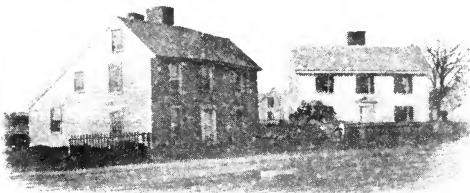


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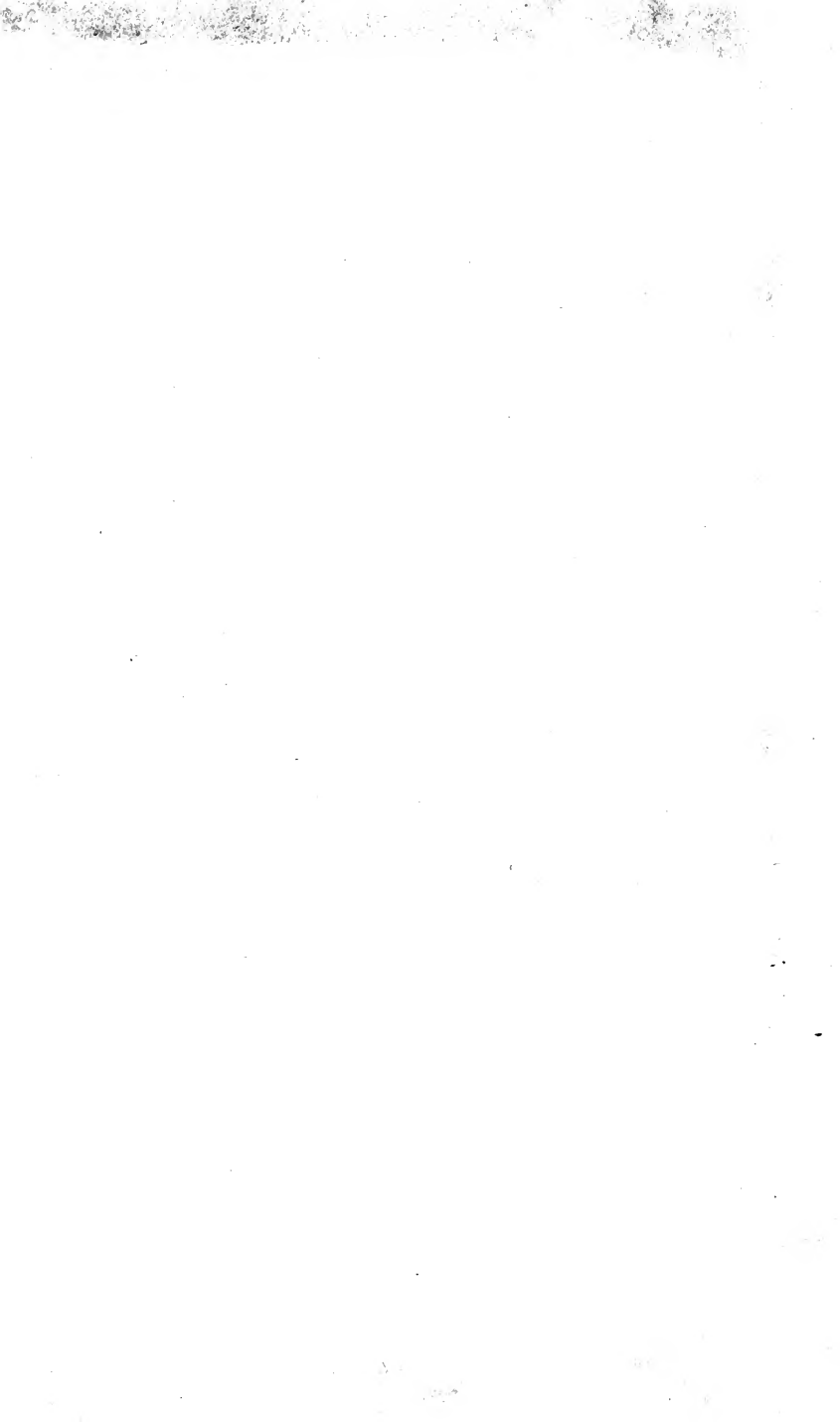
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A METHODICAL
S Y S T E M

O F

Univerfal Law :

O R, T H E
L A W S *of* N A T U R E *and* N A T I O N S

D E D U C E D
From C E R T A I N P R I N C I P L E S, and applied
t O P R O P E R C A S E S.

Written in *Latin* by the C E L E B R A T E D
J O. G O T. H E I N E C C I U S,
C o u n s e l l o r o f S t a t e t o t h e K i n g o f P R U S S I A,
and P r o f e s s o r o f P H I L O S O P H Y a t *Hall*.

T R A N S L A T E D, and illustrated with N O T E S and
S U P P L E M E N T S,
By G E O R G E T U R N B U L L, LL. D.

To which is added,
A D I S C O U R S E upon the N A T U R E and O R I G I N E
of M O R A L and C I V I L L A W S ; in which they are deduced,
by an Analysis of the human Mind in the experimental Way,
from our internal Principles and Dispositions.

Natura enim juris ab hominis repetenda natura est. CIC.

V O L. II.

L O N D O N :

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XX

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THE
L A W S
O F

NATURE *and* NATIONS *deduced, &c.*

BOOK II.
Of the LAW of NATIONS.

CHAP. I.
Concerning the natural and social state of man.

Sect. I.

HITHERTO we have considered *the law of* nature, by which the actions of particulars ought to be regulated. Now, the next thing to be done in this undertaking, is to deduce *the laws of nations* from their principles, and to give a compendious view of them. This we promised (l. I. § 23). But since *the law of nations* is the law of nature, applied to social life, the affairs of societies, and of independent political bodies (l. I. § 21), we cannot treat of it distinctly, without first giving a clear notion of what we call *states* and *societies*.

Sect. II.

State in general means the quality which constitutes a particular thing, or makes it what it is; and thus the qualities constituting man are rightly said to make *his state*. Now, we may either consider man merely as consisting of certain faculties of body and mind with which he is endowed by his Creator, or we may consider him as subjected

to laws for the regulation of his free actions. The first way of considering man is called *considering him in his physical state* *. The second is *considering him as a moral being, or in his moral state*. But in treating of the law of nations, the objects of which are mens free actions, it is evident, that it is not merely man's physical, but more directly his moral state, which then falls under consideration.

* Thus it is by regulations arising from the will of the Creator, that men are male and female, that some have well formed, and others distorted bodies ; that some have a strong and robust, others a weakly and feeble constitution ; that some are beautiful, and others deformed ; and which is more, that some have a very quick and vigorous apprehension, an universal penetrating genius, while others are exceeding slow and dull, and have no capacity almost for any thing. All these differences, it is plain, belong to the *physical or natural state* of man, as it is called by the civilians. On the other hand, the free actions of man are differently limited, if he be a husband, from what they are, if he live in celibacy ; differently according to the different personages or characters one bears, as of a parent, or a child, a master or a servant, &c. For which reason, all these differences are referred to the *moral state* of man, which is called by civilians his *civil state*. But let it be observed, that the moral state of man extends a little farther than what they call the civil state, to which they only refer the *state of liberty, citizenship, and a family state*.

Sect. III.

What is meant by a natural, and what by an adventitious state.

This *moral state*, by which men are so greatly distinguished, is either congenial to them, or it depends upon some deed of ours. The first is called *natural* ; the other *adventitious*. Wherefore the *natural state* of man is that quality or condition imposed upon man by nature, without any deed of his, by which our free actions are subjected to, and limited by a natural law, suitable to the nature of that state. The *adventitious state* of man, on the other hand, is a quality or condition which man brings himself

self into by his own deed, in consequence of which his free actions are subjected to, and limited by a natural law, suitably to the nature and exigencies of that state *.

* And in consequence of these limitations, both states give men certain rights, and oblige them to certain duties: Thus certain duties belong to those who live in a state of nature, and other duties belong to husbands and wives, others to parents and children, others to masters and servants, and others to citizens. And therefore our definition of a state comes to the same with that of Pufendorff, of the duties of a man and a citizen, 2. 1. 1. where he defines that state to be in general, “a condition in which men are understood to be placed in order to a certain course of action, and which is accompanied with certain rights.”

Sect. IV.

We do not then oppose a *natural state* to the state of brutes, for the difference between our nature and that of the brutes belongs rather to our physical than our moral state (§ 2); nor to what the Civilians call a *contra-natural state*, such as they have feigned the state of slaves to be, § 2. Inst. de jure pers. but to a social and a civil state; both of which being imposed upon men by themselves, are equally adventitious. But what this state is, shall be more accurately considered, and thereby it will appear, why so great a number of men, forsaking their natural state, have put themselves into other states, attended with many and various uneasinesses.

Natural state is not opposed to the state of brutes, nor to a state contrary to nature.

* From this state of mankind, by which their Creator hath so far exalted them above the brute creation, Pufendorff deduces certain duties of mankind, ibidem, § 3. “As that man ought to acknowledge his Creator and worship him, contemplate and admire his works, and live in quite a different manner from the brutes.” Simplicius ad Epictet. c. 79. seems to have entertained much the same sentiments, when he prays to God, “to keep him in mind of the dignity given to human nature, by his distinguishing favour.” But we are obliged to all these duties, not because we have received endowments superior to

those bestowed on the brutes, but by the will of God, the sole source of all moral obligation (l. i. § 62), and consequently, we have deduced all these duties from that principle (l. i. § 126. § 149.)

Sect. V.

It is a state
of equal-
ity.

We have already observed (l. i. § 88), that all men, tho' one may be more perfect than another, are however equal by nature. And who can call this into question, since all men consist of the same essential parts, body and mind? But hence it follows, that a state of nature is a state of equality; and consequently, among those who live in it, there is no superior or inferior; and therefore in it empire and subjection, and distinction of dignities, have no place; so that Ulpianus justly says, "That by the law of nature all men are equal," l. 32. D. de reg. jur. l. 4. D. de just. & jure, l. 12. § 3. D. de accusat. l. 64. D. de conduct. indeb. *.

* Merillius observ. i. 15. observes, that all this is taken from the Stoics. And indeed many such sayings are to be found in their writings. See Arrian. ad Epiict. i. 13. Seneca, ep. 47. and of benefits, 3. 22. which passages are quoted by Merillius. But this principle was rather common to all philosophers and poets, because none could choose but admit it, who had considered human nature with any attention. To this purpose is that of Euripides in Hecuba, v. 291.

*Lex enim vobis & liberis æqua
Et de servili sanguine natis lata est.*

And that fragment of Varro apud Nonium Marcell. 2. 98. "Natura in humanis omnia sunt paria." Not to mention many other testimonies of ancient authors to the same purport.

Sect. VI.

And like-
wise of li-
berty.

But there being, in a state of nature, no place for empire and subjection (§ 5), it must be a state of liberty*; nor can either political subjection, or that

that servitude which is introduced by the law of nations, have place in it; so that in it there can be no positive laws, no magistrates, no positive punishments, nor none of those things which suppose a certain prerogative in some above the rest.

* *Liberty* is the faculty of acting according to our own will and pleasure, and for our own advantage. And it is either *political* or *civil*, when one acknowledges no superior, according to whose will, and for whose interest he is obliged to regulate his actions: Or *of the law of nations*, which they enjoy who are under the power of no master, to whose will they are bound to conform, and for whose interest they are obliged to act. To the first, which we called *political liberty*, *subjection* is opposite. To the other, which we called, *of the law of nations*, *servitude* is opposite. Thomasius has added a third species of liberty, *viz. natural*, which is defined, § 2. Instit. de jure person. But we shall not here take any notice of it, since it belongs rather to the physical than the moral state of mankind.

Sect. VII.

Yet because magistracy, and positive laws and punishments, have no place in this state merely on account of the natural equality of mankind (§ 6), which reason does not at all affect that eternal law which is constituted by God himself; it is plain that the actions of men, even in a state of nature, are subject to the law of nature; and those who live in that state, are no less bound than we who have put ourselves into adventitious states, to love and obey God, to love, preserve, and perfect ourselves, and to love other men as ourselves; to do no injury to any one, but to render to every one his own, and to all the duties of humanity and beneficence*.

* And this is the chief argument by which we above exploded that first principle of *sociality*, laid down by Puffendorff (l. 1. § 75). This learned author derives the law of nature from our obligation to sociality, to which men are compelled by necessity itself. But man would be under

obligation to perform duties to God and to himself, tho' he were not united by any ties with other men, and every man lived apart and independently. With what shew of reason then can one set about to derive duties from our obligation to sociality, the greater part of which would have place, tho' there were no social state?

Sect. VIII.

And there-
fore in
this state
all men
had not a
right over
all, nor
were men
mere
brutes.

Whence it is evident, how absurdly *Hobbes* derives all right from compact, and therefore attributes to every man, in a state of nature, a right to all, and over all; and thus prescribes the law of nature from this state (l. i. § 73); nor do those writers speak less unreasonably, who represent a state of nature, as a state in which men would differ very little from brutes, as being bound or cemented together by no ties, no obligations *.

* Thus a natural state is described by Cicero, pro Sext. Roscio, cap. 42. So Horace, Serm. i. v. 99.

*Quum processissent primis animalia terris
Mutum & turpe pecus : glandem atque cubilia propter
Unguibus & pugnis, dein fustibus, atque ita porro
Pugnabant armis, quæ post fabricaverat usus.
Donec verba, quibus voces sensusque notarent,
Nominaque invenere, dehinc absistere bello,
Oppida cæperunt munire, & condere leges,
Ne quis fur esset, neu latro, neu quis adulter.*

Many such passages are to be found among the ancients, which are collected by Pufendorff of the law of nature, &c. 2. 2. 2. But all this is fiction, and highly improbable. For tho' we should grant, that in a state of nature men would be very brutal; and tho' we find that in former times, and even now, several nations are not very far removed from the brutes; (such an account is given of the Hunni by Ammian. Marcell. 31. 2.) yet it does not follow from hence, that in a state of nature, the law of nature cannot at all be known, nor does at all oblige.

In a state
of nature,
all men
have the
right of
making
war.

Sect. IX.

Now, since where magistracy, and positive laws, and punishments, do not take place, as we have said,

said, they do not in a state of nature (§ 6); there the oppressed can have no recourse, have no defence but in themselves; the consequence is, that in a state of nature every one has a perfect right to repel violence and injury by force, and to extort from others by violence whatever they owe him by perfect obligation; but not to extort from any one the offices of humanity and beneficence (l. I. § 84.) unless he hath voluntarily bound himself by pact to do them (l. I. § 386), or extreme necessity forces one to seize something belonging to another, and to convert it to his own use (l. I. § 170); especially if the good offices be of such a kind, that one might perform them without any detriment to himself, were he not quite devoid of all humanity. (l. I. § 216).

* Wherefore, the violence with which David menaced Nabal upon his refusing him certain offices of beneficence, would not have been excusable, even in a state of nature, 1. Sam. xxv. 21, 22. For Nabal was only obliged by the law of gratitude to supply David. But to such offices none can be forced, unless the ingratitude be pregnant, and attended with injustice (l. I. § 227). Extreme necessity would have excused force, but not such revenge as David threatened, while Nabal had not yet resisted him, but had only denied his request, which it is plain he had a right to do, especially, as he was not yet convinced of the justice of the cause.

Seçt. X.

But seeing, in a state of nature, none can be compelled to the good offices of humanity and beneficence, and therefore he who would be sure of them, must secure the performance of them to himself by pacts (§ 9), it follows, that all we have said about pacts, and the duties of those who make compacts or contracts, as likewise of the rights of commerce, hath place, or at least may have place in a state of nature; nay, that men

ought, in this state, frequently to stipulate to themselves even the performance of what is due to them by perfect right, by interveening pacts; and therefore that there is no stronger tie to hold men together in this state than the religious regard to pacts, which failing, or being contemned, all friendship and correspondence must cease.

Sect. XI.

Whether the misery of this state be so great as it is commonly represented. Now, these things being premised, it is obvious, that tho' this state be represented as most miserable by Hobbes, and even by Pufendorff, yet many things which seem to them to be wanting in it, and of which they seem so much afraid, ought not to be attributed to this state itself, so much as to the wickedness of mankind; and that some things for which they reproach this state, as solitude, poverty, weakness, barbarity, and perpetual strife, might be avoided in a state of nature, as well as in a civil state, if men would follow right reason*, and are equally unavoidable in a civil state as in a natural one, if men will not act conformably to right reason, Titius obs. ad Pufend. de offic. hom. & civ. 2. 1. 9.

* For solitude can only be conceived amongst a few, and for a short space of time Indigence, hunger and cold could not oppress men more in a state of nature, than they may do in a civil state, since nothing hinders men to possess themselves of necessaries, and carry on commerce in a state of nature as well as in civil states, that inequality of dignities which begot luxury, the mother of poverty, being unknown. Barbarity and ignorance are cured by the culture of reason. But why might not men have improved reason, as well in a state of nature as in a civil state? Nay, are not simplicity and candour often misrepresented as rudeness; and on the other hand, is not an affectation of elegance too often set forth as politeness? Besides, since even in civil states the only remedy for the weakness of particulars, is by pacts and covenants, why may not the same be done in a state of nature? In fine,
if

if strife and war be reckoned amongst the evils of a state of nature, a civil state will not be found to have much pre-eminence above it in this respect, since in consequence of the latter, whereas in ancient times, particulars tried their strength one with another to the hazard of a few, now whole nations wage war to the destruction of myriads. Let any one therefore pronounce a state of nature worse than a civil state if he can, when it is evident that the latter is liable to all the same inconveniencies as the former; and that is not subject to some to which this is obnoxious.

Sect. XII.

Therefore it was not the extreme misery of a state of nature (§ 11), but partly the hopes of greater convenience and security, and partly the malice of men that made them form themselves into societies, as shall be shewn afterwards. But since there is no stronger tie or bond for holding men together than pacts and conventions, the consequence is, that societies were constituted by pacts and conventions; and because a few more easily consent in the same end than many, it is probable that men first formed more simple, and then more complex societies*.

* Sacred history sufficiently confirms this. For first, we find Adam and Eve in the matrimonial state, the most simple of all societies, Gen. ii. 22, 23. Then children are born to them, and thus a new society was produced, Gen. iv. 1, 2. somewhat more complex, between parents and children. None could then be born slaves, unless you say that our first parents reduced their children and grandchildren into slaves. Nay, since Noah was saved by the ark with his wife, his sons and his sons wives only, it is probable that pious men then had no slaves in their families, Gen. vi. 18. Tho', on the other hand, it is evident, from what is said of the posterity of Cain, Gen. vi. 4. that some men then oppressed others, and reduced them into servitude. Again, we have an instance of the most complex sort of society, Gen. iv. 17. So that it appears very certain, that the progress was gradually from more simple to more complex societies, and from these to the

the most compounded of all, which is commonly a civil state or republic.

Sect. XIII.

What society and a social state is.

Here we understand by *society* the consent of two or more persons in the same end, and the same means requisite to obtain that end; wherefore, while such consent lasts, there is society. And so soon as they who had formerly consented in the same end and means, begin to propose and pursue each his own end, that society is broke and dissolved, and each begins to have his own to himself*. Whence a *state* in which men live in society is called a *social state*.

* I would not be understood to mean, that the pact by which society is formed becomes null by the dissent of any one of the parties. This opinion I have already confuted (§ 382): But that such a one can no longer be considered by the rest as an associate, who does not concur with them in the same end and means, and shews that disposition by incontestible signs and evidences. For in that case, the others continue to have a right by the convention to force him to fulfil his pact, and all the terms and articles of his agreement; or if that can't be done, to repair their damage, and to make them satisfaction. But such a person can no longer be said to be an associate, because the definition of an associate no longer agrees to him from the moment he perfidiously breaks the bond of union and society.

Sect. XIV.

Societies in respect of their ends are of very different kinds.

But since every society proposes or tends to a certain end (§ 13), but the ends may be very different; hence it follows, that if the end be *just* and *lawful*, the society formed for that end is likewise *just* and *lawful* (l. i. § 398). Wherefore societies of pirates, robbers, and such like societies, are most base and flagitious. Societies must be judged of by their ends*; and hence means must be judged of by their ends, and the laws, rights and duties of persons

persons united in a society, must be inferred from the end of that society.

* This we have already seen with respect to the contract of *partnership*, the end of which is common gain (l. I. § 379). But matrimonial society has another end; a society of masters and servants has another end; and in fine, that most complex of all societies, which we call a republic, has yet another end. Therefore, as many different ends as there are, so many different kinds of society there are, and so many societies so many different ends must there be. Aristotle begins his political work with a remarkable observation to this purpose. "Because we see all communion or society is constituted for the sake of some good (for all things are done with a view to something that appears good to the agent) it is evident that all societies have some good as their proposed end." (Politic. I. I.)

Sect. XV.

But since society cannot be understood without content (§ 13), which is either voluntary or extorted by force, which we call *forced consent*, and which may become valid by ratification (l. I. § 345); hence it follows, that some societies are *voluntary* and *cordial*, and others are *forced*; but that the latter ought not to be pronounced unjust, because they had a vitious or faulty origine, if those who were at first forced to enter into society do afterwards expressly or tacitly ratify their consent (l. I. § 381).

* Thus was matrimony ratified between the Romans and the Sabines; and between the Benjamites and the daughters of Shiloh, Judg. xxi. 21. tho' its origine in both cases was unjust, being violent; because the ravished afterwards confirmed the deed by their consent, and adhered to their marriages, tho' they had been forced, Dion. Hal. antiq. Rom. l. 2. p. 110. In like manner, the society between masters and their slaves taken in war, is originally forced: And yet sometimes, the mildness and humanity of masters has engaged the slaves to serve with good will, and to say seriously, what in Plautus, Capt. 2. v. 21, one says with great grief,

Quamquam

*Quamquam non fuit multum molesta servitus :
Nec mi fecus erat, quam si essem familiaris filius.*

See Exod. xxi. 5.

Sect. XVI.

They are formed either by express, tacite, or presumed consent.

Besides, consent being either express or tacite, which is inferred from some deed, of which kind is even patience (l. 1. § 391), it follows, that societies may be formed either by *express* or *tacite* consent; and it is the same as if persons had consented, when they afterwards live with others in society, and pursue the same end with them by the same means; nay, seeing sometimes we judge one to have consented from the very nature of the thing, (l. 1. § 391), it is plain that society may arise from presumed consent*.

* Such is the consent between parents and children. For so far are children from consenting directly to that society at the time they enter into it, that they are then absolutely incapable of consenting. And tho' coming afterwards to understand the nature of the thing, they might consent if they would; yet so far are all of them then from testifying this consent by words and deeds, that many more dissent and rebel. But this society is not therefore dissolved, because the education of children requires this society, and it is presumed that children cannot but consent to live with their parents in such society, without which they can neither be conveniently preserved nor educated.

Sect. XVII.

Some societies are simple, and some are more compounded.

Sometimes it happens, that not only individuals, but also whole societies intend the same end, and agree upon the same means for obtaining it. But such consent or agreement being society (§ 13), the consequence is, that not only individuals, but that whole societies may coalite into society; and therefore societies are either *simple*, such as are those formed by individuals; or they are more complex, such as those entred into by simple societies,

ties, which are then considered as associates. In the same manner, it is evident that complex societies may become larger and more compounded; so that some societies may consist not only of many thousands, but of myriads*.

* Experience confirms and illustrates all this. The most simple societies are those of persons joined in marriage, of parents and children, masters and servants. Of these societies coalited among themselves, is formed a larger society, which we call a family. Of many families are formed hamlets, villages, towns. Of many villages, &c. are formed whole states or republics; of many republics are formed systems of republics, such as were the Greek republics. See Cicero's offices, I. 17. that is, if lesser and more simple societies are not sufficient to obtain a certain end, it is necessary to form greater and more complex societies by the consociation of many little ones. Hence Justin, hist. I. 1. observes, that in the beginning kingdoms were confined within the narrow bounds of a particular counties. And this is plain from the examples of the Canaanites, the Phœnicians, the Greeks, the Gauls, the Germans, the Britons, whose provinces were originally split into several different states, kingdoms, or governments, Gen. xiv. 1. Jos. xii. 7. Judg. i. 7. Strabo, Geograph. 16. p. 519. and other writers. But by degrees, several states being oppressed by violence, coalesced with others into a larger state; and many states being in danger from their neighbours, formed a still larger system or confederacy of republics. Thus the Amphyctionian confederacy shook the power of the Medes; and the Greeks, tho' otherwise very inconsiderable, became strong merely by their union and consociation. See Jo. Henr. Boecler. de concilio Amphyctyonum.

Sect. XVIII.

In fine, those who consent in the same end and means, are either equal or not equal. The former, as equals, by common consent consult about, and find out the means necessary to a common end, and thus *equal* society is formed. In the latter, the business of finding out the end and means is intrusted

Some are equal, and some are unequal.

or committed to one or more, and then society is *unequal*, and this society is likewise called *Rectoreal*. Now, it is plain, from the nature of the thing, and from human temper and disposition, that the larger a society is, the less practicable is it, that so great a multitude of associates should find out necessary or proper means by common consent and suffrage; and therefore the larger the society is, the more necessary it becomes that it be rectoreal and unequal*.

* Hence experience teaches us, that the more extensive empires are, the less liberty they have; and empire daily extending itself and enlarging its dominions, necessity often obliges men, otherwise great lovers of liberty, to bear subjection with patience. For in a large but free and equal society, because the greater number will overpower the better part, bad councils must often take place and be pursued; and liberty degenerating into licentiousness, must create disorders, and rend the state into factions. In which cases, there is often no other remedy but subjection to one head, as it happened in the Roman republic, when Augustus usurped the sovereign power, according to the opinion of the most prudent among them. (Tacitus. annal. 1. 9.)

Sect. XIX.

Every society is one moral person. But of whatever kind society be, it is plain, from the description of it, that it is designed in order to obtain an end by certain means (§ 13). But since to consent in this manner is to will the same thing, the consequence is, that the understanding and will of every society are to be considered as one will and one understanding (l. 1. § 32), and therefore every society constitutes one person, which, in contradistinction to a physical person, is called a *moral one**.

* Cicero de off. 1. 17. observes, "that by every kind of union and friendship, many persons become one, and that because all think and will the same thing." Add. Catilin. 4. 7. So Apuleius de habit. doctrin. Platon, l. 2. p. 25.

p. 25. "A state, says he, is a conjunction of many persons, in which some govern, and others are governed, formed by concord for mutual assistance; and who being ruled by the same good laws, and having thus the same manners, constitute one body, every member of which hath the same will." We may learn the nature of a moral person from Seneca likewise, Ep. 102. as also from l. 30. D. de usurp. & ufucap.

Sect. XX.

Now, if every society be, as it were, one person (§ 19), it must, by consequence, be subject to the same laws as individuals or physical persons *; and therefore all the duties which the law of nature prescribes to particular persons, ought likewise to be religiously observed by all societies greater or lesser. In like manner, the same rights which belong to particular persons, belong also to societies, and associated persons have the same common things and rights; yea, all the affections or properties of bodies and persons may justly be attributed to societies; and thus they, by very elegant metaphors, are said to flourish, or to be sick; nay, to die and perish. See Koehler. spec. jur. gent. 1. § 20. & seq.

Therefore the laws and duties of societies, and of individuals are the same.

* And hence appears the truth of what was said above (l. 1. § 21.), that the law of nations is nothing else but the law of nature applied to a social state, and the affairs of societies and whole political bodies. Wherefore, it is justly called by Koehler, ibidem, "Jus naturale societatum, the natural law of societies." And hence likewise it is evident how sadly they reason, who, as it were, absolve empires and states from the obligation of natural law, and pronounce all things lawful to emperors which are for their private interest, or that of their empires. It was therefore a most accursed saying of Cæsar (in Cicero de off. 3. 21.)

*Si violandum est jus, regnandi gratia
Violandum est, aliis rebus pietatem colas.*

Hertius has said a great deal to excellent purpose on this execrable doctrine, Polit. pæd. § 13. p. 22. & seq.

Sect. XXI.

The obligations of associates or members with regard to society, and of society with respect to them.

From the same principle we may justly conclude, that every associate, or member of a society, is obliged to adjust his actions to the common end of that society; and therefore that he injures his fellow-associates, who seeks his own advantage at their detriment, or who does any thing contrary to the end of the society of which he is a member, or hurts any one of its members. For which reason, no injustice is done to him, if he be forced, by what is called *punishment*, to repair the injuries he has done, and to behave better with regard to his society for the future, (l. I. § 211). And it is no less evident, that an associate cannot be blamed if he separates such a bad associate from himself, or if he leave a society in which no regard is paid to its common end, nor to the means requisite to that end.

Sect. XXII.

The obligations of one society with respect to the others.

Hence likewise it is perspicuous, that society ought *to hurt no person*, but *to render to every person his own*; but is not obliged to prefer the interest of any private person, or of any other society to its own. For since every society constitutes a moral person, (§ 19), and hath the same rights with physical persons (§ 20), and no person is obliged to love another more than himself (l. I. § 94), or to perform to another the offices of humanity, which would be hurtful to himself, or to his friends, to whom he is under special obligations (l. I. § 218); hence it follows, that no society is bound to render such offices to another society, or to prefer the interest of another society to its own*.

* Therefore the confociates in a mercantile society are not inhuman when they refuse a share in their monopoly to a private person, or another society. For that would be a detriment to themselves. Nor will any one say the Cimbri, Teutones and Helvetians, who seeking a new habitation

habitation to themselves, desired, as by their right, that the Romans would turn out in their favour, and leave them certain tracts of land they possessed. For that the Romans could not grant to them without manifest detriment to their republic. For as Florus says, (“ Quas enim terras daret populus, agrariis legibus intra se dimicaturus? ” 3. 3.) And Cæsar gave a very just answer to the Tencteri and Usipetii, who demanded much the same thing, “ That there were no vacant lands in Gaul which could be given, especially to such a multitude, without doing injustice.” (de bello Gallico, 4. 8.)

Sect. XXIII.

In like manner it is demonstrable, that in more compounded societies, the interest of the lesser is not repugnant to that of the larger, but ought to submit to it; because, in this case, the lesser societies are considered as individuals (§ 17); but individuals ought to consent to the same end and means, (§ 13), and not to prefer their private interest to the common end of the society (§ 21); and therefore lesser societies, which have coalited into a larger, or more compounded society, can do nothing which is manifestly contrary to the interest of that larger society, without injustice*.

* Thus, for example, it would be no small advantage to a family to be exempt from certain imposts and taxes; but because such an exemption would be detrimental to the republic; none will say its governors act unjustly, when they refuse it to a family that asks it. On the contrary, magistrates and princes would be justly blamed, if they should thus cut the nerves of a republic, in order to promote the private interest of certain families; and therefore, when Nero thought of taking off all the taxes, and making a glorious present to the people of a total immunity from them, the senate interposed, pronouncing it a dissolution of the empire to diminish the revenues by which it was to be supported, Tacit. Annal. 14. 50.

Sect. XXIV.

General
axioms
concern-
ing the
duties of
associates.

To conclude; since the duties of the members of societies must be inferred from the end of the society (§ 14), it is plain that this is, as it were, the sum and substance of all the laws of societies; “That all the members of a society are bound to do every thing, without which, the end proposed by that society cannot be obtained; and therefore the happiness of society is justly said to be the supreme law of all its members.”

REMARKS on this Chapter.

I cannot see how the physical state of man, as it is defined by our Author, can be said not to belong directly to the moral science. For whence can a man's duties or obligations, which constitute his moral state, be inferred but from his physical state, from his frame, condition, rank and circumstances; from his make, and the relations he stands in, in consequence of his make and situation? Properly speaking, man's physical state lays him under moral obligations; or binds and obliges him to a certain behaviour; binds and obliges him to choose to act, in a certain manner, or according to certain rules: or, in other words, man's physical state constitutes the law of his nature, by which he is bound, whether he consents or not, being bound to consent and choose to act agreeably to that law. Man cannot be said to be under the law of nature, or subject to it by his consent in any other sense, but this, that were he not capable of discerning the law of his nature, of perceiving its reasonableness, its excellence, and of consenting to it, he would not be a moral creature; but being such by his make, he is by his nature under natural and immutable obligations to know the law of his nature, and to regulate his conduct in all instances by it. And all men are equally under or subject to the law of nature: no man is less or more subject to it: but all *men* as *men*, are equally, universally obliged to observe it as the law of their nature, the law of reason, the law of God their Creator. And in this sense all men are equal, or there is an equality of obligation, and of right belonging to all men. Whence it follows, that all men are by nature equally *subject* and equally *free*; equally subject to the same universal law, and equally free or exempt from all obligations but those which arise from the law of nature. All are equally bound by the law of nature; and for that reason, all are equally free from all obligations but those which the law of nature lays equally upon all. All are equally obliged to direct their conduct according to the law of nature; and therefore every one hath

hath a right, an unalienable right, to make the law of nature his rule of conduct; and none hath a right so much as to advise, far less to force or compel any one to act contrary to the law of nature, or to hinder any one from making the law of nature his rule, and exercising his right to judge of it, and to act according to it: nay, none hath a right to dispose of, quit or resign this natural right and obligation. For that would be a right to throw off his natural obligations, and to choose or take another rule to himself. Man is free, or master of his actions, free and master of his consent; but how far? within the bounds that the law of nature or of reason sets to him. That is, he is free to consent and to dispose of himself and his actions, in any way not contrary to the law of nature; but not in any way that is repugnant to it, or which the law of nature forbids. Now, if this be carefully attended to, it will not be difficult to determine any of the questions that are commonly put by moralists about what are called by our Author adventitious obligations, or obligations imposed upon man by himself, or some deed of his own. For, from what hath been said, it is evident that man can bring himself under no obligation contrary to the law of his nature. Such adventitious impositions upon himself are *ipso jure* null, being morally not in his power, as being contrary to the law of nature, which he cannot abrogate, rescind or dispense with. This general principle shall afterwards be applied to civil society, and the impositions or obligations men lay themselves under by a civil contract. Here, we shall only observe, that the natural inequalities which take place amongst mankind, are not inconsistent with the moral equality and freedom of mankind that hath been defined. The first distinction which subjects some persons to others, is that which is made by birth between parents and children, which distinction makes a first kind of government in families, where the children owe obedience to their parents, who are the heads of families. But of this we shall say nothing here, because our Author treats expressly of it at great length in a succeeding chapter. It will be better for us to supply here a few things not touched upon by our Author, which however it is of importance to clear up. 1. Then, there is an evident inequality amongst mankind, intended by nature in respect of the goods of the mind. And it might easily be shewn, were this the proper place for it, that, as our excellent poet most beautifully expresses it,

*Order is heav'n's first law; and this confess,
Some are, and must be greater than the rest,
More rich, more wise; but who infers from hence
That such are happier stocks all common sense.
Heav'n to mankind impartial we confess,
If all are equal in their happiness:
But mutual wants our happiness increase,
All nature's difference keeps all nature's peace.*

Essay on Man, Ep. 4.

But what we would observe, is in the first place the fact. “ God, who does nothing in vain, (says an excellent author often quoted in our remarks) hath so differenced or divided men, that twenty men (if they be not all idiots, perhaps if they be) can never come together, but there will be such a difference in them, that about a third will be wiser, or at least less foolish than the rest, these, upon acquaintance, tho’ it be but small, will be discovered, and (as stags that have the largest heads) will lead the herd: For while the six discoursing and arguing one with another, shew the eminence of their parts, the fourteen discover things that they never thought of, or are cleared in divers truths which had formerly perplexed them. Wherefore, in matter of common concernment, difficulty or danger, they hang upon their lips as children upon their fathers: And the influence thus acquired by the six, the eminence of whose parts are found to be a stay and comfort to the fourteen, is the *authority of the fathers*. Wherefore, this can be no other than a natural aristocracy diffus’d by God throughout the whole body of mankind, to this end and purpose. And therefore, such as the people have not only a natural but a positive obligation to make use of as their guide; as where *the people of Israel are commanded to take wise men and understanding, and known among their tribes, to make them rulers over them*. The six will acquire an authority with, and imprint a reverence upon the fourteen; which *action and passion* in the *Roman Commonwealth* were called *authoritas patrum*, and *verecundia plebis*. Nevertheless, if the few endeavour to extend the authority which they find thus acquired, to power, that is, to bring the fourteen to terms or conditions of subjection, or such as would be advantageous to the few, but prejudicial to the many; the fourteen will soon find, that consenting, they hurt not only themselves, by endamaging their own interests, but hurt the six also, who by this means come to lose their virtue, and so spoil their debate, which, while such advantages are procurable to themselves, will go no farther upon the common good, but their private benefit. Wherefore, in this case they will not consent, and not consenting, they preserve not only their own liberty, but the integrity of the six also, who perceiving that they cannot impair the common interest, have no other interest left but to improve it. And neither any conversation, nor any people, how dull soever, and subject by fits to be deluded, but will soon see thus much, which is enough, because what is thus proposed by the fourteen, or by the people, is enacted by the whole, and becomes that law, than which, tho’ mankind be not infallible, there can be nothing less fallible in mankind.” Art, says our Author, “ is the imitation of nature; and by the observation of such lines as these in the face of nature, a politician limns his commonwealth.” This is the fact, God having divided mankind into the natural aristocracy and the natural democracy, hath laid in nature the foundation of social union and civil government, and thereby delineated the whole mystery of a commonwealth, which lies only in

dividing

dividing and choofing. “ Nor has God (if his works in nature be understood) as the same Author speaks, left so much to mankind to dispute upon, as who shall divide, and who choofe, but distributed them for ever into two orders, whereof the one hath the natural right of dividing, and the other of choofing.”

2. But this natural division of mankind gives no more than authority to the aristocracy, or the right of counselling, and not the power of commanding; it gives them ability and right to advise or counsel right, and lays an obligation upon the many to seek and follow advice and counsel: But, as it cannot give a right to the few so much as to counsel, far less to command what is contrary to reason and the law of nature; so it can lay no obligation upon the many to be led by the few to what is wrong or contrary to the law of nature. The few are under obligation to conform to the law of nature in their advices or counsels; and the many are under obligation not to be influenced by the few to act contrary to the law of nature, tho’ by the nature of the thing, and by the law of nature, they be under obligation to ask and take counsel from the few. Put therefore the case, that a few being discovered to be capable of leading or counselling in matters of common concernment, the many, by voluntary consent and agreement, should put themselves under the guidance, under the command, if you will, of the few; then, it is true, they would be under an obligation by consent to obey; and the natural authority of the few, would be then changed into a right to lead or command the many; but not to lead or command contrary to the law of nature, because neither have the many power to contract with the few for such submission and obedience, nor have the few power (I mean moral power or right) to stipulate to themselves such submission and obedience.

3. There is an inequality amongst mankind intended by nature, or at least not contrary to nature, in respect of external goods or the goods of fortune, all which may be comprehended in one word *wealth*. But as superiority in respect of the goods of the mind begets authority; so superiority in respect of external goods, begets power or dominion, “ in regard that men (as the same Author expresses it) are hung upon these not of choice, as upon the other, but of necessity, and by the teeth, for as much as he who wants bread is his servant that will feed him; and if a man thus feeds a whole people, they are under his empire. There is a real distinction between authority and power. Wherefore, the *leviathan*, tho’ he be right, where he says *riches are power*, is mistaken where he says, that *prudence*, or the *reputation of prudence*, is power. For the learning or prudence of a man is no more power, than the learning or prudence of a book or Author, which is properly authority. A learned writer may have authority, tho’ he has no power; and a foolish magistrate may have power, tho’ he has otherwise no esteem or authority. The difference of these two is observed by Livy in Evander, of whom he says that he governed rather by the authority of others than

by his own power. It is property that in proportion to it begets or gives power, or makes necessary dependence." But now what we said just now of authority, will likewise hold here. Whatever superiority one may have over others in dominion or empire, by the necessary dependence on him his superior property creates, yet he can never have a right to exercise that dominion, empire, or power, contrary to the law of nature: nor can his dependents come under any obligation, even by consent added to necessary dependence, to be governed by his will, contrary to the law of nature, and the essential and immutable obligations they are under to obey it. And therefore dominion exercised contrary to the law of nature, is exercised without right, nay, contrary to right and obligation: For which reason, every dependent on any superior in power, has a right to refuse submission to, and to shake off dominion exercised over him contrary to the law of nature. That must be true; or of necessity it must be said, that superiority in dominion releases from the obligations of the law of nature; and that inferiority or dependence knows no other law but the arbitrary lawless will of a superior in property, and by consequence in power: which is to say, that there is no law of nature but the law of strength or force. It is indeed absurd to say, that it is contrary to the law of nature to seek, or to have superiority in property, *i. e.* to have dominion and dependents. Whatever property is purchased by honest industry, it, with all the superiority it gives, is a lawful purchase. But it is no less absurd to say, that the law of nature does not extend to those who have power, or does not limit its exercises, and lay it under certain obligations. And yet unless there be no obligations with regard to the exercise of dominion or power by the law of nature, there must be an exercise of power that is unlawful, and to which consequently, it is unlawful to submit or obey. Now, if it is asked, what is this law of nature with regard to superiors and inferiors, we answer, with our Author, it is the law of love or benevolence. And he goes on in the succeeding chapters to shew, what that law of love and benevolence requires in all different coalitions or societies of mankind, whether natural, as that between parents and their children, or adventitious, as that between masters and servants, and subjects and magistrates, &c. Nor, as he observes, can we ever be diffculted in any case, to find out the duties of the members of any society towards its head and towards one another, or of any one society towards any other distinct independent society, if we remember that societies are moral persons, invested with the same rights, and lying under the same moral obligations as physical persons. For that being remembered, it must, for instance, be true, that societies are bound to justice and charity, as well as individuals; and that societies have the rights of self-defence and preservation, as well as individuals. If which two principles be granted, it will be an easy matter to resolve any question about the rights and duties of superiors and inferiors in any society; or about the rights and duties.

duties of any distinct independent societies. Mean time it is evident, that the natural inequalities amongst mankind, or the inequalities made necessary by the state and circumstances of mankind, and which must for that reason be said to have been intended by the Author of nature, do not destroy the moral equality and freedom of all mankind, essential to man as such, *i. e.* the equal subjection of all mankind to the law of nature, and their equal liberty and right to act agreeably to it, and to demand from one another behaviour conformable to it. In this respect, all men are equally bound and equally free; or all men have the same common rights and duties.

C H A P. II.

Of the duties belonging to the matrimonial state, or society.

Sect. XXV.

THAT God wills mankind should be propagated, and that the number of those who daily pay their debt to nature should be supplied by a new race, is plain from hence, that otherwise his end in creating mankind could not be obtained (l. 1. § 77.) they therefore who have this end in view, propose a good end to themselves, and are obliged to have recourse to the means for compassing that end. Since then this end cannot be accomplished, unless a man and a woman consent to copulation, the consequence is, that matrimony is a society (§ 13), and that it is honest and lawful, being proper to a good end, which is very agreeable to God; and because it consists of the fewest persons of different sexes that may be, it is the simplest of all societies (§ 17).

Hence the Greeks justly called the conjugal state, *the root of all other societies*, and, as it were, *the seminary of mankind*, because without it man would be but of a single age, as Florus says of the Romans while they had not wives, Hist. 1. 1. The matter is reasoned most philosophically by Seneca the tragedian in Hippolyt. v. 466.

*Providit ille maximus mundi parens,
Quum tam rapaces cerneret fati manus,
Ut damna semper sobole repararet nova.
Excedat, agetum, rebus humanis Venus,
Quæ supplet ac restituit exhaustum genus :
Orbis jacebit squallido turpis situ.*

And a little after he adds,

*Cælibem vitam probet
Sterilis juvenus : hoc erit, quidquid vides,
Unius ævi turba, & in semet ruct.*

SECT. XXVI.

Its end is
not only
procrea-
tion, but
education.

But the end of God, as the author of mankind, being not merely that men should exist, but that they should be truly happy (l. I. § 77), it follows, that mankind ought not only to be propagated, but that the offspring should be carefully educated, that they may not be useless burdens on earth, but may grow up into useful members of the human state. Now, since this duty of educating offspring can be incumbent upon none but parents, in whose minds God hath, for that effect, implanted a most tender regard to their offspring* ; hence we justly infer, that parents ought not only to have in their view, as the end of matrimony, the preservation of children, but likewise their education ; and therefore preservation and convenient education are the genuine end of marriage.

Men, as Justinian observes, l. un. § 5. C. de rei uxor act. are strongly stimulated by a natural impulse to the care and education of their children. Nay not only are men thus impelled by nature, but the brutes likewise, who do not abandon their offspring till they are capable of providing for themselves. But seeing God does nothing in vain, it is evident that God requires of man, that love and care of his offspring, which is the only end for which this instinct could have been implanted in us by him. Hence Euripides justly observes, in a passage already quoted in Medea, v. 1098.

*Sed quibus in ædibus est liberorum
Dulce germen, eos, video curis*

Confici

Confici omni tempore :

Primum quidem, quo pacto illos bene educent,

Et unde victum relinquunt liberis.

Sect. XXVII.

Matrimony therefore is a simple society between persons of different sexes formed for procreation and education. And, from this definition, it is plain, that marriage cannot be contracted without the consent of the persons of both sexes (§ 13); and that the united parties are bound to all, without which, procreation and convenient education cannot be obtained *, and that every thing ought to be omitted which is repugnant to this end, (§ 24).

* For certainly, it would be better not to procreate, than to give a bad education to children. It would be but a small loss to mankind if every one was not equally prolific. But mankind receive great hurt from any one who is a disgrace to the kind on account of his bad education. How unhappy was it for mankind that there was a Nero? And therefore Juvenal says with great gravity and judgment, Sat. 14. v. 70.

Gratum est, quod patriæ civem populoque dedisti,

Si facis, ut patriæ sit idoneus, utilis agris,

Utilis & bellorum & pacis rebus agendis.

Plurimum enim intererit, quibus artibus, & quibus hunc tu

Moribus instituas.

See likewise Seneca of benefits, 3. 30.

Sect. XXVIII.

Since marriage cannot be formed without consent (§ 27), it is obvious, that marriage between a ravisher and a ravished person is not valid, (l. 1. § 109), unless the latter shall afterwards ratify it by consent * (§ 15); nor is marriage more valid, if any violence was done to either party (ibid.) or if either of the parties was seduced by any knavish art into a marriage, to which, had the party not been deceived, consent would not have been given

given (l. i. § 57). But tho' this nuptial consent of the parties be absolutely necessary, yet because there can be no society without consent to the means as well as to the end, we think mere consent to the end does not, by the law of nature, constitute marriage, but that immediate consent to conjunction of bodies is requisite.

* That is, if real force was used. For often in ancient times maids suffered an agreeable violence, not that they were averse to the marriage, but that they might not seem to rush into an embrace. This was an ancient custom, as is plain from Dion. Halicarn. antiq. Rom. 2. p. 100. where, to excuse the rape of the Sabines by the Romans, he says, "That this kind of rape was not an injury, but done with a view to marriage, according to a very old custom among the Greeks, which did honour to the women desired in marriage." This was practised in other nations, it being judged more decent, that a virgin should be taken with an appearance of violence, than that she should give herself up to a man of her own accord. And that such force is not repugnant to consent is very manifest.

Sect. XXIX.

The difference between betrothing and marriage.

Hence it is evident, at the same time, that consent to marriage is more properly called, *contract to marriage*, or *betrothing*, than *marriage*; so that the distinction of the canonists between *sponsalia de presenti* & *de futuro*, is too subtle for the law of nature; yet, because betrothing is a pact, and all pacts, by the law of nature, are perfectly obligatory (l. i. § 387), none can question but a contract of marriage ought to be fulfilled *, unless any of these circumstances take place, by which, we have already observed, that all other pacts are rendered null (l. i. § 382); or unless difference of tempers, or some other just reason, render it more adviseable that it should be departed from, than that it should be compleated to the great misfortune of the parties,

* It

* It may seem odd, that whereas the other Latin nations allowed an action upon betrothment, *ad id quod interest*, if the pact was not fulfilled, (Gell. noct. Attic. 4. 4.) the Romans left the betrothed persons at perfect liberty to renounce, l. 1. c. de sponsal. l. 2. c. de repud. But there being amongst the Romans so much liberty with respect to divorce, it is impossible that this pact could be firmer than marriage itself was among them, or that there could be less latitude with regard to it than there was with respect to divorce after marriage.

Sect. XXX.

Since the end of matrimony is procreation and convenient education (§ 26), and nothing ought to be done that is repugnant to this end (§ 27); it follows, that those who think of matrimony, ought to be of an age in which it may be expected they can be fit for both these ends; and therefore matrimony is not allowed, by the law of nature, to infants, or such young persons, as either have not vigour enough for raising up a new vigorous seed, or not the virtue and prudence requisite to provide for a wife and children, and to take care of their children's education and conduct *.

* In this respect Lycurgus excelled all other legislators. For he, as Xenophon informs us, de rep. Laced. cap. 1. § 6. did not allow every one to marry when he pleased, but provided that matrimony should be contracted when persons were in the best condition for propagation. This he thought necessary in order to the propagation of a wholesome vigorous race. And whereas he observed that many parents were fitter to propagate than to educate, he gave the care of education to the public; he made it a matter of public concernment; and an inspector of the youth was appointed from amongst those who had been employed in the supreme magistracy, who was called *Pædonomos*." See Xenoph. *ibid.* cap. 2. § 2. And this is a piece of civil prudence which ought not to be neglected in other states.

Sect. XXXI.

Whether
aged per-
sons may
marry?

Hence likewise it is evident what ought to be said of the matrimony between aged persons. For tho', on account of the indissolubility of this society (of which afterwards) married persons, who have become old in the conjugal state, ought not to be separated; and tho' marriage between a man in the decline of life, who is yet vigorous, and a young woman, is tolerable, because the end of marriage may yet be accomplished by such matrimony; yet no person of sound judgment can approve of marriage between two aged persons, or between a young man and a decrepit old woman, by which there can neither be consent to the end nor to the means of matrimony, without the most shameless immodesty*.

* For what is more impudent and shameless, than for an old woman, who as Martial says, Epig. 3. 64.

*Cum tibi trecenti consules vetustilla
Et tres capilli, quatuorque sint dentes,*

Verumque demens cineribus tuis quæris.

These sort of matches are tolerated in commonwealths, tho' they do not deserve the name of marriage (since, as Quintilian expresses it, Declam. 306. *quædam & nubendi impudicitia est*); but of them Pufendorff of the law of nature and nations says very justly, 6. 1. 25. "Perhaps we shall not speak improperly if we call these *honorary marriages*, as we term those offices *honorary*, in which a title only is conferred, without action or business. Nero (Sueton. cap. 35.) when he deserted his wife Octavia's bed, excused himself with saying, "*Sufficere sibi uxoria ornamenta*;" he was contented with the bare ornaments and badges of marriage; in allusion to the triumphalia ornamenta, sometimes bestowed on persons without the real solemnity of a triumph."

Sect. XXXII.

Much less is marriage to be permitted to those who have been deprived of their virility, either by accident or maliciously, or who are naturally incapable of procreation; and therefore, tho' examples of such marriages be not wanting, they are contrary to the law of nature, unless the impotence of the man, or the sterility of the woman, be unknown and uncertain, or be not beyond all hopes of cure, and the parties be satisfied to wait in hopes of a change to the better.

Such marriages therefore among the Egyptians were absurd, of which see Grotius, ad Deut. xxiii. 2. as are those likewise among the Turks, of which Ricaut, in his state of the Ottoman empire, 2. 21. And yet, even among Christians, it hath been made a question whether such marriages are not lawful. There is a little treatise on this question, entitled, de Eunuchi conjugio, reprinted Jenæ, 1737. But such things may well be reckoned amongst those prodigies of which Juvenal speaks in his time, Sat. i. v. 22.

*Quum tener uxorem ducat spado, Mævia Tuscum
Figat aprum, & nuda teneat venabula mamma:
Difficile est, satyram non scribere.*

Sect. XXXIII.

Tho' we may rightly conclude, from the same principle, that those who find themselves in proper circumstances for answering its ends and uses; yet the obligation to marriage is not of such a nature, as that he can be judged to have acted contrary to the law of nature, who prefers chaste celibacy to inauspicious marriage *. For since omission of an action cannot be imputed to one who had no opportunity of doing it, (l. i. § 114); and it often happens, that many accidents disappoint one's design of marrying, and so deprive him of an occasion; surely, in such cases, celibacy cannot be blamable, since providence

Whether all habile persons be obliged, by the law of nature, to marry?

dence hath not offered an allowable opportunity of engaging in marriage:

* This was the opinion of the Jews, as Selden has shewn, *jure nat. & gent. secundum discip. Hebræorum*, 5. 3. But it cannot be inferred from Gen. i. 38. for that is not a command but a blessing: And it is absurd to accuse those, who prefer celibacy for just reasons to marriage, of not consulting the interests of mankind, as if mankind could suffer great loss by the not marrying of one or a few, who are hindered from it by allowable reasons. They seem to have forgot St. Paul's precept, 1 Cor. vii. who, leaving the paths of Christians, go into this Jewish opinion:

Sect. XXXIV.

All copulation out of a married state is unlawful.

But because procreation and convenient education are the ends and uses of copulation, and every thing ought to be omitted which is repugnant to these ends, nothing can be more certain, than that they are exceedingly guilty who abuse that meant which is destined by divine appointment to these ends for the gratification of their lust; and therefore all these wicked kinds of venery, which it is better to have no idea of than to know, all adultery, all whoredom, all stolen love, (which is, over and above its being contrary to the end of copulation, likewise attended with injuriousness to others); all uncleanness and unchastity, and all the infamous trade of bawding and pimping are diametrically repugnant to right reason, and the law of nature; and, in fine, that there is no other lawful way of propagating and supplying human race, but by the conjugal society we have described.

* These impure conjunctions are not designed in order to propagate, but to satiate lust: And the ordinary effect of them is, that the persons who thus copulate are industrious to prevent progeny by such conjunctions. And if nature disappoints this their wicked intention, so that children are procreated and brought into the world contrary to their desire and intention, the parties are so far from having had any view to education, the other end; that they,

they (the father chiefly) utterly neglect the offspring, leaving them to the public, as an uncertain birth; whence it happens, for the most part, that such unfortunate children become rather a disgrace and a pest to mankind, than an ornament. Now, since all these miserable consequences ought to be prevented, it is plain that magistrates do not act unjustly, when they oblige lewd persons to provide for their bastards, and force men to marry the women they had debauched under promise of marriage.

Sect. XXXV.

For the same reason, *πολυανδρία*, that is, plural-Whether
 lity of husbands is contrary to right reason; as like-plurality
 wife, that community of wives which was permitted of hus-
 ed by Plato in his republic. (See Aristotle, polit. bands be
 2. 2). For since, in both cases, the offspring must lawful?
 be uncertain on the father's side, and this uncertainty will be a hindrance to the care of education, (§ 34); so far is reason from approving such conjunctions, that even those nations which permitted polygamy, or a plurality of wives to one husband, have given no woman right to have more than one husband at a time.

* And therefore the contrivance of Papirius Prætextatus to elude his mother, which is so well known, was very acute. See Gellius noct. Attic. 1. 23. But so far were the Romans from permitting a plurality of husbands, that the most barbarous nations never admitted of it, tho' some have allowed the promiscuous use of wives. See Puffendorff, law of nature, &c. 6. 1. 15.

Sect. XXXVI.

The question about the lawfulness of *polygamy*, Argu-
 or a *plurality of wives*, is more difficult. For, 1. ments for
 Such a conjunction does not hinder propagation. polyga-
 Nor, 2. Does it render offspring uncertain. my.
 Besides, 3. Many nations, even the people of God, have approved of this, and seemed to think themselves happy in having the privilege of taking home many wives. Not to mention, 4. The Turks, and other

other eastern nations, where it is not worse in respect of procreation and education, when one has many wives, than when one has but one wife. And, 5. Sometimes the husband's vigour, sometimes the wife's intolerable humour, or her barrenness, sometimes the interest of the republic, and sometimes other reasons plead in favour of Polygamy.

* Those are the principal arguments by which the defenders of polygamy support their opinions taken from reason. And as for those fetched from the sacred writings, they belong to another chair. This question has been greatly agitated by Huldericus Neobulus, of whose book on the subject see Seckendus *Hist. Lutheran.* 3. 79. addit. 3. litt. 10. p. 281. Bernardus Ochinus, who is expressly refuted by Beza de polygamia, and by Jo. Gerard de conjugio, § 207. of which author see Bayle's dictionary sub Ochinus; by Jo. Lyserus, who under the assumed names of Theoph. Alethæus, Vinc. Athanasius, & Gottl. Wahrmundi, has published several books on this subject, of which see Vinc. Placcius *Theatr. pseudonym.* n. 97. 277. 2867. Against those authors have written Jo. Brunsmannus, Jo. Musæus, Diekmannus, Feltmannus, Gesenius (who has been injurious to Pufendorff) Jo. Meyerus and others. The defence of polygamy hath been undertaken by one whose better studies such a design ought not to have interrupted, Daphnæus Arcuarius, not to mention the late writings of a lawyer of Dantzick, in every body's hands, which have been of very little service, if not of great hurt to the church.

SECT. XXXVII.

It is not agreeable to right reason.

But since it is the duty of married persons to avoid every thing repugnant to the end of a married state (§ 27), and all discord about the end or means is contrary to society (*ibid.*) and so much the more unavoidable as the society is more numerous (§ 18); hence we justly conclude, that polygamy is less agreeable to right reason than marriage with one woman; wherefore, since the law of nature obliges us

to.

to choose the best of two goods * (l. i. § 92), we are rather obliged to monogamy than to polygamy.

* This is most certain, that discord, jealousies, envy, and hatred, must arise among many wives. But in this intestine war, what place is there for harmony, or consent in the education of children of different and jarring mothers? The families of Abraham and Jacob saw such sad effects, Gen. xvi. 5. xxi. 9. xxix. 30. xxx. 1. And what may not happen when men maintain at home many wives, which instead of being virtuous and good, are furies?

Sect. XXXVIII.

Nor are the arguments brought in defence of it of such force as to oblige us to desert our cause. For grant, 1. That the procreation of children is not hindered by polygamy, yet the other end, convenient education, which ought not to be separated from the former, is hindered by it (§ 26 and 37). 2. Tho' progeny be certain in polygamy, yet this certainty does not hinder but each mother may only love her own children, and prosecute the rest with terrible hatred, or at least endeavour, by no-vercal arts, to render them less agreeable to the father than her own. 3. To oriental nations, of a hotter temper, and more prone to venery, which approved of polygamy, we may oppose examples of more civilized nations which disapproved it. Nor is the practice of the Jews a rule, since our Saviour teaches us, that all things in which the Jews dissented from the primitive rule, were rather tolerated than approved by God in them; "For the hardness of their hearts," Mat. xix. 8.

An answer to the first and second argument.

* For no reason can be given why more regard should be paid to the primitive institution of marriage in the question about divorces, than in that about polygamy. Nay, from what our Saviour says of divorce, we may draw an argument against the lawfulness of polygamy. For if he who unjustly divorces his wife and marries another, be

guilty of adultery, he is certainly much more guilty of adultery, who, while his marriage subsists, takes another wife, because the reason given by our Saviour, *viz.* that God, when he instituted matrimony, willed that “two should become one flesh, Mat. xix. 5.” is no less an obstacle to polygamy than to divorce.

Sect. XXXIX.

An answer
to the
fourth and
fifth argu-
ments.

Of the same nature are all the other arguments by which polygamy is defended. For, 4. What is said of domestic quiet and peace among the Turks and other eastern nations, is partly false, according to the annals of these countries, and is partly obtained by means repugnant to the matrimonial society *. And what, pray, 5. is more incredible, than that one is not sufficient for one? Or what is more uncertain, than that when one has an immodest or indiscreet wife, that the other he brings home shall be more modest and discreet? or that if one be barren, the other shall be more prolific? what if he should get two furies instead of one? But all their arguments depend upon a principle we have already shewn to be false.

Sola est utilitas justi prope mater & æqui. (l. 1. § 78)

* It is known that in the eastern countries, those who have plurality of wives, keep them in a *Scraglio*, as in a prison, and that they are no better than servants. Hence Aristotle. Polit. 1. 2. says, That among the barbarous nations, wives and servants are of the same rank. See a remarkable passage in Plutarch. in Themist. p. 125. “They are confined by eunuchs; and the education of children, of the male-kind especially, is seldom trusted to the mother, but for the most part, to some eunuch or servant. Now, how contrary all this is to the end of the matrimonial society, is too obvious to be insisted upon.

Whether
certain de-
grees are
prohibited
by the law
of nature.

Sect. XL.

It is a no less difficult question, whether by the law of nature reverence is to be paid to blood, and whether, for that reason, it prohibits marriage within

within certain degrees of kindred and affinity? For since such marriages are not repugnant to the end of matrimony, they cannot be forbidden on that account. Yet, since marriages between ascendants and descendants are attended with the greatest and most hurtful confusion of different natural relations amongst persons, reason itself perceives and acknowledges their turpitude; and therefore the Civilians justly asserted these marriages to be incest by the law of nations, l. 38. § 2. D. ad leg. jul. de adult. And they likewise with reason pronounced marriages between persons of the nearer degrees of kindred, to be contrary to modesty and virtue, l. 68. D. de ritu nupt.

* For nature cannot approve of contradictory things, but such are the obligations of wife and mother, father and brother, mother and sister: They cannot subsist in the same person without the greatest confusion. Such marriages therefore cannot be lawful which confound these relations together in one and the same person, as in the marriage of Herfalus and Marulla, according to an old epigram.

*Herfalus hic jaceo, mecum Marulla quiescit :
 Quæ soror, & genitrix, quæ mihi sponsa fuit.
 Me pater e nata genuit : mihi jungitur illa :
 Sic soror & conjux, sic fuit illa parens.*

Such marriages were looked upon by the Pagans as contrary to nature. See Ovid. *Metam.* 10. v. 9. where Myrra thus speaks :

*Tunc soror nati, genitrixque vocabere fratris ?
 Nec, quod confundas & jura & nomina, sentis ?*

Among collaterals, the same degree of confusion is not to be feared: Yet a certain confusion of relations cannot be avoided, if the same person be sister and wife. And therefore we think it better to assert, that such marriages are not permitted, unless absolute necessity render them excusable. And thus it is very accountable why the children of Adam married without being guilty of incest, tho' they are who now do the same. For this prohibition of certain

degrees is of those laws of nature which must yield to providential necessity (l. I. § 162).

Sect. XLI.

Of solemnities.

Since all copulation without marriage is unlawful, and there is no other lawful way of propagating mankind but by marriage (§ 34); the consequence is, that it is the interest of the married parties, and of the children, that the design of contracting the matrimonial society should be testified by some external sign, that thus a legal wife may be distinguished from a concubine, and legitimate children from illegitimate ones; which, since it cannot be done conveniently, unless marriage be publicly celebrated, we may easily see a good reason why almost all nations have judged some solemnities requisite to indicate nuptial consent, and have appointed some such.

* There is no barbarous nation which hath not instituted some rites of marriage: And therefore it is not to be wondered at, if all civilized nations have; such as the Hebrews, the Greeks and Romans, &c. concerning which customs, antiquaries have wrote such large and learned volumes, that I need not say one word on this subject. Let me only add, that the Romans, when their ancient discipline degenerated, took little or no care in this matter; and hence it was, that it was frequently so difficult to determine whether a woman was a wife or a concubine; and it was necessary to have recourse sometimes to the articles or instruments of dowry to determine this question, l. ult. Inst. de nupt. and sometimes the thing could only be judged of from the condition or quality of the woman, l. 24. D. de ritu nupt. l. 31. pr. D. de donat. But how easily might these disputes have been avoided by performing marriage with certain rites?

Of the conjugal duties arising from the nature of the pact.

Sect. XLII.

The conjugal duties are obvious. For, since the nature of this society requires consent (§ 32), which cannot be hoped for without love and concord,

cord, the consequence is, that husband and wife are obliged to love one another ; and not only to manage their common family interest * with common care and prudence, but mutually to assist one the other, especially in the education of their children, and to have one common fortune.

* Indeed what effect this community of goods ought to have after the decease of one of the parties, or what part of the common substance belongs to the survivor, and what to the defunct's heirs, must be determined by pacts or by civil laws. But that while marriage subsists, all ought to be in common, right reason teaches us. For since associates, by unity of will, are one person (§ 19), and therefore have all the things and rights belonging to their society in common (§ 20), it is manifest, that the same must hold with respect to persons united by marriage; and so, however it came to be afterwards, was it anciently among the Romans, according to Dionys. Halicar. Antiq. Rom. l. 2. p. 95. for by Romulus's law, there was, "Omnium bonorum & sacrorum communio." And even their later laws appointed, "Communem utrique conjugii bonorum usum." Whence it is evident why Modestinus retaining the old definition of marriage, and agreeably to his own time, says it is, "Conjunctio maris & foeminae, consortium omnis vitae, divinique & humani juris communicationem," l. 1. D. de ritu nupt.

Sect. XLIII.

These are the duties which arise from the very nature of consent and society. But from the end of matrimony we infer, that husband and wife are obliged to cohabit, and to allow to one another only the use of their bodies, and therefore to abstain from all adultery, whoredom, and stolen love * ; to love all their children with equal affection ; and that the one ought not, by any means, to disappoint or render ineffectual the other's care about their education.

* Some think this duty belongs to the wife only, and not to the husband, because, if he neglects it, the children

are not rendered uncertain. But tho' all copulation be unlawful which renders progeny uncertain, yet it does not follow, that all is lawful which does not render it uncertain (§ 38). See Gundlingii dissert. an major a feminis, quam a viris, castitas requiratur. We draw an argument from this principal rule of natural justice, "what one would not have done to him, &c." But surely the husband would not have his wife to love another man more than him, or grant any other the use of her person. And therefore the husband is bound to the same duty. See Chrystom. Homil. 19. in 1 Cor. vii. Lactantius Inst. divin. 6. 3. Hieron. ad Ocean. & can. 20. Causs. 32. quæst. 5. But at the same time, we grant that the wife's unchastity is more repugnant to the end of marriage than the husband's.

Sect. XLIV.

Whether
the hus-
band has
any supe-
rior com-
mand?

Moreover, it is manifest that this society would be very imperfect, if it were equal in such a manner that neither had the faculty of deciding in any common dispute, because it may happen, in many cases, that the two may differ in their opinions about the choice of means, and between two, in such cases, the dispute would be endless; wherefore, tho' the prudentest counsel ought to be preferred (l. I. § 92)*, yet, because it would often be controvertible which of the two parties in this society was in the right, there is reason to approve the common practice in this matter, and so to give a certain prerogative to the husband about affairs belonging to the common safety or advantage of the society.

* For since the parties are bound to all, without which the ends of the society, procreation and convenient education, cannot be accomplished (§ 27); they are obliged to consent to this prerogative in one of them, without which consent in the same means could not be expected. Now, because this prerogative in a society of equals is due to the more prudent, and in the conjugal society the husband for the most part is such, the wife is, for this reason, obliged to consent to the husband's prerogative.

Infelix matrona suo fit, Prisce, marito :

Non aliter fuerint femina virque pares.

Martial. Epig. 8. 12.

See Plutarch's conjugal precepts, p. 139.

Sect. XLV.

But since this prerogative of the husband extends The nature of it. only to affairs belonging to the welfare and interest of the society (§ 44); the consequence is, that this marital authority ought not to degenerate into such an empire of a master, as we have already observed to have taken place in some barbarous nations *; nor does it reach to a power of death and life, as it did in some nations. Gellius 10. 23. Tacit. annal. 13. 32. Cæsar. de bello Gallico, 6. 19. Tacit. de moribus German. c. 19. much less does it extend to a power of selling or lending one's wife to another, a custom among some nations, and not disapproved of by the Romans, Plut. in Catone, p. 770. Tacit. annal. 5. 1. Dio Cass. hist. l. 48. p. 384. But it consists in the right of directing a wife's actions by prudent counsel, and of defending her; and in the right of chastising an immodest one suitably to the condition and rank of both * (§ 21); and in divorcing her for such just causes as shall be afterwards treated of (§ 21).

* I say, chastise suitably to the rank and condition of both parties; because, since they are one person (§ 19), an ignominious chastisement of a wife reflects ignominy on the husband. And because both are bound to take care of their reputation (l. I. § 153), a husband acts contrary to his duty if he chastises his wife in a manner that tends to hurt both her and his character. This imprudent discipline of husbands is severely lashed by Plutarch in his conjugal precepts, p. 139. "As some soft effeminate persons who are not able to mount their horses, teach them to stoop to them, so some husbands, who espouse rich and noble wives, are at no pains to amend themselves, but accustom their wives to submission, that they may more easily rule over them, tho' regard ought to be had in the use

of the curb, as in the one case to the spirit of the horse, so in the other to the dignity of the wife."

Sect. XLVI.

Whether
this right
of the
husband
may be
changed
by pact?

But because this prerogative is only due to the husband on account of his presumed greater prudence, and of the matrimonial burdens incumbent on him (§ 44); since it not seldom happens that a woman of superior judgment and spirit is married to one of an inferior one, a richer to a poorer, a queen to a private man; therefore, in all these cases, the woman may stipulate the prerogative to herself*. None can deny, for we have many examples of it, that a queen may marry a prince, without giving him any power in her dominions, and likewise retain the superior power in the conjugal society; except when the consort, being heir to a kingdom, chuses to transfer the empire itself to her husband, contenting herself solely with the dignity.

* Thus what is related by Aristotle, *Politic.* 5. 11. and by Sophocles in *Oedipo Colon.* v. 354. of the wife's power over the husband among the Egyptians, was by pact, as Diodor. *Sicul. Bibl.* 1. 27. informs us. But all the questions relating to a Queen's husband are fully handled by Jo. Philip. Palthenius, in a discourse on this subject. We have a noted instance of this in Earl Bothwell, who, when he was to be married to Mary Queen of Scotland, took an oath, "That he should claim no superior degree or pre-eminence on that account; but that he should continue to be subject to the queen as he had hitherto been." Buchanan. *rer. Scot. hist.* 1. 16. p. 674. To all that is urged from scripture, *Gen.* iii. 16. *1 Cor.* xi. 7. *1 Tim.* ii. 11. *Ephes.* v. 23. *Coloff.* iii. 18. *1 Pet.* iii. 1. Palthenius has given a full reply at great length. But these things we leave undetermined, because we proceed upon another foundation.

Sect. XLVII.

The duty
of the hus-
band in
bearing

But since ordinarily the prerogative belongs to the husband (§ 44), he cannot refuse the care of maintaining his wife and children, and of bearing the

the burdens of matrimony; tho', because the children are common, and both are obliged to common care (§ 42), the wife ought certainly, as far as her estate goes, to bear a part of these burdens. And hence the origine of dowry among the Greeks and Romans, brought to husbands by wives, who were not excluded from succession to their parents*.

* In several other nations, women had a portion or dowry given them at marriage, that they might not be quite cut off from all share in their parents estate, because they were otherwise excluded from succession. The same was the case among the Romans while the *lex voconia*, obtained. But they used to give dowries to daughters before it took place; and after it was abolished, tho' married daughters shared the paternal and maternal estate equally with their brothers. All this matter is elegantly treated by Perizonius, in his dissertat. de lege Voconia, reprinted by us at Hal. 1722. Hence the Roman lawyers acknowledge, that the dowry was given in order to bear a part of the matrimonial expences or burdens, l. 7. pr. l. 56. § 1. l. 76. fin. D. de jure dot. l. 20. C. eodem.

Sect. XLVIII.

In fine, since every thing ought to be avoided that is contrary to the ends of matrimony, because education, which is no less the end of matrimony than procreation, requires a perpetual society between man and wife; hence it is plain, that the liberty of divorce, authorised by some nations, is quite repugnant to the end of matrimony. And yet because an intolerable temper and behaviour of either party no less hinder this end than divorce; and a partner cannot be blamed if he severs from him an injurious associate (§ 21); we think divorce is not unlawful, when either of the parties behaves themselves so that the end of matrimony cannot be obtained*. Now, that, this society being dissolved in any lawful way, either may make another marriage cannot be doubted, since a partner, his

the bur-
dens of the
matrimo-
nial socie-
ty.

In what
respect
marriage
is indissol-
vable.

partnership

partnership with one being dissolved, has a right to associate another partner, and thus enter into a new partnership*.

* To these we refer not only adultery and malicious desertion, which are pronounced just causes by the divine law, Mat. v. 32. xix. 9, 1 Cor. vii. 15; but every thing that is an obstacle to the end of marriage, and renders it unattainable: We do not take upon us to determine, whether our Saviour's phrase, *παρεκτός λόγος πορνείας*, Mat. v. 32. signifies the same with what is called by Moses, Deut. xxiv. 1. *some uncleanness*, as Selden seems to think; but we are certainly persuaded, that *πορνείαν* and *λόγον πορνείας*, do not mean the same: For *λόγος* signifies the condition, nature or proportion of a thing (Synes. Epist. ad Joannem: *τὸν αὐτοῦ λόγον ἔχουσι*, they are of the same nature or rank.) Now, this being the meaning of the word, the sense is, that no other cause of divorce is allowable, but such a one as is like to adultery, of the same nature with it, *i. e.* no less repugnant to the end of matrimony than adultery.

Sect. XLIX.

What is to be said of imperfect marriages.

Tho' all this be required by right reason in the conjugal society, yet it is manifest that one duty hath a nearer relation to the end of matrimony, and another a more remote relation; and therefore society between a man and a woman does not cease to be marriage, if some changes are made in it by pacts; wherefore marriage is valid tho' imperfect; *i. e.* though contracted for the sake of procreation and education privately, and without any solemnity*; nor is that invalid which is called *morgengatic marriage*; nor putative, or reputed marriage, of which Jo. Nic. Hertius hath published a curious dissertation.

* To this class belongs what is called *mariage de conscience*: as also concubinage, such as obtained among the Romans, concerning which we have said a great deal in our comment. ad legem Juliam & Papiam, l. 2. c. 4.
For

For concubine is not to be confounded with whore ; and differed only in respect of dignity from a legal wife. Whence it is called *unequal marriage*, l. 3. C. de natur. lib. On the other hand, that does not deserve the name, even of an imperfect marriage, which is called by these barbarous terms *ad talacho, emancibado, casato di media carta* ; and is contracted on this condition, that a man, so soon as he has children by a woman, may turn her away, or that the woman being pregnant, may desert her husband when she pleases ; such the marriages of the Amazons are said to have been, tho' Arrian doubts of the truth of this report, in his expedit. of Alexander, l. 7. p. 291. See Sam. Petit. de Amazonibus, & Casp. Sagitt. Exercit. ad Justin. hist. 2. 4. And what is this indeed, but as Seneca expresses it, of benefits, 3. 6. *exire matrimonii causa, nubere divortii causa* ? What can be more repugnant to that convenient education, which we have observed to be the end of matrimony ?

† [It is not unfit to explain what our Author calls, *ex lege morgantica matrimonium ad morgangabicam*, or as the writers on fiefs call it, *ad morgenticam*, comes from the German *morgen-gab*, which signifies a morning present. The person who marries a woman in the manner here specified, or as the Germans express it, *with the left hand*, the day after his wedding makes her a present, which consists in the assignment of a certain portion of his goods to her and her future children, after his death, on which condition they have no farther pretensions. Gregory of Tours calls this *matutinale donum*, l. 9. 19. as Gro-novius on Grotius observes, who likewise refers us to Linden-berg's glossary on the Codex legum antiquarum. See Barbeyrac on Grotius, l. 2. c. 8. 8. 3.]

C H A P. III.

Of the duties that ought to be observed in a society of parents and children.

Sect. L.

Con-
nection.

BY the conjunction of which we have been treated in the preceding chapter, children are procreated, who abide in society with their parents till they themselves form new families, and go from under their parents authority. For tho' children, when they come into the world, can neither expressly nor tacitely consent to this society; yet, because society may arise from presumed consent, if, by the nature of the thing, we may judge one to have consented (§ 16), and the condition of infants requires that they should live in society with others, (§ 16); there is no reason why we may not assert, that parents and children consent in the same end and means, and consequently that there is a society between parents and children (§ 13).

Sect. LI.

The end
of this so-
ciety is
the conve-
nient edu-
cation of
children.

Because infants, nay, young boys and girls, are not capable of judging how they ought to direct their actions and conduct, God, who willed their existence, is justly understood to have committed the care of such to others. And since he hath implanted not only in men, but in brutes, an ardent affection to stimulate them to this duty (§ 26), and men contract marriage for the sake of procreation and education, or ought to have those ends solely in their view in forming this society (§ eod.); the consequence is, that this duty is principally incumbent on the parents; and therefore that there is no other

other end of the society between parents and children, but convenient and proper education of children *.

* For tho' a man and woman may join together, not with a view to have children, but merely to satisfy their lust, yet they are not freed from this obligation, because they proposed another end to themselves. All impure conjunctions without marriage being repugnant to right reason (§ 34), it is no matter what end parents may really have had in their view ; but we are solely to consider what end they ought to have had in view ; nor is it in any one's power to renounce the preceptive law, which appoints this end of copulation (l. I. § 13.)

SECT. LII.

Education being the end of this society (§ 51) ; since it cannot be carried on without directing the actions of children, the consequence is, that parents have a right and power to direct their children's actions ; they have therefore power over their children, and thus this society is *unequal* and *rectoreal*. But as the duties of every society must be deduced from its end (§ 14) ; so this parental power must be estimated by its end ; and therefore it is a right or power competent to parents, to do every thing, without which the actions of children cannot be so directed, as that the end of this society may be obtained.

This end cannot be gained, unless the parents have a certain power.

* Hence then the origine of that power belonging to parents by the law of nature. God wills that children exist, *i. e.* that they be preserved and made happy (l. I. § 77) : but they cannot be preserved and live happily without proper education (§ 51) ; and they cannot be properly educated unless their actions be directed : Therefore God wills that the actions of children be directed by those who educate children. But the right of directing the actions of children is power over children (§ 52) : And therefore God wills that parents exercise power over their children. We therefore send Hobbes a packing, *de cive*, 9. 3. who derives paternal power from occupancy. Nor does Pufendorf's way, (of the law of nature, &c. l. 6. c. 2. § 4.) satisfy

us, who derives it partly from the nature of social life, and partly from the presumed consent of children. For presumed consent to this society, which we likewise acknowledge can be inferred from no other principle than that we have now laid down.

Sect. LIII.

It belongs to both parents. Since the duty of education is incumbent upon both parents (§ 51), the consequence is, that this power must be common to both parents; and therefore, by the law of nations, this power cannot belong to the father only, as the Roman law affirms; yet, since regularly the father, as husband, has the prerogative in the conjugal society (§ 44), it is plain, that when parents disagree, greater regard ought to be had to the father's than to the mother's will, unless the father command something manifestly base and hurtful to his children: For to such things, as being morally impossible, neither mother nor children can be obliged.

Sect. LIV.

It passes to Grandfathers, grandmothers, tutors, nurses, preceptors, adopters. Besides, because the duty of education, whence the parental power takes its rise, is sometimes undertaken, upon the death of the parents, by grandfathers and grandmothers, or other relatives, through affection; sometimes it is committed by the parents themselves to others, whom they judge more fit for the charge; sometimes a stranger desires a parent would devolve that care upon him; it therefore follows, that this power, as far as it consists in the right of directing the actions of children, is, in these cases, devolved upon *grandfathers, relations, pedagogues*, and those who *adopt** children, or take them *under their care*; and therefore all such persons may exercise the parental power as far as the education undertaken by them requires.

* Adoption therefore is not contrary to the law of nature; but for another reason than that upon which it is founded.

ed in the Roman law. For children being by that law under the power of the father, *i. e.* in domino juris quiritium, l. 1. D. de rei vind. Hence they inferred, that the father could alienate and sell his children, as well as the other things (mancipi) in his full possession and power. And thus adoptions were made by alienation and cession of right, as we have shewn on another occasion. Besides, men only, and not women, could adopt, except by a special indulgence from the prince to console them for the loss of their children, § 10. Inst. l. 5. C. de adopt. because they could not have any person under their power. But we derive adoptions not from any dominion belonging to the father, or to both parents, but from the duty of education, and the power of directing the actions of children, necessary to that end; which duty, since sometimes it may be better performed by strangers, or at least as conveniently as by the parents themselves, there is no reason why they may not resign it to others, willing to undertake it, and thus give them their children in adoption. Nor is there any difference whether a man or a woman, a married or unmarried person adopt, because this adoption does not imitate nature, but only the duties of parents. And we have an example of this kind of adoption, not only among the Egyptians, Exod. ii. 10. but also among the Romans, among whom Lact. de mort. perseq. cap. 50. tells us, that Valeria Augusta, not on account of barrenness, but to console her for the loss of her children, adopted Candidianus.

SECT. LV.

Since this power consists in the right of doing every thing necessary to obtain the end of the society above defined (§ 52); it is obvious, that parents have a right to prescribe to their children what they ought to do, and to prohibit what they ought not to do; and not only to chide and reprove the stubborn and disobedient, but to chastise them, as the circumstances of the case may require; and to use other severer methods to reduce them into good order and due obedience; provided it be done prudently, and with proper regard to age, the dignity of the family, and other circumstances*.

* Grotius

* Grotius, of the rights of war and peace, 2. 5. 22. and Pufendorff of the law of nature, &c. 6. 2. 7. justly observe, that this power is greater over younger than more adult children. For since the father may do every thing that education, the end of this society, makes requisite (§ 52); because children of an imperfect understanding can hardly discern by themselves what is right, the very nature of the thing requires, that parents should direct their actions, and have a right to compel them to learn some useful art, as likewise to embrace the religion they themselves approve, and to chastise with the rod, or otherwise, the disobedient. But this a good father will not do to a more grown up child, who, his judgment being more ripe, ought to be induced to do what is right, rather by authority, and the weight of good arguments, than by severity and rigid command; nor ought he to force any thing upon such a child by way of command with respect to his future manner of life, against his will and inclinations. Thus, *e. g.* parents are right in forcing a boy against his will to attend the school; but it would be wrong to force one come to the years of discretion, to marry, or to follow a profession he does not like, &c. This we observe, in opposition to Zieglerus, who in his notes on Grotius, 2. 5. 2. thinks this distinction ought not to be admitted.

SECT. LVII.

Whether
it extends
to the
power of
life and
death?

Hence it is plain, that the end of this society does not require the power of life and death over children; unless, perhaps, in a state of nature, where parents preside over a large and diffused family as its heads; and in this case they exercise such power rather as princes and magistrates than as parents*. Whence again we infer, that the law of nature does not approve of the antient rigid power of the Romans, which was afterwards disapproved of even by them; and therefore Justinian justly affirms, § 2. Inst. de patri. potest. "That no other people ever exercised such a power over children as the Romans did."

* This is plain, because that power of life and death was proper to the father, and not common to both parents,
and

and extended even to wives and widow-daughters-in-law. We have an example of the latter in Judah, Gen. xxxviii. 24. who, when he found that his Daughter-in-law Tamar had play'd the harlot, ordered her to be brought forth and burnt. Thus kings, because they are in a state of nature, exercise this power over their wives, children, and their whole family; and this power fathers in ancient times exercised, not as fathers, but as sovereigns. Thus Philip of Macedon sat as judge between his sons, Liv. 40. 8. Thus Claudius Cæsar punished Valeria Messalina his adulterous wife, Sueton. in Claud. cap. 26. not to mention more modern examples which have been examined by others. See Barbeyrac on Pufendorff, of the law of nature and nations, 6. 2. 10.

Sect. LVII.

Much less then have parents, by the law of nature, a right to expose their children to sale, of inflicting hurtful punishments upon them for faults, and of acquiring to themselves all that comes to their children, tho' all these things were approved of by the antient Roman laws. For none of these things is of such a nature, that the end of society cannot be obtained without it (§ 52). But since this power consists in directing the actions of children (§ 52), parents cannot be refused the right of commanding certain work from their children, suitable to their condition, and of making gain by their labour; nor of administering what comes to their children by the favour of men, or of providence*.

Whether parents have the power of selling, of hurting delinquents, and of acquiring by their children?

* For since children themselves, while their judgment is imperfect, are subject to the direction of their parents; why may not their goods be likewise administered by them? But may this administration be gainful to them? I do not doubt of it. Whatever things children stand in need of, such as clothes, meat, lodging, the expence of education, &c. they have a right to demand them from their parents. They therefore do not stand in need of fruits or profits, whereas the parents often greatly want them for the support and education of their children. With what face then can

children demand restitution of fruits or profits from their parents, whom they can never repay, if they would give up themselves and their all to them? Ismene says well in Sophocles, Oedip. Colon. v. 523.

Patrem cura: nam parentum causa

Et si quis laborat, laborum tamen non meminisse debet.

Sect. LVIII.

The foundation of the duties of parents to their children.

We have said enough of the power of parents. As to their *duties*, they are very obvious. For they are easily deducible from the end of this society. Education is the end of this society, and therefore it is self-evident, that parents are obliged to every thing without which this end cannot be obtained, and to avoid every thing contrary to it (§ 24). But it is worth while to give a full view or idea of education, that thereby the duties, both of parents and children, may the more clearly and certainly appear.

Sect. LIX.

Of education, wherein it consists.

The natural affection implanted in parents, inculcates, as we have already observed (§ 26) the obligation of parents to educate their children. Now, the love which parents owe to their children, is a *love of benevolence* (l. I. § 85), which consists in delighting to preserve and encrease, to the utmost of our power, the happiness of an inferior and more imperfect being (ibid.); the consequence from which is, that parents are not only bound to take care of the conservation of their children, but likewise to lay themselves out to promote their happiness to the utmost of their power. And in this does education consist, by which nothing else is understood but the care of parents to preserve their children, and to make them as perfect and happy as they can*.

* For what so great merit is there in begetting children, if care be not taken about their conservation? And what signifies

signifies it to have preserved them, if they are not so educated as to be rendered capable of true happiness? So Seneca of benefits, 3. 31. Ad bene vivendum minima est portio vivere, &c.

Sect. LX.

If parents be obliged to the preservation of their children (§ 59), the consequence is, that they are not only bound to provide for them all the necessaries of life *; *i. e.* cloaths and food, according to their condition of life, but likewise to take care of their health, and to preserve their bodies sound and intire in all their members, as much as that lies in their power; and therefore to keep them from gluttony, luxury, lasciviousness, and all the other vices which tend to enervate, weaken, or hurt their bodies; and, on this account, not rashly to leave them to themselves, or without some guardian.

It is the duty of parents to preserve the health, soundness; &c.

* To this class belongs chiefly suckling. For that the mother is obliged to this is evident, from the care of nature to furnish her with such plenty of milk, till the child's stomach is fit to receive and digest more solid food. Those mothers are therefore truly neglectful of their natural duty, who either for their own ease and conveniency, or for the sake of preserving their shape, delegate this care to nurses, often of little worth, if not bad women, as the heathens themselves have acknowledged, and proved by many solid arguments. See Plutarch on education, p. 3. Aul. Gell. noct. Attic. 12. 1. But because necessity exems one from the obligation of an affirmative law (l. 1. § 114), mothers of a delicate constitution, or who have not milk, are not blameable if they give their child to a good nurse. But what care a mother ought to take in this matter, is elegantly described by Myia in a letter to Phyllis, apud Tom. Gale Opuſcul. Mythol. Eth. & Phytic. p. 750.

Sect. LXI.

To this duty are directly contrary, endeavours to bring about abortion, exposing infants, abdicating and disinheriting them without a just cause *; de-

What is contrary to this duty.

nying them necessary sustenance, and other such crimes, repugnant to the end of this society. They chiefly are very blameable, nay, unworthy of the name of parents, who abandoning their children, or, by their carelessness about them, are the cause of their receiving any hurt in any of their senses, organs or members; this impiety of the parents is so much the more detestable, that the soundness of their senses, and the integrity of their members, belong not only to the preservation, but to the happiness of children.

* What difference is there betwixt murdering children and denying them necessary sustenance? l. 4. D. de agnos. & alend. lib. But those parents withhold necessary sustenance from their children, who abandon or desert them, or disinherit them without a cause: Nay, those laws are reprehensible which give so much indulgence to parents, as to allow them to treat their children as they please, or at least pay more regard to paternal power than to natural equity. For who can choose but blame the laws of the Tarquinians, which suffered the testament of Demaratus to hold good, “who not knowing that his daughter-in-law was pregnant, died without mentioning his grand-child in his testament; and thus the boy being born after his grandfather’s decease, to no share of his estate, was on account of his poverty called Egerius.” Liv. 1. 34. And who, on the other hand, does not approve of Augustus, “who, by his decree appointed C. Tettius, an infant disinherited by his father, to inherit his father’s estate by his authority, as father of his country, because the father had acted most iniquously towards his lawful son, in depriving him of his right by his father, Valer. Max. 7. 7.

Sect. LXII.

The understanding of children ought to be improved.

Since parents are obliged to promote the perfection and happiness of their children to the utmost of their power (§ 59), to which belongs the cultivation of their understandings, in order to render them capable of distinguishing true good from evil (l. 1. § 146), it is certainly the duty of parents

rents to infitil early into the minds of their children the principles of wisdom, and the knowledge of divine and human things, or to commit them to the care of proper masters to be polished and informed by them, and to save no expence in instructing and improving them, within their power, and agreeable to their rank. Whence we also conclude, that parents are obliged to give due pains to find out the genius of their children, that they may choose for them a kind of life suitable to their genius, rank, and other circumstances; and that being chosen, to exert themselves to the utmost for qualifying them to act their part on the stage of life with applause*.

* Since one and the same person often sustains several different characters, as Hertius has shewn in a dissertation on the subject, education ought to be so modelled, that children may not only be fit for the way of life chosen for them, but likewise to act a becoming part in other characters. Hence, because children ought to be qualified not only to be good merchants or artizans, but likewise to be good citizens; the education of children ought to be accommodated to the state and form of the republic to which they belong, as Aristotle has wisely observed, Polit. 5. 9. adding this reason for it, " That the best laws are of little advantage, unless the subjects are early formed and instituted suitably to them (*si leges sint populares populariter, sin oligarchicæ, oligarchice*), for if there be an unsuitable disposition to the frame of government in any one of the subjects, the state will feel it."

Sect. LXIII.

Since the will or temper is the seat of that love Their will by which we perceive true good or happiness, or temper parents do nothing, whatever care they may take ought to about perfecting the understanding of their children, be rightly if they neglect the formation of their will or framed. temper. Parents, who take not proper pains and methods to inspire early into their minds the love of piety and virtue, but train them up to vice,

if not to gross and manifest vices, yet to cunning, avarice, ambition, luxury, and other such vices, by representing these vices to their minds under the false shew of prudence, frugality, spirit, taste, and elegance. Parents, in fine, who set a pattern of wickedness before their children, and sadly corrupt their minds by a continued course of vicious example*.

* Those are the fatal methods by which we may observe children of the best natural dispositions to be corrupted and ruined. For as none is so careless about his own reputation as to affect to shew his vices; and therefore every one endeavours to hide his crimes under some false semblance of prudence and virtue, so parents, for the most part, are not at so much pains to teach their children to live honestly and virtuously, as to teach them to deceive others by a counterfeit appearance of virtue and probity, *i. e.*

Ut Curios simulent, & bacchanalia vivant.

To this end are all their precepts directed, and this is the lesson their example inculcates. Inasmuch that when some children, through the goodness of their natural disposition, are in the way to virtue and real honour, their excellent turn of mind is depraved gradually by the bad example of their parents. For as those who travel in a dark night, are easily misled out of their right road by false lights; so the best dispositions are easily corrupted, if bad examples are continually seducing them; especially, if their parents themselves are by their practice perpetually shewing them the inutility of all the discipline bestowed upon them. How mindful ought parents to be of that important advice of Juvenal, Sat. 14. v. 44.

*Nil dictu scdum visuque hæc limina tangat,
Intra quæ puer est, procul hinc, procul inde puellæ
Lenonum, & cantus pernoctantis parasiti.
Maxima debetur puero reverentia. Si quid
Turpe paras, nec tu pueri contemseris annos:
Sed peccaturo obsistat tibi filius infans.*

Sect. LXIV.

Nothing is so flattering to youth as pleasure and ease; and therefore parents ought to take care not to educate their children too softly and delicately; not to suffer them to become languid and indolent, to dissolve in ease and laziness; not to breed them up to luxury and high living; but to inure them to hardship, to bear heat and cold, and to content themselves with homely fare, with whatever is at hand. For while the children of peasants are thus bred up to work, and to homely diet, do we not see how they surpass the youth of higher birth in health and vigour*?

Above all the mind is to be recalled from the pursuit of pleasure.

* There is an excellent epistle to this purpose from Theanus to Eubules, apud Thom. Gale Opuscul. ethic. physic. & mytholog. p. 741. "It is not education, but a perversion and corruption of nature, when the mind is inflamed with the love of pleasure, and the body with lust." Nor are the precepts of Plutarch, in his excellent treatise of education, less grave and serious.

Sect. LXV.

Nothing so much depraves youth as bad company; and therefore parents ought to be watchful that their children do not associate themselves with corrupt companions, but with their equals, and such as are well educated. For tender minds are prone to imitation*, and easily moulded into any shape by example, but averse to admonition; and the danger of their being corrupted is so much the greater, that they are so little capable of distinguishing flatterers and parasites from true friends, corrupt from good masters, or inducements to vice from wholesome precepts.

And from bad companions.

* How prone youth is to imitation, is plain from the many instances of those, who being bred up among the brutes, acquire their gestures, their voice and fierceness to such a degree, that they are hardly distinguishable from

them. Instances of this sort are collected by Lambert Schaffnab. ad annum 1344. Hartknoch. de Polon. lib. 1. cap. 2. p. 108. Bern. Connor. Evang. med. art. 115. p. 181. & de statu Polon. part. 1. ep. 6. p. 388. In the Leipfick Acts 1707, p. 507. we are told of a deaf and dumb boy, who, by frequenting the church, begun to imitate all the motions and gestures of those he saw there, in such a serious-like manner, that the clergy could no longer doubt of his having some sense of religion: And yet, when he afterwards had learned to speak, it could not be found out in any way, that he had ever had any notion of religion. If such be the force of example and imitation, is it to be wondered at, that boys receive, as it were, a new nature from the society they frequent, and are by drinking Circe's cup transformed into beasts.

SECT. LXVI.

Children
owe their
parents a
love of re-
verence
and obe-
dience.

The duties of children to their parents are easily deducible from the state and right of parents, and from the end of the society we are now considering. For since parents have the right of directing the actions of their children, hence it is plain, that they ought to be regarded by their children as superior and more perfect than them; and consequently that they ought to be loved by them with a love of reverence and obedience * (l. 1. § 85); whence it follows, that children ought to pay all reverence and obedience to their parents (l. 1. § 86), such reverence and obedience as is due to their perfection and superiority (l. 1. § 87).

* Hence, all the ancients have acknowledged, that next to the love due to God, is that owing to parents. So Gellius Noct. Attic. 4. 13. to prove which, he quotes Cato, Massurius Sabinus & C. Cæsar. The golden verses of Pythagoras are yet more express to this purpose.

*Primum immortales Divos pro lege colunt
Et jusjurandum: heroas, clarum genus, inde.
Dæmones hinc, terris mixti, sua jura ferunt.
Inde parentis honos sequitur: tum sanguinis ordo.*

In commenting upon which verses in his way, Hierocles observes, that in parents there is the image of God. And Simplicius

Simplicius ad Epiſtet. Enchirid. c. 37. p. 199. tells us, “ That the more ancient Roman laws pay’d ſuch veneration to parents, that they did not heſitate to call them (Deos) *Gods* : And out of reverence to this divine excellence, they called a father’s brothers (Thios) *Divine*, to ſhew the high reſpect they thought was due by children to parents.”

Sect. LXVII.

Becauſe parents ought to be revered with a reſpect ſuitable to their perfection (§ 66), none can doubt but children are bound to prefer their parents before all others, to ſpeak honourably to them, and of them ; yea, to take care not ſo much as to ſhew diſreſpect by any look. And tho’ it may happen, that one of the parents, or both, may not have the perfections requiſite to beget veneration (l. I. § 87) *, yet it is the duty of a good child to overlook theſe imperfections, and rather to bear injuries from them with patience, than to omit any thing which nature itſelf requires of children.

* For even bad parents are ſtill parents, *i. e.* they are, as Simplicius, *ibidem* p. 198. juſtly calls them, the authors of our exiſtence next to God : And this perfection alone ought to incite us to dutifulneſs and reverence to our parents. Epiſtet. Enchirid. c. 37. ſays, “ But he is a bad father. Have you then no union by nature but with a good father ? No ſure, the union is with a father, as ſuch. Do therefore your duty to him, and do not conſider what he does, but how your own conduct will be agreeable to nature.”

Sect. LXVIII.

Since parents have power or right to direct their childrens actions, and to curb and correct them, (§ 55), the conſequence is, that parents ought not only to be loved and revered, but feared. From this mixture of love and fear ariſes filial fear (l. I. § 131) * ; and therefore we cannot chooſe but conclude

clude from hence, that good children will only have this filial fear of their parents; and thus they will not be so much afraid of the pain, the castigation and reprehension of their parents will give themselves, as of provoking their parents indignation against them by their vices.

Sect. LXIX.

As also obedience.

But because obedience is likewise due to parents, (§ 66), children cannot escape reproof and chastisement, if they do not readily and cheerfully obey their parents commands; and that the morosity and severity of parents does not authorize children to withdraw their obedience. Yet, because right reason teaches us, that the greater the perfection and excellence of a being is, the greater veneration and obedience is due to that being (l. I. § 87)*, the consequence is, that if parents command any thing that is base and immoral, or contrary to the divine will, and to the laws of the country, more regard is to be had to the divine will and the laws, than to the commands of parents*.

* What is said of the commands of magistrates by the apostles St. Peter and St. John (“ Whether it is more just to obey God or you, do you yourselves judge, Acts iv. 19.” “ Is it better to obey God or men, Acts v. 29.) may be applied to the precepts of parents. For tho’ their authority be sacred, yet that of God is more such: Nor does the paternal authority extend so far as to free their children from the laws of the supreme magistrate (§ 23). Hierocles, in his commentary upon the golden verses of Pythagoras reasons thus: “ If any order of parents be repugnant to the divine will, what else ought they to do to whom such a collision of laws happens, but to follow the same rule that ought to be observed in other cases, where there is a competition of duties? Two honest goods or pleasures being proposed, which cannot be both enjoyed, the greater ought to be preferred to the lesser. Thus, *e. g.* it is certainly duty to obey God; but it is also duty to obey our parents. If therefore both obligations concur and draw

draw you the same way, it is a double and unexpected gain, and without controversy the greatest good. But if the divine law draw one way, and the will of parents another, in this disagreement of laws, it is best to follow the better will, and to neglect the will and command of parents in these cases, in which parents themselves do not obey God."

Sect. LXX.

Moreover, since the necessity of the parents right to direct childrens actions is the sole genuine foundation of parental power (§ 52), none can question but that end being gained, the means must cease; and therefore the parental power does not continue till death, but expires then, when male-children are come to such maturity of years and judgment, that they are capable of directing themselves, and can make a new family, or when daughters and grand-daughters marry, and go out of their father's or grandfather's house into other families; so that the law of nature does not approve that rigour of the old Roman law, which placed children, with their wives and children, under the father's power, till fathers or grand-fathers, of their own free accord, emancipated and dismissed them*.

* This flows from the paternal power, or the dominium juris Quiritium peculiar to the Romans. For time did not put an end to this dominion; nor could any one lose it without some deed of his own. Hence those imaginary sellings made use of in emancipations. For nothing appeared more consistent than that (*res mancipi*) things in full possession and dominion should be alienated by selling. See A. Corn. van Bynkershoek *de jure occid. lib. cap. I. p. 145.* But this dominion over children, as *res mancipi*, being unknown to the law of nature (§ 54), this rigour we have above described, cannot belong to it.

Sect. LXXI.

But when the parental power is dissolved (§ 70), that love which nature hath implanted in the breasts of

Parental power being dissolved. love ought not to cease.

of parents towards their children ought not to cease. And therefore it is the duty of parents to delight in the welfare and happiness of their children, even after they are separated from them, and out of their family; to assist them with their counsel and their wealth to the utmost of their power, and to be no less beneficent to them than to those which are still in their family; and, in fine, to do all they can to promote their happiness: Whence it is also evident, why emancipated children ought to succeed to intestate parents as well as those who are not*.

* Wherefore, in this matter, many nations seem to have departed from natural equity, in which married daughters, having got a certain patrimony by way of dowry, were obliged to content themselves with it, and were excluded from any farther share or succession to the paternal inheritance. This law was amongst the Hebrews founded on a very solid reason, because such was the frame of that republic, that every tribe had its lot, which could not pass to any other tribe, Num. xxvii. But the Syrian custom, of which we see an instance, Gen. xxxi. 14. & seq. was not equally commendable. See a curious dissertation by Jacob Perizonius, de lege voconia, p. 119. where there are several learned observations on this subject. Much less still can we approve of the Roman law, which excluded emancipated sons from succession to the paternal inheritance, since the Prætor had a power to soften the rigour of it, and since Justinian entirely abrogated it, Novella I. 118. For emancipation ought only to dissolve parental power, and not parental love, from which we have shewn that succession to intestates ought to be derived (l. I. § 295).

Whether
it be in the
power of
the pa-
rents and
children
to dissolve
the paren-
tal power
at their
pleasure.

SECT. LXXII.

Hence we also conclude, that it is not in the power of parents, at their will and pleasure, to dismiss children, of whatever age, from their family, nor to retain adult children under their power so long as they please; but yet, that children are not excusable in deserting parents against their will

will, and in refusing to submit to their authority. For as it is unjust in parents to omit any thing without which the end of this society cannot be attained (§ 24); so children cannot, without injustice, shake off their parents authority; because what one would not have done to himself, he ought not to do to others (l. 1. § 88).

Sect. LXXIII.

As the love of parents ought not to be extinguished when parental power is dissolved (§ 71), that love of veneration which children owe to their parents ought much less to cease with parental power; yea, since every one is bound to love his benefactor (which love is called *gratitude* (§ 226); the consequence is, that children, after the parental power no longer takes place, are obliged to testify gratitude towards their parents every way; not merely by words, but to repay benefits by benefits; and therefore to undertake nothing of any moment, or that regards the honour of the family, (such as marriage) without their consent; nay, to supply them with the necessaries and conveniencies of life, if they want them. This kind of gratitude, tho' it belongs to the duties of imperfect obligation, yet it is of such a peculiar nature, that civil laws may reduce children, unmindful of their filial duties, into good order * (l. 1. § 227).

* If what is told of the storks be true, that they provide for their aged parents, those brute creatures reproach children who neglect their duty to parents. “The storks (says Ælian. Hist. animal. 3. 23.) take tender care of their aged infirm parents: tho' they be commanded to do this by no laws, yet they are led to it by the goodness of their nature.” But shall not reason persuade men to what nature excites the very brutes?

Sect. LXXIV.

The mutual obligation of tutors and pupils.

If parents die before children have arrived at a proper age to conduct themselves, the nature of the thing requires that their education should be committed to others, who are called *tutors* or *guardians*; and therefore guardianship is nothing else, but the power of directing the actions of children, and of managing their affairs and interests in room of their parents, till the children are come to such maturity of years and judgment, as to be fit to govern themselves * (§ 54). From which definition we may infer, that tutors have the same power with parents, if it be not circumscribed by the civil laws within narrower bounds; and are obliged to the same fidelity, and all the same duties as parents; and, in fine, that pupils or wards are no less obliged to veneration, gratitude and obedience, than children; and that this obligation is so much the more strict, that the benefit done them is greater, when performed not in consequence of any natural tie, but from pure benevolence.

* How long children are to be held minors, the law of nature cannot determine, so different are the capacities, genius's and dispositions of children, some becoming very early wise, and others continuing very long fools. But, because legislators in such cases attend to what ordinarily happens (§ 44), they have done well to fix a certain period to minority. But how various their determinations have been in this matter, is shewn by testimonies collected from the most ancient histories, in a dissertation of Jo. Petrus a Ludewig, de ætate legitima puberum & majorennium.

C H A P. IV.

*Concerning the duties belonging to masters and servants,
and that despotical society.*

Sect. LXXV.

WE now proceed to consider the *society of ma-* Wherein
ster and servants, which is not, by nature, the despo-
 so necessary as the more simple societies of which tical soci-
 we have already treated, but yet has been most fre- ty con-
 quent among mankind from the most antient times. sists, and
 And by it we understand a society between a ma- its origina-
 ster or mistress, and men or women-servants, in
 which the latter bind themselves to promote their
 master's interest by their work and labour, and the
 former bind themselves to maintain them; nay,
 sometimes to pay them a certain hire or wages.
 For since such is the condition of mankind, that
 one stands in need of another's work; and there is
 no reason why one may not procure to himself what
 he wants by another's help (l. I. § 325); the con-
 sequence of which is, that we may stipulate to our-
 selves the help or work of others by an interveing
 contract, and thus form between us and servants a
 despotic society, which is evidently, in its nature,
 unequal and rectoreal (§ 18).

Sect. LXXVI.

By *master* or *mistress* we therefore understand a What is a
 person who employs others to promote his interest, master or
 and obliges himself to maintain them, or over and a mistress,
 above to pay them certain wages. *Servants* are and what
 persons who bind themselves to promote their ma- a man or
 ster's interest by their labour, either for their main- woman-
 tenance only, or for wages, together with mainte- servant?
 nance. Now, from these definitions it is manifest,
 that servitude of the latter kind is mercenary, and
 its

its foundation is none other than *a contract of letting and hiring*; the former is perfect servitude, and may be called *obnoxia, property**; and its foundation is dominion over the persons of servants acquired by a just title.

* I use the word used by Phædrus Fab. l. 3. præf. v. 34.

*Servitus obnoxia,
Quia, quæ volebat, non audebat dicere,
Adfectus proprios in fabellas transtulit.*

The Greeks distinguished between servants, which were property, whom they called *δούλος*, and domestic or hired servants, whom they called *δικέτας*, according to Athenæus Deipnos. 6. 19. Both kinds of servitude are very ancient. It is plain from Genesis, xi. 5. xiv. 14. xv. 3. 4. xvi. 1. & seq. that Abraham had many servants, *obnoxii*, or perfect servants, in the fourth age from the deluge. So that Jacob served Laban as a mercenary servant for many years, is well known from Genes. xxix. 15. xxx. 28. Nay, Noah makes mention of perfect servitude, Gen. ix. 25. And he condemns Chanaan to it for injuries he had done to him. But Jo. Clericus Comment. in Genes. p. 72. has justly observed, that this was rather a prediction of what was to happen a little after.

Sect. LXXVII.

Some give themselves up to perfect servitude on account of their dullness and incapacity.

That mercenary servitude is not contrary to the law of nature none can doubt; but neither is the other servitude, since experience teaches us, that some men are naturally of so servile minds, that they are not capable to govern themselves or a family, nor to provide for themselves the necessaries of life*. But since every one ought to choose the kind of life he is fitted for, (l. 1. § 147), and such persons are fit for no other kind of life, but to serve others for their maintenance, they certainly do nothing contrary to their duty, if they give themselves up perpetually to others on that condition.

* This was observed by Aristotle, who says, that some men are *φύσει δούλος*, servants by nature, Polit. 1. 3. For tho'

tho' Pufendorff of the law of nature, &c. 3. 28. & 6. 3. 2. had reason to refute this philosopher, if his meaning were, that persons by their prudence, had a perfect right of enslaving, without any other cause, those who are stupid, as the Greeks arrogated a right to themselves over the nations they called barbarous; yet there is no absurdity in this saying, if it be understood of a servile disposition, and of a natural condition, as Dan. Heinfus thinks it ought to be, *epist. ad Ge. Richterum, apud Jan. Rutgers. var. lect. 4. 3.* In this sense Agefilaus says, in Plutarch, *apophtheg. Lacon. p. 190.* that the Asiatics were bad freemen, but excellent slaves.

Sect. LXXVIII.

Besides, extreme poverty, and other private or public calamities, may induce some, who are not stupid, to become servants rather than perish. For since man is obliged to preserve his life, and to avoid death and destruction (l. I. § 143), and of two imminent evils, the least ought to be chosen; it follows, that he whom providence hath placed in this situation, is not to be blamed, if, there being no other honest way of avoiding death, he give himself up in servitude *.

* Thus the Egyptians gave themselves up to their king as servants, that they might not perish by famine, and held it for a favour that Pharaoh would accept of their service for their living or maintenance. Hence, having accepted of the condition of servitude, they answered Joseph, Gen. *xlvi. 25.* "Thou hast given us our lives, let us find favour in thy sight, and let us be servants to Pharaoh." Thus Pausanias tells us, l. 7. c. 5. "That the Thracian women, tho' freeborn, earned their bread among the Erythræi, by voluntary servitude; not now to mention the Frisians, of whom Tacitus, *Annal. 4. 72.* nor the Gauls, of whom Julius Cæsar *de bello Gallic. 6. 13.*

Sect. LXXIX.

Again, the fury of war much augmented the number of servants. For because all things are lawful to an enemy against an enemy, it is lawful to conquer in war, and to accept of this condition.

ful to kill a subdued enemy (l. i. § 183). But because he who can deliver himself from danger without hurting his aggressor, or by a lesser evil, ought not rashly to proceed to killing (ibid. § 181), it is certainly not unjust for a conqueror to save the vanquished, and lead them captives, that they may no longer have it in their power to hurt him; and to make servants of them, that he may not have the burden of maintaining them gratis; nor can they be blamed who choose to save their lives on these terms, rather than perish*.

* Therefore, this society arises really from consent, tho' not voluntary, but extorted by just force (§ 15). For the conqueror is willing to save the conquered, but upon this condition that they become his servants; the conquered is willing to serve, that he may be saved. For if he would rather perish, what hindered him from rushing upon the conqueror's arms. Now the concurrence of two wills is consent (l. i. § 381.) Wherefore, society between a master, and servants taken in war, arises from consent.

SECT. LXXX.

Some are
born ser-
vants.

But these kinds of perfect servitude cannot but produce the effect which one is detrued into by the very fortune of birth. For since the foundation of perfect servitude is dominion acquired by a just title (§ 76), and all those we have already mentioned are just titles (§ 76 & seq.) the consequence is, that all these servants are under the just dominion of their masters. But since out of lawful matrimony (which can hardly take place among some of those sorts of servants*) the offspring goes along with the mother (l. i. § 252) it is no wonder that the offspring of such women-servants undergo the same condition with the mother, as an accession to her; and therefore those kinds of servants are known to all nations, which were called by the Romans *vernae*.

* Matrimony

* Matrimony is a simple society between persons of different sexes, formed for the sake of procreation and education (§ 27). Those therefore who enter into this state, ought to have it in their power to consent to this end, and to choose it, and the means necessary to obtaining it. But the principal end, *viz.* convenient education, is not always in the power of perfect servants, but it depends wholly on the will of their master. Therefore, among some such men and women servants; there is no place for lawful matrimony. We say it cannot take place among some such, as those namely whom fortune has reduced to this condition, that their masters, after the manner of the Romans might, *descriptis per familiam ministeriis uti*. But when every one has his fixed seat and abode, as among the Germans, (*Tacit. de morib. Germ. c. 25.*) there marriage among servants may more easily take place, as experience shews us. But tho' the proper slaves of the Germans have the *jus connubii*, liberty of marriage, yet this rule has force among them, that the birth follows the bearer, and is of the same condition with the parents, except where alternate sharing is established (l. i. § 252).

Sect. LXXXI:

These principles being fixed, it is easy to find The
 out the duties of masters and servants in this socie-
 ty, and what power masters have over their ser-
 vants. For as to mercenary servants, since they
 are only bound by a contract of letting and hiring,
 (§ 76) the master has no other power over them,
 than to appoint the work to them for which
 they bind themselves, and to make profit by their
 work, and to force them to serve during the
 time for which they engaged: He has no right
 to exact any other work or service from them;
 but that for which they bind themselves; and
 much less to chastise them with great severity;
 tho', if the servant do not fulfil his contract, the
 master may not only mulct him of a part of his
 wages, but turn him away from him as incorrigi-
 ble (§ 21).

power of
 a master
 over a
 mercena-
 ry ser-
 vant.

Sect. LXXXII.

The mutual duties of this master and servant.

As therefore it is the master's duty to fulfil his contract, and not to exact other service than was contracted for from his servant, and to maintain him as persons of that condition ought to be, and to pay him his promised wages *; so the servant is bound to reverence and obedience to his master as his superior; to perform his contracted service to him as his hirer, and to promote his interest with all fidelity as his partner.

* But neither wages nor maintenance are due, if a servant, by his own fault, or by chance, is not able to perform the service he engaged to do (l. i. § 361). And therefore, tho' the humanity of those masters be very commendable, who maintain a servant while he is sick, yet what humanity enjoins cannot be exacted by perfect right. On the other hand, it is most iniquitous in a master to deny a servant who has done his work, the wages due to him, or to change his wages at his pleasure, contrary to the terms of their contract, as Jacob complained that Laban had done ten times, Gen. xxxi. 7. This conduct of Laban was so displeasing to God, that he took all his wealth from him, and transferred it to Jacob, Gen. ibid. 9.

Sect. LXXXIII.

The power of a master over a perfect servant with respect to the disposal of him.

Perfect servants, we have said, are in dominion, (§ 76). But since he who hath the dominion of any thing, hath the free disposal of it (l. i. § 306); the consequence is, that a master may impose upon such a servant any work he is capable of; make all profit by him; claim him and his children as his property, and sell or alienate him and them upon any terms, unless the servant, who voluntarily delivered himself into servitude, made this condition, that he should not go out of the family, or be alienated to any other master. As to the power of life and death, none will deny that it belongs to such masters (l. i. § 308) unless either convention or law forbid it. Much less then can it be denied, that

that such masters have a power to coerce and chastise such servants according to the exigence of the case, provided the master still bear in mind that his servant is a man, and by nature his equal * (l. i. § 177).

* For tho' a servant may happen to be more perfect than his master, yet it cannot be denied that the master is his servant's superior: And this diversity of perfections and states, does not alter the essence of man; so that a servant is still equally with his master, a man (l. i. 177). That maxim of the civilians is therefore far from being humane, "That no injury can be done to a servant or slave," l. 15. § 35. D. de injur. And that saying of a mistress in Juvenal is most inhumane. Sat. 6. v. 223.

*O demens, ita servus homo est? Nil fecerit: esto
Sic volo, sic jubeo, stet pro ratione voluntas.*

He is therefore no less excusable who hurts a servant, than he who hurts a free-man.

Sect. LXXXIV.

Since to a master belongs the possession of his own, and the right of reclaiming it from every person (l. i. § 306) hence it follows, that a master may defend himself in the possession of his maid or woman-servant by any means, and reclaim his servants, whether they desert, or whether they are unjustly carried off, from any one whomsoever, with the fruits or profits, and accessions of the possession; and, in the first case, to punish the renegade according to his desert, and to take proper and effectual measures to prevent his taking the same course for the future *; unless this effect of the master's dominion be restricted by the civil laws (l. i. § 317).

With re-
spect to
possession
and vind-
ication.

* Hence home-shackles, prisons, houses of correction, and other methods which necessity obliged to, or the cruelty of masters, allowing themselves all corporal power over their slaves, invented. For tho' here regard ought to be had to humanity and benevolence (§ 83), yet the coer-

cive power ought not to be taken from masters, especially over servants taken in war, partly because such are upon the catch to find an opportunity of flying and returning to their own country (which is not so very blameable, as *Lorarius* in *Plautus* observes, *Plaut. Captiv. 2. 1. v. 14.*

Lo. *At fugam fingitis. Sentio, quam rem agitis.*

Cap. *Nos fugiamus? quo fugiamus? Lo. in patriam.*

Cap. *apage! haud nos id deceat,*

Fugitivos imitari. Lo. Immo, ædæpol, si erit occasio, non debortor.)

partly because they still preserve a hostile disposition, in-
somuch, that what *Seneca* says is particularly true of such
servants, *Ep. 47.* So likewise *Festus* in voce: quot servi.
“Totidem quemque domi hostes habere, quot servos.”
So many slaves at home, so many enemies at home.

Sect. LXXXV.

The du-
ties of ma-
sters to
such ser-
vants.

It will not now be difficult to ascertain the mu-
tual duties of masters and such servants. For be-
cause an *obnoxious* or perfect servant is in dominion,
(§ 76) and therefore a master may make all the
gain he can of such (§ 83), so that such a servant
hath nothing in property; the consequence is, that
the master is obliged to maintain such a servant,
and this obligation does not cease, then especially,
when he is not able to perform his service *. And
since a servant is, with regard to nature, equal to
his master (§ 83) it is obvious, that the master is
culpable if he injuriously hurts his servant; and he
is worthy of commendation, if he endeavours to
reform a disobedient servant by benefits rather than
by cruel methods.

* A mercenary servant, besides his maintenance, re-
ceives wages (§ 82), so that he has something wherewith-
all to sustain himself, if he be disabled by sickness or acci-
dent from performing his work; wherefore, since the
master is obliged to maintain such a servant only by the
contract of hiring (§ 76), he is not perfectly bound to the
alimenting of such a servant, who is not able to serve (§ 82).
But with respect to a perfect servant or slave, the case is
different:

different : For he is not maintained for his work, but as being under his master's dominion, and having no wages, he has nothing belonging to him. Besides, charity and humanity oblige us to assist even strangers and enemies (l. 1. § 219); and therefore, with what face can we deny sustenance to a sick slave, who has worn himself out in our service ? Hence the Emperor Claudian gave their liberty to slaves, who were exposed in their sickness by their cruel masters, Sueton. in Claud. c. 25. l. 2. D. qui sine manum.

Sect. LXXXVI.

Because as many different kinds as there are of servitude, so many duties of servants there are, The duties of servants to their masters. correlates to the several rights of masters (l. 1. § 7) hence it follows, that perfect servitude obliges a slave to every sort of work or service, to promote his master's interest to the utmost of his power, and to bear chastisement and correction, and the disposal of him and his at his master's will, with patience. That he acts contrary to his duty, if he deserts his master, or defrauds his master, by stealing, as it were, himself away from him ; and that he ought rather to endeavour to merit his liberty and manumission by faithful and cordial service, thus rendering himself worthy of so great a benefit.

Sect. LXXXVII.

From what hath been said, we may easily understand how this society is dissolved. Mercenary servitude is dissolved. Mercenary servitude is dissolved. Mercenary servitude, depending upon a contract of letting and hiring, is dissolved in the same manner such contracts are dissolved, and more especially by the expiration of the time contracted for. Perfect servitude is principally dissolved by manumission. For since any one may derelinquish or abdicate his own (l. 1. § 309), there is no doubt but a master may renounce his right to a servant, which renunciation was called by the antients *manumission*. Besides, renunciation being a kind of alienation, and seeing

in alienation one may except or reserve what he pleases (l. i. § 278) it is plain that manumission may likewise be granted upon any honest conditions whatsoever*.

* Thus the old Romans at manumission stipulated to themselves certain handicraft-works, presents or gifts, l. 3. pr. l. 5. l. 7. § 3. D. de oper. libert. And our ancestors, when they manumitted their slaves, reserved a right to themselves to exact from them such services as their mercenary servants, or even slaves were wont to perform to them; so that abstracting from the title and condition of the servitude, there was hardly any difference between slaves and libertines among them. And hence Tacitus de moribus Germ. says, "That their freed-men were not in a much more preferable state than their slaves."

SECT. LXXXVIII.

What a freed man is, and what are his duties.

Those slaves who are manumitted by their masters are called *libertini*, and the *liberti* of the manumittor. Now, since masters, who give liberty to their slaves, confer upon them the greatest benefit they can bestow; and every one is obliged to love him who bestows favours upon him (l. i. § 226); slaves set at liberty (*liberti*) are the most ungrateful of mortals, unless they love the patrons who conferred so great a blessing upon them, and they are obliged to pay the highest veneration to them, and not only to perform to them cheerfully all that their masters stipulated to themselves upon giving them their liberty (§ 87) but likewise to be ready to render to them all other good offices in their power; or, if the power of serving them be wanting, at least to shew gratitude towards them in every manner they can* (l. i. § 228).

* The ancients looked upon giving liberty to slaves as the greatest of benefits. Simo in Terence says, And. l. i. v. 10.

*Feci, e servo ut esses libertus mihi,
Propterea, quod serviebas liberaliter :
Quod habui, summum pretium persolvi tibi.*

For the Patron, by giving his liberty to a slave made him a *person* : and therefore, he was to the freed-man in the room of a father, who on that account assumed his patron's name, as if he were his son, *Lactant. divin. Inst.* 4. 3. Hence he was no less obliged than a son to provide an aliment for his patron, if he happened to be in want, *l. 5. § 18. l. 9. D. de agnosc. & alend. lib.* And as a son, tho' the obligation to gratitude be otherwise imperfect, was forced to repay the benefits received from his father, and to maintain him ; so the freed-slave was forced to do the same, and could be reduced into slavery again for pregnant ingratitude, *Inst. § 1. de cap. diminut. l. un. C. de ingrat. lib.*

C H A P. V.

Of the complex society called a family, and the duties to be observed in it.

Sect. LXXXIX.

WE observed that lesser or more simple societies What a may coalesce or unite into larger and family is. more *compounded* ones (§ 17) : and of this the societies we have described afford us an example. For when these join and consent into a larger society, hence arises a *family*, which is a society compounded of the conjugal, the paternal and despotic society*. Whence the husband and wife, parents, masters and mistresses, with respect to this society, are called *fathers* and *mothers*, or *heads of a family* ; the children are called *sons and daughters of the family*, and the men or women-servants are called *domestics*.

* Ulpian's definition comes to the same purpose, *l. 195. § 2. D. de verb. signif.* " We call a *family*, with its proper rights, as such, many persons subjected to one head,

head, either by nature or by law, (ut puta patremfamilias, matremfamilias, filiumfamilias, filiamfamilias), and those who succeed into their room, as grandsons and granddaughters, &c. But we take the term in a somewhat larger acceptation. For, whereas he only comprehends husband and wife, parents and children, we comprehend servants as a part of a family; as he himself a little afterwards calls them, § 3. “servitium quoque solemus vocare *familiam*,” we also reckon servants a part of the family.” Besides, among the ancients *family* signified the servants, “quasi familia,” as Claud. Salmast. exercit. Plin. p. 1263. has shewn. And the parents and children were called by them *domus*, the house, as in Apuleius Apolog. p. 336. “ipse *domi* tuæ rector, ipse *familix* dominus. We shall therefore use the word *family*, to denote what the ancients called *domus* and *familia*.

Sect. XC.

To whom the direction or government belongs in this society. But because the larger a society is, the less practicable is it that so many members should find out necessary means for attaining the end of the society by common consent and suffrage (§ 18) it is evident that this society must be unequal and rectoreal; and therefore that the power of directing the rest to the end of the society, must be transferred to one of the members. Now, since the husband and father of the family has a certain authority or prerogative over the wife (44) and his command, as father, ought to prevail over the mother's when they disagree (§ 53); and since he hath, as master, undoubted power over his servants of whatever sort; (§ 81 and 83) the power of directing the actions of the whole family must belong to the *father**; but in such a manner however, that the mother is obliged, as sharer of his good or bad fortune, to give him all the assistance she can of every kind (§ 42).

* But this is to be understood of what ordinarily or regularly happens. For that it is sometimes otherwise, we have already shown (§ 46). Who will deny that a queen
who

who marries a stranger is still head of her family, and that in this case, no other part belongs to the husband but what regularly belongs to the wife, *viz.* to give all manner of assistance to his queen-wife? We have very recent examples of this.

Sect. XCI.

Now, such a family is either in a state of nature, The end of this society in a state of nature, and in a civil state. or it is united with other families into one state. In the first case, the end of this society is not only to acquire the things necessary to its happy subsistence, but likewise to defend itself against all invaders or enemies; and therefore they judge right, who consider such a family as a species of the lesser states or republics *. In the latter case, because every family is protected against the injuries of their fellow citizens or subjects by judges, and against common enemies, by the common strength of the republic, its end can be no other but the acquisition of things necessary to its more comfortable and happy subsistence.

* Thus Aristotle considers it, *Polit.* 3. 6. where he says, that segregate heads of families, living by themselves, are with their families as states, and defend themselves by the members of their families against all injurious invaders. Nor does Hobbes philosophize about the manner differently. *Leviath.* c. 20. 'Tho' properly indeed such a family be not a state, as Aristotle acknowledges a little after, where he says, " Yet if we accurately consider the matter, it is not properly a city or state; " yet it is very like to one, and when it grows up into a great multitude of persons, it becomes a state or republic, as Plato observes in *politic.* t. 2. op. edit. Serrani.

Sect. XCII.

But since the end of this domestic society, in a state of nature, The power of the head or father in a state of nature. is not only to acquire the necessary to convenient and comfortable living, but likewise to defend itself against injuries (§ 91) the consequence is, that the father of the family has all the

the rights necessary to attain to these ends; and therefore he may not only manage the family estate and interest as seems best to him, and allot to every one in the family his care and task, and call every one to an account for his management; but he has likewise all the rights of a prince or supreme magistrate in his family, and consequently can make laws, punish delinquents, make war and peace, and enter into treaties*.

* We have examples of this in the patriarchs Abraham, Isaac, and Jacob, who, as princes, or heads of separate families, exercised all the rights of sovereignty. Thus Abraham, when he heard his brother Lot was taken captive, armed his trained servants born in his own house, and joined with certain confederates, and made war against the enemy, Gen. xiv. 14. The same Abraham entered into an alliance with Abimelech, Gen. xxi. 22. which was afterwards renewed by Isaac, Gen. xxvi. 26. Jacob in like manner made a covenant with Laban, Gen. xxxi. 44. and his family made war (tho' an unjust one) against Hamor and his son Shechem, Gen. xxxiv. 25. Jacob likewise gave a law to his household about putting away strange gods from among them, Gen. xxxv. 2. Judah, his son, condemned his daughter-in-law to be burnt, Gen. xxxviii. 24, 25. Of these facts Nicolaus Damascenus was not ignorant. Excerpt. Peiresc. p. 490. See likewise Justin. 36. 2.

Sect. XCIII.

In a civil
state.

On the other hand, since the end of a family, coalited with other families into the same state, can be no other but the acquisition of necessaries and conveniencies (§ 91), it is very plain that such eminent rights do not belong to the heads of such families, but those only which we described (§ 92), without which the family cannot have a comfortable subsistence; and in this case the mother has some share; whereas the modesty and character of her sex does not permit her to partake of those

those rights which belong to the father of a family, as the supreme magistrate of the family.

Sect. XCIV.

Moreover, since in more complex societies the interest of the more simple or lesser ought not to be opposed to that of the larger (§ 23), it is plain, that the conjugal, the paternal, the domestic societies ought not to be an obstacle to the end and interest of the whole united family *; and hence arise certain duties peculiar to this complex society, some of which belong to the father and mother with regard to one another; others to both, with respect to the other members of the family; others to the members of this family, with respect to the father and mother of the family; and others, in fine, to the members with relation one to another. See Wolfius de vita sociali hominum, § 194.

* Because, in this case, one and the same person sustains several different personages or characters, he is under so many respective obligations, and has so many respective rights correspondent to, and depending upon these different characters and relations of husband, father, and head of the family.

Sect. XCV.

Since the father hath the principal part or character in this society (§ 90); but so, that the mother is obliged to give him all possible assistance in every way (ibid.); it follows, that it belongs to the father of the family to command what he would have done, to maintain the whole family, and each member, as every one's condition requires, to coerce and punish those who do any injury or dishonour to the family, suitably to what the rights of a more simple society permit, and to support the dignity and authority of the mother; and it is her duty to use her utmost care that the children and servants obey their orders *; to act in the husband's room in his

his absence; and, in fine, to shew an example to the whole family of veneration and obedience, being sure to have so much the more authority in the family, in proportion as she studies to maintain and augment that of her husband.

* Socrates says in Xenophon. *Oecon.* c. 3. § 15. "I think a wife who is a good partner in a family, contributes as much to its interest as the husband. For very often wealth is brought by the husband's industry into a house, and the greater part of it is at the management of the wife, which, if it be good, the family is enriched; if bad, it is ruined."

SECT. XCVI.

The duties of both with regard to the simpler societies.

Now, if the simpler societies ought to be so managed, that they may not be a hindrance to the good of the whole family (§ 94), it is manifest that the father acts contrary to his duty, if he is an impediment to the mother in her care about the education of their children; and she is much less excusable, if she makes the rebellious children worse by her indulgence; and both are in the wrong, if they, by their discords and jars, are a bad example to the children, or if they are negligent of their education and behaviour. In like manner it is evident, that a domestic society must be in a very bad state, if the children are left to the care of the servants, and are allowed to converse with them at their pleasure; or if, on the one hand, the servants give ill advice to children, and induce them to, or assist them in any crime; or if, on the other hand, the children are suffered to treat the servants rudely.

* For most servants being of the very dregs of mankind, and therefore very ill educated, it is impossible but children must be corrupted by them. We see how justly they are represented in Plautus and Terence, as often corrupting the children by flattery, and exciting them to or assisting them in very bad practices. Plutarch upon education
wifely

wisely observes, “ If you live with a lame person, you will insensibly learn to halt.” And hence he infers, “ That nothing can be more absurd and unreasonable than the very common practice, when one has many good servants, some fit for agriculture, some for navigation, some for merchandize, some for banking, others to be stewards, if he finds one slave that is idle, drunken, and unfit for every other business, to set him over his children.” But it is evidently much the same in effect, whether parents commit the care of their children to worthless persons, or suffer them to be familiar with them.

SECT. XCVII.

Hence it is plain, that the whole matter lies in preserving good order in a family. But then are things said to be done in order, when all things are managed and done as the circumstances of each affair requires. And therefore in a family every one ought to have some business or task appointed to him, and to give a strict account of it ; and each person ought to be inured to do his business, not only with due care and diligence, but also at a convenient time, and in a proper place ; and, in fine, all the furniture, and every utensil ought to be kept neat, clean, and intire, and every thing ought to be found in the place appointed for it, or where it is proper and convenient it should be placed *.

In a well regulated family all is in good order.

* All this Xenophon hath delightfully explained in his golden treatise of œconomics, where he introduces Ischomachus discoursing with his wife about the management and œconomy of a family. And cap. 8. she sums up all thus: That, as in a choir, in an army, or in a ship, so in a domestic society, there is a first, a second, and a last order, and that the perturbation of this order throws all into confusion, and renders the largest stock of furniture useless. In the 8. chapter she adds, “ The disturbance of order seems to be like a farmer’s throwing wheat, barley, and legumes, all together in a heap ; and then when he wants bread, kitchen-stuff, or any other thing, he must have

have the trouble of separating them, and to search through the whole confused mass for what he has present need of.

SECT. XCVIII.

The duties of the inferior members of a family.

From what hath been said of the duties of the whole *family*, it is obvious, that since all the members expect aliment from the head, each suitably to his rank (§ 95) every one of them is obliged to take care of the common interest of the whole body, and of that part committed to his trust in particular, to render reverence and obedience to the father and mother of the family; and, above all, to do nothing that may tend to interrupt the conjugal harmony, or to hinder the education of the children; or to bereave the head of the profits he might justly expect from the labour, honesty, and diligence of his servants.

REMARKS on this Chapter.

Our Author hath treated very distinctly and fully of the duties of the simpler societies, as he very properly calls them. But because it is common in arguing about government, or the civil state, to which our author is now to proceed, especially among the defenders of absolute monarchy, to reason from the right of paternity, it will not be improper to consider domestic or family dominion in its natural causes. This will prepare the way for the consideration of civil government, or dominion in its natural causes: And it is the more necessary, because the defenders of absolute monarchy, in their reasonings to prove its *jus divinum*, from the right of paternity, or the government of families, conceal, as Mr. Harrington observes, one part of it. "For family government, says that excellent author (for it is from him, of his works p. 385. upon the foundations and superstructures of all kinds of government, I am now to transcribe) may be as necessarily popular in some cases, as monarchical in others. To shew now the nature of the monarchical family: Put the case a man has one thousand pounds a year, or thereabouts, he marries a wife, has children and servants depending upon him (at his good will) in the distribution of his estate for their livelihood. Suppose then that this estate comes to be spent or lost, where is the monarchy of this family? But if the master was no otherwise monarchical than by virtue of his estate, the foundation or balance of his empire consisted in the thousand pounds a year. That from these principles there may be also a popular family,

is apparent : For suppose six or ten, having each three hundred pounds a year, or so, shall agree to dwell together as one family, can any one of them pretend to be lord and master of the same, or to dispose of the estates of all the rest ? or do they not agree together upon such orders, to which they consent equally to submit ? But if so, then certainly must the government of this family be a government of laws or orders, and not the government of one, or of some three or four of these men. Yet the one man in the monarchical family giving laws, and the many in the popular family doing no more, it may in this sense be indifferently said, That all laws are made by men ; but it is plain, where the law is made by one man, then it may be unmade by one man ; so that the man is not governed by the law, but the law by the man ; which amounts to the government of the men, and not of the law : whereas the law being not to be made but by the many, no man is governed by another man, but by that only which is the common interest ; by which means this amounts to a government of laws, and not of men. That the politicks may not be thought an unnecessary or difficult art, if these principles be less than obvious and undeniable, even to any woman that knows house-keeping, I confess I have no more to say. But in case what has been said be to all sorts and capacities evident, *it may be referred to any one*, whether without violence, or removing of property, a popular family can be made of the monarchical, or a monarchical family of the popular. Or whether that be practicable or possible, in a nation upon the like balance or foundation in property, which is not in a family. A family being but a smaller society or nation, and a nation but a greater society or family. That which is usually answered to this point is, That the six or ten thus agreeing to make one family, must have some steward, and to make such a steward in a nation, is to make a king. But this is to imagine, that the steward of a family is not answerable to the masters of it, or to them upon whose estates (and not upon his own) he defrays the whole charge : For otherwise, this stewardship cannot amount to dominion, but must come only to the true nature of magistracy, and indeed of annual magistracy, in a commonwealth ; seeing that such accounts, in the year's end at farthest, use to be calculated, and that the steward, body and estate, is answerable for the same to the proprietors or masters ; who also have the undoubted right of constituting such another steward or stewards, as to them shall seem good, or of prolonging the office of the same.

Now, where a nation is cast, by the unseen ways of providence, into a disorder of government, the duty of such particularly as are elected by the people, is not so much to regard what has been, as to provide for the supreme law, or for the safety of the people, which consists in the true art of law-giving. And the art of law-giving is of two kinds ; the one (as I may say) false, and the other true. The first consists in the reduction of

the balance to arbitrary superstructures, which requires violence, as being contrary to nature ; the other in erecting necessary superstructures, that is, such as are conformable to the balance or foundation ; which being purely natural, requires that all interposition of force be removed."

It is impossible to treat distinctly of family or of civil dominion, without considering it in its natural causes, or its natural generation. " The matter of all government is an estate or property. Hence, all government is founded upon an over-balance in propriety. And therefore, if one man hold the over-balance unto the whole people in propriety, his property causeth absolute monarchy : if the few hold the over-balance unto the whole people in propriety, their propriety causeth aristocracy, or mixed monarchy. If the whole people be neither over-balanced by the propriety of one, nor of a few, the propriety of the people, or of the many, causeth democracy, or popular government : The government of one against the balance is tyranny ; the government of a few against the balance is oligarchy : the government of the many (or attempt of the people to govern) against the balance, is rebellion or anarchy ; where the balance of propriety is equal, it causeth a state of war : To hold that government may be founded upon community, is to hold that there may be a castle in the air, or that what thing soever is as imaginable as what hath been in practice, must be as practicable as what hath been in practice. Hence it is true in general, that all government is in the direction of the balance." All these truths, however much neglected by writers upon government, are of the greatest moment : They have the same relation to or connexion with theories about government, whether domestic or civil and national, whether consisting of one or many families, as the real laws of matter and motion have with theories in natural philosophy : For they are moral facts or principles upon which alone true theories in moral philosophy or politics can be built, as the other are the natural facts, laws or principles upon which alone true axioms in natural philosophy can be erected. They are all fully explained by the author already cited. And hence we may see, " That the division of a people into freemen and servants, is not constitutive, but naturally inherent in the balance. Freemen are such as have wherewithal to live of themselves, and servants such as have not : Nor, seeing all government is in the direction of the balance, is it possible for the superstructures of any to make more freemen than are such by the nature of the balance, or by their being able to live of themselves. All that could in this matter be done, even by Moses himself, is contained in this proviso, Lev. xxv. 29. *If thy brother that dwells by thee be grown poor, and be sold to thee, thou shalt not compel him to serve as a bond-servant, but as a hired servant, and a sojourner shall he be with thee, and shall serve thee to the year of jubilee : And then shall he depart from thee, both he and his children with him, and shall return to his own family, and to the possession of his fathers*

fathers shall be return. Yet the nature of riches being considered, this division into freemen and servants, is not properly constitutive but natural." See Mr. Harrington's works, the art of lawgiving, p. 436. 437. Compare p. 248. I shall only add upon this head, that the defenders of absolute monarchy can never draw any conclusions to serve their purpose, either from paternal government, or from the power of masters over their servants. For with regard to the former, what relation can be stricter than that between parents and children: There cannot be stronger obligations to subjection upon any than there are upon children: This relation and obligation is not the effect of consent, children being incapable of giving their consent, but is the effect of the necessity of nature, and in a peculiar sense, an authority or power of the author of nature's appointment: Yet let it be remembered, that our Author, and all writers on the laws of nature and nations allow, that the obligations of children do not contradict the powerful law of self-preservation and self-defence, in cases in which life, or any thing dearer than life, is concerned. But if this be true, how can one imagine, that when the ruin of the public happiness, which is as it were the life of the community, is attempted, the same law of self-defence is of no force, and ought not to be regarded? Suppose the right of dominion over men secured by an over-balance in property, and withal of divine appointment, in any conceivable sense of these words, yet, if it be as sacred as the right of a father, it cannot extend beyond the right of a father, which does not extend to the destruction of the right of self-defence, or to command immoral actions without contradiction or resistance: Or if it be more sacred than the right of a father (could that greater sacredness be conceived) it cannot be more sacred than the law of nature, and the right of God to exact obedience to that law, and to forbid the transgression of it in obedience to whatever other authority, and so extend to the demolishing of all the natural rights and duties of mankind: Power, whatever be its title, or whatever be its foundation and security, if it be exercised contrary to the laws of nature, contrary to the law of justice and love, it is not *right*; it is power indeed, but guilty criminal power, which it is, it must be a crime not to resist to the utmost of one's power, if the law of nature, *i. e.* the law of God be immutable, universally and indispensably obligatory upon all men.

With respect to the power of masters over servants, or slaves conquered by just war, it is likewise true that such a master is a lawful superior, and hath no equal in his family, yet hath his family, his servants, his slaves a right to defend themselves against him, should he endeavour to ruin or murder them; and such a master has no right to command any thing in the smallest degree contrary to the law of nature; but every one in his family hath a right, or more properly speaking, is obliged to reject and resist such orders to the utmost of his power. None can have a right to injure any one in making acquisitions of

property or dominion, and none can have a right to exercise his acquired power, property or dominion, in an injurious way to others, tho' part of their property or dominion; because tho' dominion and property be not contrary but agreeable to the law of nature, yet the more considerable part of the law of nature consists in limitations upon the exercise of dominion and property, or in prescribing duties to those who have dominion and property, with regard to the use and exercise of it. And (as our Author hath often observed) where there is duty incumbent upon any one, there is, *ipso facto*, a right vested in some other, who is the object of that duty, to claim the fulfilment of it towards him. But we shall have occasion to return to this subject afterwards. And it is sufficient at present to have observed, 1. The natural cause or source of dominion. And, 2. That there are boundaries set by the law of nature to the acquisition and exercise of dominion, which boundaries are, with respect to subjects of dominion, rights belonging to, and vested unalienably in them, by the same law which sets these limitations to power and dominion, and by setting them to it, imposes certain indispensable duties upon the possessors of power and dominion. This must be, if the law of nature is not an empty sound, the supreme law, with regard to those who have dominion, whether as fathers, masters or kings (according to this definition of a King by Grotius, *de jure belli & pacis*, l. 1. c. 3. "Paterfamilias latifundia possidens, & neminem alia lege in suas terras recipiens quam ut ditioni suæ, qui recipiantur, se subjiciant" "A master of a family, who having large possessions, will not suffer any one to dwell in them on other terms than being subject to him.") *viz.* the greater good of their children, servants, family, or subjects. This being fixed as the fundamental law, particular duties are easily deducible from it. And this must be the supreme law, or man is subject to no law, but may exercise his power as he pleases, *i. e.* in other words, either the greater good of the whole society is the law, or strength is free from all law, and may do what it can, and there is no such thing as unlawful exercise of power.

C H A P. VI.

Of the origine of civil society, its constitution and qualities, or properties.

Sect. XCIX.

TH^O, in the societies we have described, men The civil might have lived very comfortably; yet state has some reason hath prevailed upon men to form been a- themselves into those larger societies, which we greeable call *states* or *republics*, and to prefer, almost by uni- to almost versal consent, the civil to the natural state; there every na- is almost no nation so barbarous, in which we do tion. not find some semblance of a civil state or republic.

* They attest the truth of this who have visited the anciently unknown countries, northern and southern, having found in most of them either great multitudes subject to one king, or determining matters of common concernment to them by common consent. For what some authors have said of the *Casri*, and the people inhabiting mount Caucasus, and of certain American Islanders, (see Hert. Elem. prud. civil. 1. 1. p. 45. Becmann. geograph. 9. 8.) these accounts seem to be given by persons who had not enquired very narrowly into the matter, and who thought they saw no vestige of civil government, where they saw no palaces and guards, nor nothing of the splendor and magnificence of a court. Petrus Kolbius, who lived long in that corner of Africa, says of the *Casri*, that they were divided into seventeen provinces or nations, each of which had its own prince, whom they called *Kouqui*, and that every village had its prefect, called in their language *Kralle*, who had even the power of punishing criminals. As for public affairs, he adds, that all the prefects met together, and consulted in a common-council, in which the prince of the nation presided. I am afraid what Salust says of the Aborigines and Gætuli, Catil. cap. 6. & Jugurth. c. 18; and Strabo of the Numidians, geograph. l. 17. p. 1191. and Valerius Flaccus, Argonaut. l. 4. v. 102. of the Bebricii, Pliny of the Troglodites,

hist. nat. 5. 8. and in fine, Homer of the Sicilians, that all these accounts are equally groundless. The natural state of the Sicilians is elegantly described by Homer Odyss. l. 10. v. 112.

*Nec fora conciliis fervent, nec judice: tantum
Antra colunt umbrosa: altisque in montibus ædes
Quisque suos regit uxorem natosque, nec ulli
In commune vacat socias extendere curas.*

Sect. C.

Whether it was by indigence of necessaries they were engaged to choose a civil state.

Tho' many, in their enquiries concerning the origine of a civil society, have thought that men were compelled to it by the want of several necessaries (Plato de repub. l. 2.); yet this is the less probable; first, Because we have an account of something like civil society in Genesis iv. 17. when the world was not so populous as that there could be any want of necessaries. And next, because nothing hinders commerce from taking place where there is no civil government (§ 10); and, in fine, because there has been a much greater indigence of all things, since, civil government being established, luxury and wantonness began to spread and reign among mankind*.

* Thus we find Abraham, Isaac and Jacob, who lived sometime in a natural state, (§ 92), tho' they only applied themselves to husbandry, and feeding of cattle, to have lived very agreeably, and to have amassed great wealth, and to have wanted nothing, Gen. xxiv. 35. xxxiii. 11. And indeed, seeing families living separately and independently in very early times of the world, understood agriculture, and planting and dressing of vines, and were no strangers to gold and silver, and the more useful arts (Gen. xiii. 2. xxiv. 35.) what could men desire more, tho' they lived in a state of nature, if luxury were unknown, and made none of its exorbitant demands to which nature is a stranger?

Sect. CI.

Again, it can hardly be imagined that elegance and politeness were the motives which induced men, in the primitive times of frugality, to prefer a civil to a natural state. For besides that, what is called *elegance*, is really vanity, and what is called *politeness of manners*, is truly but an affected complaisance and flattery (§ II) *; there is nothing to hinder men, in a state of nature, from improving their reason, and refining or polishing their manners. Nay, the examples of Abraham, Isaac, and Jacob, who lived by themselves with their separate families, and had not entered into civil society, sufficiently shew us, that men, living in a state of nature, may be quite free from all barbarity, and very decent and polite.

* A proof of this is the mannerly polite speech of Abraham to Melchisedech, Gen. xiv. 22. and his uncommon hospitality to strangers, Gen. xviii. 2. and his conference with the sons of Heth, Gen. xxiii. 7. That Abraham had taught his servants to be most observant of decency and good manners, appears from that message carried by Eleazer to Nachor, Gen. xxiv. 22. Nor does that interview between Jacob, in his return from Mesopotamia with Esau, favour in the least of barbarity, in which they strove to outdo one another in civil words, presents, and other tokens of love and friendship. Besides, if it be true, which Joseph. antiq. Jud. I. 9. says of Abraham, that he was skilled not only in numbers, but in astronomy; and what is said by others of skill in the interpretation of dreams being brought to great perfection in his family (Suidas Abraham. & Justin. hist. 36), none can doubt but that the arts and sciences may be cultivated to a great degree of perfection in a state of nature, and therefore that there is no need of a civil state in order to gain that end.

Sect. CII.

Equally groundless are other reasons for which men are imagined to have coalesced into republics or civil states. For as to what some say of justice, justice.

that civil society was formed for the sake of it, (as Hesiod. Theog. v. 87), and others of interest, as if it had been done on that account, (as Aristotle, Ethic. 8. 11.) and what others say, of the instigation of nature, (as the same Aristotle, 1. 1. & 2.)—All these reasons, we think, are of such a nature, that they might have contributed somewhat towards it, but could not have been the sole motives which determined men to commute a state of liberty and equality for a state of civil government and subjection.

* For why might not the heads of separate families have made laws, and distributed justice each in his own family, (§ 92)? Again, why might not the more simple societies have produced all the advantages of union, since in these every one was at liberty to acquire what he pleased, and there would be none of those tributes, taxes, imposts, upon persons or estates there, which now eat up the property and estates of subjects in civil governments? Let nature be as abhorrent of solitude, and let a state of solitude be as miserable as Pufendorff hath painted it out to be, yet we can never say, that Abraham, for example, lived in a solitary state, who besides a wife and a hand-maid, and many children by both, had such a numerous retinue of servants, that he could bring into the field three hundred and eighty servants born in his family, Gen. xiv. 13. However strong the natural propension of mankind to society may be, yet surely they were not immediately led by natural inclination to form those larger societies, in which there are many things very contrary to the natural dispositions of mankind, as Pufendorff hath shewn at great length in his 7th book, cap. 1. § 4. of the law of nature, &c. It is however very certain, that in a civil state, if it be rightly constituted, justice is well administered, and all the public and private interests of mankind are wisely consulted and provided for; but those things are more properly called consequences of good civil government, than motive causes to the formation of it.

Sect. CIII.

Wherefore, when the matter is fully and accurately considered, they appear to have hit upon the true cause, who maintain that the strength and violence of wicked men gave rise to the formation of civil states. For all men being equal and free in a state of nature (§ 5 and 6); but such being the temper and disposition of profligate men, that they have an insatiable lust of power and wealth; of robbing others of their possessions and rights, and bringing them under their yoke, it could not but happen that several heads of families, of this temper and genius, would unite their strength in order to subject others to them. And since a large society cannot but be unequal and rectoreal (§ 17), the consequence is, that such a band of robbers would choose a leader to themselves, and prescribe a certain form of government to him, according to which he was to rule and command them; and hence the origine of civil society or political states *, which are nothing else but a multitude of people united under a common head, upon certain conditions for their mutual security, and dependent on, or subjected to no other mortal.

The real cause which moved men to form large civil societies was the fear of wicked profligate men.

* This is the most natural account of the rise of civil government, if we attend to reason and the nature of things. But ancient history sets it beyond all doubt that it was so. For that is found in the sacred writings. And these records assure us, that before the deluge, not the *sons of God*, as they are called, Gen. vi. 1. but the *posterity of Cain*, built the first city, Gen. iii. 17. For tho' we should grant to the learned Jo. Clerc. comment. p. 40. that this city consisted but of a few little cottages, set about with a mound or green hedge (which is by no means certain or indisputable) yet a society of many families, without some form of civil government, can hardly be conceived. Moreover we are told, that after the deluge Nimrod the son of Chus, being mighty in possessions or territories, founded the kingdom of Babylon, *i. e.* began to oppress others, and

force them to submit themselves to his command, Gen. x. 8. Nor is any more ancient kingdom mentioned by Moses, tho' the names and transactions of several kingdoms and dynasties occur in the history of the time of Abraham, a few ages after. And who indeed can doubt that civil states were originally formed in this manner, *i. e.* by violent oppression, since this has so often happened in latter times? Hertius prud. civil. 1. 3. 4. p. 77. & seq. has shewn by instances brought from universal history, that the most potent kingdoms took their rise from oppression and robbery.

Sect. CIV.

This obliged the innocent to unite together in order to repel force by force.

The justest heads of families could not find any other remedy against such confociations, but to repel force by force (§ 9). And a few not being sufficient to accomplish that end, necessity, and the malice of wicked men, forced other men to coalesce into large bodies; the consequence from which is, that just and good heads of families were obliged, through fear of violent and wicked men, to unite their forces, and joining together under a common head on certain conditions, to form a civil society or political state * (§ 103); whence we infer, that there would have been no republics in a state of integrity. See Bocman. meditat. pol. 11. 5; and that it is trifling to obtrude upon us a state of innocence as the first principle of the law of nature and nations (l. 1. § 74).

* They are not therefore in the wrong who assert that fear and force were the origine of civil society, as Bodin, de rep. 1. 6. 2. 6. Hobbes de cive. 1. nor they who say, that men formed civil societies for the sake of enjoying their properties with security, Cic. de off. 2. 21. nor those who maintain, that the imbecillity of segregate families, was the reason why men changed their natural liberty for civil government, as Grotius de jure belli & pacis, proleg. § 19. & l. 1. c. 4. § 7. For tho' all these opinions seem to differ in words, yet they come to the same thing in effect.

Sect. CV.

Civil society is therefore of a two-fold origine; The double origine of civil society. Some were formed to oppress the innocent, and for violence; others were formed to repel force by force, and for common self-defence. The end of the former is most unjust; that of the latter just. Wherefore the former is rather *a gang of robbers* than a society; the latter is *a lawful republic*. But because things which have an unlawful beginning may be afterwards amended when the error is found out; and, on the contrary, things which had a very laudable commencement are often perverted; a band of thieves and robbers, having laid aside their oppression and violence, may become an excellent commonwealth; and a lawful republic, forsaking their humanity, may degenerate into a tribe of ruffians; yet in both the same end, *viz.* the *security* of the members is the end of confociation.

* Thus, tho' certain piratical republics in Afric were formed rather to plunder and oppress, than merely for common safety, and therefore in this respect they differed very little from bands of robbers; yet they had likewise common security for their end, as well as lawful republics have; and for that reason, they put themselves in a state of defence against all external force; and were rigid in the distribution of justice,

Ne vaga profiliat frænis natura remotis.

This then is the common end of all civil societies; but with this difference, that the former are not very solicitous about virtue and equity, if that end be but obtained; whereas the latter proposes that end, in order that they, as the apostle expresses it, "may lead under kings, and all in authority, quiet and peaceable lives, with all godliness and honesty," 1 Tim. 2. 2.

Sect. CVI.

Since the common *security* of the members is the end of all civil societies (§ 105); but it is from

The end of civil society is the security of its members.

the end of a society that we must judge of the means, and of the rights and duties of its members (§ 14); the consequence is, that they who unite into society, ought to do all, without which the common end, *viz. security*, cannot be obtained. Now, since the violence which is obstructive of public security, consists in the united force of wicked men (§ 103), it is necessary that others, who would secure themselves against such violence, should unite their strength; and therefore it is proper, that as many men should form themselves into a more large and compounded society, as may, with probability, be sufficient to repel, by just force, the unjust violence of injurious neighbours*.

* Hence it is an idle question, what number of persons constitutes a society? For tho' Apuleius thought fifteen freemen might constitute a republic, Apol. p. 304, and others have said three tolerably numerous families might make one, Val. Max. 4. 4. 8. 4. 6. 5. yet the authors of these opinions seem not to have had common security as the end of society in their view, since that end cannot be accomplished by fifteen persons joined together; but the number ought to be increased, in proportion to that of the enemy feared. Accordingly, all history shews us, that states were very small in their beginnings, or confined within the narrow limits of a small territory. Nor were there any larger ones in their neighbourhood, to make them afraid. But so soon as large empires were formed by oppressing and swallowing up their neighbours, lesser republics united either into one larger republic, or making a confederacy, become a system of republics, that they might be able to resist their mighty and powerful neighbours, as it happened in Greece after the Persian overthrow, and in Germany after the victories of Drusus and Germanicus.

SECT. CVII.

A republic consists in a multitude of men.

A state or republic does not consist, as Nicias says in Thucydides, 7. 14. and Themistocles in Justin. hist. 2. 12. in a territory, in towns, in walls, in houses, but in men; nor is it requisite to constitute

constitute a civil state, that whole families, composed of persons of both sexes, be united; but it is sufficient, if many conjoin their forces and minds, so as to be able to conquer or outwit their enemies; though it cannot be denied, that a civil state would be but of one age, if not composed of such families, but of single persons, however great its numbers might be, Florus 1. 1. *.

* That a republic may consist without a territory, without towns, walls, or houses, is plain from the example of the Hebrews, a most sacred republic, which wandered forty years in the deserts of Arabia, without any fixed habitation or abode, without houses or walls, till they were settled in the promised Palestine, Numb. xiv. And that a republic may consist without families, none will deny, who has considered the Papal monarchy, which hath been accurately described by Pufendorff and Thomafius. I shall not now appeal to the kingdom of the Amazons; all that is said of it having been called into doubt by many learned men. Whence it may be concluded, that it is a convenient number of men united by consent, that constitutes a republic; and that such a society does not become extinct, tho' their territory may be occupied by others, while its members survive that loss, and are in a condition to contend with their enemies. Thus the republic of Athens still subsisted, tho' Attica was entirely possessed by the Persians, while the fleet subsisted, into which Themistocles, with the whole body of the people, and every thing they could carry with them, had betaken himself, Nepos Themistoc. cap. 2. And therefore, Adimantus's speech to him was very foolish, and his answer was excellent. The former said he had no right to pretend to give law or dispence justice, having no country. The other answered, that he had both a territory and a city much larger than theirs, while he had two hundred well armed and manned ships, an invasion from which none of the Greeks could resist, Herodot. hist. 1. 8. p. 305. edit. Hen. Steph.

SECT. CVIII.

Since a republic consists in the union of such a number, whose united force is not unequal to that of their neighbours (§ 105); but there can be no society

They must consent in the end and the means.

society without consent (§ 13); the consequence is, that civil states or republics are constituted by an interveining contract, whether some men voluntarily coalite into society, or whether their consent was at first extorted by violence, or whether some men acceded in either of these ways to a republic already formed; or whether, in fine, the descendants of such citizens are presumed, from their having been bred up in a society, as some time to succeed to their progenitors (§ 16) in it, to have consented to continue members of it*.

* Thus the inhabitants of Albania, and that medley of shepherds and thieves who attaching themselves to Romulus, built huts on the banks of the Tiber, from the beginning consented to form that republic. Dion. Halicar. antiq. l. 1. p. 72. Thus the Sabines acceded voluntarily to the Romans, after they had formed themselves into a commonwealth, Liv. 1. 13. On the other hand, the Albans, their capital being destroyed, augmented the Roman state against their will, l. 1. 29. Nor was it ever doubted of, that the posterity of Roman citizens were Roman citizens, unless they either voluntarily abandoned their country, or being exiled, were forced much against their inclination to leave it.

Sect. CIX.

The first
pact of
those who
voluntari-
ly consti-
tute a re-
public.

Hence it is plain, that civil states, like other societies, are constituted or augmented either by *voluntary* consent, or by *forced* consent (§ 15). In the former case, the first and principal pact must be that by which all consent to constitute the same state or republic. And since every pact ought to be free, and may be made upon conditions, it is self-evident that he who does not consent, or whose terms are not agreed to, remains without that society, and is his own master*.

* This would hold, if any new republic were to be constituted at present by consent. But it happens rarely that any one stipulates for himself and his family in
this

this manner in a republic already constituted. Yet we have an example in Ottanes of Persia, mentioned by Herodotus, hist. l. 3. p. 124. who, after the Magi, who had usurped the government were destroyed, when the Persian princes were assembled to consult together about a form of government, his opinion for a popular state not being approved, at last said: "Ye factious men, since some of us must be named king by lot, or by the election of the multitude, with the permission of the Persians, or some other way, I shall not oppose you, because I neither desire to be above you, nor will I be below any one of you. Upon this condition therefore do I give up my right of empire, that neither I, nor any of mine, ever be subject to any of you.

Sect. CX.

But since members of the same society must consent to the same end and means (§ 13), which consent cannot be expected in a great multitude, unless the society be rectoreal; therefore some governing power must be instituted, by the will of which the whole people is to be ruled (§ 18); and the consequence is, that this multitude ought to determine what the model of government ought to be *; and tho' they be not obliged to stand to the resolutions of the rest, who consented to the future republic, only upon condition that a certain form of government in it should be agreed to, if another form please the people (§ 109); yet those who entered into the first pact without any conditions, ought to submit to the plurality of suffrages.

* They are much mistaken who affirm there never was any such pact. The Roman history alone sufficiently overthrows that assertion. For when that rabble of Alba, and herd of shepherds and robbers, who had enriched themselves by many depredations, had agreed to coalesce into one republic, Romulus having called an assembly, or convention, asked the people what form of government they would prefer. Dionysius Halicar. has fully described the whole affair, Antiq. Rom. l. 2. p. 80. where he tells us the answer of the people, which was to this purpose.

"We

“ We do not stand in need of a new form of government, nor will we change that approved by our ancestors, and handed down from them to us ; but we will follow their sentiment who founded our present form of government, not without great prudence, and are content with the condition we are now in. For why should we find fault with it, since we have enjoyed under kings the goods of the highest estimation among mankind, liberty and empire over others. This is our opinion concerning our form of government.”

Sect. CXI.

Another
pact.

A form of government being agreed upon, nothing remains to constitute a perfect civil society, but to nominate the person or persons a people would have to rule over them *, and to prescribe the form of government agreed upon in the former pact, to him or them ; which prescription will then become, properly speaking, the *fundamental law* of the republic, (since things settled by pacts are called *laws*) ; and therefore it binds the governors, whether one or many, no less than the subjects ; so that nothing is right that is done contrary to this primary law, or essential constitution of the society.

* We find this order observed in the institution of the Roman republic, according to Dionysius Halicarn. For when the greater part of the Albans who had been inured to kingly government, had resolved to preserve that form of government, being then solicitous to choose a king, they added : “ And this honour we think is due to none so much as to you, as well on account of your virtue as your birth ; but chiefly, because you have been the leader of this colony ; and we have experienced in your conduct, in all your words and deeds, great prudence and valour.” In like manner, a little after, when the people was divided into *curiæ* and *tribes*, and a hundred fathers were chosen to compose the council or senate of the republic, the administration of the republic was so divided, that the care of sacred things, the conservation of the laws and customs, the power of judging in crimes of the higher kinds, the right of proposing to the senate, and of assembling the people,

people, was given to the king ; to the senate the right of deciding whatever was propounded to them by the king, and passing the opinion of the majority into an act or decree ; and to the people under the senate proposing, the right of creating magistrates, and giving the ultimate authority to laws, and of determining upon war or peace, if the king would permit. This is the fundamental law or constitution of this new government, as it is described most accurately by an author excellently versed in politics, and it lasted till the tyranny of Tarquinius.

Sect. CXII.

Thus does society arise as often as a people voluntarily forms it. But so often as a people, brought under dominion by a more powerful one, coalesces into the same republic with their conquerors, the first pact is undoubtedly a consent to form one common republic with them ; because, if they did not consent, they would not accept the terms offered by their conquerors, but rather perish than put themselves under such a yoke. But such a people will hardly be consulted or hearkened to with regard to the form of government, nor in the choice of rulers, but to them will be left little more than the glory of obeying*.

Whether the same pacts take place when society is constituted by persons under force.

* Yet this whole matter depends upon the terms and conditions of the surrendry, which are commonly better or worse, according as the victory is more or less ambiguous. Thus, while the Sabines and the Romans disputed upon a very equal footing with regard to the event of war, they thought fit to put an end to it, by striking a league, the articles of which are recorded by Dionysius. " That Romulus and Tatius should reign at Rome with equal honour and power ; that the city should preserve its name derived from the founder, and the citizens should be called Roman Citizens as before, but all should be called by the common appellation of *Quirites*, from the country of Tatius ; that the right of Roman citizenship should be given to as many of the Sabines as should desire it, and that they should be admitted into tribes and curiæ, with their sacred usages. Such was this treaty of union, by which

the Sabines were in some respect permitted to constitute the republic.

Sect. CXIII.

So if the conqueror forces a new form of government upon the conquered. It sometimes happens, that a new form of government is obtruded upon a conquered people *; and the victorious people stipulates to themselves, that this new republic shall pay homage to them, as joined to their republic by an unequal covenant. In which case, the nature of the thing shews us, that the pacts we have described above (§ 109, 111), and the decree about a form of government, (§ 110), cannot take place; but the conquered people consents to all, not voluntarily, but by force.

* It was the custom of the Athenians to obtrude upon those they conquered a popular state, and of the Lacedemonians to force an aristocracy upon all whom they conquered. The reasons of which are given by Xenophon, de republ. Athen. cap. 1. § 14. and cap. 3. § 10. tom. 3. But one is sufficient, p. 249. The Athenians established, and often renewed, after it had been overturned, a popular state among the Samians. But when they were subdued by Lyfander the Lacedemonian, he set up a decarchy among them in the room of a democracy. What fortunes other states in Greece underwent, according as the Athenians or Lacedemonians had the empire of the sea, is well known. And that these things could not happen without force is perspicuous to every one.

Sect. CXIV.

All the members of a civil state ought to submit their wills to the supreme powers in it. But as all societies are understood to have one understanding and one will (§ 19); so the same must be said of a state or republic thus constituted. Now, as many associates cannot agree upon the same end and means (§ 17), unless that business be committed to some one, or some certain number; so in a state the same must be done *. But to do this, is the same as to submit one's will to that of another; whence

whence it is plain, that all the members of a republic ought to submit their wills to one or more ; and therefore that he or they govern to whom the rest have submitted their will.

* Many cannot otherwise have the same will than by consent in the same will ; or by submission of all to the same will. The first cannot be hoped for, as every one will immediately see, who hath considered the different tempers, turns, genius's and dispositions of mankind. Hence Seneca, ep. 102. " Putas tu, posse sententiam unam esse omnium ? non est unius una. Do you think all can have the same mind ? no single person is of one mind." Therefore the latter way remains, which is submission to the will of one or many. For as a ship, however well manned, would perish, did not all agree to commit their safety to one pilot, skilled in navigation, who is to exert his utmost to save the ship from storms and rocky seas : so it is impossible that so many myriads of men who have coalesced into one large society, should escape the civil tempests to which they are continually exposed, and obtain safety and security, unless they be governed by one or more common rulers. Arrian, diff. ep. 1. observes, " That good citizens submit their wills to the law and authority of the state."

Sect. CXV.

Hence it follows, that there can be no more but three regular forms of republics or civil states. For subjects must either submit their wills to *one*, to *many*, or to the *whole multitude*. Now, when they submit their wills to the will of one physical person, hence arises *monarchy*, a *kingdom* or *principality* *. But if to the will or decrees of many, thence arises *aristocracy*. And if to the whole people, that is, to what is decreed by the common suffrage of the whole people, then the form of government is *popular*, and called a *democracy*.

Hence arise either
monarchical,
aristocratical
or democratical
states.

* Polybius Hist. 6. 2. distinguishes between *μοναρχίαν* and *βασιλείαν*, a monarchy and a kingdom. He thus differences them: "The first, monarchy, is constituted without any art, and by the force of nature: Kingdom follows it, and takes its origine from it, then, when art comes to make emendations." But since things, less or more polished, do not differ in species, we shall not here take notice of this difference.

Sect. CXVI.

To which are opposites, tyranny, oligarchy, and anarchy. But since whether one, many, or all govern, none presides over the republic by any other right but this, that the rest of the citizens have submitted their wills to such a governor or governors (§ 114); the consequence is, that those command unjustly; *i. e.* without right, to whom the members of a state have not submitted their will. Wherefore, if one such person command, monarchy becomes *tyranny*; if, instead of the senate of the nobles, a few usurp the supreme command, aristocracy degenerates into *oligarchy*; and if, instead of the whole people, a certain rabble, consisting of the very dregs of the people, manage all things at their pleasure, democracy degenerates into *ochlocracy**. These vitious forms of government being very like to the regular ones, the latter easily degenerate into the former, as Polybius justly observes, and experience has abundantly confirmed. Polyb. hist. 6. 1.

* This is observed by the most excellent politician Polybius, *ibidem* p. 629. "Therefore, there are six kinds of republics: The three we have just mentioned, which are in every body's mouth, and three nearly allied to them, the domination of one, of a few, and of the mob; some by tyranny understand monarchy, because, as we said above, this author had distinguished between monarchy and a kingdom. But he himself adds a little after, "a kingdom, when it declines into the disease to which it is obnoxious, *viz.* a tyranny." In these divisions and definitions, all the writers of morals or politics agree; and

and therefore, there is no need of dwelling long upon them.
By whom have they not been repeated?

Sect. CXVII.

Now, since these regular forms of government may be perverted into as many opposite vitious forms (§ 116), it is not to be wondered at, that there are very few states to be found which have chosen any one of these three, but that many have compounded all these forms into one *, or have so mingled two of them together, as that the one form might be a balance or check on the other. And since names are generally derived from the better or more eminent part; hence various kinds of kingdoms, aristocracies and democracies could not but arise, which it very little concerns us, whether they be called *mixt* or *irregular republics*. See Hert. element. prud. civ. 1. 2. 8. p. 2320 & seq.

What are mixed republics.

* Polybius pronounces this the best form of government, hist. 1. 1. p. 628. " 'Tis manifest, that a republic compounded of the three forms we have mentioned, is the best." And cap. 8. p. 638. he highly extols Lycurgus for not having founded a simple uniform republic, but for having, by mingling the good qualities of all the best republics, composed one, consisting of all of them blended together, and by that means so equally poised and balanced it, that it could not degenerate into any of the vicious forms we have mentioned, but was kept entire by various checks. So Dionysius antiq. 1. 2. p. 82. after having told us, that the Roman republic was constituted by Romulus much after the same manner, he adds, " This form of a republic I prefer to all others, as being equally fit for peace or war." I pass by several testimonies to the same purpose by Cicero apud Non. Marcell. de verb. prop. 4. 292. by Zeno apud Laert. 7. 131. and by Tacitus annal. 4. 33.

Sect. CXVIII.

Again, since whole societies may coalesce into a larger body (§ 17); hence it follows, that many republics may, each preserving its form of government

What are systems of republics.

ment and its independency intire, make a confederacy for acting with common consent for their common preservation and safety *. Such confederated republics were the Achaian ones; and such are called *systems of republics*.

* Pufendorff, singulari dissertat. de systematibus civitatum, to be found in the collection of his dissert. Acad. selectæ, p. 210. & seq. and de jure naturæ & gentium, 7. 5 16. thinks systems of societies are formed when several separate kingdoms, either by convention, or by marriage, or by succession, or by conquest, come to have one king, but in such a manner that they do not become one kingdom, but are governed each by its own fundamental laws; or by a treaty of alliance. And Hertius elem. prad. civil. is of the same opinion, 1. 12. 6. & seq. But either one kingdom is so subjected to another, that it hath no share in the common government, as anciently the kingdoms of Macedonia, Syria and Egypt were subjected to the Romans; or each retains its own constitution, as now the German empire, Hungary and Bohemia; or they coalesce in such a manner as to compose one kingdom, as now England and Scotland, Poland and Lithuania. In the first case, the conquered kingdom is reduced into a province, and does not constitute one system with the other. Nor in the second case can two kingdoms be said to have coalited into a system, since they have nothing in common, but one prince who sustains two characters. There remains therefore the third case only, in which two kingdoms, or two bodies of people uniting their will and strength for common defence, constitute one larger society, and therefore are a system of republics, according to our definition. See G. G. Titius ad Pufendorff de offic. hom. & civ.

Sect. CXIX.

A monarch has a right to any title of honour.

Since *monarchy* is formed as often as all the subjects submit their will to one person (§ 115); the consequence is, that it is the same what title of honour he assume to himself, monarch, emperor, king, duke, or prince; and that having no superior, he may change his title, and take any other at

his pleasure *, tho' he cannot so easily force other kings or republics to acknowledge any new title he may take ; and therefore it is more prudent for a prince, before he assumes to himself any new title or dignity, to know the sentiments of other kings and states about it, and expressly to stipulate to himself such new titles of honour.

* For since supreme powers live in a state of nature with regard to one another, which state is a state of liberty and equality (§ 4. 5. 6.) it follows, that monarch is equal to monarch, and nothing hinders any one from enjoying as much dignity in his own state as any other in his ; and therefore any one may take any title to himself, to support which he finds himself equal. We have seen in our times two examples of it, to which even future ages will pay reverence, in Frederick I. King of Prussia, and Peter I. Emperor of Russia ; the former of whom first took the title to himself of King, and the other of Emperor, and both of whom had these titles acknowledged to them afterwards by other Kings and Emperors. It is true Pope Clement XI. shewed his intolerable arrogance, when Frederick I. a prince worthy of immortal glory, took the title of King to himself, vainly pretending, that it depended on him alone to make Kings. But this doctrine, more becoming a Hildebrand than Clement, and detested even by princes the most devoted to the Romish church, hath been sufficiently refuted by the worthy and learned chancellor of our university Jo. Petr. a Ludewig, who had formerly fully treated that controversy in several small treatises, *de auspicio regio*. Add to these a very elegant treatise by V. C. Everardus Otto, de titulo Imperatoris Rufforum, inserted among his dissertat. juris publici & privati, part. I. p. 135.

Sect. CXX.

Hence it is evident that a monarch governs all by his will ; and tho' he may take counsel from persons of prudence and experience, yet their opinions are not suffrages but counsels ; and that he acts at all times, and every where ; so that it was justly said in the times of Hadrian the Roman emperor, He solely exercises all the rights of majesty.

peror, “*Roma est, ubi imperator est,*” where the Emperor is, there is Rome, Herod. hist. 1. 6. There is therefore no right of majesty which a prince may not exerce (§ 111); yea, a kingdom hardly deserves to be called a monarchy in which any other exercees any of the rights of majesty independently of the king*.

* For the understanding and will, like that of one moral person, ought to be one (§ 114). Now, if any exercees any of the rights of majesty whatsoever, independently of the king, the whole republic would not have one understanding and will. Wherefore, it would not be one republic, but a republic within a republic. And to this we may apply what Homer says, *Iliad.* 2. “’Tis not good that many should rule: Let there be one emperor, one king.” Tho’ we are not ignorant that tyrants have often abused this maxim. See Sueton. Calig. cap. 22.

Sect. CXXI.

The difference between a monarch and a tyrant.

But tho’ a monarch governs all by his will, (§ 120), yet he ought not to act otherwise than the end of the state, the security of its members requires (§ 105); whence it follows, that the security and happiness of the people ought to be the supreme law in a monarchy; and in this does it differ from tyranny, which refers all to its own security and advantage; and which being acquired by villainous practices, cannot be retained by good methods, and therefore is very little concerned about the public welfare, provided it can sustain and preserve itself*.

* To this head belong all the tyrannical arts of which Aristotle hath treated most accurately, *Polit.* 5. 10. Tyrants, conscious to themselves of the public hatred, are fearful and suspicious; and therefore, being jealous of virtue, they oppress and bear it down, and cut off the heads of the more eminent and worthy, like poppies which overtop the rest: They bear hard upon the innocent, under the pretext of treason, the only crime of those who have

have no crime: They sow discord and animosities among their subjects: They extinguish all the light and splendor of useful literature: They prefer foreigners to natives: The latter they bereave of all dignities and riches, and reduce to the extremest misery: But how repugnant all this is to the end of civil society, and how unjust, is glaring. Polyb. hist. 2. 59. p. 202. "For the very name *Tyrant*, hath annexed to it all manner of wickedness and impiety, and includes in it all the injuriousness and criminality that is to be found amongst mankind."

Sect. CXXII.

Again, from the definition of aristocracy, we infer, that all the rights of majesty or sovereignty belong to the whole senate or college of nobles, and cannot be exercised but by the concurring consent of the whole senate. There must therefore be a certain place where they assemble to consult about the common affairs of the state; and likewise a certain appointed time, on which the ordinary senate is held, unless some unexpected emergencies demand the calling of a senate out of the ordinary course. Besides, because the consent of many can hardly be expected but by submission (§ 17); the consequence is, that even in aristocracy the smaller number ought to submit to the greater number; and therefore that the voice of the plurality should determine; but in an equality of voices, nothing can be done, unless he who presides give the deciding voice, or the case be such as that there is place for the *Calculus Minervæ**. Moreover, since the vitious form of government, that is the opposite of Aristocracy is called *oligarchy* (§ 116), and into it does aristocracy easily degenerate (*ibidem*); the very nature of the thing demands that no decree be valid, unless it be made when the greater part of the senate is present, *e. g.* two thirds.

* The *Calculus Minervæ* is, when in an equality of condemning and absolving voices, the pannel is acquitted. For when Orestes was tried for parricide, those who condemned

demned him being superior to his absolvers by one voice only, Minerva is said to have added one to the latter, that in an equality of suffrages, he might be absolved. And this became afterwards almost an universal law, as Euripides makes Minerva foretel it should, in Iphigen. Taur. v. 1268. See Boecler. dissert. singul. de calculo Minervæ, and a dissertation by Henr. Cocceii de eo quod justum est circa numerum suffragiorum, & de calculo Minervæ, cap. 7. where this learned author gives this natural reason for the practice, “ That the first state of the person accused is changed by condemnation, and is continued by absolution; and therefore nothing is done: Wherefore, since the majority only can change a former state and introduce a new one, it follows, that in the case of equality nothing is done; and consequently, the first state of the person continues to take place, and he is absolved.

Sect. CXXIII.

How in
democra-
cy.

It is the same in a democracy: For since in it whatever is decreed by the common voice of the whole people is the will of the whole republic or state (§ 115), it follows, that the sovereignty belongs to the people, and that they have the right to exercise all the rights of majesty. But since that cannot be done unless the people hold assemblies to consult about their affairs, it is evident, that here also a certain place and stated days must be fixed for the public assemblies; and that whatever is resolved by the plurality of peoples suffrages in tribes, in *curiæ*, or singly, is valid. In fine, that a democracy may degenerate into an ochlocracy*, if the right of voting be allowed to the minority of the people, the rest being excluded or absent, is evident from the very definition of ochlocracy (§ 116).

* Then is the condition of the republic most miserable, especially if demagogues interpose their arts to stir up the people and promote faction, till one of them finds an opportunity of becoming tyrant; and the same happens that Phædrus represents to have been the fate of Athens, Fab. I. 2.

*Athenæ quum florerent æquis legibus :
 Procax libertas civitatem miscuit,
 Frænumque solvit pristinum licentia.
 Hinc, conspiratis factionum partibus,
 Arcem tyrannus occupat, Pijstratus.*

Concerning the artifices of demagogues, see Hertius Elem. prud. civil. part. 2. § 23. § 24. p. 496.

SECT. CXXIV.

But since mixed republics, as they are called, are sometimes the best, and were formed on purpose that one form might balance another, and keep it within due bounds (§ 107), it is plain, that all, or some of the rights of majesty, ought to be so shared in such states, either among the senators, or among the people, that one order cannot determine any thing without consulting the other, and not to be so divided, that one may act either without the knowledge, or against the will of the other. For, in this case, nothing can hinder a republic from springing up within a republic *.

* The Roman state became monstrous when it degenerated into such a condition that the mob, stirred up by the factious fury of the tribunes, made laws, condemned or absolved, and did every thing without consulting with the rest of the people ; and the people neither made laws nor administered justice, nor determined concerning war or peace, without the populace. But when instead of the people a certain rabble or mob decides every thing as they please, the popular state is corrupted into an ochlocracy ; and that the Roman state was then not very far from such a condition, is very evident.

SECT. CXXV.

As to *systems of republics*, since they are either constituted by the coalition of two kingdoms into one under a common head (§ 118), or by a confederacy between several independent states (ibid.) it is plain, in the former case, that unless they

How in systems of republics.
be

be distinct, perfect kingdoms, besides a common king, they ought to have a common senate, to which all the orders of both kingdoms are called proportionably to their strength. But, in the latter case, each state exercises by itself, at its own pleasure, all the immanent rights of sovereignty; and the transeunt rights, relative to their common security, ought to be exercised in a common council, composed of delegates from each, which is either perpetual or temporary; and in which all affairs concerning their common security are determined, the delegates having first consulted each his own state*.

* Such of old was the Amphyctonian council, of which see Boecler. dissert. de Amphyct. and Ubbo Emmo vet. Græc. Tom. 3. p. 305. Of this we have an example at present in the most flourishing states of Holland and Switzerland, which are described by Jos. Simlerus, Sir Richard Temple, and other learned men; so that we need not say any thing of them.

SECT. CXXVI.

There
may be a
great di-
versity of
systems of
republics.

But because such confederacies chiefly depend upon the articles or terms of the agreement, there cannot but be a great diversity in this matter; and some will be more closely united, and others more laxly; some will have more, and some less in common. Thus some may have, by confederacy or treaty, a common treasury, a common mint, and a common armory, and others not. In fine, some may have a certain president, who is guardian of the confederacy, and takes the chair in the council, and others may be confederated in a very different manner; and, in a word, neither the right of suffrage, nor the manner of contributing towards the common security, nor any of the other constitutions can be every where, or in all confederacies the same.

REMARKS on this chapter.

First of all, it is worth while to observe here, That tho' it be very certain that mankind may be very happy, and arrive at a considerable degree of perfection in sciences and arts, to great politeness as well as opulence, in segragate families living independently one of another, or with regard to one another, in a state of natural equality and liberty; yet, as it is beyond all doubt on the one hand, that an ill-constituted civil state is the source of the greatest misery mankind can fall into; so on the other hand, it is equally plain from the nature of things, and from experience, that there is a perfection and happiness attainable by a rightly constituted civil state, to which mankind can no otherwise attain. Now mankind may be justly said to be fitted and designed for the state of the greatest perfection attainable by them in consequence of their frame; and therefore to be designed for the civil state, by which the greatest perfection and happiness of mankind is attainable. There must be means to an attainable end; and all means cannot possibly be equally fit for attaining the same end: But any end attainable by man in consequence of his having the means for attaining to it in his power, is, properly speaking, an end within human reach, according to the laws of human nature. And it is but doing justice to the Author of nature, and but speaking of the end for which mankind is designed by the Author of all things, in the same manner we speak of the ends for which any mechanical structure of nature's production (as the human body, or any other animal body) or any mechanical structure produced by human art, (as a ship, a watch, &c.) is designed, to say that mankind are principally designed by the Author of nature for the best end, or the highest perfection and happiness within human reach, in consequence of man's frame and constitution, the laws of his nature, and the means within his power. If therefore the highest perfection and happiness within human reach be attainable, and only attainable in a rightly constituted civil state, and if men be sufficiently impelled to, and furnished for rightly constituting civil state, man may be said to be intended for rightly constituted civil state, and all the perfection and happiness attainable in it, or by it, in the same sense that any animal structure, or any machine, is said to be intended for its end. Our conclusion must hold, if the premises from which it is drawn be true.

Now, that there is a very high degree of perfection and happiness attainable by man in a rightly constituted civil state, not otherwise attainable by man, will appear from comparing civilized states one with another, and with nations living without any order deserving the name of civil government. But the manifold advantages of rightly constituted civil government having been fully proved by many authors, Harrington, Sydney, Locke, among the moderns, and by Plato, Aristotle, Polybius, Cicero,

Cicero, and others among the ancients; I shall only add upon this head, a very remarkable saying of one ancient, with regard to the greatest happiness attainable by man. Hippodamus Thurius Pythagor. de felicitate, having described the principal ingredients of human happiness, says, — *Quæ quidem omnia continent si quis rempublicam bene constitutam nanciscatur. Id quod quidem Amaltheæ quod dicitur cornu voco. Etenim in reſta legum constitutione sunt omnia; neque maximum naturæ humanæ bonum vel exiſtere abſque ea, vel comparatum & auctum permanere poſſit. Nam et virtutem, & ad virtutem viam in ſe continet; quandoquidem in ea partim naturæ bona procreantur, partim & mores & ſtudia; leges optime ſe habent & reſta ratio, pietas ſanctimonia magnopere vigent. Quamobrem qui beatus futurus & feliciter viſturus eſt, eam in bene conſtituta republica & vivere; necesse eſt & mori, &c.* “All theſe blessings and advantages will accrue to one from a well conſtituted republic. This we may juſtly call the horn of *Amalthea*, the horn of plenty and felicity. For all depends upon the good orders, conſtitutions and laws of a ſtate: Nor can the greateſt good of mankind be attained, or being attained, be preſerved, without right government. A well framed government includes virtue, and the way to virtue in it: Good orders make good men: There the goods of nature grow up as in their proper ſoil; and there good manners and uſeful ſtudies and employments will flouriſh: There the laws direct and impel into the right paths; and there reaſon, virtue, piety, authority, muſt have their greateſt ſplendor and vigour. Wherefore, he who would be as happy as man can be, and would continue while he lives to be ſuch, muſt live and die in a well framed, a well conſtituted or balanced civil government, &c.”

2. But let me juſt obſerve, in the ſecond place, that ends and means to ends, can only be learned from nature itſelf by experience, and reaſoning from experience. This muſt be equally true with regard to natural and moral ends and means. The conſequence of which is, that the political art required time, obſervation and experience, to bring it to perfection, as well as natural or mechanical arts. And for this reaſon, in very early times of the world, men could not be ſo much maſters of the ſcience upon which the framing of government aright muſt depend, as to have had all the advantages and diſadvantages of different governments, all the various effects of different moral or political conſtitutions in their view, in framing a government: They could only learn theſe natural connexions of moral things from experience. And therefore, in treating of government, two ſeparate enquiries ought never to be confounded; the one of which is, “what ends right reaſon dictates to mankind as the ends to be propoſed in conſtituting civil government; and what means, *i. e.* what orders and conſtitutions it points out as the proper means in order to attain theſe good ends.” And the other is, “how in fact various governments were formed, and how,
being

being formed, they changed gradually their frame to the better or worse." The one is a question of fact or history; and the principal advantage reaped by history, is instruction in the natural effects of various constitutions in different situations; or the knowledge of what moral connexions and causes produce in different circumstances, and the knowledge of the rise of different circumstances, from internal or external causes; which knowledge has the same relation to moral theory in moral philosophy, that the history of facts in nature, with regard to the operation of natural causes in different circumstances, has to natural theory or physics: that is, it is the only solid basis in both to build upon. For as in physics it is now agreed that we can only come to solid or real knowledge by induction from experiments; so in morals and politics it is equally true, to use the words of a great man often quoted in these remarks, "To make principles or fundamentals belongs not to men, to nations, nor to human laws. To build upon such principles or fundamentals as are apparently laid by God in the inevitable necessity or law of nature, is that which truly appertains to men, to nations, and to human laws. To make any other fundamentals, and then build upon them, is to build castles in the air." The other question supposes knowledge of human affairs, and the natural operations of moral causes, learned in this way from fact, and reasoning from fact or experience; and it is properly a philosophical enquiry into what ought to be done in consequence of the natural operation of moral causes, or of the laws of human nature, known by experience, in order to frame such a civil government as would make its members as happy as men can be. And it is, when it proceeds upon facts or experiments, the most pleasant and useful of all phylofophical enquiries; and that certainly, which, of all other studies, best becomes those, who, by their natural happy lot, are delivered from drudgery to their backs and bellies. Nay, may I not say, that it is the study, to which, if such do not betake themselves chiefly, they are absolutely inexcusable. For sure, if virtue and benevolence be not empty names, they must lie under the strongest, the most indispensable obligations to qualify themselves for promoting human happiness: they are bound and obliged to be tutors and guardians to mankind. And whatever other employment they may carve out to themselves, or however thoughtlessly they may waste their time, if they neglect this, they neglect the noble work providence hath put into their hands to do. A work, (a happiness should I not rather say) than which nothing can be higher, nobler, or more glorious. It is a work or employment, and a happiness of the same kind with the work, employment, and happiness of the great Author of nature, the all-perfect God.

But let me observe, in the third place, that tho' our author, in speaking of the origine of civil governments, (which is a question of fact or history) hath frequently come very near the matter, especially in the scholium, where he speaks of the Kingdom

dom founded by Nimrod, yet he hath not fully spoke it out: and therefore it will not be improper here to lay before the reader a series of propositions relative to that subject; *i. e.* which shew government in its natural causes, or in its natural procreation and natural variations. And these truths having a necessary connexion with what hath been already taken notice of in our remarks with regard to property, or the acquisition of dominion over things, they will be easily understood; so that there will be but little occasion to do more than just mention them. And that I shall, for the greater part, do in the very words of an excellent author, unknown to foreign writers, from whom we have already borrowed so many useful observations.

1. The distribution of property, so far as it regards the nature or procreation of government, lies in the over-balance of the same. Just as a man, who has two thousand pounds a year, may have a retinue, and consequently a strength that is three times greater than he who enjoys but five hundred pounds a year. Not to speak of money at this time, (*of that we have already treated in another remark, viz. the remarks on chapter 13. l. 1. which the reader may turn to*) which, in small territories, may be of like effect; but to insist upon the main, which is property in land, (because to property producing empire, it is required that it should have some certain root, or foot-land, which, except in land, it cannot have, being otherwise, as it were, upon the wing;) to insist upon this, which is the main, the over-balance of this, as it was at first constituted, or comes insensibly to be changed into a nation, may be especially of three kinds; that is, in one, in the few, or in many. The over-balance three to one, or thereabouts, in one man against the whole people, creates absolute monarchy; as when Joseph had purchased all the lands of the Egyptians for Pharaoh. The constitution of a people in this, and such cases, is capable of intire servitude. *Buy us and our land for bread, and we and our land will be servants to Pharaoh,* Gen. xlvii. 19. If one man be sole landlord of a territory, or overbalance the people, for example, three parts in four, he is Grand Signor; for so the Turk is called from his property; and his empire is absolute monarchy. The overbalance of the land to the same proportion in the few against the whole people, creates aristocracy, or regulated monarchy. The constitution of a people in this, and the like cases, is (*nec totam libertatem, nec totam servitatem pati possunt, Tacit.*) neither incapable of intire liberty, nor of intire servitude. And hereupon Samuel says to the people of Israel, when they would have a king, *He will take your fields, even the best of them, and give them to his servants,* 1 Sam. viii." If a few, or a nobility with the clergy be landlords, or over-balance the people to the proportion above-mentioned, it makes what is called *the Gothic balance.* (See this treated of at large by Mr. Harrington). The over-balance of land to the same proportion in the people, or

2

where

where neither one nor the few over-balance the whole people, creates popular government; as in the division of the land of *Canaan* to the whole people of *Israel* by lot. The constitution of a people in this, and the like cases, is capable of intire freedom; nay, not capable of any other settlement; it being certain, that if a monarch, or single person, in such a state, thro' the corruption or improvidence of their councils, might carry it; yet, by the irresistible force of nature, or the reason alledged by *Moses*, (*I ain not able to bear all this people alone, because it is too heavy for me*, Numb. xi. 14.) he could not keep it, but out of the deep waters would cry to them, whose feet he had stuck in the mire. If the whole people be landlords, or hold the lands so divided among them, that no one man, or number of men, within the compass of the few, or aristocracy over-balance them, the empire, (without the interposition of force) is a common-wealth.

2. If force be interposed in any of these three cases, it must either frame the government to the foundation, or the foundation to the government; or holding the government not according to the balance, it is not natural, but violent; and therefore, if it be at the devotion of a prince, it is tyranny; if at the devotion of a few, oligarchy; or if in the power of the people, anarchy. Each of which confusions, the balance standing otherwise, is but of short continuance, because against the nature of the balance, which not destroyed, destroys that which opposes it. But there be certain other confusions, which being rooted in the balance, are of a longer continuance, and of worse consequence. As first, where a nobility holds half the property, or about that proportion, and the people the other half; in which case, without altering the balance, there is no remedy but the one must eat out the other; as the people did the nobility in *Athens*, and the nobility the people in *Rome*. Secondly, when a prince holds about half the dominion, and the people the other half, (which was the case of the *Roman Emperors*, planted partly upon their military colonies, and partly upon the senate and the people) the government becomes a very shambles both of the princes and the people. Somewhat of this nature are certain governments at this day, which are said to subsist by confusion. In this case, to fix the balance is to entail misery; but in the three former, not to fix it, is to lose the government; wherefore, it being unlawful in *Turkey*, that any should possess land but the *Grand Signior*, the balance is fixed by the law, and that empire firm. While *Lacedemon* held to the division of land made by *Lycurgus* it was immoveable, but breaking that, could therefore stand no longer.

3. Fixation of government cannot be provided for without fixing the balance of property. But fixation of the balance of property is not to be provided for but by laws. Now, the laws whereby such provision is made, are commonly called *Agrarian laws*. This kind of law fixing the balance in lands, was settled by God himself, who divided the land of *Canaan* to his people

by lots; and it is of such virtue, that wherever it has held; that government has not altered, except by consent; as in that unparalleled example of the people of Israel, when being in liberty they would needs choose a king. But without an *Agrarian*, no government, whether monarchical, aristocratical or popular, has a long lease. And as governments are of divers or contrary natures, so are such laws. Monarchy requires of the standard of property, that it be vast or great; and of *Agrarian* laws, that they hinder recess or diminution, at least in so much as is thereby entailed upon honour. But popular government requires that the standard be moderate, and that its *Agrarian* prevent accumulation. In a territory not exceeding England in revenue, if the balance be in more hands than three hundred, it is declining from monarchy; and if it be in fewer than five thousand hands, it is swerving from a commonwealth. In consequence of the same principles, wherever the balance of a government lies, there naturally is the militia of the same; and against him or them, wherein the militia is naturally lodged, there can be no negative voice. If a prince holds the over-balance, as in Turkey, in him is the militia, as the Janizaries and Timariots. If a nobility has the over-balance, the militia is in them, as among us was seen in the Barons wars, and those of York and Lancaster; and in France is seen, when any considerable part of that nobility rebelling, they are not to be reduced, but by the major part of their order adhering to the king. If the people has the over-balance, which they had in Israel, the militia is in them, as in the four hundred thousand first decreeing, and then waging war against Benjamin; where it may be enquired, what power there was on earth having a negative voice to this assembly! This always holds where there is settlement, or where a government is natural. Where there is no settlement, or where the government is unnatural, it proceeds from one of these two causes, either an imperfection in the balance, or else such a corruption in the law-givers, whereby a government is instituted contrary to the balance. Imperfections of the balance, that is, where it is not good or downright weight, cause imperfect governments; as those of the Roman and Florentine people, and those of the Hebrew Kings and Roman Emperors, being each exceeding bloody, or at least turbulent. Government against the balance in one is tyranny, as that of the Athenian Pisistratus; in the few it is oligarchy, as that of the Roman Decemvirs; in the many, anarchy, as that under the Neapolitan Mazinello.

4. From these principles will the reader find the more remarkable changes in the Athenian, Spartan, Roman, and other states, accounted for naturally by Mr. Harrington. And from them he justly infers, that wherever, thro' causes unforeseen by human prudence, the balance comes to be intirely changed, it is the more immediately to be attributed to divine providence: And since God cannot will the cause,
but

but he must also will the necessary effect or consequence, what government soever is in the necessary direction of the balance, the same is of divine right. Wherefore, tho' of the Israelites God says, *They have set up kings, but not by me; they have made princes, and I knew it not.* Yet to the small countries adjoining to the Assyrian empire, he says, "*Now have I given all these lands into the hands of the king of Babylon my servant.—Serve the king of Babylon and live.*" The general truth here insisted upon, which history abundantly confirms, is, that the over balance of property begets dominion, and that the balance of dominion will always follow the balance of property, be under its direction, or vary as it varies. And therefore this author says very justly (of his works, p. 70.) To erect a monarchy, be it ever so new, unless like *Leviathan*, you can hang it, as the country fellow speaks, by geometry; (for what else is it to say that any other man must give up his will to the will of this one man without any other foundation?) it must stand upon old principles, that is, upon a nobility, or an army planted in a due balance of dominion. "*Aut viam inveniam aut faciam,*" was an adage of Cæsar; and there is no standing for a monarchy, unless it finds this balance, or makes it. If it finds it, the work is done to its hand; for where there is inequality of estates, there must be inequality of power; and where there is inequality of power, there can be no commonwealth. To make it, the sword, must extirpate out of dominion all other roots of power, and plant an army upon that ground. An army may be planted nationally or provincially. To plant it nationally, it must be either monarchically in part, as the Roman *Beneficarii*; or monarchically in the whole, as the Turkish tenants; or aristocratically, that is, by earls and barons, as the Neustrians were planted by Turbo; or democratically, that is, by equal lots, as the Israelitish army in the land of Canaan by Joshua. In every one of these ways, there must not only be confiscations, but confiscations to such a proportion as may answer to the work intended.

5. As nothing else can fix government but an *Agrarian* suitable to its nature; so different superstructures are natural to different foundations of government. Thus, such superstructures as are natural to an absolute prince, or the sole landlord of a large territory, require for the first story of the building, that what demesnes he shall think fit to reserve being set apart, the rest be divided into horse quarters or military farms for life, or at will, and not otherwise; and that every tenant for every hundred pounds a year so held, be, by condition of his tenure, obliged to attend his sovereign lord in person, in arms, and at his proper cost and charges, with one horse, so often, and so long as he shall be commanded upon service. These, among the Turks, are called *Tinnariots*. The second story requires, that these horse-quarters, or military farms, be divided by con-

venient precincts or proportions into distinct provinces, and that each province have one commander in chief of the same, at the will and pleasure of the Grand Signior, or for three years, and no longer. Such, among the Turks, (unless by additional honours, they be called *Basbaws* or *Viziers*) are the *Beglerbegs*. For the third story, there must of necessity be a mercenary army, consisting both of horse and foot, for the guard of the prince's person, and for the guard of his empire, by keeping the governors of provinces so divided, that they be not suffered to lay their arms or heads together, or to hold intelligence with one another; which mercenary army ought not to be constituted of such as have already contracted some other interest, but to consist of men so educated from their very childhood, as not to know that they have any other parent or native country, than the prince and his empire. Such, among the Turks, are the foot, called *Fanizaries*, and the horse, called *Spahys*. The prince, accommodated with a privy council, consisting of such as have been governors of provinces, is the topstone. This council, among the Turks, is called *the Divan*, and this prince, *the Grand Signior*.

The superstructures proper to a regulated monarchy, or to the government of a prince, (three or four hundred of whose nobility, or of whose nobility and clergy hold three parts in four of the territory) must either be by personal influence, upon the balance, or by virtue of orders. The safer way of this government is by orders; and the orders proper to it, especially consist of an hereditary senate of the nobility, admitting also of the clergy, and of a representative of the people, made up of the Lord's menial servants, or such as by tenure, and for livelihood, have immediate dependance upon them.

An aristocracy, or state of nobility, to exclude the people, must govern by a king; or to exclude a king, must govern by the people. Nor is there, without a senate, or mixture of aristocracy, any popular government; wherefore, tho', for discourse sake, politicians speak of pure aristocracy and pure democracy, there is no such thing as either of these in nature, art, or example: where the people are not over balanced by one man, or by the few, they are not capable of any other superstructures of government, or of any other just and quiet settlement whatsoever, than of such only as consists of a senate as their counsellors, of themselves, or their representative, as sovereign lords, and of a magistracy answerable to the people as the distributors and executioners of the laws made by the people. And thus much is of absolute necessity to any, or every government, that is or can be properly called a commonwealth, whether it be well or ill ordered. But the necessary definition of a commonwealth any thing well ordered, is, that it is a government consisting of the senate proposing, the people resolving, and the magistracy executing. To speak of different orders

ders in commonwealths, would be almost endless. Some commonwealths consist of distinct sovereignties, as *Switzerland* and *Holland*; others are collected into one and the same sovereignty, as most of the rest. Again, some commonwealths have been upon rotation or courses in the representative only, as *Israel*; others in the magistracy only, as *Rome*; some in the senate and magistracy, as *Athens* and *Venice*; others in some part of the magistracy, and in others not; as *Lacedemon* in the *Ephori*, and not in the kings; and *Venice* not in the *Doge*, nor in the *procuratori*, but in all the rest. *Holland*, except in the election of states provincial (which is emergent) admits not of any rotations or courses. But there may be a commonwealth admitting of rotation throughout, as in the senate, in the representative, and in the magistracy, as that proposed by Mr. Harrington in his *Oceana*. Rotation, if it be perfect, is equal election by, and succession of the whole people to the magistracy by terms and vacations. Equal election may be by lot, as that of the senate of *Lacedemon*; or by ballot, as that of *Venice*, which of all others is the most equal. The ballot, as it is used in *Venice*, consists of a lot, whence proceeds the right of proposing, and of an unseen way of suffrage, or of resolving. From the wonderful variety of parts, and the difference of mixture (before Mr. Harrington scarce touched by any) result those admirable differences that are in the constitution and genius of popular governments; some being for defence, some for increase; some more equal, others more unequal; some turbulent and seditious, others like streams in a perpetual tranquillity. That which causes much sedition in a commonwealth is inequality, as in *Rome*, where the senate oppressed the people. But if a commonwealth be perfectly equal, it is void of sedition, and has attained to perfection, as being void of all internal causes of dissolution. And hence many ancient moral writers, Cicero in particular, have said, that a well constituted commonwealth is immortal, *æterna est*. An equal commonwealth is a government founded upon a balance, which is perfectly popular, being well fixed by a suitable Agrarian, and which, from the balance, through the free suffrage of the people given by the ballot, amounts, in the superstructures, to a senate debating and proposing, a representative of the people resolving, and a magistracy executing; each of these three orders being upon courses or rotation; that is, elected for certain terms injoining like intervals. And to undertake the binding of a prince from invading liberty, and yet not to introduce the whole orders necessary to popular government, is to undertake a flat contradiction, or a plain impossibility.

6. All I have further to add in this remark, designed to shew the natural generation and variation of empire is, that these principles (as Mr. Harrington has observed) were not unknown to ancient politicians, and are sufficiently confirmed by history. That they were not unknown to Moses, is plain from

the history given us of the orders of the commonwealth instituted by him; nor to Lycurgus, is as plain. I shall only just set down the passages Mr. Harrington quotes from Aristotle and Plutarch. The first is Aristotle, in these words: "Inequality is the source of all sedition, as when the riches of one or a few come to cause such an overbalance in dominion, as draws the commonwealth into monarchy or oligarchy; for prevention whereof the *ostracism* has been of use in divers places, as at *Argos* and *Athens*. But it were better to provide in the beginning, that there be no such disease in the commonwealth, than to come afterwards to her cure, Polit. 5. 3." The second is Plutarch, in these words: "Lycurgus judging that there ought to be no other inequality among citizens of the same commonwealth than what derives from their virtues, divided the land so equally among the Lacedemonians, that, on a day beholding the harvest of their lots lying by cocks or ricks in the field, he laughing said, that it seemed to him they were all brothers, Plutarch in Lycurg." This account of the rise, variation or fixation of empire, is abundantly confirmed by experience or history. To prove this I shall only here insert a small part of what Mr. Harrington says of several ancient republics, in order to excite the reader's curiosity to have recourse to himself, (of his works, p. 57). "Israel and Lacedemon, which commonwealths have great resemblance, were each of them equal in their Agrarian, and unequal in their Rotation: especially Israel, where the Sanhedrim or senate first elected by the people, took upon them ever after to substitute their successors by ordination. And the election of the judge, susses, or dictator, was irregular, both for the occasion, the term, and the vacation of that magistracy, as you find in the book of Judges, where it is often repeated, That in those days there was no King in Israel, that is, no Judge: and in the first of Samuel, where Eli judged Israel forty years, and Samuel all his life. In Lacedemon, the election of the senate being by suffrage of the people, tho' for life, was not altogether so unequal, yet the hereditary right of kings, were it not for the Agrarian, had ruined her. Athens and Rome were unequal as to their Agrarian, that of Athens being infirm, and this of Rome none at all; for if it were more anciently carried, it was never observed. Whence, by the time of Tiberius Gracchus, the nobility had almost eaten the people quite out of their lands, which they held in the occupation of tenants and servants: whereupon, the remedy being too late, and too vehemently applied, that commonwealth was ruined. These also were unequal in their rotation, but in a contrary manner. Athens, in regard that the senate (chosen at once by lot, not by suffrage, and changed every year, not in part, but in the whole) consisted not of the natural aristocracy; nor sitting long enough to understand or be perfect in their office, had no sufficient authority

city to restrain the people from that perpetual turbulence in the end, which was their ruin. notwithstanding the efforts of *Nicias*, who did all a man could do to help it. But as Athens fell by the headiness of the people, so Rome fell by the ambition of the nobility, through the want of an equal rotation; which, if the people had got into the senate, and timely into the magistracy (whereof the former was always usurped by the patricians, and the latter for the most part) they had both carried and held their Agrarian, and that had rendered that commonwealth immoveable."

This short specimen of our Author's way of reasoning about the rise and fall, or variations of civil government, is sufficient to shew, that he reasons from natural causes in these matters, as natural philosophers do about phenomena commonly called natural ones. And indeed every thing in nature, moral or corporeal nature, must have its natural course, its natural rise, progress and variations. And as to know the one is to be a natural philosopher, so to know the other is to be a moral philosopher or politician.

C H A P. VII.

Of sovereignty, and the ways of acquiring it.

SECT. CXXVII.

SINCE those who unite into a civil state lived before that in a state of nature (§ 3), which is a state of equality and liberty (§ 5 and 6); the consequence is, that a civil state is subjected to no person or persons without it; may not be hindered or disturbed in doing any thing it judges necessary for its conservation, but may freely exercise all its rights, and cannot be forced to give an account to any of its transactions. But all those things together constitute what is called *supreme* or *absolute sovereignty* or *empire*; and therefore, in every civil state, there is *supreme and absolute empire or sovereignty* *.

All sovereignty is supreme and absolute.

* We are now speaking of a republic properly so called, which we defined to be a multitude of people united together under a common head for their security, and independent of all others (§ 103). And therefore, a people conquered and brought under power by a conqueror, is

not a republic, but a *province*, because subjected to others. For the same reason, a multitude of people, united indeed under a common magistracy, but subjected to a larger kingdom or republic, does not properly come under the appellation of a *republic*, but of a *town-corporate*: Wherefore the civilians frequently call such towns-corporate *republics*, and thus make mention of the republic of Antioch, l. 37. D. de reb. auct. jud. possid. of the republic of the Heliopolitani, l. 4. C. qui pot. in pign. of the Tusculans, l. 38. § 5. D. de legat. of the Sebastiani, l. 21. § 3. D. de ann. leg. of the Arelatenfes, l. 34. D. de usu & usufruct. leg. of the Sardiani, l. 24. D. de ann. legat. yet when they speak more accurately, they deny those to be absent on account of the republic, who are sent upon a commission by a city, l. 26. § ult. D. in quibus causs. mai. It is therefore of consequence how we use the word *republic*.

SECT. CXXVIII.

The error
of mo-
narch-kill-
ers.

Because there is supreme empire or absolute sovereignty in every civil state or republic (§ 128), and citizens or subjects may have submitted their will either to one, or many, or to the whole people, (§ 114); the consequence is, that to whomsoever they have submitted their will, he, or they are vested with supreme power or sovereignty, and therefore they can be judged by none but God alone; and much less therefore can they be punished in any manner by the people; so that the doctrine of monarch-killers, which makes the people superior to the king or prince, and places in the former the real, and in the latter only personal majesty, is a most petulant one*.

* This is the doctrine of Franc. Hotoman. Stephen Junius Brutus, (under which fictitious name some think Hub. Languetus, others think Buchanan lurked) Sidney, Althusius, Pareus, Jo. Milton, and others, of which authors see besides the observ. Halenses, 6. 1. Jo. Franc. Budd. hist. juris naturæ & gentium, § 52: But the fundamental error by which they are misled into allowing power and authority over kings, lies in their making the constituent

constituent superior to the constituted ; for that principle being presupposed, the people which constitutes their prince or head (III), must be superior to the prince or head constituted by them. Now this doctrine is no less absurd than it would be to say, that a servant who hath voluntarily subjected himself to a master (§ 78), is superior to his master, because he constituted him such. See Grotius of the rights of war and peace, 1. 3. 8. Zach. Huber. diff. 1. 2. p. 124. Reason rather tells us, that he cannot be superior who hath subjected himself to another's will, having thus renounced his own will. And therefore, since a people does so when they unite into a republic (§ 128), with what front can they call themselves superior to their sovereign ?

Sect. CXXIX.

But since subjects have only so far subjected themselves to the will of a sovereign as their common security, the end for which they entered into the civil state, requires (§ 14 & 106), we must infer from hence, that they are abominable and flagitious flatterers of sovereigns, who persuade them that they may do what they please, and can do no injury to their subjects ; but that their persons, lives, reputations and estates, are so absolutely dependent upon them, that subjects have no more left to them but the glory of absolute submission and obedience. From this corrupt spring flow all those pestiferous tenets, which Machiavel and Hobbes have attempted to impose upon mankind with the greatest assurance ; and, together with them, all the asserters and defenders of passive-obedience in Great-Britain. But who will deny that such doctrines are no less pestilential than that of *king-killing* * ?

As like-
wise of
the ma-
chiaveli-
ans.

* The tenets of Machiavel and Hobbes are well known. Nor is the controversy so warmly agitated between the authors of books intitled, *Julianus* and *Jovinianus*, and other learned men in Great Britain, less notorious. Grotius of the rights of war and peace, 1. 3. 8. is thought by not a few, to have given some handle to this doctrine of passive-

passive-obedience and non-resistance. But whether a people is subdued by force, or consents voluntarily to their subjection, it is unlawful, highly criminal for a prince to injure his people, or oppress them in a hostile manner. For in the first case, the people laid aside their hostile disposition, when they surrendered or gave themselves up. And in the latter case, the prince has no power but what was transferred to him by the people, which none will say was a power to maltreat them like slaves. That passage, 1 Sam. viii. 11. gives no authority to such abuse; for whether we understand the *jus regis* there mentioned to be a narrative of fact and custom, as *jus latronis* is used, l. 5. D. ad leg. Pomp. de parricid. or of the *dominium eminens*, as the Jewish doctors interpret it, and with them Thomasius ad Huber. de jure civit. 1. 2. 7. 13. p. 58. or of *jus*, right, so far obligatory that it may not be resisted, as *jus* is used by Paullus, l. 11. de just. & jure, and as V. A. Zach. Huber explains this place, *ibid.* p. 237, it cannot be proved from thence, that sovereigns have any such right as Machiavel and Hobbes, and their disciples, a *flavish race*, have dared to attribute to them. Surely a good prince will never arrogate such power to himself,

*Qualis apud veteres divus regnabat Ulysses,
Qui nulli civi dicto factove nocebat.
Scilicet hac hominem Dis immortalibus æquat.*

SECT. CXXX.

Sovereigns are sacred.

Since sovereigns cannot be judged by any but God, much less be punished by their people (§ 128); hence we conclude that sovereignty is sacred, and that Sovereigns are sacred; and therefore that sedition and rebellion are very heinous crimes. Tho' we should grant in theory, that Sovereigns who manifest a hostile disposition against their subjects, may be resisted as tyrants; yet this rule would be in fact of no utility, because Sovereigns can only be judged by God, and therefore God alone can decide whether a Sovereign truly bears a hostile mind against his subjects or not*.

* Thomas. ad Huber. de jure civ. 1. 9. 2. 20. p. 316. hath treated largely on this subject. The example of Henry

Henry IV. Emperor, if it be carefully attended to, will sufficiently convince any one how dangerous it is to allow the people a right of judging of this matter. He was a most brave prince, and his only design was to recover to himself the rights of empire and sovereignty, extorted from him in his minority. The clergy, to whom that was imputed, were chafed; and it was easy to them to misrepresent and traduce a young headstrong prince, zealous of his rights, as an enemy to the church and state, not only to the populace, but even to the princes of the empire called secular, nay, and to Pope Gregory; and thus so to dispose things, that an excellent prince, tho' he had an army that was for the most part victorious, was strip'd by his own son of his kingdom and all his wealth, as an enemy to the church and state. So perilous is it to allow not only the populace, but even the nobles, to judge of the actions of princes.

Sect. CXXXI.

But since every thing is not lawful to a prince But yet it is not lawful to sovereigns to do whatever they please. (§ 129) the consequence is, that he cannot impose any violence or restraint upon the consciences of his subjects, nor command them to do any thing contrary to the will of God the supreme lawgiver (l. I. § 87); neither can he, without a pregnant and just reason, deprive any subject of his right, seeing subjects united into a civil state chiefly for the security of their rights (§ 105). Subjects therefore, in great distress, may try all methods in order to obtain their rights, and, in extreme danger, leave their native country (§ 21); but they may not take up arms against their prince or the republic (l. I. § 232).

[I cannot go further without observing, that it is surprizing to find so distinct and clear an author, after he had laid down principles that lead, as it were, by the hand, to the true conclusion about the rights of subjects, giving and taking in such a manner upon this subject, that one cannot tell what he would be at. But Grotius, Pufendorff, and all the writers of systems of the laws of nature and nations, treat this important question in the same manner. I shall not stay here to observe, that our Author runs into

the common mistake about Machiavel's doctrine; so unaccountably are that excellent politician's writings misunderstood. Our Harrington, tho' he differs from him in several points, has done justice to him, and shewn him to be a friend to liberty, and to have understood the true principles of politics better than most writers on the subject. But let me take notice, that the excellence of our constitution appears from this, that our country has produced the best treatises on government: In this matter we have left all other countries far behind. Mr. Barbeyrac, in his notes on the chapters of Grotius and Pufendorf relative to government, has done us justice in this point, and indeed in every thing. He hath set his Authors right in this matter by the help of our Sidney, Locke and others. And no where is this subject more fully and accurately handled than in an excellent treatise upon the measures of submission, published at a very seasonable time, by an inimitable defender of the rights and liberties of mankind (Dr. Hoadley Bishop of Winchester) whose name will be precious in our country, while the value of our constitution is known, and we preserve a just sense of the best privileges men can enjoy, or God bestow; privileges we cannot part with without the greatest of crimes, because we cannot give them up, without degrading ourselves into a state far below that for which God designed men, by making them rational and free agents. Our Author lays a mighty stress upon this maxim, That the inferior cannot call the superior to account. But is there any absurdity in our excellent Hooker's distinction between *singulis major* and *universis minor*? I am to return to this momentous question afterwards. But what an odd jumble is our Author's doctrine upon this article, when all he says is brought together? It amounts briefly to this: "A prince has no right to injure his subjects: It is unlawful or criminal in him to do it; and they are base flatterers who tell princes they may do what they please; but God alone can judge when they do injure their subjects; the people hath no right to judge of the matter; and if they should, in extreme misery, feel they are injured, all they, who may do every thing in that case to recover their rights, have a right to do, is to leave their dear native country." Who would have expected to have found our Author talking any where in such a manner? Let us oppose to this a few things, first from Mr. Sidney. "They who create magistracies,

gistracies, and give to them such nature, form and power as they think fit, do only know whether the end for which they were created be performed or not. They who give a being to the power which had none, can only judge whether it be employed to their welfare, or turned to their ruin. They do not set up one, or a few men, that they and their posterity may live in splendor and greatness; but that justice may be administered, virtue established, and provision made for the public safety. No wise man will think this can be done, if those who set themselves to overthrow the law are to be their own judges. If Caligula, Nero, Vitellius, Domitian, or Heliogabalus had been subject to no other judgment, they would have completed the destruction of the empire. If the disputes between Durstus, Evenus III. Dardanus, and other Kings of Scotland, with the nobility and people, might have been determined by themselves, they had escaped the punishments they suffered, and ruined the nation, as they designed. Other methods were taken; they perished by their madness; better princes were brought into their places, and their successors were by their example admonished to avoid the ways that had proved fatal to them. If Edward II. of England, with Gaveston and the Spencers, Richard II. with Trefilian and Vere, had been permitted to be judges of their own cases, they who had murdered the best of the nobility would have pursued their designs to the destruction of such as remained, the enslaving of the nation, the subversion of the constitution and the establishment of a mere tyranny, in the place of a mixed monarchy. But our ancestors took better measures. They who had felt the smart of the vices and follies of their princes, knew what remedies were most fit to be applied, as well as the best time of applying them. They found the effects of extreme corruption in government, to be so desperately pernicious, that nations must necessarily suffer, unless it be corrected, and the state reduced to its first principle, or altered. Which being the case, it was as easy for them to judge whether the governor, who had introduced that corruption, should be brought to order, or removed, if he would not be reclaimed, or whether he should be suffered to ruin them and their posterity; as it is for me to judge whether I should put away my servant, if I knew he intended to poison or murder me, and had a certain facility of accomplishing his design; or whether I should

continue

continue him in my service till he had performed it. Nay, the matter is so much the more plain on the side of the nation, as the disproportion of merit between a whole people and one or a few men entrusted with the power of governing them is greater than between a private man and his servant." Discourse upon government, chap. 3. § 41. The same author, chap. 3. § 36. observes, "Neither are subjects bound to stay till the prince has entirely finished the chains which he is preparing for them, and has put it out of their power to oppose. 'Tis sufficient, that all the advances which he makes are manifestly tending to their oppression, that he is marching boldly on to the ruin of the state."

The second is from Mr. Locke on government, chap. 18. § 209. It is as impossible for a governor, if he really means the good of the people, and the preservation of them and the laws together, not to make them see and feel it; as it is for the father of a family not to let his children see he loves and takes care of them (§ 210). How can a man any more hinder himself from believing in his own mind which way things are going, or from casting about how to save himself, than he could from believing the captain of the ship he was in was carrying him and the rest of his company to *Algiers*, when he found him always steering that course, tho' cross winds, leaks in his ship, and want of men and provisions, did often force him to turn his course another way for some time, which he steadily returned to again, as soon as the winds, weather, and other circumstances would let him. *But it will be said, this hypothesis lays a ferment for frequent rebellion. No more, says Mr. Locke, than any other hypothesis.*

"1. For when the people are made miserable, and find themselves exposed to the ill usage of arbitrary power, cry up their governors as much as you will for *sons of Jupiter*, let them be sacred and divine, descended or authorized from heaven; give them out for whom or what you please, the same will happen. The people, generally ill-treated, and contrary to right, will be ready, upon any occasion, to ease themselves of a burden that sits heavy upon them.

2. Such revolutions happen not upon every little mismanagement in public affairs. Great mistakes in the ruling part, many wrong and inconvenient laws, and all the slips of human frailty, will be born by the people without mutiny and murmur.

3. This power in the people

people of providing for their safety anew by a new legislative, when their legislators have acted contrary to their trust, by invading their property, is the best fence against rebellion, and the most probable means to hinder it. For rebellion being an opposition, not to persons, but authority, which is founded only in the laws and constitutions of the government; those, whoever they be, who, by force, break through, and, by force, justify the violation of them, are truly and properly rebels. *The principle upon which all this depends is self-evident, and clearly set forth by the same author, book 2. cap. 4.* “No man can so far part with his liberty, as to give himself up wholly to an arbitrary power, to be treated absolutely as that power thinks proper: for this would be to dispose of his own life, of which he is not master. Much less has a whole people such a right, as every one of those who compose it, is intirely destitute of. The natural liberty of man is to be free from any superior power on earth, and not to be under the will or legislative authority of man, but to have only the law of nature for his rule. The liberty of man in society, is to be under no other legislative power, but that established by consent in the common-wealth; nor under the dominion of any will, or restraint of any law, but what the legislative shall exact according to the trust put in it;—as freedom of nature is to be under no other restraint but the law of nature. This freedom from absolute arbitrary power is so necessary to, and closely joined with a man’s preservation, that he cannot part with it, but by what forfeits his life and preservation together.”

The third is from Dr. Hoadley’s measures of submission, (the defence) p. 70. “Supposing some should apply this doctrine, which only concerns the worst of governors to the best, and oppose good princes, under pretence that it is lawful to oppose tyrants and oppressors, this cannot affect the truth of the doctrine; nor doth the doctrine in the least justify or excuse them, but rather condemns them. Our blessed Lord hath laid down a very reasonable permission in his gospel, that husbands may put away their wives in case of adultery, and marry others; and is this ever the less reasonable, because wicked men, under the cover of this, may put away the most virtuous wives, and take others merely for the gratification of their present inclinations? Or doth this permission of our Lord’s justify

justify all pieces of wickedness that may be acted under the pretext of it? It is certainly true, that magistrates may, and ought to punish and discourage evil men, and disturbers of human society: And is this ever the less true, because some magistrates may, under the pretence of this, punish and afflict the best and most peaceable subjects? It is certainly true that a child may resist a father, if he should attempt to take away his life: And is this ever the less true, because a child may, through mistake, pretend against a good father, that he hath designs against his life, and, under that pretence, dishonour and resist him? It is agreed upon on all hands, as a good general rule, that men ought to follow the dictates of their consciences: But surely this rule is not made false; nor can it be supposed to justify a man, if he should be so void of understanding, as to be directed by his conscience to murder his parent or his prince, as a point of indispensable duty."

In this excellent treatise, all the objections against the doctrine of liberty, and all the monstrous absurdities of the opposite doctrine of passive-obedience and non-resistance are fully handled with uncommon strength and perspicuity of argumentation. But our author may be refuted in a few words from his own principles. He says expressly, (§ 129 in the scholium), that a prince has no right to shew a hostile disposition, or to injure even a subdued people; *Nefas est principi*, &c. Now, is not obligation the correlate of right; and have not then a people a right to demand, exact, nay, force (*i. e.* a perfect right, according to his own definition) their prince to treat them uninjuriously, that is justly. If a prince has no right to injure, he is obliged not to injure; but if he be obliged not to injure, the people whom he is obliged not to injure, hath a right to demand just treatment from him, and to keep off injuries; otherwise a prince may be under an obligation to a people; and yet the people may acquire no right by that obligation to them. If the law of nature extends to all men, it extends to those vested with power, as well as to those under power; now, as far as the law of nature extends, the law of justice and benevolence, or in one word, the law of love extends; for that is the sum and substance of the law of nature. But so far as the law of love extends, justice is of perfect obligation, and benevolence is of imperfect obligation: Princes therefore, being under the law of nature, are perfectly obliged to justice, and imperfectly obliged to bene-

benevolence. Now, since none (as our Author often says) can be under an obligation, without giving some right to some other ; it is plain a prince cannot be under the perfect obligation of justice, and the imperfect obligation of benevolence, without giving the people, to whom he is perfectly or imperfectly obliged, a perfect or imperfect right, correspondent to these his different obligations to them. The people therefore must have a perfect right to justice ; that is, according to our Author's definition of perfect right, they must have a just title to exact, to demand, nay, to force it. There is no avoiding this conclusion from our Author's own principles, but by saying what he denies, and never will say, " That men are only under the law of nature till they have got subjects some how or other under their power ; and that then power is right, and they are no more under the law of nature." For unless this be asserted, whether a people be subdued, and, to make the best of their misfortunes, hath surrendered themselves to their conqueror as their prince ; or whether a people voluntarily and freely chooses to subject themselves to one or many as their governors, it must be true that a prince is under perfect obligation to justice, in the treatment of his subjects ; and consequently, that they have a perfect right to force justice from him. No misfortunes can, and far less can voluntary consent destroy or annul the law of nature. And therefore the right to justice common to all men, can neither be annulled by the superior force of arms, nor given up by voluntary consent. To say that the people, tho' they can judge of the obligations of other men to justice by the law of nature, yet cannot, or have not a right to judge of the obligations of their prince to justice by the law of nature, is either to say, that men in civil government give up not only their understandings, but their senses and feeling ; or it is to say, that tho' they may still see, feel and understand injustice, yet by putting themselves under a prince, they put him in a state that exempts him from all obligation to justice, and consequently annuls their right to it ; which is to say, that civil government annuls the law of nature ; and which of these two is most absurd, is difficult to determine. To say the people have in civil government a perfect right to justice, and that the princes are by the law of nature perfectly obliged to render justice to their subjects ; and yet that the people have in the case of unjust treatment by their

governors or princes, no right left to them, but that of leaving their dear native country, is to say they have a perfect right, the exercise of which is unlawful; a perfect right which is no right at all. And to say the right of subjects to justice under civil government, is a perfect right to demand and exact justice from their governors, every way but by taking up arms, is to speak of a right not defined by our Author, or any writer on the law of nature and nations, by all of whom, either in our Author's words, or in others equivalent to them, right is divided into perfect and imperfect; and right to justice is called perfect right. So that our Author must give up his conclusions in the preceding sections, or he must say, That civil government being constituted, the right of subjects to justice from their governors, becomes, instead of a perfect right, an imperfect one, as the right to benevolence: nay, which is more, he must say, That, tho' in a state of nature a right to benevolence may become, by the law of necessity, a perfect right (as our Author hath often said it may), yet in a state of civil government, the right to justice, even in extreme necessity, is none at all. For sure that right becomes none at all, which extends no farther than to the right of tamely leaving one's native country when one cannot have justice, but is injuriously used, which is the whole of the right of subjects according to our Author, notwithstanding the full and perfect obligation of princes to justice. We may reason thus against our Author from his own concessions, his own principles. But does it indeed require any proof, that miracles from heaven cannot prove any person to have a right to exercise his power over those who are under it, whether by consent or force, in an injurious, cruel, oppressive manner? Miracles from heaven could not prove the doctrine of passive-obedience and non-resistance to be a doctrine of God. It is an immoral doctrine, which overturns the law of nature, and destroys all moral obligations. Whence could our Author, or any writer on the laws of nature, derive his conclusions, without laying down this fundamental principle, as our Author does, "That God wills the perfection and happiness of mankind, and gives them a right to make themselves happy?" But is not this principle given up, the moment it is asserted, That under civil oppression and tyranny, because it is the effect of power, submitted to for common preservation, safety and happiness (the only end of civil society)

men must put up contentedly with all hardships, injuries and abuses, and no more think of any probable means to make themselves happy, of any probable means, should I not rather say, to rescue themselves from misery into a state somewhat congruous to the natural dignity of mankind, and to the only intention, God can be supposed, without blasphemy, to have had in view by creating them such as they are made, for religion, virtue, industry, ingenuity, social commerce, and all the goods, wisdom, benevolence, religion, virtue, good government, art and united strength can procure to human society, many of which blessings may be attained to in some degree in a state of nature; but can never be attained to in any degree under absolute slavery, or despotic, injurious, lawless tyranny.]

Sect. CXXXII.

Tho' these things be true of Sovereigns in general; What if yet it may happen, that empire is given to one with certain restrictions by pacts, and with a commissory article to this effect, that the deed shall be null, if the conditions be not fulfilled. Now, in this case, no injury is done to Sovereigns, if after they have been frequently admonished, they do not cease to invade the liberty of their subjects, and to oppress them; the Empire be taken from them. And it is evident, from the nature of pacts, if free-men hinder those from exercising rule over them, who assume it to themselves without any just title to it, or with whom they have made no pact, no transference of power, no covenant, they cannot be blamed *.

* Hence we see, that Brutus and the other conspirators unjustly killed Cæsar *: For tho' he usurped empire in a free city, and extorted liberty from his fellow-citizens without any just cause; yet they had acquiesced in it, and renounced their liberty. And indeed since Brutus himself in Cicero, Epist. ad Brutum, 4. durst not accuse Antonius of a hostile disposition towards the republic, nor when the matter was referred to him, attack him as an enemy; with what right could he murder Cæsar, whom the senate and people of Rome were so far from looking upon as an enemy, that they had rather solemnly surren-

dered themselves to him. Wherefore, that saying of Lucan is not agreeable to right reason, Pharsal. l. i. v. 351.

Detrahimus dominos urbi, servire paratæ.

For if the whole city desired a master, what right had Cæsar, or any other private citizen, to oppose, by a civil war, their falling under domination ?

† [I do not see how this conclusion follows. But not to enter into so trite a dispute, it is sufficient to observe here, That by the confession of our Author, Grotius, Pufendorff, and every writer on the law of nature, these states, kingdoms or republics, which are constituted by pact, and with what is called by the civilians *lex commissoria*, (a peremptory condition, that in case the king act otherwise, the subjects shall not be obliged) have the power of judging when their pact is satisfied, and of taking care it be fulfilled. In such states, the sovereign and the people hold their respective rights by the same express tenure or charter. But no pact being valid that is contrary to the law of nature, the law of nature really lays this restriction upon every pact about government, that the good of the people, or the governed, shall be the supreme law, and that nothing shall be imposed upon subjects repugnant to their good, as much, as if that restriction had been expressly made in the pact, by a commissory clause. All immoral things are impossible things in the language of the doctors of laws and civilians. And therefore a pact by a people, giving power to a prince to act contrary to their happiness, or to prefer whatever he may fancy to be his private interest, to their good, is a pact originally and in itself invalid. A pact by a people, giving a prince power to rule over them, otherwise than agreeably to the law of nature, that is, the law of justice and benevolence, or in one word, the law of love, and binding themselves to obey his commands, whatever they be, is a pact a people cannot make ; it is an impossible pact, because an immoral one ; and therefore it can never be obligatory, but to make it is a crime ; and to stand to it, is to continue, nay, to increase the guilt. It is a mutual agreement between prince and people, to put the arbitrary will of a prince in the place of the law of nature, the law of God. And if such a pact can be valid, why hath our Author so often pronounced all immoral pacts invalid ? But if such a pact cannot be valid, then every pact about government, and all consent

consent to government, express, tacite, or presumed, hath, in consequence of the immutability and eternal obligation of the law of nature, this condition contained unalterably and essentially in it, " Provided the government be agreeable to the law of nature, the law of justice and benevolence." There is therefore, in all pacts about government, in all consent to government, this commissory article naturally and necessarily included, inasmuch, as it cannot be left out, but must be understood to be there by the law of nature itself, whether it be mentioned or not, its truth, existence, or obligation, being of the law of nature, and therefore universal and indispensable.]

Sect. CXXXIII.

But since all empire is supreme and absolute, Empire exerts it- self in rights of majesty. What these are (§ 127), the consequence is, that all the rights are joined with it, without which the end of civil society, *viz.* security, cannot be obtained; all which united together constitute *majesty*, or *the rights of majesty*. Now, this security being two-fold, *internal*, by which the subjects are inwardly secured one against the other, and *external*, by which the society is defended against the arms and force of outward enemies; hence it is plain, that the rights of majesty are of two sorts; some relative to the citizens or subjects themselves, called *immanent*; and others relating to foreigners, called *transseunt* *.

* All these are confounded by several writers, who having applied themselves to the study of public law, have acted as if it had been their business, like Plautus's cooks, to mingle and confound the most distinct rights. Having read in Feud. II. § 6. some things concerning regal rights usually joined with fiefs, they thought them the very same with the rights of majesty, tho' it be of great consequence whether one exercise the rights of regality as a vassal, or dependently, as it is commonly termed; or the rights of majesty as a sovereign, or independently. Besides, all the rights belonging to sovereignty, and which are exercised by it, not being recited in that place of the feudal law, they thought, that there the rights which could not be communicated to vassals without encroaching upon majesty were

only treated of ; and hence they called them *regalia minora*, to which they oppose *regalia majora*, *i. e.* in their opinion, incommunicable ones. Thus several writers have proceeded, who are solidly refuted by Thomafius ad Huber. de jur. civ. 1. 3. 6. 3. p. 91. & feq. But fince we are not treating here of the rights of patronage and vafalage, but of public and univerfal law, it is proper to caution againft the above divifion, and to deduce the rights of majefty and their different kinds from the nature and end of civil fociety, *i. e.* from the fountain-head, rather than from Henningius, Arnifæus, Regn. Sixtin, and other authors of that clafs.

Sect. CXXXIV.

Of the
immanent
rights of
majefty.

If the *internal fecurity* of a ftate confift in defending the fubjects againft violence from one another (§ 133), of neceffity there muft be joined with fovereignty the right of making laws, and of applying thefe to facts or cafes, which we may call *fupreme jurifdiction* ; as likewise the right of punifhing tranfgreffions of the laws, and of exacting *tributes* and *duties* proportionable to the exigencies of the ftate ; the right of *conftituting administrators* and *magiftrates* ; of regulating all that relates to facred things, as well as to *commerce*, and the ornament of the ftate ; and, in fine, of watching that the republic fuffer no wrong or hurt.

Sect. CXXXV.

What the
tranfeunt
rights of
majefty.

And fince thofe who coalited into the fame republic, likewise intended their *common fecurity* againft external violence (§ 133) ; the confequence is, that from foverignty cannot be fevered the right of making *alliances* and *treaties*, fending *ambaffadors*, and making *war* and *peace* ; fince without thefe rights the ftate could not be preferved fafe and fe- cure. For without the right of making alliances and treaties, a weaker ftate would often be a very unequal match for a more potent one ; without the right of fending ambaffadors, treaties could not be
made ;

made; and without the right of making war and peace, it would be impossible to repel force by force; and therefore the end of society, which is security, could not be obtained.

Sect. CXXXVI.

Those rights of majesty flowing directly from the nature and end of sovereignty, cannot be separated from it without destroying that unity of will which is the essence of society, and rearing up a republic within a republic (§ 120); yet, because all, or several forms of government, are sometimes so blended together, that one may check or balance another, (§ 117), it may happen, that all, or the greater part of the rights of majesty may be exercised, not by one person, or by one college, but by many, or by the whole people; and in this case, there must be an assembly, in which the Sovereign exercises them according to the judgment of the different orders composing it *.

Whether they are communicable and divisible.

* The most potent and flourishing Kingdom of Great Britain is an example of this, in which the prerogative of the King with regard to war and peace, remaining entire and unviolated, neither new laws are made, nor new taxes imposed, nor any other thing relating to the safety and glory of the nation done, but in the states of the Kingdom, called a *Parliament*. Thus likewise in Germany, nothing relating to the Empire is decreed but by the common resolution of the Emperor, Electors, Princes, and other orders of the Empire: And almost the same is now done in Poland and Sweden, with safety to the prerogatives belonging to the most august Emperor and these most potent Kings: which prerogatives are called in Germany *reservata*. Yea, some such thing takes place in particular sovereignties and republics of the German Empire, as is observed by Hertius de legibus consultat. & judic. in specialibus Imp. Rom. Germ. rebuspubl.

Sect. CXXXVII.

Empire is acquired either by election or by succession. Moreover, because both the form of the government, and the governors themselves, are elected by the same people, who also prescribe fundamental laws to them (§ 110); hence it is evident, that none can acquire empire to himself in a civil state without the consent of the people, or contrary to its fundamental laws. But, according to these, empire may either be *elective* or *successive*; and this division extends not only to monarchies, but to aristocracies and popular governments.

* Thus, when the right of governing is included in a few families, exclusive of all the rest, so that they and their descendents only have it by right of blood, aristocracy in this case is *successive*. Such are the republics of Venice, Genoa, &c. at this day, as is observed by Hertius, Elem. polit. 1. 10. 16. p. 212. On the other hand, if the nobles or senators be chosen, either by the people or by the college itself, then aristocracy is *elective*. See Huber. de jur. civ. 1. 8. 1. 17. p. 292. In like manner, if in a democracy the right of suffrage be given to no others but the native citizens, it is in some sort successive; but if it may be given likewise to strangers, it is in some respect elective.

Sect. CXXXVIII.

What is just with regard to the election of a sovereign. Empire is *elective*, when the people in an *inter-regnum* creates a Sovereign, and transfers the empire to him with his consent. But, because the people may either exercise this right themselves in a regular assembly, or give this right in perpetuity to certain persons; the consequence is, that he who is chosen by the one or the other of those who hath the right of choosing, ought to be held as Sovereign, provided he accepts of the sovereignty offered to him, and be qualified according to the fundamental laws of the state to rule and govern; and provided the election be made in the order, and with the

the solemnities required by the public laws, or the customs of the state*.

* Wherefore, those are not lawful princes who are set up by a seditious mob, or an army, which hath not the right of election. What confusion and ruin was brought upon the Roman state in the latter way, we may see from the examples of Otho, Vitellius, Vespasian, Pescennius Niger, Clodius Albinus, and Septimius Severus. For which reason, Plutarch in his life of Galba, p. 1053, speaking of a time, in which, as Tacitus, hist. 1. 4. says, this arcanum of empire was divulged, that a prince might be made any where else as well as at Rome, “affirms, that the Roman republic was shaken and convulsed by commotions like those of the Titans in the fable, the sovereignty being at that time bandied from one prince to another, by the avarice and licentiousness of the army, who being corrupted by bribes and largesses, drove out one Emperor by another, as we do a nail by a nail.” See Petri Cunæi, orat. 9. p. 188. It therefore greatly concerns a civil state, in whom the elective power is lodged, to define by clear and fixed laws, the electors and the persons capable of being elected, and the form and method of choosing, that it may not suffer such violent convulsions.

SECT. CXXXIX.

Moreover, it is evident, from the definition of What is an elective government (§ 138), that in it an *inter-regnum* happens, that is, a state in which the re-an inter-regnum in an elective state? public hath no Head or Sovereign, as often as the Sovereign dies or abdicates, or is deposed by the people; unless the people, during the Sovereign's life, and with his consent, choose one who is to succeed to him; and that the designed successor hath no more power or right, during the Sovereign's life, but what is given to him by the people with his consent, or what the Sovereign himself delegates to him, either during his absence, or when he is hindered by any just cause from presiding over the state himself*.

* For since it is one thing to abrogate sovereignty from a sovereign, or divest him of it, and another thing to nominate a successor to him, the designed successor can have no right to take possession of the sovereignty, but when the sovereign is abrogated. Hence we may observe, that the Kings of the Romans, who are sometimes chosen in the Emperor of Germany's life, have no power unless the Emperor delegates some to them, as we know Charles V. did. The case is almost the same with regard to co-adjutors, as they are called, who while the bishops or prelates live, have no other right but that of succeeding them, when their chairs come to be vacant, as they speak. See Boehmer. jur. eccles. protest. 3. 6. 23.

Sect. CXL.

Whether the re- public subsists in an inter- regnum? But since an *interregnum* is a state in which the republic hath not its regular or ordinary Head or Sovereign (§ 139); and yet the people would not have the republic to cease, while it is consulting about the choice of a new head; the consequence is, that certain extraordinary magistrates ought to preside in the republic during that interval, by whatever name they may be called, who ought either to be elected by the suffrages of the orders in the republic at that time, or which is safer and better, be appointed by a public law before hand, making provision for the security and good order of the state on such occasions; but that their authority ceases when a Sovereign is elected, is obvious. However, since they supply the Sovereign's place for a time, it is strange to find learned men disputing whether the republic truly subsists in an interregnum, and what frame it falls into in that situation*.

* Pufendorff, of the law of nature, &c. 7. 7. 7. reasons thus about this matter: "Since the intrinsic perfection of the state, and the actual existence of the sovereign power, were both owing to the latter compact between the prince and the people, it follows, that the person in whom the sovereignty properly resided being extinct, the kingdom sinks into an imperfect form, and is united only by the

the first antecedent pact, by which we conceive the particular members of the community to have agreed to incorporate in one society; (*of this pact we have treated* § 109) not but that the primitive pact uniting the general body, is during the time of an *interregnum* considerably strengthened and assisted by the endearment of a common country, and that kind of relation or affinity which results from thence, together with this consideration, that the fortunes of most men are rooted or fixed in that particular soil, and the effects of others not easily to be transported or removed. Tho' we may with Livy, 1. 17. call a nation during an *interregnum*, a *state without government*, and, as it were, an army without a general; yet because communities at their first meeting, before the sovereignty hath been conferred either on a single man, or on a council, seem to bear the semblance of democracies; and further, since it is natural that all persons upon the decease of him, to whom they committed their guidance and safety, should take care of themselves, therefore an *interregnum* hath the appearance of a kind of temporary democracy." This is also observed by Grotius of the rights of war and peace, 1. 3. 7. Hertius follows the opinion of Pufendorff, *Elem. prud. civ.* 1. 12. 14. and also Houtuyn. *Polit. general.* § 100. n. 6. & seq. But since for the most part an interrex is previously designed, or if not, some one or more persons are elected by the common suffrage of all the orders in the state, who for a time preside over the republic with the same power, and sometimes with larger power than the Sovereign himself is vested with; and exercise all the rights of Majesty, about things at least which do not admit of delay; there is no imaginable reason why this constitution of a state, tho' temporary, may not be called perfect, and monarchical, if this power be lodged in one hand, duarchical if in two, and aristocratical if confided to many, as it were *intercalary* princes.

Sect. CXLI.

Empire is *successive* when by the decree of the people a royal family is elected, one of which is always to have the supreme power, while any one of its posterity is capable of holding it by the public constitutions. When such a form of government is agreed upon, either the people determine the manner it.

Of succession in kingdoms where the people hath made no settlement with regard to it.

manner of succession, or left it undefined. In the latter case, the people is presumed to have approved of the common right of succession to intestates. But, because females are not presumed to have so much prudence as men (§ 44), and because a kingdom might happen to pass by a woman to a foreigner as dowry, therefore women are not admitted to succession but as subsidiaries, and failing male-heirs. In fine, since unity of will is, as it were, the life and soul of a republic (§ 114); and this cannot be expected, if two or more have the joint administration of a monarchical kingdom, or share it between them; the consequence is, that among many equally near to the last king, the first-born is justly honoured with the prerogative, (l. 1. § 297)*.

* There are some who have pronounced females quite unqualified and inhabile to succeed to sovereignty, as Jo. Bodinus, but upon principles of Roman law, which do not bind free nations. And since even in the Jewish state, Deborah executed the office of a judge with great honour, and the annals of almost all nations celebrate Queens who acquired immortal glory to themselves by their prudent government and great actions; who will declare women unworthy of reigning? However, since nature hath generally given a pre-eminence to men above women, it is not absurd to say, that they ought only to be called to succession as subsidiaries. So Aristotle, Polit. 1. 3. "A man is more fit by nature to reign than a woman, unless she hath some qualities very uncommon to her sex."

Sect. CXLII.

What
when the
people
hath set-
tled it.

When the people hath settled and fixed the order of succession, it is plain that this rule ought to be adhered to (§ 111), and whether the French constitution take place, by which females are excluded; or the Castilian, which doth not exclude the women, but postpones them to the men, and runs back to the female again, in case the males, who were superior or equal to them in other respects, shall

shall happen to fail, together with their issue; (*i. e.* in the same degree of the same line, the younger males are preferred to the elder females; yet so as that no transition is made from one line to another on the bare obstacle of the sex); or whether greater regard be had to the line, or to the nearest degree of kindred; or whether there be any new or unusual method of succession fixed by the public law, that rule, whatever it be, ought to be observed as a sacred, as a fundamental constitution; whence, moreover, we conclude, that a people may give their Sovereign the power of appointing his successor, and may interpose when disputes arise about the right of succession; tho' experience teaches us, that (to use the words of Ennius) in such a difficult situation, "Non in jure manum conferi, sed magis rem ferro agi;" it is not right, but the sword that decides*.

* Many examples are brought by Pufendorff of the law of nature, &c. 7. 7. 14. But the most regular way is the lineal, in which the first-born male, and his first-born male succeed, while any one of the line remains; and this line being extinct, the first-born of the next line comes in, and so on while there is any one subsisting of the first Sovereign's posterity. We know it was formerly disputed whether the first-born, tho' born before his father came to the throne, or the first-born after he began to reign, had the right of primogeniture. But since in the right of primogeniture, regard is had to the order of birth only, there is no reason why a younger brother should be preferred to his elder, merely because the court heard the former squall in a purple cradle.

Sect. CXLIII.

Since in elective government a single person only is chosen (§ 138), but in *successive* governments a royal family is elected (§ 141); because, in the first case, the right expires with the person elected; whereas, in the latter, it subsists while the royal family subsists; the consequence is, that in the first case

Ordinary
and ex-
traordina-
ry inter-
regnum.

case there is an ordinary interregnum upon the decease of the elected person; in the latter, there is an extraordinary interregnum, when the royal family is extinct; and then it falls into the power of the people to confer the regal honour upon any family they please, and to continue the same kind of government and order of succession, or to confine both within more narrow limits, as they shall think fit*.

* We have an example of this in the French history. See Glab. Radulph. Hist. 2. 1. and Aimon de geste. Francorum, ann. 987. "Convenientes totius regni primates Hugonem, Ducem Parisiensem, in regem ungi fecerunt." And in Russia, when after various commotions, they chose a new royal family, from which came Alexius, John, two Peters, and Ann. For that Catharine the Empress did not succeed by right of succession, but by the last will of Peter I. every one knows.

SECT. CXLIV.

How empire is acquired by force.

Those are the ways of acquiring empire when a people constitutes its own Sovereign; but it is often acquired by arms and force; in which case also, a conquered people, tho' forced, does yet, without all doubt, consent to that sovereignty under which they are brought; and whether the conqueror promises to govern them according to their former laws, or stipulates to himself and his successors new terms and larger power, or remits to the conquered people some things which their former princes arrogated to themselves, that rule must be the rule to their posterity*.

* Hence Grotius, of the rights of war and peace, says justly, 3. 8. 1. 3. "Empire may be acquired by victory, either as it subsists in a King or Sovereign, and then it is succeeded to just as it is, and no more power is acquired; or as it subsists in the people, and then the conqueror acquires it in such a manner that he can alienate it, as the people might have done." But what he says of alienation, deserves

deserves a more accurate inspection. We say then, that a conqueror either waged war with a King only, or with the people themselves. In the first case he succeeds to the rights of the conquered prince, and ought to change nothing in the form of government, as, *e. g.* William Prince of Orange, the War with James being ended, made no change in the British government: But in the latter case, he has a right to transact with the conquered people, and it depends on his will to reduce the conquered state into a province, as the Romans for the most part did; to impose a harder yoke upon them; or to give a specimen of his clemency, and remit some things to them. Thus Alexander, at first a most merciful conqueror, having made himself master of the Sidonian Kingdom, made no change in the form of their government, but restored it to Abdolominus, Q. Curt. 4. 1. The Turks, on the other hand, having conquered the Byzantine Empire, by the right of victory, imposed upon them much severer conditions, being of the opinion of Ariovistus in Cæsar, de bello Gallico, "That by the right of conquest, the conqueror may command the conquered as he pleases. In fine, Agesilaus, according to Xenophon de Agesilao Rege, cap. 1. § 22. "Whatever states he subdued, he exempted them from those things to which slaves are obliged by their masters, and only commanded those things in which freemen obey their magistrates." But that indeed rarely happens, and much more rarely still what Justin hist. 1. 1. says of the times before Ninus, "That those who made war fought for glory, and satisfied with victory, did not affect empire."

Sect. CXLV.

Wherefore all the ways of acquiring empire de- The divi-
pend upon the consent of a people either voluntary, sion of
or forced and extorted either by a just or unjust kingdoms
cause. And therefore we think there is very little into pa-
foundation for the distinction between *patrimonial* and trimonial
and usu-
usufructuary empire. For tho' Grotius first invented fructuary.
that distinction (of the rights of war and peace, 2.
6. 3. & 1. 3. 12.) and hath been followed in it by a
numerous tribe of learned writers; yet this whole
doctrine is loaded with so many difficulties, that
we cannot tell what kingdoms may be called patri-
monial,

monial, and what usufructuary. See Thomaf. ad Huber. de jur. civ. I. 3. 2. 15. p. 69. & feq.

Sect. CXLVI.

Whether
this divi
fion be
juft?

Grotius thinks ſome kingdoms are ſo much under the dominion of their Sovereigns, that they may be alienated by them either in their life, or in the proſpect of death; and theſe he calls *patrimonial*. And that others are ſuch, that their Sovereigns cannot alienate them, which he calls *usufructuary ones*; tho' Thomafius jurisprud. divin. 3. 6. 135. thinks they may be more properly called *fideicommiſſory* or *trufte*s. But, 1. Since patrimonial things are no longer common (l. I. § 235) and therefore not public, becauſe that ſuppoſes at leaſt private communion (l. I. § 237), it is plain that a kingdom ceafes to be a republic, and degenerates into a family (§ 89), if it be in the dominion or patrimony of one. Befides, 2. Since all civil ſtates are conſtituted, not for the ſake of the Sovereign, but for common ſecurity (§ 105); for that reaſon, a kingdom cannot be patrimonial, without ceaſing to be a civil ſtate. See a diſſertation of the illuſtrious preſident of this province, Jo. Gothofredi de Cocceiis, de teſtamentis principum, part 2. § 16. & ſeq. *

* A patrimonial kingdom implies a contradiction, becauſe a kingdom is a ſpecies of a civil ſtate (§ 115); but a patrimonial kingdom is a thing under private dominion. And indeed the whole reaſoning about this matter commonly runs in a circle. For, if you aſk whether a prince has the right of alienating his Sovereignty or not? The anſwer is, That there is a great difference between patrimonial and uſufructuary kingdoms. But if you inſiſt, and enquire what is the difference between theſe two? they tell us, that by the former is meant a kingdom that can be alienated by its ſovereign, and by the other, one that cannot: So that they have as yet given us no certain mark by which the one may be diſtinguiſhed from the other.

For

For nothing hinders why despotic kingdoms, or kingdoms acquired by war, may not be unalienable, as Huber has justly observed, *de jure civ.* 1. 3. 2. 18.

Sect. CXLVII.

Hence we think it may be justly concluded, that no Sovereign can sell, give, barter, divide, leave by last-will to any one his kingdom, or transfer it in any of those ways, one can dispose of his patrimony in his life, or in view of death to others, unless the people consent, or have given him expressly the power of alienating his sovereignty or disposing of it *.

The alienation of kingdoms without the consent of the people is unlawful.

* Nor do the examples brought by Grotius, Pufendorff, and others, prove any thing. For tho' we read that some have divided their kingdoms, and that others have disposed of them in their last wills; yet the justice of such alienations must be determined, not from what has been done, but from the principles of right reason. And therefore the illustrious Baron de Cocceiis, gives a proper answer to all these arguments, when he says, *de testament. principum* part 2. § 17. "Either these alienations had no effect, or they were done with the consent of the people, either tacite or express; or it was force that prevailed."

REMARKS on this Chapter.

It will be easy to determine what the law of nature prescribes in other cases, if we can determine what it prescribes with respect to the exercise of the absolute empire, which is the effect of, and rooted by an overbalance in property. We have already taken notice of the natural causes of Empire, to which, if moral writers had attended, they would not have debated so much about the origine of civil government or Empire. If one man, it hath been said, be sole land-lord, or over balance the many in property to a certain proportion, he will be sole monarch. But now, how ought such a land-lord, and absolute master, to exercise his dominion or empire? What rules does the law of nature prescribe to him? Doth it not prescribe to him these very immutable, universal laws of justice and benevolence, which have been already explained? In general, therefore, may we not answer, that such a master is under perfect obligation to exercise justice towards his subjects or servants, let them be called which you will, and under imperfect obligation to exercise beneficence towards them? But not to rest in so general an answer, the following propositions may be laid down with re-

gard to such empire, in consequence of what hath been said by our Author, and in the preceding remarks subjoined to him, to his two last chapters in particular. 1. It is lawful to acquire and to possess dominion; for if it be lawful to acquire property, it must be lawful to acquire all that is necessarily attendant upon property, *i. e.* the dominion which an overbalance in property will necessarily produce. 2. As an attempt to change government, without changing the over-balance of property, or to fix government without a fixation of the balance of property, is an attempt contrary to nature; so to endeavour to violate property in order to change government, is unjust force. All violation of property is unjust. 3. But he or they who hold the over-balance of property, and consequently the reins of government, are certainly obliged by the law of nature to make their dependents as happy as they can, as much *men* as they can. This must be true, or the law of love is a mere empty sound. And therefore, 4. Tho' it cannot be pronounced unlawful for one or many, who have the over-balance in property, to hold it, no more than it is for one or many, to make use of the authority their superiority in wisdom may give them; yet it is certainly unlawful to exercise power in consequence of property in an injurious, oppressive manner over dependents, as if they were not men; as it is unlawful to make use of superior prudence, or rather cunning, in order to deceive and mislead those who pay submission and reverence to it; to their ruin or hurt. 5. It is certainly the natural right, nay, the natural duty of a people, when providence puts it in their power, by any revolution bringing property to such a balance, that an equal happy government can be constituted, to constitute such a government, and to fix and secure its duration by the only natural way of fixing and securing it. This must be their duty, if it be a people's duty to consult their best interest, or to provide for their own greatest good, and the secure continuance of happiness to their posterity. And then does providence give this opportunity, and consequently call to this duty, when by the course of things, without forcible removal, or violation of property, the people come to have the balance. And, 6. Whoever hold the over-balance of property, and by consequence the reins of empire, one or the few, he or they are under the same obligation, to constitute such orders of government as may best promote and secure the general happiness of the dependent people, that they are under to benevolence, because this is what benevolence manifestly requires at their hands. I have said the same obligation that they lie under to benevolence, because of the distinction already explained, which is admitted by all moral writers between perfect and imperfect obligation. And that it is a glorious and noble part to act, who can doubt, who hath a just idea of true glory, I had almost said, any feeling of humanity? Let it not be said that this cannot be expected of mankind. This is an unjust reproach. Our Author has, in the scholium to § 144.

named some instances of generous princes, who made no other use of the rights, even of just conquest, but to make the conquered happy and free. And let me add some other examples from ancient history yet more heroic, as they are narrated, by an author often referred to and quoted in our remarks, with great satisfaction, with all the joy every beneficent mind must needs be touched with, by such god-like instances of generosity and public spirit. "In those ancient and heroic times (when men thought that to be necessary which was virtuous) the nobility of Athens having the people so much engaged in their debt, that there remained no other question among these, than which of those should be King, no sooner heard Solon speak, than they quitted their debts, and restored the commonwealth, which ever after held a solemn and annual feast, called the *Sisacbia* or *Recision*, in memory of that action. Nor is this example the Phoenix; for at the institution by Lycurgus, the nobility having estates (as ours here) in the lands of Laconia, upon no other consideration than the commonwealth proposed by him, threw them up to be parcelled by his Agrarian.

The Macedonians were thrice conquered by the Romans, first under the conduct of Titus Quintus Flaminius, secondly, under that of Lucius Æmilius Paulus, and thirdly, under that of Quintus Cæcilius Metellus, thence called Macedonicus. For the first time Philip of Macedon, who (possessing of *Acrocorinthus*) boasted no less than was true, that he had Greece in fetters, being overcome by Flaminius, had his kingdom restored to him, upon condition that he should immediately set all the cities which he held in Greece and in Asia at liberty; and that he should not make war out of Macedon but by leave of the senate of Rome, which Philip (having no other way to save any thing) agreed should be done accordingly. The Grecians being at this time assembled at the Isthmian games, where the concourse was mighty great, a crier, appointed to the office by Flaminius, was heard among them proclaiming all Greece to be free; to which the people, being amazed at so hopeless a thing, gave little credit, till they received such testimony of the truth as put it past all doubt; whereupon they immediately fell on running to the consul with flowers and garlands, and such violent expressions of their admiration and joy, as, if Flaminius, a young man about thirty three, had not also been very strong, he must have died of no other death than their kindness, while every one striving to touch his hand, they bore him up and down the field with an unruly throng, full of such ejaculations as these: How! is there a people in the world, that at their own charge, at their own peril, will fight for the liberty of another? Did they live at the next door to this fire? Or what kind of men are these, whose business it is to pass the seas, that the world may be governed with righteousness? The cities of Greece and Asia shake off their Iron-fetters at the voice of a crier! Was it madness to

imagine such a thing, and is it done? O virtue! O felicity! O fame!

In this example we have a donation of liberty to a people, by rellitution to what they had formerly enjoyed, and some particular men, families or cities, according to their merit of the Romans, if not upon this, yet upon the like occasions, were gratified with *Latinity*: But Philip's share by this means did not please him; wherefore the league was broken by his son Perseus; and the Macedonians thereupon, for the second time, conquered by Æmilius Paulus, their King taken, and they some time after the victory summoned to the tribunal of the General, where remembering how little hope they ought to have of pardon, they expected some dreadful sentence: When Æmilius in the first place declared the Macedonians to be free, in the full possession of their lands, goods and laws, with right to elect annual magistrates, yielding and paying to the people of Rome one half of the tribute which they were accustomed to pay to their own Kings. This done he went on, making so skilful a division of the country, in order to the methodizing of the people, and casting them into the form of popular government, that the Macedonians, being first surprized with the virtue of the Romans, began now to alter the scene of their admiration, that a stranger should do such things for them in their own country, and with such facility, as they had never so much as once imagined to be possible. Nor was this all; for Æmilius, as if not dictating to conquered enemies, but to some well-deserving friends, gave them, in the last place, laws so suitable, and contrived with such care and prudence, that long use and experience (the only correctors of works of this nature) could never find fault in them.

In this example, we have a donation of liberty to a people, that had not tasted of it before, but were now taught to use it.

But the Macedonians rebelling, at the name of a false Philip, the third time against the Romans, were by them judged incapable of *Liberty*, and reduced by Metellus to a province."

Now, with respect to incapacity of liberty, I beg leave to add a remark from the same author. "A man may as well say, that it is unlawful for him, who has made a fair and honest purchase, to have tenants, as for a government, that has made a just progress, and enlargement of itself, to have provinces. But how a province may be justly acquired appertains to another place. (*Our author treats of just war afterwards*; and this Author treats of propagation and holding at great length) — The course Rome took is best; wherefore, if you have subdued a nation that is capable of liberty, you shall make them a present of it, as did Flaminius to Greece, and Æmilius to Macedonia, reserving to yourselves some part of that revenue which was legally paid to the former government, together with the right of being head of the league, which includes such levies of

men

men and money as shall be necessary for the carrying on of the public work. For if a people have, by your means, attained to freedom, they owe both to the cause and you such aid as may propagate the like fruit to the rest of the world. But whereas every nation is not capable of her liberty to this degree, lest you be put to doing and undoing of things, as the Romans were in Macedon, you shall diligently observe what nation is fit for her liberty to this degree, and what not; which is to be done by two marks: the first, if she loves the liberty of mankind; for if she has no care of the liberty of mankind, she deserves not her own. But, because in this you may be deceived by pretences, which continuing for a while specious, may afterwards vanish; the other is more certain, and that is, if she be capable of an equal Agrarian; which, that it was not observed by excellent *Æmilius* in his donation of liberty, and introduction of a popular state among the Macedonians, I am more than moved to believe for two reasons. The first, Because at the same time the Agrarian was odious to the Roman patricians. The second, That the *Pseudo-Philip* could afterwards so easily recover *Macedon*, which could not have happened but by the nobility, and their impatience, having great estates, to be equalled with the people: For that the people should otherwise have thrown away their liberty, is incredible."

But because it will be very easy to draw a solution from the principles which have been laid down to all the questions about government; and because the enquiry, what constitution of government is best, belongs not to the present subject, we shall take leave of our author here, and add no more to what he says; but in the first place, That no maxim is more false than that whatever government is best administered is best. That only is good, which is, by its frame, well secured against bad men, and bad administration. 2. Nor is another maxim in politics less dangerous, which asserts that good men make good laws. It is the maxim of Demagogues. The truth is, that good laws or orders make good men. And a government ought to trust to its constitution and orders, and not to men. 3. The chief matter, the whole mystery of government is revealed to us every day (to use the words of an excellent author) by the mouths of babes, as often as they have a cake to divide; for this is their natural language, "I will divide, and you shall choose." To which we may apply what Horace says of other natural instincts or directions. *Unde nisi intus monstratum?* The whole secret of a well poised equal government, lies in dividing and choosing, as the same author we have so often quoted hath shewn at great length. Dividing and choosing, in the language of a commonwealth, is debating and resolving. And in order to a right division and choice, as the council dividing, should consist of the wisdom of the commonwealth, so the assembly or council choosing, should consist of the interest of the commonwealth. The wisdom of the few may be the light of mankind,

but the interest of the few is not the profit of mankind, nor of a commonwealth. Therefore, as the wisdom of the commonwealth is in the aristocracy, so the interest of the commonwealth is in the whole body of the people. And whereas this, in case the commonwealth consist of a whole nation, is too unwieldy a body to be assembled, this council is to consist of such a representative as may be equal, and so constituted as can never contract any other interest than that of the whole people. Whence it follows, 4. That government, *de facto*, may be an art, whereby some men, or some few men subject a city or nation, and rule it according to his or their private interest: which, because the laws, in such cases, are made according to the interest of a man, or of some few families, may be said to be the empire of men, and not of laws. Yet government, *de jure*, is an art, whereby a civil society of men is instituted and preserved upon the foundation of common right or interest, which is properly called by Aristotle, *an empire of laws*, and not of men. The necessary definition of a government, any thing well ordered, is, that it is a government, consisting of the senate proposing, the people resolving, and the magistracy exercising. Our excellent constitution hath been judged by the most renowned politicians the very best. See our author, § 116 in the scholium. But the discussion of this equally curious and important subject, belongs not to the present question.

C H A P. VIII.

Concerning the immanent rights of majesty, and the just exercise of them.

Sect. CXLVIII.

THe *immanent* or *internal rights of majesty*, are rights so inseparably connected with it, that the security of the subjects cannot be attained without them (§ 134). Since therefore this security consists in this, that no subject may be injured by any other, and every one may have his own, or whatever he has a perfect right to demand; the consequence is, that it lies chiefly in *external justice*, by which we understand conformity of external actions to law; and therefore they are not in the wrong who contend, “That civil states were constituted for the sake of justice; or that (Velleius Pater. hist. 2. 80), by giving force to laws *, and authority to courts

The internal security of a civil state consists in external justice.

courts of justice, industry and religion might be encouraged, and property might be sure, and every one might enjoy with security his own lawful acquisitions:” And therefore they justly assert that a civil state cannot subsist, unless that justice prevail in it, by which subjects are kept to their duty, Aristot. polit. 1. 2.

* For tho’ none can deny, that internal justice, or a constant disposition to injure no person, but to render to every one his own, be a more noble degree of virtue; yet that such virtue is not to be expected from so many men as coalesce into the same civil state, will not be controverted. It will therefore be sufficient, so to hold men to their duties by laws, that they shall conform their external actions to laws, and not refuse to any one what he hath a perfect right to demand, or do any thing contrary to justice and equity. Yet it becomes good rulers to take all proper methods, by the right education and discipline of their subjects, to make internal justice or virtue to flourish among them. “It is the duty of prudent magistrates, (says Isocrates in Areopag. p. 27.) not to multiply laws, but to endeavour to render their subjects sincere lovers of justice. For it is not laws and edicts, but good education that will make a state truly happy. Men who are not rightly formed will dare to despise the best laws; but those who are well educated, are led by their inward disposition to approve good laws.”

SECT. CXLIX.

Because external justice, necessary to the security of a civil state, consists in the conformity of external actions to law (§ 148), the consequence is, that it is the office of the supreme powers to arm a state with laws; and therefore they must have the right and power of law-making, and of executing the laws, and consequently of adjusting the laws to the end, form, and interest of the republic *. They have therefore power and right to add to them, take from them, abrogate or change them, as the good of the state may require; which power is expressed by the Roman lawyers in a stile

To sovereignty therefore belongs a legislative power.

accommodated to the nature of the Roman government, by *rogare*, *obrogare*, *derogare*, *abrogare*, *surrogare*, Ulpian fragm. 1. 3.

* Because there is this difference between natural and civil law, that the former hath for its object good and bad actions, internal as well as external; the latter respects indifferent and external actions, as far as the safety of a people or state requires the regulation of them (lib. 1. § 18.); it is therefore impossible that the laws of all states should be uniform. Whence it is very difficult to determine which state hath the best laws; and Herodotus says very justly (apud Stobæum serm. 21. p. 180.), “If one should lay before a people laws of all sorts, and bid them choose the best, every one would approve of the laws of his own state; every people thinks their own laws the best.” And indeed the laws which are best with regard to one state, because of its end and form of government, may not be proper for another state; but, on the contrary, what is very advantageous to one may be very hurtful to another.

SECT. CL.

What civil law is, and what is its object?

Since there ought to be one understanding and one will in a state (§ 114), which thus happens, when all the members have the same end in view, and choosing the same means, regulate all their actions by the same rule; an agreement that cannot be expected, considering the diversity of human dispositions, otherwise than by the submission of all the members of a state to the will of its rulers (§ 114); hence it follows, that the supreme power ought to make the rule known to which he would have them to conform their external actions, which are in themselves indifferent. Now, this can only be done by prescribing laws to them; and therefore civil laws are commands of the supreme power in a state concerning the regulation of external, indifferent actions for the good and honour of the state; whence it is evident, that this legislative power

power cannot extend to the subversion of divine laws (l. i. § 17).

Sect. CLI.

We say, that civil laws consist in the adjustment of the external indifferent actions of subjects to the honour and interest of the state (§ 150). For tho' it be often necessary that magistrates repeat some divine positive as well as natural laws, and extend and interpret them * ; give actions and civil remedies against transgressors of them ; and threaten punishments to those who shall dare to violate laws established by God himself ; yet it is plain, from the nature of the thing, that then these laws do not owe their original obligation to the will of the civil magistrate, but that he then only exerts himself, as guardian of the divine laws, to make their authority sacred in the state.

What power or authority the supreme magistracy hath with regard to divine laws.

* It is true, God hath commanded that nothing be added to or taken from the divine law, Deut. iv. 2. But the former ought certainly to be understood of superstitious rites contrary to the divine law, or of will-worship, to which the Jews were so propense. But this is no reason why the civil legislative may not extend a divine prohibition to cases not expressly included in it, that thus the divine law be more strictly fenced and guarded. The Hebrew doctors call this a mound to law, by which men are kept at a greater distance from the violations of it, and the first steps towards transgression are guarded against. See upon this subject Schickard, jur. reg. cap. 5. theor. 18. p. 391. and Carpz in his notes on that place, and Jo. Selden, de uxor. Heb. 1. 2.

Sect. CLII.

Because civil laws are commands of the chief magistrate concerning the regulation of external indifferent actions for the good and honour of the state (§ 150) ; but such is the nature of mankind, that internal obligation alone is not sufficient to influence them (l. i. § 8) ; nay, civil laws cannot

The constituent parts of a law.

1

produce

produce internal obligation (l. 1. § 7); the consequence is, that all civil laws must be enforced by some penal *sanction*; and therefore a perfect law consists of two parts, *the preceptive part*, and the *penal sanction*: But rewards are not due by a republic to those who obey its laws; unless something be not promiscuously enjoined to all the subjects, but it be proper that some should be excited by a particular condition to do something extraordinary for the public good*.

* This it is proper to observe in opposition to Cumberland of the laws of nature, proleg. c. 14. & cap. 5. § 40. where he asserts the promise of rewards to be no less necessary to maintaining the authority of laws than the commination of punishments. But a legislator does not owe rewards to those who do what it would be criminal in them not to do, but to those only who do any thing extraordinary for the common good (lib. 1. § 99). Hence in vain does he expect a reward, who does not commit murder or adultery, or theft, since he who perpetrates any such crime is worthy of punishment. But one hath a right to claim a reward, if the legislator having proffered a recompence, he is thereby excited to carry provisions to ships, to furnish arms at his own expence, or to do any such like good service to the public, to which all and every one are not obliged. And in this appears the wonderful goodness of God, that whereas he hath a right to threaten punishments to the transgressors of his laws, without promising rewards to the obedient, he proffers recompences, recompences even to a thousand generations, to them who obey his will, Exod. xx. 6.

Sect. CLIII.

Seeing by punishment is understood an evil effect of the transgression of a law (l. 1. § 99), which evil effect may consist not only in a certain evil of suffering, but likewise in the nullity of the act done in disobedience to a law; yea, in both: For this reason, a law which both pronounces an act contrary to it null, and renders a transgressor liable

Penal
sanction is
either de-
finite or
indefinite.

to some evil of suffering, is called by the Civilians *a perfect law*; and other laws are called *imperfect*, or *less than perfect*, Ulpianus fragment. I. I. Moreover, because an illicit action may be either determinate or indeterminate, and may be varied by a great diversity of circumstances (l. I. § 100), the consequence is, that punishment may be *definite* or *indefinite* and *arbitrary*.

Sect. CLIV.

Because laws would be ineffectual, were they not applied to facts; *i. e.* unless enquiry were made in-^{Judiciary} to the agreement or disagreement of actions with ^{power} laws (l. I. § 95); it follows, that there must be ^{likewise} some person, in a civil state, who hath the power ^{belongs to} of judging of the imputation of actions; which ^{the su-} power, is nothing else but a power of judging of ^{preme} the actions of others (l. I § 97); whence it is plain, that *judiciary power* is necessary in a republic. Now, because between equals neither magistracy nor punishment can take place (§ 6), this judiciary power in a republic must belong to the superior; *i. e.* to the supreme power in it*; and therefore it is one of the internal rights of majesty (§ 134).

* Indeed a father of a family may administer justice in a natural state to his separate family, as we have already observed (§ 92). But in a republic that cannot be done, but so far as the laws permit the head of a family to do it (§ 93). Judiciary power therefore in civil states, belongs to the supreme magistracy, which is chiefly constituted for this very end, according to the ancients, Hesiod. Theog. v. 88.

*Hac una reges sapienti lege creantur,
Dicere jus populis, injustaque tollere facta.*

Sect. CLV.

But it being the office of a judge to apply laws ^{What it} to facts or actions, and actions contrary to law be- ^{is, and} ing either detrimental to the republic itself, or to ^{how it} ^{ought to} ^{be exer-} private ^{ced.}

private persons; it follows from hence, that all judgments are either *private* or *civil*, *public* or *criminal*; the former of which consist in determining suits or controversies; the latter in punishing bad actions, Cic. pro Cæcin. c. 2. And tho' a prince cannot be blamed, if he delegates the judiciary power to prudent and good men, skilled in the laws (l. i. § 101), and so constitute magistrates and judges every where; yet there ought always to be access to the supreme power for those who think themselves oppressed by an unjust decree of the judges; and therefore, the ultimate determination of doubtful causes belongs to the Sovereign of a state.

* Therefore, it belongs in monarchical states to Kings and Princes; in aristocracies to the college of nobles; and in democracies, the right of appeal is to the people; nor ought any tribunal rashly to be established from which there is no appeal: This the Romans could not long brook under their Kings and Dictators, l. i. 26. 2. 8. 3. 55. 10. 9. But because the right of appealing may be not a little abused, it is not to be wondered at, that various remedies have been invented to restrain it within due bounds. Such are, the power of determining without appeal lodged in some magistrates, a certain sum being defined by the law above which appeal may be made, an oath of calumny, a certain sum of money to be deposited by the appellant in case he should be cast, and the like; which, whether they be expedient or not, is rather a question of civil prudence than of natural jurisprudence.

SECT. CLVI.

Also the power of punishing. Because it belongs to a judge to apply laws to facts, and to determine whether an action be imputable to a person or not (l. i. § 95); but to impute an action, is to declare whether the effect assigned by a law to a certain action takes place or not (l. i. § 99); hence it follows, that the Sovereign, who has the supreme judiciary power, has also the power of *inflicting punishments*. And because

cause it cannot be denied, that he who hath the power of making laws, must also have the power not only of taking away a part of a law, or of making some exception to it, but even of abrogating a law (§ 149); much less can it be refused, that he hath the power of excoeming a delinquent for just reasons from a law, so as to give him a remission from the punishment due by it*.

* The stoics denied this. Their maxim is known to every one: “Sapientem non dare veniam, nec ignoscere,” Diogenes Laert. 7. 123. Senec. de clement. 2. 6. 7. But if the most just God forgives sins without violating his essential justice, why may not a supreme magistrate, who hath the power of making penal laws, cancel these laws; and why therefore may he not pardon a criminal? But we have said *for just causes*: For as laws ought not to be enacted but for grave and important reasons, so neither ought any indulgence to any one to be granted without just and good reasons. But what if the punishment be appointed by a divine law? If it can be made appear that there is such a penal law, we scruple not to affirm, that no Sovereign hath power to change such a law, or to dispense with it (lib. 1. § 17). But whether there be any such law, hath been much disputed among the learned, and is yet undetermined. See Thomafius dissert. de jure adgrat. princip. circa pœnam homicid.

Sect. CLVII.

Hence again we conclude, that there is no right of punishing among equals*, and that neither one's integrity of life, nor another's confirmed inveterate habit of sinning, gives an equal any right of punishing; and therefore, that the nature of punishment is not fully pointed out by Grotius's definition of it, who says, “It is an evil of suffering inflicted for an evil of doing.” Nor by Becmann's, “who defines it to be pain inflicted for a crime.” The evil of suffering inflicted by the sufferer, is not punishment, but revenge; and if it be inflicted by a third person, who is not a superior, it is

Whether
this power
can take
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is injury. But that neither of these ought to be permitted in a civil state, is plain from hence, that the judiciary power in it belongs only to the supreme magistrate, and those to whom he hath delegated and intrusted it (§ 154, 155).

* For we are speaking here of *civil punishment*, properly so called, and appointed by law, and not of *conventional*, to which one of his own accord subjects himself; nor of that revenge by which one deprives another of certain benefits on account of his crimes, renounces his friendship and acquaintance, &c. nor of these natural evils, such as diseases, pains, infamy, &c. which one brings upon himself by his wicked practices. Again, there is a great difference between punishing and that right of *chastising* which the laws give to parents, and sometimes to a husband, and to a master. For *chastisements* are applied at pleasure by way of discipline: But *punishment*, properly so called, is inflicted by the prescription or appointment of a law, in the way of jurisdiction. Whence it is self-evident, that an equal cannot punish an equal; but he alone can punish who hath the right of making laws, and of applying them to facts: Which since the supreme magistrate alone hath the power of doing (§ 151 and 154), he alone therefore hath the power of punishing. It is then a very singular opinion of Grotius (of the rights of war and peace, 2. 20. 3. 1.) to say, “That nature sufficiently shews it to be most proper that punishments should be inflicted by a superior; but that it cannot be demonstrated, that it is necessary, unless the word *superior* be taken in such a sense as to signify, that he who does a bad action, does thereby, as it were, detruce himself out of the rank of men, into that of the brutes subjected to men.” As if moral superiority or pre-eminence could give any mortal the right of punishing, and superiority of empire were not necessary. See Thomafius, *jurisp. divin.* 3. 7. 31. Wherefore, if an offender is punished by the person injured, it is not punishment, but revenge; and if he is punished by a third person, it is an injury. But that both these are prohibited in a civil state, Grotius does not deny. And therefore *Sanio* in Terence reasons much better, *Adelph.* 2. 1. v. 34. “I am a pimp, I confess: the bane of youth: a perjured villain: a common nuisance and pest: but I have done you no injury.”

Sect. CLVIII.

Nor will it be difficult to determine what is the ^{What are} end of punishment from the very reason which ^{the ends of} makes it requisite. For since punishment, ^{punish-} properly so called, took its rise upon the introduction ^{ments.} of civil government (§ 6), and the right of inflicting it, is one of the immanent rights of civil majesty (§ 134); the end of which is nothing else but the security of subjects; the consequence is, that the same must be the end of punishments. But because subjects are rendered secure, by reducing them in such manner, that they shall no more be disposed to transgress, or that they shall no longer have it in their power; *i. e.* either by amending them, or by taking the power from them of offending for the future; hence it is evident, that the former is the end of punishments, which are inflicted without taking away the criminal's life; and that the latter is the end of capital punishment, "punishment joined with the loss of life, as Justinian speaks, § 2. *Instit. de pub. jud.**." And because sufficient provision would not be made for the security of the state, if those only who had offended should cease to transgress, and the like transgressions may still be apprehended from others; it is obvious, that by the same punishments, as by examples, others ought to be admonished of the danger of transgressing; and therefore the guilty ought to be punished publickly, unless some weightier reason forbid it.

* Hence it appears, that to human punishments, the end, of which some speak so much, does not belong, *viz.* the expiation of guilt, and the satisfaction due to divine justice: For neither can we absolve those from cruelty, like that of Phalaris, who punish delinquents for no other end but to torment them. Nor could the suffering of a guilty person make any satisfaction to the infinite divine justice, had it not been satisfied by another satisfaction truly infinite.

nite. But they who talk in this manner do not consider the origine of punishments, which is nothing else but the necessity of them to the security of a civil state; and seem at the same time not to attend to the distinction between human and divine justice, and between civil punishments and those eternal ones which abide sinners in the life to come.

SECT. CLIX.

Whether a delinquent be obliged to suffer punishment?

These principles being fixed, it is very perspicuous, whether there be any obligation upon a delinquent to suffer punishment. For since he who lives in a civil state, is obliged to all, without which its end, *i. e.* the public security, cannot be obtained or expected (§ 106), undoubtedly a delinquent is obliged to suffer the punishment defined by the law, tho' not to punish himself, and therefore not voluntarily to offer himself to cruel sufferings*: no injury is done to one who suffers condign punishment, being convicted of a crime; nor is it lawful to any one to resist the supreme power, when it inflicts the punishment appointed by law.

* Yea, because punishment is an evil of suffering, from which nature is abhorrent, what one is willing to undergo would not be a punishment. Quintilian Declam. 11. says, "He is mistaken who measures the atrocity of torments by their names: Nothing is a punishment but what is unwillingly undergone. We suffer no pain but by impatience, and it is fear that alone can make a thing appear cruel or terrible. Will any one call that a punishment to one, to which one runs, and which he calls for? Drag condemned malefactors whither they are unwilling to go." It is a barbarous custom to force men to lay violent hands on themselves, to rip up their bowels, or to take poison, or to choose any other way of death. For we are not obliged to be ourselves the instruments of the punishment we are obliged patiently to submit to.

Seçt. CLX.

Now, from the end of punishments (§ 158), we infer, that they ought to be adjusted to the end of the republic, and therefore to be of such a nature as is most proper for its internal security. Whence it follows, that the supreme power is obliged to punish such crimes as disturb the security of the state, or hinder the subjects from living conveniently and tranquilly. But it is not necessary to punish vitious acts which rest in the mind, nor yet such minute faults as every man is liable to; nor the omission of the offices of humanity, unless these crimes become, by their prevalence, dangerous, or disgraceful to the state, and therefore necessity obliges to restrain even them *.

If all crimes ought to be punished, and what crimes ought to be punished.

* Thus we find in matters of treason, the very thought or knowledge of it in some states is punished; and in some nations inhospitality is punished: We have given some examples of this, (lib. 1. § 216.) And we shall now add, that the ancient Germans commanded humanity to strangers by laws, with penalties annexed to them. There are such sanctions in the *Lex Burgund.* 33. 1. *Capitular.* 1. 75. in which a pecuniary mulct is ordered against those who shut their house or the market-place against a stranger. The Goths ordered by a law the houses of those to be burnt who had three times refused access to travellers, Joan. Mag. hist. Goth. 4. 1. See *Element. juris Germ.* 1. 18. § 420.

Seçt. CLXI.

It is abundantly plain, from the very definition of punishments (l. 1. § 99), that they only ought to be punished who have committed any evil action; not their heirs or their families *, or sureties, who bound themselves to punishment for others, contrary to right and justice (l. 1. § 146). But since whole societies constitute one moral person (§ 19), and therefore are bound by the same laws prescribed to the rest (§ 23), it is obvious,

Who are to be punished.

that communities and societies may be punished, tho' humanity itself pleads for the mitigation of the punishment, that the innocent may not suffer equally with the guilty; and that those who transgressed by mistake, or thro' weakness of judgment, may not feel the same severity with those who were the stirrers up and ringleaders in such tumults. And in punishing large bodies, corporations or communities, that the remedy may not be worse than the disease, care ought to be taken that fear may affect all, and punishment may reach but to few.

* The Persians were so barbarous, of which cruelty, see Barn. Briffon. de regno Persic. 2. 227. p. 591. We have some traces of it in Daniel, vi. 24. and Esther ix. 14. And that this barbarity still prevails very universally in the eastern nations, hath been observed by those who have described their manners with the greatest accuracy. But as this usage is absolutely repugnant to right reason, so it is not possible by any prudence to prevent the falling of punishment inflicted upon parents, indirectly, at least, upon their children, especially when their estates are confiscated by law. And this consideration hath moved more humane legislators very rarely to use this punishment, and not but in case of treason, to confiscate all the goods, that as much as it was possible for them to do, they might prevent punishment from extending so much as indirectly to the children of the punished.

SECT. CLXII.

The principles upon which the quantity of punishment is determined.

What kind of, and how great punishments ought to be inflicted, is plain from the nature and end of punishment. For since the end of punishment consists in the security of the subjects (§ 158), the consequence is, that punishment ought to be sufficient to impress fear, and to restrain and coerce evil dispositions. But such being the nature of mankind, that any evil concupiscence, which hath once got possession of the heart, cannot be restrained, but by setting before men a greater evil or good, (l. 1. § 52); hence we have reason to conclude, that

that a penal sanction will not impress sufficient fear, unless men judge it a greater evil to undergo the threatened punishment, than to omit the crime forbidden under that penalty, and be deprived of the pleasure or profit they expect from it*.

* The punishment of injuries by the laws of the twelve tables, furnishes us with an example. For it struck so little terror into wicked rich men, that they rather took pleasure in committing insults, which could cost them but a very trifling fine. The whole matter is related at great length by Aulus Gellius Noct. Attic. 20. 1. who tells us there, “ That the fine for an injury or insult being a very few pence, that hardly any one was so poor, as that he could be restrained by it from indulging his arrogance and insolence. And therefore Labeo in his commentary on the twelve tables, did not approve of this law. He mentions one L. Neratius, a person of remarkable pride and insolence, whose great joy it was to give a freeman a blow on the face with his fist, and who went about diverting himself in this outrageous manner, attended with his servant, who carried a purse to count down the fine of five pence, appointed by law for the offence to every one he cuffed. For which reason, the Prætors afterwards abolished this law, and published an edict, in which they constituted themselves repairers of estimable injuries.” So far then was such a slight penalty from checking, that it rather provoked and encouraged insolence and injuriousness.

Sect. CLXIII.

From these principles we further conclude, that the security of the civil state does not admit of the punishment of retaliation, or like for like*. Nor is the rule about proportion between the crime and the punishment a just one, unless it be understood, not so much of the actions themselves, as of the disposition to perpetrate them. Besides, since some crimes are more noxious to the public than others, and some tend more than others to its dishonour, it is easy to find a reason why an action, which is more hurtful to the public security, is fenced against

Conclu-
sions from
hence.

by more severe and awful punishment, and punishment is augmented when crimes become more frequent.

* God himself seems to have approved this law, Exod. xxi. 23. Levit. xxiv. 50. Deut. xix. 19. That law of the Decemviri is also well known, "Si membrum rupsit, ni cum eo pacit, talio esto." apud Gell. Noct. Attic. 20. 1. But as the Jewish Rabbis themselves so interpret the divine law, that such injuries might have been expiated by money consistently with it: So Cæcilius denies that ever this law took place among the Romans, apud Gell. ibid. And they are perhaps proverbs indicating, that he is not injured by one who suffers the same from another, he himself did to him, tho' perhaps the same thing may not occasion equal suffering to both. See Jo. Clericus ad Exod. xxi. 22. In which sense Pythagoras said punishment was compensation, or equal suffering. However that may be, that the law of like for like hath not always place, may be proved from these considerations. 1. That sometimes such a punishment would scarcely deserve the name of punishment, *e. g.* if I should be ordered to take as much money from one as he had taken from me, in the highway; or if a man of no rank give a blow to a magistrate, should be struck himself by the magistrate. 2. Sometimes it cannot be done, *i. e.* the one cannot be made to suffer as much as the other, *e. g.* if a person with one eye should beat out another's two eyes. 3. Sometimes equality cannot be so observed but that the delinquent must suffer more than the person injured. Thus, *e. g.* I know an instance of one run through the body by a night-walker in such a manner, that his intestines not being touched he soon recovered. But could all the physicians in the world, with their united skill, thus run a sword through one without doing him more mischief?

Sect. CLXIV.

In ap-
pointing
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ces.

But, as in the imputation of other human actions, so likewise in the imputation of crimes, all circumstances ought to be attended to; for one circumstance often changes the whole affair (l. i. § 100). And therefore it may happen, that one ought to be more severely punished than another for the same

same crime ; and in defining punishments, regard ought to be had not only to the person of the delinquent, but likewise to the person injured, and also to the object, the effect, the place, the time, and like circumstances *.

* Thus, with respect to the delinquent, he deserves a greater punishment whom kindred, prudence, age, dignity ought to have kept back from a crime, than a stranger, an ignorant unthinking person, one under no special obligation, a boy or stripling, one of the lower rank of mankind (l. 1. § 113). A robust person will require a severer corporal punishment than one of a weakly delicate constitution ; and if a pecuniary mulct is to be inflicted, more ought to be laid upon a rich *Neratius*, than upon a poor man. In like manner, if an injury be done to a magistrate, or to a person of dignity, who will deny that it ought to be more heavily punished than an affront to one of the vulgar and dregs of mankind? Besides, if it be a crime to seize the goods of a private person to make gain of them ; how much greater a crime must it be to rob the public, or to commit sacrilege? Thus we find a soldier's deserting from his post in an encampment is more severely punished than one's running away from winter-quarters, on account of the more dangerous consequences of the former. And in like manner, all equal judges pronounce an injury done in church, or during divine worship, more heinous than one done in a private place, and at another time. So that the public sense does not approve the doctrine of the Stoics, concerning the equality of all crimes, Cic. Paradox. 3. Diogen. Laert. 7. 120. against which we find Horace reasoning thus :

*Non vincet ratio hoc, tantumdem ut peccet, idemque,
Qui teneros caules alieni infregerit horti,
Et qui nocturnus divum sacra legerit. Adfit
Regula, peccatis quæ pœnas irroget æquas :
Ne scutica dignum horribili sectere flagello.*

Horat. Serm. 1. 3. v. 115.

Punish-
ments in-
flicted to
amend

Seçt. CLXV.

Nor ought it to be forgot, that since all punishments are not intended to cut off the flagitious delinquent ; but they are often only intended to reform

persons,
ought not
to be ig-
nomini-
ous.

him, and make him more regular and circumspect for the future (§ 158); care ought therefore to be taken, that all who suffer for their faults be not marked with ignominy; because they would thus be no longer useful members in the republic, and could scarcely gain their living by any honest art or employment.

Sect. CLXVI.

To the internal rights of majesty belongs the power of exacting *tributes* and *taxes* from subjects, and of applying their goods to public uses when necessity so requires; which last is called *eminent dominion* *. For all being in the power of a Sovereign, without which the end of a republic, *viz.* internal and external security, cannot be obtained (§ 133); which cannot be obtained without contributions from the subjects for bearing the necessary charges of the republic, and unless the Sovereign may sometimes apply the goods of subjects for public uses; the consequence of this is, that Sovereigns must have a right to exact contributions from subjects, and likewise a right of exercising an eminent dominion.

* We confess that this term is not very apposite to express the thing, the ideas of empire and dominion being very different, and because the former and not the latter belongs to Sovereigns. Wherefore, what Grotius (of the rights of war and peace) first termed *dominium eminens*; Seneca of benefits, 7. 4. has more properly called *potestas*. "Ad reges, potestas omnium, ad singulos proprietates pertinet." See V. A. Corn. van Bynkersh. Quest. jur. publ. 2. 15. p. 290. And hence certain lawyers of Wirtemberg have contended against Jo. Fr. Hornius, that this supreme right is not to be derived from dominion, but from sovereignty. (See Guil. Leyseri collectio scriptorum eristicorum pro imperio contra dominium eminens). But this debate being about words, while all are agreed that a Sovereign hath the right of applying the goods of subjects to public

public uses, when necessity requires it, there is no reason for exploding a received phrase.

Sect. CLXVII.

Now, since a Sovereign hath this right (§ 166), it is obvious, that to him belongs the protection and guardianship of private properties *; that when the exigencies of the state require it, they may be ready, and in a condition to answer the necessities of the republic; and therefore he has a right of making laws concerning the right use of property, and concerning alienations and conveyances (l. i. § 317); as likewise of settling commerce by treaties, and of restricting it according as the interest of the republic may require; of regulating import and export, promoting manufactures and arts, making sumptuary laws; and, in one word, of doing every thing to make the state thriving and opulent, and sufficient to defend and maintain itself in a flourishing condition.

What this right is in the ordinary state of a republic.

* Upon this depends the right of Sovereigns to give tutors and curators to minors, to persons labouring under any disease which incapacitates for business, to mad persons, to prodigals, to women, &c. and of prescribing rules to such administrators, calling them to an account, and removing them from their trust, if they are unfaithful. See Plato de legibus, l. II. where he says, that pupils are under the care and guardianship, not of private persons, but of the public, and are one of its most sacred charges. Hence the Germans, from the most ancient times, claimed from their Emperors a certain supreme guardianship or tutorage, of which I treated long ago in a dissertation de suprema principum & magistratuum tutela.

Sect. CLXVIII.

Such is the right of sovereignty in the ordinary state of a republic. But because it is in an extraordinary state of the republic that eminent dominion takes place (§ 166), the consequence is, that a Sovereign has the right, in time of war, to make en-

And what in an extraordinary state.

campments upon the fields of private persons, and to make necessary fortifications and public works upon them, l. 9. C. de oper. public. to bring in corn and other necessaries by foraging; to make new high-ways through the lands of subjects when the old ones fail, l. 14. § 1. D. quemadm. serv. amitt. throw down houses in the suburbs when Hannibal is at the gates, and such other like things.

Sect. CLXIX.

When this eminent dominion justly takes place.

But since this right only takes place in urgent necessity (§ 166), and since that is necessary, without which the public good, *the supreme law in every state* (§ 24), or liberty, property and security, cannot be maintained and preserved; hence we may justly infer, that this right may not only take place when the extreme necessity of a republic requires it, but even as often as it is truly requisite to the public utility; especially since utility often becomes necessity (V. A. Corn. van Bynkersh. *ibid.* p. 292). But this right scarcely takes place, when it is merely the private interest of the Sovereign that demands it, if any one's just right is taken from him by it; much less, when it is not his real utility but pleasure that is the motive. And, in fine, of such a nature is this eminent dominion, that a good prince will easily submit to fixing bounds to it, and will use it very modestly (Bynkersh. *ibid.*)*.

* We have added these limitations, because without them this right would degenerate into the highest injuriousness. Hence God *was exceeding wroth* with King Achab, when he would have violently extorted Naboth's vineyard from him, because contiguous to his palace, that he might make a Kitchen-garden of it, 1 Kings xxi. 2. For such a demand proceeded rather from the wantonness and voluptuousness of a wicked King, than from real utility. The Roman senate refused an action to the Prætors against M. Licinius Crassus, when they would have carried an aqueduct thro' his ground, because they said it was rather

ther a matter of pleasure and ornament than of public utility, Liv. 40. 51. Thus the case is represented by Marc. Zuer. Boxhorn. Disquisit. polit. casu 31. Yet Bynkersh. hath produced a charter by William Prince of Orange, in which he gives power to the magistracy of Leyden, of taking possession of the court-yards of private persons, paying them the price, even though it was not otherwise necessary, but for the ornament of the Academic buildings, and the pleasure of the students: upon which, however, he adds this remark, “ Such a right I would not use, nor did the Roman senate use it in the case of Crassus ; nor did even Augustus use it, of whom Sueton tells us, Aug. c. 56. “ That the Roman Forum was made narrow by him, because he would not take the neighbouring houses from their proprietors.”

Sect. CLXX.

Since equity teaches us that the common burdens of the republic ought to be supported at the common charge (§ 166), the consequence of this is, that one subject ought not to be loaded more than another ; and therefore, that compensation ought to be made to him who must part with any thing for the public utility out of the treasury or the public coffer *. And if that cannot be done immediately, they who are thus deprived of any part of their property have a right to exact it, unless they build contrary to law, and such an edifice, or whatever kind of work it is, be destroyed, the public utility so requiring. For, in this case, so far are they from having a right to demand refunding the value, that they are liable to the penalty appointed by the laws. V. A. Corn. van Bynkersh. *ibid.* p. 297.

How they
ought to
exerce it.

* This is acknowledged by Grotius of the rights of war and peace, 2. 14. 7. by Pufendorff of the law of nature and nations, 8. 5. 7. by Huber *de jure civitatis*, 1. 3. 6. 44. and by all who have treated at any length of this dominion ; among whom Bynkersh. *ibid.* deserves the first place, who has shewn that the Romans followed this maxim, from Tacitus *Annal.* 1. 75. and 1. 9. *cod.*
de

de oper. pub. And undoubtedly the same principle of equity takes place here, upon which the Rhodian law concerning goods thrown over board, was founded, Paulus l. i. D. ad leg. Rhod. viz. That what is given up for all should be made up by the contribution of all.

Sect. CLXXI.

Whether it can be extended to the goods of foreigners not enemies.

Besides, from the same definition it is plain that this right can only be exercised upon the goods of subjects, and not upon the goods of foreigners who are not enemies. Wherefore those princes are hardly excusable, who lay their hands upon the goods and merchandize of nations in friendship with them, force them to lend them money, or seize their ships to transport troops or provisions. But such pressing, as it is called, is frequent, and defended under this colour, that foreign ships, found in the harbours of a prince, are subject to him *; and it is practised by a received custom among nations and empires.

* Since the Greeks returning from the expedition of Cyrus, could not so much as use this colour, what they did is so much the less excusable, tho' Grotius does not seem to condemn it (of the rights of war and peace, 2. 2. 10). By Xenophon's advice, as he himself tells us, de expedit. Cyr. 5. 1. 6. they, having the most pressing occasion for shipping, seized such as passed by, but so that the cargo was preserved untouched for the owners, and to the seamen they not only gave provisions, but paid them the freight." This indeed had been excusable on account of necessity, had it been a public expedition. But we cannot see how this right could in any way belong to a handful of soldiers, who had engaged in an expedition with Cyrus without the content of their several states, an expedition more memorable by its greatness than its justice.

Sect. CLXXII.

What is the exchequer and treasury.

So much for the *eminent dominion* or *transcendental propriety*. As to *taxes* and *imposts*, it is the interest of a republic to be strong in money on a double

ble account. First, in order to support its Sovereign suitably to his dignity. And secondly, that money, the nerves of all business, may not be wanting either in time of war or peace; and therefore in republics there are usually two public coffers, one of which is intended for the suitable maintenance and support of the Sovereign, and is called *the exchequer*; the other for the public use, which is called *the treasury* *. That both of these should be well filled, is greatly the interest of every civil state.

* It is right to distinguish these two, tho' not unfrequently in monarchies princes take all to themselves in such a rapacious manner, that there is in fact no difference between the two. Dion. Cassius, hist. 53. p. 506. tells us, That Augustus had both money and soldiers at his absolute command; and he adds, "And tho' in words he distinguished between his own money and the public treasury, yet in fact he made use of both at his pleasure." But here we are not enquiring what is done, but what ought to be done: and therefore, it is proper to distinguish between these two public coffers, as is carefully done even in aristocracies and other republics.

SECT. CLXXIII.

Since the money destined for the support of a Sovereign is brought into the (*fiscus*) or *exchequer*, (§ 172), some nations have thought fit not only to assign to their Sovereigns certain lands and territories, out of the revenues of which their dignity is to be supported, which are now called *desmenes* of the crown, or *crown-lands*; but likewise certain customs, duties, tollages, or taxes; and all things within the territory of the republic not under dominion (l. 1. § 243 & seq.); which latter way of enriching the king's treasury hath been the more readily agreed upon in all nations *, that it is done with the least cost to particulars.

* The

* The nations of German origine chiefly, of whom Grotius of the rights of war and peace, lib. 2. c. 8. § 5. fays, “ The people of Germany consulting about making some allowances to their Princes and Kings to support their dignities, thought it proper to begin with such things as might be given without damage to any one, such are those which no person could lay particular claim to, which I find that the Egyptians also practised. For there the King’s Intendant, whom they called ἰδιον λόγον, seized on all such things to the use of the crown.” But what Grotius fays here of the Egyptians, as from Strabo, whom he quotes in the margin, Geog. l. 17. p. 1148. edit. noviff. does not relate to the Egyptians, but to the Romans, after they had reduced that country to the form of a province. The office which Strabo calls ἰδιος λόγος, was the same as the *Digest* calls *Procurator Cæsaris*, or *Rationalis*. What Strabo fays is this, “ There is another officer called ἰδιος λόγος, whose business it was to demand such things as had no master, and consequently ought to fall to Cæsar.” This is justly observed by Casaubon on this passage of Strabo.

Sect. CLXXIV.

His rights
over his
demenial
goods. Since therefore the demains of a Sovereign are intended for the maintenance of his dignity (§ 173), it is plain that they cannot be alienated, and therefore may be reclaimed by a successor singular or universal, if they are alienated; nor does it make any difference whether they are alienated in part or in whole, since of what is not ours we cannot alienate the smallest part, as Grotius justly observes (of the rights of war and peace, 2. 6. 11.) where he remarks, that such alienations made with the consent of the people are valid *, and the fruits of this demain or patrimony of the crown are to be distinguished from the patrimony itself.

* Whether the people originally consented, or afterwards ratified the alienation, of which innumerable instances hath happened in Germany. For the ancient Emperors being so very profuse in giving away their demains, especially to the church, that at present hardly any of them remain;

remain ; none will say, that the Emperor can now reclaim them, since these alienations have been confirmed long ago by the orders of the Empire ; yea, tho' the Emperor usually promises to recover the rights and revenues of the Empire, Capitul. Caroli 6. art. 10. yet this is understood by the interpreters of the public law of Germany, to mean so far as it can be done consistently with the public laws. And the Emperors and Kings, who were solicitous about this recovery, had very bad success, such as Henry V. Rudolph I. Albert I. and others. See Schweder dissert. de dominio imperii.

Sect. CLXXV.

Moreover, because things having no master have been assigned to Sovereigns (§ 173), it is not difficult to find a reason why the crown every where pretends to a right to all those things which are by the Roman law pronounced either common or public, as the seas which wash their territory, rivers, large forests, and therefore the rights of fishing and hunting ; as also the right of digging for minerals and metals, and of taking possession of vacated goods, and of gems or precious stones cast out by the sea, alluvions, new islands, deserted channels, and, in some places, trove-treasure, and vagabonds and bastards ; tho' all these things differ according to the different usages of nations, as Huber has justly observed, de jur. civ. 2. 4. 4. 48. p. 468.

The right of a Sovereign over things which have no master.

* The disputes about the dominion of the sea between Grotius and Selden, Rob. Jonston, Petr. Bapt. Burgus, Guil. Welwood, Jo. Isaac Pontanus, Theod. Grafwinckelius, and more lately between Pufendorff, Huber, Jac. Gothofredus, Jo. Hen. Boeclerus, Corn. van Bynkerhoek, and Christ. Thomasius, and others, are known ; nor need we enter into the controversy. We are of opinion, that as none can doubt that the sea is under the dominion of none, so it cannot be questioned but it may be occupied, and falls to the occupant, (lib. 1 § 241) ; especially since that hath been long ago done, and is still, as experience teaches us. But because things of exhaustless use are not occupied,

occupied, nor is it lawful to exclude others from the use of them by occupancy, (lib. I. § 235), some things in the sea being of exhaustible use, such as the larger kinds of fishes, pearls; tolls, and such other emoluments; and other things being of inexhaustible use, as navigation; others may be excluded from the former, but not from the latter. Much more then have they who have certain territories beyond sea, a right to exclude all others from navigation to them, whether with a view to occupancy or for commerce, unless it be otherwise provided by treaties and pacts; since it depends upon the will of every nation, to permit or not permit commerce with foreigners to its subjects. But navigation to other territories not belonging to us, for the sake of commerce, is as unjustly denied by us as the use of a public road, unless this navigation be hindered by pacts and treaties. This is our opinion about this celebrated question. Nor need we be very anxious about it, since this matter is rather decided by force than by words and arguments; so true is what Horace says, Carm. I. 3. v. 21.

*Necquidquam Deus abscidit
Prudens Oceano dissociabiles
Terras, si tamen impiæ
Non tangenda rates transfliunt vada.
Audax omnia perpeti
Gens humana ruit per vetitum nefas.*

Sect. CLXXVI.

Other
laws of
the Ex-
chequer.

Since it is the interest of the republic that the exchequer should be as rich as possible (§ 172), it is not strange that other advantages and means of gain are given to it; especially the right of coining money, mulcts, and contrebanded goods, and the right of seizing * all unlawful acquisitions, and other such, which are commonly, tho' not so justly, called *the regalia minora* (§ 133). But here the customs of nations are different, according as kingdoms allow more or less to Sovereigns, or they have arrogated more or less to themselves by long use.

Sect.

Sect. CLXXVII.

As for the public treasury, it is chiefly filled by taxes and duties, unless there be so much public land that the republic can be preserved by its revenues. For since (§ 172) republics can do nothing without money, either in war or peace (Tacit. hist. 4. 74), and, there not being a sufficient quantity of public land, that can be no otherwise got than from the subjects; the consequence is, that the chief magistrate can impose tributes and taxes upon the subjects, either with or without the consent of the different orders of people in the state, according to the different forms of government; and that they may lay them upon persons, lands, merchandize imported and exported, consumable commodities, manufactures and commerce, as is most convenient, provided regard be had to the condition of the people and the quality of things *, and subjects be not so oppressed, that they, like slaves, do not acquire to themselves, but to their Sovereign.

The treasury is enriched by taxes and duties.

* This appeared most equal to Serv. Tullius King of the Romans, and by that means he was very popular, Dion. Halicar. antiq. Rom. lib. 4. p. 215. He declared he would not suffer the poor to be over-loaded with taxes, and to be obliged to contract debt; and therefore, that he would rather make a valuation (*census*) of the estates of his subjects, and make every one contribute according to his fortune, as used to be done in well constituted and regulated states. “For (said he) I reckon it just that he who has large possessions should contribute largely, and that little should be exacted from those who have but little.”

Sect. CLXXVIII.

But if in levying taxes, regard ought to be had to every one's faculties, and the subjects ought not to be oppressed with burdens (§ 177), it is manifest that what is above the power of the subjects, ought not to be exacted from them; nor ought they in

What is just with regard to it.

times

times of peace to be so spunged, that they can be able to contribute nothing in case of danger: Besides, this contributed money ought not to be collected with too much rigidity, and it ought to be honestly and faithfully managed, and employed for the purposes to which it is destinated, or which the very end of the contribution requires. This is evident from the nature of the thing.

Sect. CLXXIX.

The right of the Sovereign to constitute magistrates and ministers.

Moreover, another of the internal rights of majesty, is to constitute *ministers* and *magistrates* (§ 134). By *ministers* we understand those who govern a part of the republic entrusted to them in the name of the Sovereign: By *magistrates*, who manage a part committed to them in their own name, but dependently on the Sovereign. Since therefore ministers act in the name of the Sovereign, and magistrates dependently on him, the consequence is, that the Sovereign has the sole right of nominating them, unless he hath granted to others the right of choosing and presenting, or to a community the right of election: that they are under particular obligation to him, and are bound to render account to him, and may be justly degraded from their dignity by him, if they do not acquit themselves well in their charge; nay, may be punished, if they be guilty of knavery, or any gross misdemeanor, as the demerit of their crime requires*.

* But an unfraudulent counsel or design, disappointed by the event, is not punishable, since none can be obliged to answer for the event of things. Nor does he deserve punishment who executes the commands of his prince or country, if it be not contrary to justice and morality. See V. A. Corn. van Byunkerh. Quæst. jur. publ. 2. 2. p. 196. & seq. It was therefore a barbarous custom of the Carthaginians to punish their best Generals, if their designs missed of success. Nor is that custom of the Turks and

and other eastern nations less detestable, who measuring a counsel by the event, condemn those whose designs prove successful. For this is not only contrary to justice, but to prudence. “ If any one, says that excellent writer, desire advice in difficult affairs ; there are many who are capable of giving it ; but none will answer for the event ; and if you require this, none will assist you with their counsel, no, not one.”

Sect. CLXXX.

As a part of the public concerns is entrusted to The duties of Sovereigns and their ministry, and of magistrates, ministers as well as magistrates (§ 179), it therefore is the duty of a prince to know his men well, and to take care to choose none but such as are proper for the trust ; and it is the duty of subjects, on the other hand, not to ambition trusts to which they are not equal ; and much more is it so, not to bribe for them, or to use bribery, largesses, and other vile arts to procure them, or to buy them, unless it appear to the Sovereign to be for the interest of the republic that such offices should be matter of commerce. Moreover, it is self-evident that every minister and magistrate is obliged to all diligence and fidelity, and to regard the happiness of the state as his chief, his supreme law ; and much more is this obligation incumbent upon a first and chief minister, upon whose shoulders the Sovereign hath laid the chief burden of the government*.

* Such are usually called (*ministriissimi*) chief ministers ; and concerning these, two questions are commonly asked ; first, whether it be for the interest of a state to entrust the care of the whole state to one : And secondly, whether it can be lawfully done. The first is a question of civil prudence or expediency, upon which it is worth while to read Hert. Elem. prud. civil. I. 10. 11. Guil. Schroeter and Jac. Thomas their dissertations on this subject. The latter may be easily answered by any who have considered with any attention the principles of the law of nations. For since we may delegate to another what we do not think ourselves sufficient to manage, why may not princes likewise delegate their office to others, especially when age, the

weight of government, and other just reasons induce to it : And if it be not unjust to put a Kingdom under tutorage, while the King is not of an age to take the reins of government into his own hands, why should it be deemed unjust for a King to commit it to a minister ? However, a prince would act most unjustly, if he should devolve the care of the public upon a first minister, merely that he might pursue his pleasure, and not be troubled with it, since he ought to use him as a minister, and not transfer the government absolutely to him. The Persians seem to have been sensible of this, when they called ministers *the eyes and ears of the King*, Xenophon Cyrop. 8. 2. 7. p. 483. of which Briffon. de regno Persic. has discoursed at large, lib. I. § 190. p. 264.

SECT. CLXXXI.

The right in sacred things belonging to Sovereigns. One of the chief immanent rights of Sovereigns is the right relative to religion, sacred things, or the church, by which we understand a society formed on account of religion. Now, since (§ 23) all communities and societies of the simpler kind ought to be so subordinated, that they may do nothing contrary to the interest of the larger society ; the consequence is, that a church ought to be subordinate to the republic ; and therefore, that the chief magistrate has the right of directing its affairs and concerns *. This may be proved from this consideration, that a republic ought to have one will (§ 114), which could not be the case, if the church in a state were not subject to the chief magistrate, but constituted by itself a free and independent community, not subject to the chief magistrate. Besides, that since all the rights belong to majesty, without which the security of the subjects cannot be obtained (§ 133) ; and experience has abundantly shewn us how much the internal and external security of subjects hath been disturbed under the pretext of religion ; who then can deny that a Sovereign has the right of so directing religious affairs that the republic may suffer no detriment ?

* There-

* Therefore this right belongs to a Sovereign as Sovereign, and not as Bishop, as some have said, who have been solidly refuted by Hen. Boehmer. *dissert. de jure Episcop. princip. evangel.* And therefore that distinction of Constantine the great (in Eusebius *vita Constant. mag. 4. 24*) between the oversight of things without the church and within the church, is without any foundation. Nor do they come nearer to the truth, who attribute this right about sacred things to a Sovereign, as the primary member of the church; or they who derive it from compact; the first of which opinions is defended by Jæger. *de jure suprem. potest. circa sacra, cap. 3. p. 74. & seq.* For it being a right of majesty or sovereignty, a Sovereign wants no other title to the exercise of it but his sovereignty; whence the Roman lawyers have pronounced long ago, “*Jus publicum etiam in sacris & sacerdotibus consistere,* l. 1. § 2. D. de inst. & jur.

SECT. CLXXXII.

Religion, on the account of which men coalesce into the particular society called *a church* (§ 181), consists chiefly of two things. The first is a just idea of God (l. 1. § 127). The last is perfect love to God (*ibid.* § 130). Now, from hence it is evident, that with regard to the former a Sovereign can have no power, since the understanding cannot be forced (l. 1. § 129)*; and therefore his right ought not to be stretched to a right of imposing new articles of faith upon his subjects, and proscribing former ones; (*i. e.* of imposing a yoke upon their consciences;) tho’ it be incumbent upon him to take care, that his subjects be instructed in the doctrines he judges to be agreeable to reason and revelation; and that these doctrines be rendered subservient to promote piety and virtue, instead of feuds and divisions, to the equal detriment of the church and state.

Whether it extends to articles of faith?

* The doctrine of Hobbes and others is therefore monstrous, which subjects the consciences of subjects to a Sovereign (§ 129). For not to insist upon what was just now said, that the understanding cannot be forced; and

that a Sovereign can no more command it to believe or not believe, than he can command the eye not to see what it sees; what horrible butchery would these principles occasion, if a Nero or a Domitian, possessed of sovereignty, should take it into his head that the Pagan or Mahometan religion was better for society than the Christian, or to forge a new one? Nay, who does not see, that this doctrine, despising the true, the sole end of religion, perverts it into an engine of tyranny.

Sect. CLXXXIII.

Whatwith regard to the internal worship of God?

As for divine worship, we said before it is either *internal* or *external*. Now, the *internal* is of such a nature, that the obligation to it is obviously deducible from principles of right reason (l. I. § 130); and therefore, no mortal hath power to change it, (l. I. § 17); and consequently, a Sovereign can neither abrogate nor alter it; tho' all men being obliged to promote the glory of God to the utmost of their power (l. I. § 128); a prince must be obliged, and have the right to take care that his subjects be duly instructed in the internal worship of God; to use proper methods to reform the impious, and bring them to a just sense of the reverence they owe to the Supreme Being; *i. e.* by reasoning and argumentation; and to guard his state against the spreading either of atheism or superstition, by such fences as the nature of religion and persuasion admits.

Sect. CLXXXIV.

Whatwith regard to external worship?

External worship consists partly in external actions flowing from love, fear, and trust in God (l. I. § 135), partly in arbitrary indifferent actions (ibid. § 138). With regard to the former, the same rule takes place as with respect to internal worship; and therefore, with regard to it, a good prince will arrogate no power to himself, besides that of endeavouring to the utmost to promote it by due methods*. The latter are neither prescribed nor disapproved

approved by reason (l. I. § 138); and therefore they are subject to the direction of a Sovereign; and he hath all the right and power with regard to them, which is neither repugnant to reason nor revelation.

* Hence it is plain, that the supreme magistrate has no right to hinder any one from praising God with hymns, and offering prayers to him, or performing other such religious actions; but he hath a right to prescribe the order and manner in which these actions ought to be publicly performed. Therefore, the command of Darius, that none should dare to petition either God or man during thirty days, was most absurd, Dan. iv. 7. But the care of David and other pious Kings, to order the worship of God in such a manner, that the people might neither want hymns to sing to God, nor be ignorant of the most serious and decent way of singing them, was most reasonable.

Sect. CLXXXV.

Since all direction with regard to the arbitrary acts of external worship, which is neither repugnant to reason nor revelation, belongs to sovereignty, (§ 184); the consequence is, that the chief magistrate hath the right of reforming and of abolishing abuses truly such, so far as the public laws or acts permit; the right of making and amending ecclesiastical laws; the care of ecclesiastical goods or possessions, and of applying them to their proper uses; the right of jurisdiction over all persons, causes, and things ecclesiastical; and of convening and directing synods and councils*; and finally, the right of permitting meetings of dissenters; or of not tolerating them, but obliging them to leave the kingdom, when important reasons require such severity.

* They are called for various reasons; as to confirm doctrines called into doubt by new decrees and creeds, and to consult about indifferent rites; and in fine, to settle matters relating to discipline. Synods of the first kind are

contrary to the nature and genius of religion ; first, because that is not always true, which appears to be such to the greater number ; and in matters of opinion and belief, 'tis not the plurality of votes but the weight of arguments that ought to preponderate and determine. Next, because these decrees of councils are obtruded upon the members of a church by way of laws, with public authority, whereas laws cannot be given to the understanding. Besides, it often happens, that one part of the judges usurps power over the rest, and thus the wounds of the church are not so likely to be healed as to be festered ; which is so confirmed by experience, that Gregory Nazianzenus, ep. 55. ad Procopium, says, “ That he never expected any good from councils, and that they generally rather exasperated than cured any evil.” The other synods may be sometimes of use to the church ; but only when the church has no legislative power without the direction and authority of the supreme magistrate.

SECT. CLXXXVI.

The right of the chief magistrate about schools or academies.

Schools and academies are seminaries to the church and to the state ; nurseries for ministers, magistrates and good citizens, as well as for divines, their end being to instruct the youth in all useful arts and sciences necessary to qualify them for the various offices of life, and the several different stations in which they may be placed, or professions they may choose, as well as to form their manners to virtue and probity, and decency of conduct. For which reason, it is the duty of the supreme power in a state to establish such schools, and to adorn them with good laws and constitutions, and with learned and well qualified professors or masters ; to take care that no hurtful doctrines be taught in them, that discipline be kept upon a good footing ; and, above all, that turbulent genius's do not sow divisions and contentions in them * ; so as to render them like the school of Megara in ancient times, ἡ σχολήν, ἀλλὰ χολήν ; “ Not a school, but a seat of choler and scuffling,” Diogenes Laert. 6. 24.

* The

* The mischief scholastic wars do to youth, and to useful learning, cannot be expressed. They are frequently occasioned by stupid sluggish men, to whom the learning and industry of others in their proper business is an eye-fore. For the more learned men are, the further they are removed from a spirit of contention. And the scuffle is carried on with calumnies, libels, and fraudulent arts, by which they hope to bear down their enemy, or render him suspected by his auditors. And hence it comes about, that the hours which ought to be devoted to the education and instruction of youth, are consumed in writing controversial pamphlets, and that the students, tho' not capable of judging of the dispute, and unacquainted with the true nature and rise of it, are divided into factions; so, that from words it not seldom comes to blows. But how prejudicial such feuds must be to the most flourishing universities, is very manifest.

Sect. CLXXXVII.

The other right of magistracy which remains to be considered, is what regards commerce (§ 134). For since mankind, far less a republic, cannot subsist without commerce (l. 1. § 325), the governors of a civil state ought to take care to promote and maintain it, and to direct it into a right and proper channel. And therefore they have all the rights relative to it, without which these ends cannot be obtained (§ 133); the consequence of which is, that they can make laws concerning traffic, manufactures, export and import, payment of bills and debts, and about money or coin; give privileges to traders, stipulate security to foreign commerce by treaties, and defend it by arms; grant immunities and rights to larger societies of merchants; and, in general, do every thing necessary to support and promote trade, consistent with pacts and treaties made with other princes or states.

The right of the chief magistrate with respect to commerce.

* This whole subject is well illustrated by two dissertations: one by Jo. Fridr. L. B. Bachovius ab Echt dissert. de eo quod justum est circa commercia inter gentes, Jenæ 1730. Another by Jo. Jac. Mascovius de foederibus

commerciorum, Lip. 1735. To which, if we add the writings pro and con with regard to the disputes between the Dutch and the Imperial Netherlands, about the Ostend Company, we shall not need to look further into this subject. See Refutation des argumens avancés de la part de Mrs. les Directeurs de Compagnies d'orient & d'occident des provinces-unies, contre la liberté du commerce des habitans des Pais-bas, Hague 1723, and Jo. Barbeyrac Défense du droit de la compagnie Hollandoise des Indes orientales, contre les nouvelles pretensions des habitans des Pais-bas Autrichiens.

C H A P. IX.

Concerning the transeunt rights of Sovereignty.

Sect. CLXXXVIII.

It is law-
ful to
make
war.

BECAUSE all empire is supreme and absolute, (§ 127), it follows, that different empires or civil states are independent, and subject to no common authority on earth (§ eodem). But such states are in a state of nature, and therefore in a state of natural equality and liberty (§ 5 & seq). And because in such a state the injured have no defence or protection but in themselves, and therefore in it every one has a right to repel violence and injury, and to extort by force what is due to him by perfect right (§ 9), it is abundantly evident, that every civil state or republic has the right of making war*.

* This might be proved by other arguments. For nature hath not only endued men, but even brute animals with a principle of self-defence; and hath furnished the latter with certain arms to protect themselves.

*Ut, quo quisque valet suspectos terreat; utque
Imperet hoc natura potens, sic collige mecum.*

*Dente lupus; cornu taurus petit. Unde, nisi intus
Monstratum?*

Horat. Serm. 2. 1. v. 50.

Many

Many testimonies of the ancients to this purpose are collected by Grotius, of the rights of war and peace, I. 2. I. 4. Again, since private persons living in society have the right of self-defence, when they cannot have recourse to public protection (lib. I. § 181), much more must it be allowable to a free people to defend themselves, since in a state of nature there is no common magistrate to judge between the injurer and the injured, and to defend against violence (ibid. § 183). The ancient fathers of the church have brought several arguments from the sacred writings against the right of war, as Tertullian de idolol. cap. 18. & de corona milit. cap. 11. Origen adv. Cels. l. 8. p. 425. Erasmus in milite Christiano, & Adagiorum Chil. 4. Cent. 1. adag. 1. and likewise the Anabaptists, of whom Arnold. in Hist. eccles. & hæret. part. 2. l. 16. cap. 21. n. 24. But these objections have been sufficiently answered by Grotius in his masterly way (ibid. § 5. & seq.) and by Huber de jur. civ. 3. 4. 4. 6. & seq.

SECT. CLXXXIX.

By *war* we understand a state in which free and independent men or nations, living in a state of nature, contend in prosecution of their rights by force or stratagem, while they retain that intention *. From which definition, it is plain that war does not consist in the act itself of contending, but in a hostile state, and in the fixed purpose of contending; and therefore truce does not belong to a state of peace, but to a state of war; and, on the other hand, the quarrels and tumults, the private or public violences of men who are not their own masters, but subjected to civil government, do not come under the definition of war.

* Thus we think it proper to define war, tho' it be otherwise defined by others. According to Cicero (off. I. II.) all contention by force is war. But Grotius (of the rights of war and peace, I. I. 2. I.) observing, that not the act but the state is properly denominated war, amends this definition, by calling war a state of contention by force, as such. Yet because this definition agrees as well to tumults, or private and public violence, as to war, the definition

dition of Albericus Gentilis (of the rights of war, i. 2.) is rather preferable. He defines it to be a just contention by public arms. But the best of all, is the definition given by V. A. Corn. van Bynkersh. *Quæst. juris publ.* i. 1. which we follow.

Sect. CXC.

To whom
the right
of war be-
longs, and
in what it
consists.

Since war is made by free nations, and men who live in a state of nature (§ 189), the consequence is, that in the latter case the right of war belongs to all promiscuously, as being all equal (§ 5 & 9); but in the former to the supreme power only (§ 135); and therefore it is the right of the Sovereign to levy or hire troops*, to build fortresses and fortify towns; to raise money for the maintenance of an army, to make provision of arms, warlike stores, ammunition, and other necessaries for war; to build, man, and store ships, to declare war, wage war against an enemy, and thus expose soldiers to the greatest danger, and make laws relative to military discipline and exercise, and such like things. For the end of this right being the external security of the state (§ 135): because the chief magistrate of a state must have all the rights, without which that end cannot be obtained (§ 133); every one may easily see that the right of war must make one of them.

* It is well known, that there are three kinds of armies: one when every subject bears arms for his country, as in the Grecian republics of old, and among the Romans during their freedom, and as at present in Switzerland: another is mercenary, when soldiers, even foreigners, are listed for money; which kind of army Augustus, by the advice of Mæcenas, preferred for certain reasons to the other, *Dion. Cass. hist. lib. 52. p. 482.* and which is at present preferred by all monarchs, who are not secure of the hearts of their people: another is confederate, when republics by alliance, or in consequence of due homage, are bound to furnish

furnish a certain quota of forces; such were the auxiliaries furnished by the Latins to the Romans: of which kind of armies see a curious dissertation by Herm. Conringius. Concerning hired or mercenary troops, it hath been often questioned, whether it be lawful for a prince to keep up such amidst his well-affected subjects. Upon which question, see V. A. Corn. van Bynkershoek, *Quæst. jur. publ.* I. 22.

Sect. CXCI.

From the same definition of war, it is evident that an inferior magistrate, or the governor of a certain province or fortress, cannot make war; tho' that such may defend the towns or provinces under their command and government against any aggressor whatsoever, on a sudden attack, even without a special order, none can doubt; nay, because a province may be so remote, that its governor cannot inform the Sovereign of its imminent danger speedily enough to receive proper instructions, in this case certainly, if the right of making war be given to the governor by a general mandate, there can be no doubt of his right to make war without particular order from his superiors *.

Whether
an inferior
magistrate
may make
war?

* Hence the war of Cn. Manlius against the Gallo-Græci was unjust. And for this reason, he was refused a triumph, Liv. 38. 45. "because, says he, he did it without any reason, and without the authority of the senate, or the command of the people, which none ever had dared to do." And it is known that the senate were not far from giving up Julius Cæsar to the Germans, for having made war against them without the command of the people, Sueton. Jul. Cæs. cap. 24. But the governors sent by the Spanish, Portuguese, Dutch, &c. into American provinces, have commonly such full power of making war and peace, that the news of the victory are often the first news of the war.

Sect. CXCII.

Whether private persons have the right of war?

Moreover, from this definition we learn that single combats are unlawful, unless undertaken by the command of the supreme powers*; and therefore Grotius's distinction between *private* and *public* war hath no foundation, nor does it quadrate with the definition of war. Much less can that be called war which is carried on by citizens against one another, and is commonly called *a civil war*. Again, the state of violence and enmity, which pirates and robbers are in with all mankind, as it were, is not a state of war, but of robbery and plunder; and therefore such persons have not the rights of war, but ought to be punished as disturbers of the public security.

* For such kind of single combats were a sort of representative war, used among the ancients, when they chose persons out of each army to decide the fate of the war by a single combat, agreeing that the party which had success in it, should have the right of victory or conquest. Ancient annals are full of such examples. Many of them are gathered together by Grotius, (of the rights, &c. 3. 20. 43. & seq.) who, however, pronounces such combats unlawful, because no person is master of his life and members. But sure, if a Sovereign may expose whole armies to an enemy, he may expose one or a few persons. Whether this practice be agreeable to civil prudence, is another question. Of that there is reason to doubt, because thus the whole republic is submitted to one chance, nor can they afterwards try their fortune with the remains of their strength, as the Albans felt to their sad experience, Dionys. Halicar. antiq. lib. 3.

Sect. CXCIII.

The justifying causes of war. Since war is carried on by free nations (§ 189) in prosecution of their rights, the consequence is, that there are only two *just causes of war*: One is, when a foreign people injures another people, or attempts to rob them of their liberty, wealth, or life,

life: the other is, when one people denies another their perfect right *. The first is a just cause of *defensive* war, the last of *offensive*; and therefore the third, first mentioned by Grotius (of the rights of war and peace, 2. 1. 2. 1.) *viz.* the punishment of crimes, is not to be admitted as a just cause of war; the rather, that it is certain an equal cannot be punished by an equal; and therefore one nation cannot be punished by another (§ 157).

* Nor does the reason assigned by Grotius prove any thing else, *ibid.* n. 1. "As many sources as there are of judicial actions, so many causes may there be of war. For where the methods of justice cease, war begins. Now in the law there are actions for injuries not yet done, or for those already committed. For the first, when securities are demanded against a person that has threatened an injury, or for the indemnifying of a loss that is apprehended, and other things included in the decrees of the superior judge, which prohibited any violence. For the second, that reparation may be made, or punishment inflicted; two sources of obligation, which Plato has judiciously distinguished. As for reparation, it belongs to what is or was properly our own, from whence real and some personal actions do arise; or to what is properly our due, either by contract, by default, or by law; to which also we may refer those things which are said to be due by a sort of contract, or a sort of default, from which kind all other personal actions are derived. The punishment of the injury produces indictments and public judgments." So far Grotius. But as we cannot reason from a state of nature to a civil state; so no more can we reason from a civil state to a state of nature. One nation hurts another, either by its default, or does not hurt any other, *e. g.* if it worships idols, or eats human flesh. In the first case, the injured people attacks the delinquent people with a just and lawful war, not a punitive but a defensive war. In the last case, there is absolutely no right to make war, because none but a superior can punish a delinquent.

Sect. CXCIV.

Whether
war be
just on the
account of
refusing to
render
imperfect
right ?

As the denial of perfect right only is a just cause of war (§ 193), hence it follows, that it is not allowable to have recourse to arms for the refusal of an imperfect right (§ 9); and therefore these are not just causes of war; as, for instance, if one refuses passage to an army, or denies access to a people in quest of a new habitation, will not grant the liberty of commerce to a people at their desire, or furnish money, provision or shelter, to those who are carrying on war, unless these things be due by an antecedent treaty, or be demanded in extreme necessity, or be of such a kind, that they may be granted without any detriment * (§ 9 & seq.) For then a refusal of such things becomes an injury, and is therefore a most just cause of defensive war (§ 193).

* That rarely happens. For either there is danger from the army that demands liberty to pass, or from the enemy, who may take it amiss that passage was granted. But if the passage be absolutely without danger, and so necessary that there is no other way for them who ask it to take, he does an injury who refuses such passage. And to this cause we may refer the war waged by the Israelites at God's command, Num. xxi. 21, 22. But the Idumeans were not touched for the same reason, Num. xx. 21. either because that passage was not so safe, or not so necessary, there being another way to Kadesh.

Sect. CXCIV.

If war
may be
waged for
others ?

But it being sometimes the same whether we ourselves are immediately injured, or we are so thro' the side of another; and, in like manner the same, whether perfect right be denied to us or to others, whom we are obliged, either by treaties, or on our own account, to assist; hence we may justly conclude, that war may be engaged in for allies and confederates; yea, and for neighbours,

bours, if it be very certain that we must suffer by their ruin. For who will blame one for hastening to extinguish fire near to his own house? Who does not consent to the truth of the antient saying, “Your interest is at stake, if your neighbour’s house be on fire?” However, since we cannot make war even for ourselves without a just cause (§ 193), much less will a war be just and vindicable, if we engage in the behalf of others for unjustifiable reasons.

Sect. CXCVI.

But tho’ these just causes be easily distinguishable from the mere pretexts often used by those who make war most unjustly; yet men, who regard nothing but their own interest, often lay more stress on the latter than the former. However, it is plain, that if these causes we have mentioned be the only justifiable causes of war (§ 193), war must be very unjust, if made merely because opportunity, and the weak, defenceless state of another nation invites to it, or purely to gain some great advantage, and to extend one’s empire, for the glory of martial achievements, or from religious enmity, without any other just cause*.

Mere colours do not justify war.

* And I know not but the cruel wars carried on in the middle ages against the Mahometans by Christians, must be referred to this class: as likewise those which the Spaniards dared to undertake against the Americans, a nation not inured to war, and that had never done any injury to the Europeans. The former were not coloured over with any other pretext, but that the Holy-land, Jerusalem chiefly, were possessed by aliens from the Christian church, and that it was the interest of Christians thus to promote and propagate their religion. The latter with this only pretext, that the Americans were impious idolaters, or rather worshippers of demons. But since Christianity does not permit of propagation by force; and neither reason nor revelation allows places which appear sacred to certain men, to be therefore claimed by arms and violence; and since besides all this, all

wars

wars in order to punish are unlawful (§ 193), these wars must needs be pronounced most unjust. Wherefore, Herm. Conringius ad Lampad. p. 242. says very justly, “ Tho’ many things were done in them which deserve the praise of zeal and courage; yet, if we may speak the truth, all these expeditions were owing to the weakness, imprudence, and superstition of the Kings and Princes of that age.” See likewise Jo. Franc. Buddeus, exercitatus de expeditionibus cruciatis, § 5. & seq. As to the opinion of the Spaniards, about a right to punish the Mexicans for their crimes against nature, which Grotius defends (of the rights of war and peace, 2. 20. 40. & seq.) it is given up even by the Spanish doctors themselves, Victoria, relat. 1. de Indes. n. 40. Vasquius controver. illust. 1. 25. Azorius, Molina, and others.

Sect. CXCVII.

The distinction between solemn and less solemn war is of little use.

Many nations have thought that war, so soon as resolved upon, ought to be solemnly declared; and hence the known distinction between *solemn* or *just*, *less solemn*, or *unjust* war. The former, in the opinion of most writers, is that which is undertaken by one who hath the right to make war with a previous solemn denunciation. The latter, that which is undertaken by one who hath not the right of war, and is not previously declared. But tho’ we grant that this is become almost an universally received rule, and victory is generally thought more glorious, when it is obtained by a war that was previously declared by a manifesto, or by heralds, or with other solemn rites; yet, because rites and solemnities are arbitrary, and such customs do not constitute a part of the law of nations (l. 1. § 22); * we think there is no difference as to legal effect between war *declared* and *not declared*; and therefore, that this division is of very little moment*.

* Grotius of the rights of war and peace, and Alberic. Gentilis of the rights of war, lay great stress on this distinction, who are followed in this matter by Pufendorff, Huber and others, for a double reason. First, because by such

such an appeal or declaration, it is made evident, that we cannot otherwise obtain what is due to us. And secondly, because thus it appears that the war is made by the consent of the whole body in both nations. But these reasons only prove, that a previous declaration of war is of use and laudable, not that it is necessary to make a war just, because both these facts may be evidenced by other means, besides a solemn declaration. Wherefore, Dio. Chrysoſtom. Orat. ad Nicomed. asserts with reason, and agreeably to the principles of the laws of nations, “Several wars are undertaken without denunciation.” But this subject hath been exhausted by Thomafius ad Huber. de jur. civ. 3. 4. 4. 27. and by V. A. Corn. van Bynker. Quæst. jur. publici, 1. 2. p. 5. & seq. who hath there likewise treated of the most modern European customs.

Sect. CXCVIII.

But right reason clearly teaches us, that recourse ought not to be had immediately to arms; but then only, when a people hath shewn a hostile disposition against us (l. 1. § 183). But seeing he shews a hostile disposition against us, who obstinately rejects all equal terms and conditions of peace (§ eodem); hence we justly infer, that before we take violent methods, what is due, or we think is due to us, ought to be demanded, and the dispute ought to be clearly stated with the arguments on both sides, and all means ought to be tried to prevent war*; which being done, he certainly takes up arms justly, who, having proposed good and adequate reasons, cannot obtain from his enemy any reasonable satisfaction.

* Three means are particularly recommended † Gro- tius, of the rights of war and peace, 2. 23. 7. 2. Pufen- dorff of the law of nature and nations, 5. 13. 3. and 8. 6. 3. an interview or friendly conference, reference to arbitrators, and lot. But as for the last, besides that it can rarely have place but when a thing is to be divided, princes and states seldom choose to submit their fortunes to chance. The other methods are received in all civilized nations, and are most agreeable to right reason; for no wise man will

take a dangerous way to obtain what he may have without force (lib. I. § 181), so true is what the soldier in Terence says, tho' upon a ridiculous occasion,

*Omnia prius experiri, quam armis, sapientem decet.
Qui scis, an, quæ jubeam, sine vi faciat?*

For this end are these public writings called *Manifestos* and *Declarations*, tho' the former are more commonly published at the very point of striking the blow, rather to declare and justify the war, than with a view to decline and prevent it. See Jo. Henr. Boecler. exercitat. de clarig. & manifestis.

Sect. CXCIX.

What is
lawful a-
gainst an
enemy.

Seeing princes and free nations make war in order to vindicate their rights (§ 193), the consequence is, that every thing is lawful against an enemy, without which these rights cannot be obtained. But they cannot be obtained but by reducing the enemy to such a state, as that he either cannot, or will not any longer shew a hostile disposition: and therefore every one has a right to use force or stratagem against an enemy, and to employ all means against his person or effects, by which he can be weakened; without regard even to the offices of humanity, which then cease (l. I. § 208); nay, we cannot call it absolutely unjust to make use of poison or assassines, tho' such practices are with reason said to be repugnant to the manners of more civilized nations; and to what is called (*ratio belli*) the humanity of war.

* Grotius (of the rights of war and peace, 3. 4. 15. and 18.) is of a different opinion. But actions, because they are more glorious, and shew more greatness of mind, are not for that reason so obligatory, that it is unjust not to do them. Poison is not used by more civilized nations; but the Turks and Tartars poison their darts and arrows. We may therefore call them less humane on that score, but not unjust, because every thing is lawful against an enemy. Thus we may justly refer to the class of greatness of mind, what the Roman consuls are said to have wrote to Pyrrhus,
“ We

“ We do not choose to fight by bribery or by fraud,” Gell. Noct. Attic. 3. 8. But we cannot call Ehud unjust for killing Eglon, Jud. iv. 20 ; nor Jael for driving a nail into the temples of Sisera, Jud. iv. 21. or Judith for cutting off Holofernes’s head, if the story be true. Besides, the manners of nations, who pretend to greater politeness than others, often degenerate into vile dissimulation ; of which see Bynker. Quæst. jur. publ. 1. 3. p. 17. “ To such a height did flattery rise in the preceding age, and is it at present, that princes do not lay it aside even in war. For now it is common for enemies most politely to wish one another all prosperity, and to exchange compliments of condolence. So do the letters of the States General to the King of England run, 10th July, 16th September, and 26th November 1666; and those of the King of England to the States General, 4th August and 4th October 1666, tho’ they were then preparing for destroying one the other, yet the states wrote, that the offices of friendship might take place amidst the rights of war, July 10. ep. 1666. So the King of France, tho’ he was in war with the King of England in the year 1666, sent an envoy to condole him upon the burning of London. It is indeed glorious to exercise humanity, clemency, and other virtues of a great mind in war, but it is silly and absurd to use such unmeaning unsincere words. For what is it but to use deceitful false words, to regret the burning of a city one would willingly have set fire to? Are not these rare specimens of humanity? Shall we then pronounce C. Popilius Lænas more unjust than those princes and states, who being saluted by Antiochus, declared he would not return his salute till they were friends ; and refused the King’s hand when he stretched it out to him? Polyb. Excerpt. legat. cap. 92. Liv. 45. 12. These are harsher methods, but not unjust, yea much more decent than hostile adulations and false compliments.

Seçt. CC.

But since it is against an enemy only that it is lawful to use force or stratagem (§ 199), the consequence is, that it is not lawful to use either against those with whom we are in treaty ; because we pledge our faith to them not as an enemy, but as a people treating with us *. Whether it be lawful to deceive an enemy by pacts and treaties?

dent, that they are guilty of abominable perfidiousness, who break a short or long truce before it is expired; tho' it be very true that both parties may exert defensive acts during that time, Pufendorff of the law of nature and nations, 8. 7. 10. Nor is their treachery less abominable, who basely violate the articles of surrendery, pacts concerning the conveyance of provisions, or the redemption of prisoners, foolishly pretending to justify themselves by this pretext, that all is lawful against an enemy.

* Agefilaus in Plutarch, p. 600, well distinguishes between an allowable stratagem and perfidy. There is there recorded an excellent saying of his: "To break the faith of a treaty is to contemn the Gods: but to outwit an enemy is a laudable, and withal a saving method." But what if an enemy had formerly proved treacherous and false? May we not then render like for like? I think not. For tho' the perfidy of one of the contracting parties exempts the other from his obligation (l. 1. § 413), yet this is to be understood of the same bilateral pact, the conditions of which are not fulfilled by one of the parties. But if we make a new pact with one who had not stood to his former, we are deemed to have passed over his former perfidy, and are therefore bound to fulfil our new contract.

Sect. CCI.

What is
lawful a-
gainst o-
thers not
enemies.

From the same principle we conclude, that none may use the rights of war against such as are in peace and friendship with them, under the pretext that an enemy may seize their castles and fortresses, or harbours, and make advantage of them against us; nor is it lawful to seize or hurt enemies or their ships in the territory, or within the ports of a people in peace with us, unless that people designedly gives reception to our enemy, because such violence is injurious to the people with whom we are in peace, whose territory or ports are entred by force. See V. A. Corn. van Bynkershoek. quest.

jur. publ. 1. 8. On the other hand, there is no reason why we may not hinder such a people from conveying arms, men, provisions, or any such things to our enemy, and hold such things for contraband*; (Bynkerf. *ibidem*, cap. 9. & seq.) tho' equity requires that we should not promiscuously condemn the goods belonging to our friends with those belonging to our enemies. (Bynkerf. 1. 12. & seq.). See likewise our dissertation *de navibus ob mercium illicitarum vecturam condemnatis*.

* This is granted by Grotius, 1. 3. cap. 17. § 3. but with a restriction. "It is the duty, says he, of those that are not engaged in a war, to sit still and do nothing that may strengthen him that prosecutes an ill cause, or to hinder the motions of him that hath justice on his side." But because a neutral party ought not to take upon them, as it were, to sit as judges, and determine upon which side justice lies, but, on the contrary, to take no part in the matter, as Livy observes, 35. 48; hence it is evident, that there is no place for this restriction. See V. A. Corn. van Bynkerf. *Quæst. jur. publ.* 1. 9. p. 69.

SECT. CCII.

We have observed, that the persons and estates of enemies may be spoiled or taken (§ 199); whence it is plain, that it depends on the will and pleasure of an enemy to lead persons taken in war captive into servitude, or which is now the prevailing custom in European nations, to detain them till they are exchanged or ransomed. The effects of enemies, moveable or immoveable, corporeal or incorporeal, fall to the conqueror; moveable, so soon as they are brought within the conqueror's station; immoveable, and other things, from the moment they are occupied, tho' the possession of them be not secure, till peace being concluded, treaties about them are transacted. But that moveable things, as well as persons and territories, being retaken, or recovering their antient liberty, have the right of postliminy, none can call into doubt*.

How acquisitions may be made by war.

* Here many questions occur in Grotius, 3. 5. & seq. Pufend. 8. 6. 20, as how things taken in war are acquired? whether incorporeal things and actions, &c? But since all these things depend rather upon the customs of nations than the laws of nations, and many of them may be easily decided from the principles already explained, we shall not insist upon them. All these are handled by V. A. Corn. van Bynkerhoek *Quæst. jur. public.* l. 1. cap. 4. & seq. in a masterly manner.

Sect. CCIII.

What reprisals are. From the definition of war it is plain, that if there is no controversy between nations and states themselves, when we lay hands upon persons or effects belonging to another republic in peace with us, on the account of justice refused to any of our society, this cannot be called *war*, but is making *reprisals* *. But since this may very probably give rise to a war, it ought not to be done by any private person, but with the approbation of the Sovereign; and it ought to be carried no farther, than to make satisfaction to our member to whom justice was refused.

* This right, since ever it hath been practised, hath been called *Reprisals*. The ancients not being acquainted with it, there is no word in the Latin language that properly expresses it, (Corn. van Bynkerkh. *ibidem.* l. 24.) Grotius derives this right from the right of taking pawns, competent to every person (of the rights of war and peace, 3. 2. 7. 3.); and so likewise Bodinus de republica, l. 10. But this opinion is refuted by Hertius ad Pufendorff, 8. 6. 13; and before him by Ziegler de jure majestatis, l. 34. 8. where he asserts, § 32. that this right proceeds rather from the rights of war. And certainly, if a republic may justly vindicate by war an injury done to it and its members (l. 1. § 245), it may likewise lay its hands on the goods of others, for an injury done to any one of its subjects, unless the greater and not the less may be allowable.

Sect. CCIV.

But since in a state of nature the right of de-^{How em-} fence lasts while an enemy shews a hostile disposi-^{pire is ac-} tion (l. 1. § 183), which he cannot be said to have ^{quired o-} laid aside, who is not willing to return into friend-^{ver the} ship, but repels all reasonable conditions of peace,^{conquer-} (ibidem) no injustice certainly is done to the con-^{ed.} quered, if we prosecute our right till they are fully subdued, and we have obtained compleat empire over them; and we may constitute this empire as we judge proper, and exercise it, till peace being concluded, some articles are agreed upon with relation to it; or the nation not being totally overthrown, and no treaty being yet made, recovers its antient liberty, or is bravely rescued by their former Sovereign*.

* And then in both these cases, it is most equal that recovered towns, cities, provinces, nations, should have the right of postliminy (§ 202), and thus recover their former rights, if their falling into the enemy's hands was not by their own fault, or even if it be not very clear, that they could have made a longer or stronger opposition to the enemy. Hence, when the French Garisons having left the country, a dispute arose between the states of Utrecht and Friezeland about the right of precedency, upon pretext that the former had given themselves up without resistance, yet the province of Utrecht recovered its former place and state, Huber. Prelect. ad Dig. l. 49. tit. 15. § 9. But the case would be quite different, if a city or province, which, unmindful of their faith to their Sovereign, had wilfully deserted and gone over to the enemy, should afterwards be recovered by war. For such would be justly deemed unworthy of this benefit, and therefore it is in the conqueror's power and right to reduce them into any condition he pleases. Such examples did the Romans make of the Brutii, Lucani and Campani, who deserted to Hannibal; of Capua chiefly, which city was so far from having its ancient rights restored to it, that it was deprived of its municipal privileges, its right of magi-
O 4
fracy,

stracy, and its territories, and reduced into the form of a province, Liv. 26. 16. & seq.

Sect. CCV.

What a treaty is, equal or unequal.

Another right of majesty, which may be reckoned among the external or transeunt ones, is that of *making treaties* among free nations about things belonging to the utility of both, or any of them. From which definition it is plain, that some of them are *equal*, in which the condition of both parties are equal; others are *unequal*, in which both parties have not the same rights granted to them, but one has better, and the other worse conditions; which, as examples shew us, may be either with regard to the conditions to be fulfilled, or to the manner of performing them*.

* Thus one of the confederate parties being stronger, engages to furnish the other not so powerful, a certain pecuniary subsidy, or a certain quota of ships, troops, or marines, and stipulates little or nothing to itself. In this case the treaty or alliance is unequal, in respect of the things to be done. But it is often provided by treaties, that one republic shall be bound to pay homage to another; not to undertake war without another's consent; not to keep a fleet; to pay an annual tribute; to make use of no iron or iron-smiths, except for agriculture, 1 Sam. xiii. 19, 20. which Polybius, hist. nat. 34. 14. says was done in the first treaty of Persena with the Roman people. All these are unequal treaties with respect to the manner of doing, since the one makes itself the other's client by this manner of treating.

Treaties are either matters of simple general friendship, or which oblige to something in particular.

Sect. CCVI.

Because free nations can contract about things relating either to the utility of either or of both, (§ 205), it follows, that those good offices which are owing by natural obligation, may be stipulated to themselves by free nations or states; and these are called *leagues of friendship* *. And other things may be stipulated, to which there was no prior obli-

obligation ; which treaties we call *treaties of particular obligation*. The first are not unnecessary, because there is no other way of securing another's performance to us of the duties of humanity, but by pacts (l. 1. § 386). And it often happens, that war puts an end to all the duties of humanity (§ 199), and therefore it is absolutely necessary that friendship should be renewed by pacts and covenants.

* To these treaties Grotius (of the rights of war and peace, 2. 15. 5. 3.) refers leagues which provide for the entertainment of strangers, and the freedom of commerce on both sides, as agreeable to the law of nature. But since the law of hospitality comprehends many good offices, which are not perfectly due by the law of nature alone (of which Jo. Schilterus has treated very accurately), and since the permission of commerce with foreigners depends upon the will of the supreme powers in every state (§ 187), such leagues can hardly in any case be referred to those, by which one nation stipulates to itself from another nothing more than is due by the law of nature. As to leagues of commerce, that there is not so much difficulty about any others as about them, is proved by Jo. Jac. Mascou. dissert. de foeder. commerc. § 6. by an example from Jac. Basnag's Hist. Belg. tom. 1. p. 51. and 439. And the Athenians, Smyrnians, and other republics, struck medals to be monuments of such treaties, as the same author has shewn from Ezek. Spanheim. de usu & præstantia numismatum, diss. 3. p. 143. & dissert. 13. n. 4. as likewise in his Orbe Rom. cap. 4. and from Vaillant de numis imp. Græc. p. 221. But who ever thought a simple league of mere friendship worthy of being commemorated by such monuments ?

SECT. CCVII.

A thing may be useful to a state either in peace or war, and therefore some treaties relate to *peace*, and others to *war* ; but it being the interest of a state, that peace be rendered as durable and stable as possible, and as profitable to its subjects as may be, we may refer to the first end, treaties by which certain guarantees engage their faith, that the articles

Some treaties are made in time of peace.

ticles of peace shall be faithfully observed, and promise assistance to the injured party * ; as likewise treaties about building new fortifications, or for admitting and keeping garisons in certain fortified places, for defending frontiers, commonly called *barrier-treaties* ; for not sheltering fugitive soldiers or subjects ; or not giving reception to enemies, &c. to the latter of the above mentioned ends we may refer treaties of commerce.

* Upon these treaties it is worth while to consult Ulr. Obrecht. *diff. de sponsore pacis*, the seventh of his Academic dissertations, and Henr. Cocceii *de guarantia pacis*, Franckfort 1702. The principal question that is moved on this subject is, whether the guarantes of a peace be obliged in general to enter into a war-alliance with the injured party, for any breach of peace whatsoever? But Pufendorff (of the law of nature and nations, 8. 8. 7.) has justly denied that the guarantes are bound to send aids in any war that takes its rise from other reasons than the violation of the articles of peace of which they are guarantes. For as it would be absurd for a creditor to demand a debt from a surety, contracted by the principal debtor after the suretiship ; so it would be no less unjust for a prince or a state to demand that a guarantee should take up arms in his defence, if the war takes its rise from some new cause. For a guarantee is only bound, when the peace of which he was surety is broken. But peace (as Grotius has well observed, 3. 20. 27. & seq.) is broken, if any thing be done contrary to what is included in every treaty of peace, or may be inferred from the very nature of peace in general, or to the express articles of a particular peace. And the matter is clear enough in general theory ; yet when the question comes to be, whether a particular deed be a violation of a certain treaty of peace ; it is not so easily determined, as very recent examples abundantly prove.

SECT. CCVIII.

Some treaties are made in time of war.

But in time of war various treaties are made by free nations with *friends* and *enemies*. With the former, treaties are made sometimes about joining their forces against a common enemy, which are called

called *offensive* and *defensive treaties*; sometimes about free passage through a territory, and furnishing provisions; and sometimes about not interfering in the war, which last are called *treaties of neutrality*. With the latter, treaties are made, sometimes about paying tributes, sometimes about giving up certain towns, sometimes about the redemption or exchange of prisoners, which are called *Cartels*. (Of these Hertius has expressly handled in his *diff. de lytro*) and sometimes about a truce of hours, days, or months *, and other like matters.

* Here it is usually asked, when that time commences? Grotius 3. 21. 5. insists that the day from which the measure of the time is to commence, is not included within that measure or compass of time: but he is solidly refuted by Pufendorff of the law of nature and nations, 8. 7. 8. And therefore, if for instance, it should be agreed that there shall be a truce from the first of July to the first of September, both these days are included; and in like manner, if from the first of June for thirty days, the first day of June is the first day of the truce, and the thirtieth day is the last day of it, so that the day after it is lawful to take arms.

Sect. CCIX.

Besides, that interest, for which treaties are made, Some are personal, and others are real. either respects the person of the Sovereign only, or the state itself. For which reason, some treaties are *personal*, and others *real*; and the former expire with the persons; the latter continue after both the contracting Sovereigns are extinct. Now, from these definitions it is plain, that all treaties for the conservation of a prince or his family are personal, and those relating to the utility of a state itself are real *. And to this division may all those of Pufendorff (of the law of nature and nations, 8. 9. 6.) be most conveniently referred.

* This question arose when the Romans changed their regal government. For the Sabines having contracted with their

their Kings, upon the change of the government they declared war against the Romans, pretending that the Roman people, in a popular state, had no right to the advantage of treaties made with their Kings, Dionys. Halicarn. Antiq. l. 5. p. 307. In the year from the foundation of Rome 267, the Hernici had recourse to the same plea, denying that they had ever made any treaty with the people of Rome, and asserting that their treaty made with Tarquin had ceased, because he being dethroned had died in exile, Dionys. Hal. 8. p. 530. But both these nations having made a treaty upon their being conquered by the Roman arms (See Dionys. ib. l. 4. p. 252. & seq.) it is indisputable that they had not contracted with Tarquin only, but with the Roman state, and therefore their treaties continued obligatory even after his expulsion.

Sect. CCX.

Whether treaties may include, or be beneficial to allies?

What is advantageous to a state is likewise advantageous to its allies and confederates; and therefore we may consult not only our own interest, but that of our allies likewise, in treaties; and that either by mentioning them in general, or specially and particularly. And here it is plain from the nature of the thing, that in the last case, the treaty cannot be extended to any others but those mentioned in the articles. But in the first case, it extends to all our allies at the time the treaty was made; but not to such allies as joined themselves to us afterwards*; because pacts cannot be extended to comprehend things not thought of when they were entered into (lib. I. § 393).

* This question really happened when Hannibal besieged Saguntum. For the Romans complained that Hannibal had unjustly attacked them, because the Carthaginians were bound by their treaty with the Romans not to annoy their allies. The Carthaginians insisted, on the other hand, that the Saguntini were not comprehended in their treaty, because they were not allies to the Romans at the time it was made, Polyb. hist. 3. 29. Liv. 21. 19. But tho' both these authors take the part of the Romans, I do not hesitate to say with Grotius, 2. 16. 13. that this treaty could

could not hinder the Carthaginians from making war against the Saguntines, and yet the Romans had a right to make new allies, and to defend them against the Carthaginians. For the Romans had not in the treaty made any provision for their future allies, and could not oblige the Carthaginians to understand as comprehended in the treaty things not thought of in making it; nor did the Carthaginians stipulate to themselves from the Romans, that they should make no new allies; and therefore they had no right to object against their defending their new allies.

SECT. CCXI.

Moreover, because a league is a convention between free nations or states, it is plain (§ 205), that none can make leagues but those who have a commission to do it, either expressly, tacitely or presumptively. And therefore, what ministers of a Sovereign have promised without a commission from him, if it be not afterwards ratified, comes under the denomination of *sponfion*, and not of *league*. Now, hence it is evident that a republic is not bound to ratify a pact made without their order; but it is certain, on the other hand, that a minister who contracts with a state is obliged to make satisfaction to that state, which by the fecial law of the Romans, consisted in giving him up naked with his hands tied behind his back*. And it is no less certain, that the exception against a treaty for want of a commission to the minister, is for the most part a cavil, seeing a republic who gives the command of an army or province to a minister with full powers, is justly deemed to have given him all the power, without which an army or province, nay, the republic itself, cannot be secure.

* There are two remarkable instances of this in the Roman history, the *Sponfio Candina* & *Numantina*, Liv. 9. 8. & seq. and 55. 15. The Romans would not stand to the treaty by which Posthumius Coff. and the other Generals had extricated the army at the *Furculæ Caudinæ*, nor to that of Hostilius Mancinus with the Numantines, pretending

tending that both were done without their orders. But who can doubt but Generals, when an army is in danger; have all the power necessary to deliver them from it, and which the safety of the army and the state requires. Such sponfions ought therefore either to have been confirmed, or things ought to have returned to the posture they were in before the sponfions, if the Romans had not been more ingenious in devising cavils, than faithful in observing their treaties. See *Christ. Thomafius* and *G. Beyerus de sponfionibus Numantina & Caud.*

Sect. CCXII.

If it be
lawful to
make treat-
ies with
infidels.

Because treaties are made by free nations (§ 205); it is plain that it makes no difference, whether a people profess the same religion we do, or one which we look upon as impious and abominable; for as a private person may lawfully contract or bargain with one of a different religion; so neither a republic nor its rulers ought to be blamed if they make useful treaties for their people with infidels; and that revelation hath made no alteration with respect to this natural truth, *Grotius* has fully demonstrated (of the rights of war and peace, 2. 15. 9. & seq.)

* Thus before the Mosaic law was given, *Abraham* and *Isaac* made a covenant with *Abimelech*, and *Jacob* with *Laban*, who most certainly worshipped idols, *Gen.* xxi. 22. xxvi. 26. xxxi. 44. And after the law of *Moses* was given, we know *David* and *Solomon* made leagues with *Hierom* King of the *Tyrians*, 2 *Sam.* v. 11. 1 *Kings* v. 12. We likewise read in the sacred records, of the alliances of *Abraham* with *Efcold* and *Aner*, *Gen.* xiv. 13. of *David* with *Achish* King of the *Philistines*, 1 *Sam.* xxvii. 2. & seq. and with *Toi* King of *Hemath*, 2 *Sam.* viii. 10. of *Afa* with *Benhadad*, 1 *Kings* xv. 18. & seq. The objections brought from Scripture are answered by *Grotius*.

Sect. CCXIII.

Moreover, since treaties are conventions (§ 205); Duties the consequence is, that all we have said above of with re-
 pacts, takes place likewise in treaties. So that no-^{spect to}
 thing ought to be held more sacred than treaties, ^{treaties.}
 nor nothing more detestable than the perfidiousness of
 treaty-breakers. Yet because no society is obliged to
 prefer another's interest to its own (§ 22), a republic
 cannot be obliged by an alliance or treaty to assist
 another, if its own condition doth not permit;
 as, e. g. if it be overwhelmed in war, or be in any
 imminent danger *; nor is a republic ever obliged
 to engage in an unjust war for its allies.

* But this is to be understood, not of pretended but real
 danger. For that false pretexts are used by Sovereigns, as
 well as by private persons, is daily complained. And the
 excuses and delays of friends are elegantly represented by
 Æsop in the fable of the Lark in Aulus Gellius Noct. At-
 tic. 2. 29. who there advises every one to place his chief
 dependence on himself, and not on his friends or allies,
 who often promise mountains of gold, and do nothing.
 This is likewise the counsel of Ennius in his Satires, pre-
 served to us by the same Gellius.

*Hoc erit tibi argumentum, semper in promptu situm :
 Ne quid exspectes amicos, quod tute agere possis.*

Sect. CCXIV.

So far have we treated of leagues in general, the
 noblest of which undoubtedly is that pact by which ^{The right}
 an end is put to war among free nations, common-^{of Sove-}
 ly called a *treaty of peace*. But peace being the ^{reigns}
 ordinary state of a republic, and, as it were, its ^{with re-}
 natural state; and war being its extraordinary and ^{gard to}
 preternatural state, it is evident, that Sovereigns ^{peace.}
 are obliged to maintain peace, and to restore it, if
 it be interrupted; and consequently that these are
 savage wars, which are carried on, not with a view
 to peace, which is *better than a thousand million of*
triumphs.

Sect.

Sect. CCXV.

What a
treaty of
peace is.

By a *treaty of peace* we understand a convention between free nations involved in war, by which their quarrels are accommodated by way of transaction. From which definition it is plain, that peace, in its own nature, ought to be perpetual; and therefore, if it be made for a certain time only, however long, it is not properly peace, but a truce*; because the quarrel which engaged the nations in war is thus not ended, but the design of disputing it by arms still subsists; which state, as we observed, is a state of war, and not of peace, (§ 189).

* And yet such truces not unfrequently are called *peace*, because not only all hostile acts cease, but even a state of war ceases, as if the contending parties had laid aside their hostile intentions. Thus we are told by historians, that the Lacedemonians made peace for fifty years; the Romans for a hundred years, Justin. hist. 3. 7. Livy. 1. 15. Sozom. hist. eccles. 9. 4. And we have more recent examples of such truces between Spain and Portugal, Sweden and Denmark, England and Scotland, Venice and the Turks, who seldom make peace with Christians, but for a limited period of time. See Pufendorff 8. 7. 4. & ibidem Hertius, p. 1249.

Sect. CCXVI.

If the ex-
ception of
the consequence
is, that it may
be made giving,
inequality
retaining, or
promising
something;
and therefore,
that equality
in its articles
is not requisite;
nor can
either of the
parties justly
complain of
being wronged,
however
enormous the
wrong may be;
since the
conqueror may
impose any
terms, and the
conquered may
prefer any
terms never so
hard to
perishing*.

Peace being made by way of transaction (§ 215), the consequence is, that it may be made giving, retaining, or promising something; and therefore, that equality in its articles is not requisite; nor can either of the parties justly complain of being wronged, however enormous the wrong may be; since the conqueror may impose any terms, and the conquered may prefer any terms never so hard to perishing*.

* Provided it be evident, from the articles of the peace, that the conquered submitted to these terms. For if by
malicious

malitious cavil, invidious interpretation, or by open force, harder terms are obtruded on the conquered than they consented to, they have just reason to complain that they are injured. Thus Q. Fabius Labeo egregiously cavilled, when Antiochus having promised to deliver up to him the half of his navy, he ordered all his ships to be cut in two, and thus ruined his whole fleet, Valer. Maxim. 7. 3. which piece of false cunning he had perhaps learned from the Campani, who, as Polyænus Stratag. 6. 15. tells us, had thus destroyed the arms of their enemies, one half of which was to be surrendered to them by treaty. And how detestable was the open force with which the Galli Senones insulted the Romans, with whom, tho' conquered by them, they had transacted, obliging themselves to pay them a thousand pound weight of gold, when they not only brought false weights, but put a sword into the scale with the gold, saying insolently, *væ victis esse*, Liv. 5. 48.

Sect. CCXVII.

Much less can an exception of fear or force be Nor the exception of force or fear. opposed to a treaty of peace; for this exception never takes place when one has a right to force another (l. 1. § 108). But war is as just a way of forcing among independent free nations, as the authority of a judge in a civil state (§ 9); nor is it to any purpose to say that the war was unjust, and therefore that the victor used unjust violence in extorting hard conditions from the conquered. For besides, that neither of the parties engaged in war hath a right to make himself judge in his own cause, and determine concerning the justice of the war, the conquered, by transacting with the conqueror, remits that injury, and consents to the amnesty included in all such treaties*.

* And hence we may see what ought to be answered to Pufendorff, who maintains against Grotius, that this exception takes place. See Grotius l. 2. cap. 17. § 20. & lib. 3. cap. 18. § 11. and Pufendorff of the law of nature and nations, 8. 8. 1. For these are two very different things, *viz.* to oppose an exception of fear, and to renew the war because the conquering party had taken occasion

to do something contrary to the articles of peace. In the latter case we readily grant there is a just reason for war (§ 117); but we deny that the first is valid. But these two are not sufficiently distinguished by Pufendorff, as is plain from the example he brings. Polyb. hist. 3. 30. asks whether the Carthaginians had just reasons for their declaring the second punic war against the Romans? And he thinks they had, on this account, that the opportunity the Carthaginians took to revenge themselves, was of the same kind with that the Romans had taken to injure them; which is the same as if he had said, that the Carthaginians might justly plead the exception of fear, because, while they were embroiled in troubles and confusions at home, the Romans had forced them to give up Sardinia, and extorted a vast sum of money from them. But tho' in the articles of peace between the Romans and the Carthaginians, nothing was transacted concerning Sardinia, yet the Romans acted unjustly, and contrary to their treaty of peace, in taking advantage of the confusions the Carthaginians were involved in at home, to make themselves masters of Sardinia, as Polybius himself acknowledges, 1. 88. And therefore the Carthaginians did not object an exception of fear against the treaty of peace which put a period to the first punic war, but they complained that this treaty was broken by the Romans, by their taking occasion from their distress to force them to give up Sardinia.

Sect. CCXVIII.

If peace ought to be kept with rebellious subjects?

Grotius 3. 19. 6. and Pufendorff of the law of nature and nations, 8. 8. 2. ask whether a commonwealth or government is obliged to observe a treaty of peace made with rebellious subjects? And they justly affirm it ought, against Boxhornius, instit. polit. 1. 14. 19. and Lipsius. For peace is made by way of transaction (§ 215); but he who transacts with one who had injured him, is deemed to have remitted the injury done to him. And therefore Sovereigns, by making a treaty of peace with rebellious subjects, give an indemnity to them for their rebellion; and thus this peace cannot be broken without injustice, unless for a new cause; except it was not valid from the beginning, either on
account

account of some fraud on the part of the rebels, or of the state of the prince who made the treaty.

* Thus in the year 1488, the people of Bruges having invited Maximilian I. to their city, forced him by an unparalleled treachery to a very shameful pact with them : But so far was the Emperor Frederick, from ratifying it, that in a convention of the nobles at Mechlin, it was decreed that Maximilian was not bound by these promises, Jo. Joach. Muller Reichs-tags-Theatr. in Maximilian I. act. 1. cap. 8. And surely the people having by knavery and unjust force made a prisoner of the King till he should promise whatever they were pleased to demand of him ; such an extorted promise was no more binding upon him than the promise a robber on the highway forces from one.

Sect. CCXIX.

Besides, as other treaties, so those of peace ought to be (§ 213) most religiously observed ; and therefore the time within which articles ought to be fulfilled, must be strictly observed, and delays cannot be easily excused. See Grotius 3. 20. 25. It is likewise evident to every one, that *mediators*, who undertake the office of making peace, and *guarantees*, who answer, as it were, for the contractors, are obliged, by pact, to the contracting parties * ; because, having undertaken the business, they oblige themselves to whatever it requires. Whence we conclude, that it is the duty of *mediators* not to favour one party more than another, but to judge impartially of the cause on both sides, and to persuade each to what is most equal and advantageous ; and the duty of *guarantees* to use their utmost endeavours that the articles of the treaty be fulfilled on both sides, and to assist the injured party by their advice and aids, and with forces, if promised.

* The same is to be said of hostages, *i. e.* persons pledged for the faith of a state, whether they voluntarily offered themselves, or they were given up as such by the supreme power in a state. Grotius of the rights of war

and peace, 3. 4. 14. In the former case they are bound by their own consent; in the latter, by the convention between their sovereign and the other state with whom the peace is made. Whence it is plain, 1. That hostages may not fly. Nor, 2. a republic receive them by the right of postliminy. Therefore, when Clœlia being a hostage, fled, Porfena demanded that the hostage might be sent back, threatening to hold the treaty as broken if it was not, and the Romans acted justly in delivering back this pledge of their treaty. 3. That hostages ought not to be treated as slaves, or even as prisoners of war. And therefore, 4. That their estates cannot be confiscated as persons incapable of testating, tho' this was the old rigid Roman law, l. 31. D. de jure fisci. 5. That their obligation expires with their persons; and therefore, that when one hostage dies, ransom only is due for the other. 6. But if the treaty of peace be broken, the hostages may be kept in chains, and spoiled of their liberty and effects, tho' it be very hard, to kill them, if the treaty be violated without any fault of theirs. But of all this see Grotius of the rights of war and peace, 3. 20. 52. & seq. Pufendorff of the law of nature and nations, 8. 8. 6. and Schilter. opusculum singulare de jure obfidum.

Sect. CCXX.

The right of sending ambassadors, and their sacredness. Sovereigns having the right of making leagues and peace with enemies (§ 135), which cannot be done without employing agents or messengers; the consequence is, that they are allowed to have the right of sending ambassadors. Now, since he who receives another's ambassadors, by that very deed is deemed to promise them a safe admission and exit (l. 1. § 391); the consequence is, that ambassadors ought to be held sacred amongst enemies, and not only as exempted from the jurisdiction of him to whom they are sent (of which V. A. Corn. van. Bynkerkh. hath admirably discoursed in his treatise *de foro legatorum*); but as having the right of saying, writing, and acting whatever they are ordered by their constituent republics or Sovereigns, to speak, write,

or

or do, provided they shew no hostile disposition against the state to which they are sent *.

* If there are evident proofs of this hostile disposition, neither a prince nor a republic is obliged to receive an ambassador, and may command him to get out of their territories, as is usually done when war begins to rekindle between two states, the treaty of peace being broken: For we are not obliged to admit an enemy into our bosom or house, and therefore not his minister or commissioner.

Sect. CCXXI.

Other matters relating to ambassadors, which are Different treated of at great length by Marselarius, Wicque- customs of nations with regard to ambassadors. fort, and others, may either be easily deduced from the preceding principles, or belong to the customs of nations, and not to the laws of nature and nations; such as the jurisdiction of an ambassador over his own family, his rights with regard to the exercise of his religion in his family, his immunities, his right of giving protection, and the solemnities of his reception, entry, and taking leave; his titles and honours, and the forms of audience; and the different orders and degrees of ambassadors, their titles of honour, precedence, and many other such like questions; as likewise concerning what is become now universal usage, the inviolability of trumpeters, drummers, and heralds (as among the Greeks of old) of whom Homer often makes mention (odyss. 10. v. 59. & 102. & 19. v. 294. and Iliad 10. v. 14. & 178). But upon these matters it does not concern us to dwell.

C H A P. X.

Of the duties of subjects.

Sect. CCXXII.

The duties of subjects special and general.

Hitherto we have treated of the rights of the supreme magistrate both within and without his dominions. Let us now enquire into the *duties of subjects*; but all of them may be so easily deduced from the rights of Sovereigns as correlates to them, (l. I. § 7), that we shall quickly dispatch them. For as subjects may be considered either as members or parts of the state entrusted to them, or as their subjects, their *duties* are either *general* or *special*; the former of which arise from the common obligation they lie under to the sovereign power; the latter, from their particular stations in the state.

Sect. CCXXIII.

The general duties towards the state.

Their *general duties* are either owing to the state itself, or to the supreme power in it, or to their fellow subjects and citizens. But since the whole state is one society, and every member of a society is bound to adjust his actions to the common end of the society (§ 21); it follows, that nothing ought to be dearer or more sacred to a subject than the security and public welfare of his state; that he ought to prefer its good to his life and all the advantages of life *, and to promote it by every just and honest method.

* And this is that obligation to one's country, which some ancients carried to such a height, that they said, it comprehended in it all the other branches of benevolence, and that none ought to hesitate about sacrificing his life for his country, when its good called for it at his hands. Cicero in his offices, l. 17. 3. 23. The ancient saying, " Dulce

“ Dulce est pro patria mori,” is in every one’s mouth. But Jo. Clericus, in his examination of this maxim, *Ars Critica*, 2. 2. 5. 16. says, “ Men rarely know what they mean by the word *country*. And in reality, says he, what was it an Athenian or a Roman called his country? If by it was understood the soil of Italy or Attica, there is no more reason why it should be a more glorious thing to die for it, than to die for that of Africa or Asia. For the soil in which one is born no more belongs to him, than the soil upon which he may live conveniently: It is therefore foolish to prefer dying in a country lying to the east or west, to living in another that lies to the south or north. If by it was understood the inhabitants, what were the Athenian and Roman republics but societies of robbers, if we look narrowly into the matter? And therefore, he who died for them was a robber, and sacrificed his vile life for a band of thieves.” But all this is very empty stuff, of which we may justly say,

Nil intra est oleam, nil extra est in nuce duri.

For by one’s country is meant not a spot of ground, nor yet a set of men among whom there may be many knaves and fools, but that civil constitution which connects our happiness and safety with that of the whole state: And certainly, it is better to die than to see that society dissolved, upon which our liberty, dignity, and all our happiness depends. The prophet Jeremiah philosophizes in a very different manner from Mr. le Clerc, *Jeremiah xxix. 7.* “ And seek the peace of the city, whither I have caused you to be carried away captive, and pray unto the Lord for it, for in the peace thereof you shall have peace.” Might not these captives have said, Why should we be more concerned about this soil than any other? Why should we pray for so many robbers, idolaters, for so many impure and wicked persons, with which this city of Babylon is filled? But God does not command them to be concerned about the Babylonian soil, nor its inhabitants, but about the republic, upon the safety of which their safety depended. “ In the peace thereof shall ye have peace.”

Sect. CCXXIV.

Again, because the life of a *republic* consists, as ^{Towards} it were, in this, that all the subjects submit their ^{the su-} ^{preme} ^{power.} wills

wills to the will of the supreme power (§ 114); the consequence is, that subjects are obliged to pay to the supreme magistrate, as to their superior, a love of veneration and obedience * (l. i. § 86). And since they are likewise bound by pact, it is evident that they are bound to fidelity, and that it is incumbent upon them not to be factious, and thus disturb the state by their feuds and animosities, but to pay allegiance to their rulers, and not to hurt them by word or deed, but to hold them sacred, and to render dutiful obedience to all their laws and orders.

* And that not only internal but external, which consists in giving them certain titles, and paying them certain honours, according to the custom of the state. Thus, among the Persians the subjects were obliged to call their Kings *Basileus* *Βασιλεως*, and to salute them with this acclamation *vivas æternum*, and other such like. Of other titles of honour and gestures of respect, many have treated, as Becman *Notitia dignitatum*, diss. 6. But tho' Sovereigns may justly require certain titles and ceremonies of honour and respect from their subjects; yet there is no reason why strangers should be forced to pay them, as the ambassadors of other princes or republics, who do their duty if they render reverence to a foreign prince according to the received manner and custom of their own nation. See *Corn. Nep. Conon*, cap. 3.

Sect. CCXXV.

Towards
fellow
subjects.

Besides, it being the duty of fellow subjects to live together, as the common end of their society requires; they are certainly obliged to love one another, to live peaceably together, and not only to render justice one to another, but likewise to be more humane towards one another than to strangers. In fine, not to be invidious, or calumniators; not to envy those whom either birth, the benevolence of the prince, or merit has raised to greater dignities*; those who excel in any virtue, or those to whom providence hath been more favourable with

with respect to their outward circumstances or fortunes.

* This is the vice to which democracies are exceeding liable; for such governments can neither bear with vices, nor brook more eminent virtues. Hence that horrible decree of the Ephesini, on account of which Heraclitus pronounced them all worthy of dying in the prime of life. "Let none of our citizens excel others in merit; if he does, let him live elsewhere and with others." (Diogenes Laert. 9. 2.) How many eminent men suffered at Athens by their ostracism is well known. See Corn. Nep. Themistocles, cap. 8. Aristides cap. 1. Cimon. cap. 3. and Sigonius de Republ. Atheniensium. 2. 4.

SECT. CCXXVI.

All the *special* duties of subjects flow from the ends of the particular station of each in the republic; and therefore they are all obliged to do, every one, what the end of his station requires; and not to do any thing that is repugnant to its end; and moreover, not to desire any offices for which they are not equal. From which few rules, one may easily perceive what must be the duties of generals, counsellors, ambassadors, treasurers, magistrates, judges, ministers of the church, professors and doctors in universities, foldiers, &c.*

The foundation of the special duties of subjects.

* It is not therefore necessary to speak more fully of the special duties belonging to every station. Of those Puffendorff of the duties of a man and a citizen, 2. 18. 7. has treated at large, and may be consulted.

SECT. CCXXVII.

Moreover, the general duties of subjects oblige as long as they continue subjects; the special, only so long as they continue in the stations to which their respective duties belong. But one ceases to be a subject several ways. For a republic consists of a number of men (§ 107), whom we call *a people*; whence it follows, that the people being extinct or dispersed

One ceases to be a subject, the republic being destroyed.

disperſed (which may happen by an earthquake, war, inundations, and other public calamities) a few ſurviving perſons ceaſe to be ſubjects, unleſs they maintain their ſtate till they grow again to a ſufficient number of people *. But one does not ceaſe to be a ſubject, if a people, being conquered in war, accedes as a province to another ſtate, becauſe he then becomes the ſubject of another ſtate; nor if the form of the republic be changed, becauſe a people does not then ceaſe to be the ſame,

* A few ſo ſurviving, Grotius, 2. 9. 4. thinks, may, as private perſons, ſeize the dominion or property of the things which the whole people formerly poſſeſſed, but not the empire. But ſo long as the ſurviving perſons have a mind to have a common ſupreme magiſtrate, and to ſubmit themſelves to his will for their common internal and external ſecurity, why does not the republic remain? Thus did the Athenian republic remain, when the people were reduced to the greateſt extremity, inſomuch, that all fit to bear arms being deſtroyed, they gave the right of citizenship to ſtrangers, freedom to ſlaves, indemnity to condemned perſons, and after all, that medley was ſcarce-ly able to maintain their liberty, Juſt. Hiſt. 5. 6.

Sect. CCXXVIII.

Not when the form of government is altered.

But becauſe the people remains the ſame, tho' the form of their government be changed (§ 227); the conſequence is, that the real treaties made by a people with other ſtates (§ 209), and the public pacts made with private perſons, while the former government remained unaltered, ſtill ſubſiſt; and therefore the obligations of the people ſtill are valid, tho' their form of government be changed. But that ſubjects are not bound by the deeds of thoſe who unjuſtly uſurped the government, or did any thing contrary to their fundamental laws *, is certain, for this reaſon, that they never conſented to their power or empire.

* Thus the Athenians, when they had got rid of the thirty tyrants, made a law that all their acts and judgments, private or public, should be null, Demost. in Timocrat. p. 782. The Emperor Honorius made a like constitution with relation to the deeds of the tyrant Heraclianus, l. 13. C. Theod. de infirm. quæ sub tyrann. But here prudence and moderation are requisite, 1. If the obligation arise from something that hath been profitable to the people, and turned to their advantage. 2. If one chosen by the people holds the sovereignty for some time by mistake, l. 3. D. de off. præ. upon which law there is a most learned dissertation by Jac. Gothofredus, *de electione magistratus inhabilis*. 3. If one's government was originally just, and he afterwards degenerates into a tyrant, to which case I refer l. 2. & 3. C. Theod. eodem, where Constantine the Great justly confirms all the lawful deeds and rescripts of Licinius.

SECT. CCXXIX.

Moreover, from the same principle (§ 226), we conclude, that one does not cease to be a citizen or subject, if one state is divided into many, or many coalesce into one system; tho' it may happen, in the former case, that one is no more a subject of the same, but of another state. If a republic or state resolve to send a colony, it is of great moment of what kind that colony is. For some may go out of a larger country to constitute a republic that shall not be obliged to any thing with regard to its *metropolis*, but homage; and others, so as still to remain a part of their mother-country *. Now, it is plain, that the former case is the same as when an empire is divided; and in the latter there is no alteration with respect to the first obligation of the subjects who make the colony.

* Such colonies the ancient Greeks used to send. Whence in Thucydides, l. 1. p. 25. the Corcyræans say, "They are not sent into colonies on these terms that they may be slaves, but that they may be equal to those who still remain in their native country." To which the Corinthians answer, "We did not plant a colony of them to be affronted

ed and despised by them, but that we might still remain their masters, and have homage paid by them to us. For the other colonies love and respect us." Therefore, it was the only duty of those colonies to pay respect to their mother country, and to testify that respect by some solemnities, as the same Thucydides speaks, p. 18. *ibidem*, adding (as his scholiast explains it) that these honours chiefly consisted, in giving, at the public sacrifices, when they distributed the entrails, the first share to the citizens of the metropolis. Hen. Valefius not. ad Excerpta Peiresc. p. 7. has largely treated of the other honours rendered in colonies to the subjects of their ancient mother-country. But the customs amongst the Romans were different: For their colonies received their laws and institutions from the Romans, and did not make them themselves. See Gellius Noct. Attic. 17. Yet the Albanian colony was their own masters from the first, and not only did not pay any homage to their primitive country, but scrupled not to bring it under subjection to them; for which Metius Fufetius reproaches them in Dionys. Halicarn. Antiq. Rom. 1. 3, p. 143.

Sect. CCXXX.

If by
changing
habita-
tion.

Again, since one is a subject, in regard that he constitutes with others one republic, or with regard to a republic into which he willingly enters (§ 108); it follows from thence, that one ceases to be a citizen, so soon as he willingly removes with that design from his native country, and joins himself to another itate, settling there his fortune and family, unless the public laws forbid subjects to remove, as among the citizens of Argos, of whom Ovid says, *Metam.* l. 15. v. 28.

*Prohibent discedere leges,
Penaque mors posita est patriam mutare volenti.*

or that liberty be indulged only with regard to a part of one's effects, which is the custom in several European nations. That they change their seat, but not their obligation to their country, who desert to an enemy, is manifest; and therefore, when they can be brought back, they are justly punished.

Sect.

Sect. CCXXXI.

In fine, because those who are members of any society, and do not conform to its laws, may be severed from the society by the other members (§ 21) ; the same right certainly belongs to members of a civil state; and therefore, bad subjects may very justly be exiled; and this being done, they certainly cease to be subjects. But this is not the case with respect to those who, tho' sent out of a country, still possess estates in it, or to those who are transported to a certain place subject to the country, there to lead a disagreeable life, or perform some task by way of punishment. In general, I should think, that those who are deprived, for any crime, of the right of citizenship, are deprived of the privileges of subjects, but are not thereby freed from their obligation to their country, so far at least, as that they may molest it, or, imitating Coriolanus, take up arms against their countrymen, Liv. 2. 35.

A

SUPPLEMENT

Concerning the Duties of

SUBJECTS *and* MAGISTRATES.

WE have had little occasion to differ, very considerably at least, from our Author, except in one important question, about the measures of submission to the supreme power; and as little occasion to add to him, except with relation to the natural causes of government, and their necessary operations and effects; *a consideration of great moment in moral and political philosophy, which hath however been overlooked, not by our Author only, but by Grotius and Pufendorff, and all the moral-system writers I have seen.*

These few things excepted, which we have endeavoured to supply in our remarks, our Author will be found, having had the advantage of coming after several excellent writers, to have given a very full compend of the laws of nature and nations, in which, they are deduced by a most methodical chain of reasoning, from a few simple and plain principles, and they are applied to as many proper cases as is requisite to initiate any attentive intelligent reader into this science, and enable him to decide, by his own judgment, any questions that may occur in life concerning justice and equity, between subject and subject, in whatever relations, natural or adventitious, as parent, husband, master, &c. between subject and magistrate; or finally, between
separate

separate and independent states. Now, upon a review of what our Author hath done, every one, I think, must perceive that the science of morals may be divided into two parts. The first of which is more general, and very easy and plain, consisting of a few axioms, and certain obvious conclusions from them, with relation to the general conduct of our life and actions. The second consists in finding out from these more general rules, what equity requires in various more complicated cases. And here, as in all other sciences, for the same reason, the deduction must be longer or shorter, according as the conclusions lie nearer to, or more remote from the first fundamental truths in the science. There is no science in which the first axioms or principles are more evident than that of morality. Thus, for example, the only principle our Author, or any other moral writer requires, or has occasion for, in order to demonstrate all the social duties of mankind, is, “ That it is just to hurt or injure no person, and to render to every one his own, or his due ; or in other words, That it is just and equal to do to others, as we would have them to do to us.” The reasonableness of this principle is self-evident ; and there is no case, however complex, relating to social conduct, wherein the reasonable part one ought to act may not be inferred from this principle. Certain general rules of conduct obviously arise from this principle. And the resolution of particular cases consisting of many circumstances by it, only appears difficult till one hath been a little practised in attending to circumstances, and separating, weighing, and balancing them. Here indeed study is requisite, as in other sciences, where the first principles are likewise very simple ; and many truths are easily deducible from them, but others lie more remote, and require a longer train of argumentation : But yet it may be averred, that the remotest truths, and the most complex cases

*Self-evident
fundamental
Principle of
Ethics and
Politics.*

cases in morals, are not so difficult to be resolved, or do not lie so distant from their first principles, as the higher truths in most other sciences. And therefore, it is justly said by moralists, that the science of morality is more level to every capacity than any other science; tho' certainly a thorough acquaintance with it requires a good deal of close thought and attention, and considerable practice in the examination of examples or cases. This, I think, every one, who hath read our author with any degree of attention, will readily acknowledge, whatever he may have thought, while he viewed this science at a greater distance. But, in order to give a short view of the extent of this science, and distinguish what is more easy and obvious in it from what is more complex and difficult, let us first consider an excellent summary given us by Cicero of the general laws or obligations of nature; and then let us cast our eye on what he says upon the design of civil law, which is to settle the rules of equity in more complex or compounded cases. We find him discoursing thus of the general laws of nature. "The law of nature, says he, does not consist in opinion merely, neither is the sense of its obligation wholly formed by education and art; but it is from nature: we are led, directed, and impelled to fulfil its obvious dictates by certain dispositions congenial with us: we feel its force, so soon as objects proper to excite and stir certain affections deeply inlaid into the frame of our minds, are presented to us. Nature thus leads us to religion, to piety, to gratitude, to resentment of injustice, to esteem and veneration, to veracity and candour. Religion consists in reverence toward some superior divine nature, and concern to approve ourselves to that Being, by whom we and all things subsist. Piety directs us to the love of our country, our parents, and of all who are endeared to us by natural ties of blood. Gratitude teaches us to main-

tain a kindly resentment of good offices, and to love; honour, and reward our benefactors. Resentment of injustice impels us to ward against and punish all injuries to ourselves, or to others who ought to be dear to us; and in general, to repel all iniquity and violence. Reverence is naturally excited in us by grave and wise old age, by eminence in virtue, or worth and dignity. Veracity consists in fulfilling our engagements, and acting consistently with what we promise, profess or undertake." Cicero de inventione rhetorica; l. 2. n. 22. & n. 54. where he adds excellent definitions of prudence, justice, magnanimity, patience, temperance, modesty, perseverance; and all the virtues which make men good and great.

This is Cicero's succinct abridgment of the more general laws of nature: And he calls them laws of nature, because the obligation to them is founded in human nature; the happiness of mankind consists in the observance of them; and mankind are pointed and prompted to fulfil them by natural dispositions or principles in their minds. Insomuch that the idea of a supreme Governour of the universe cannot be presented to our minds, without exciting religious veneration and love in them; nor can the idea of our parents, our relatives by blood, or of our country, be set before us, and we not feel certain kindly affections stir within our breasts, which are very properly called, in a peculiar sense, natural affections; nor the idea of a generous benefactor, and our hearts not burn with gratitude towards him; nor the idea of injustice to ourselves, or even to others, and we not be filled with indignation and resentment; nor the idea of great wisdom, virtue and integrity, and we not be affected with esteem and reverence towards such characters; nor finally, the idea of consistency, faithfulness and candour, and we not admire and approve the beautiful image; and own such conduct to be truly

laudable and becoming. We are naturally affected by the several objects that have been mentioned in the manner described : And it is easy to perceive, that the private happiness of every individual, and the common happiness of our kind, which we cannot reflect upon without feeling a very high satisfaction in it, and a very strong tendency to promote it, are inseparably connected with the practice of those virtues. They are therefore, in every sense, of natural obligation. This, I take to be a just paraphrase upon what Cicero says in the passages above referred to, and to be sufficient to shew the strength and evidence of the more general rules of morality.

Now Cicero, agreeably to this account of human nature, and of the primary laws and obligations arising from it, thus defines the end of civil society (to which nature likewise strongly excites and impels us) and of its laws. (*Topic ad Tribatium, n. 2.*) “ The end of civil society, and civil laws, (says he) is security of property, and equal treatment to the members of the same state, in consequence of just constitutions, formed and guarded by mutual consent.” And how elegantly doth he elsewhere enlarge upon the advantages of good civil laws, which secure the members of a state against all violence and injustice, and all feuds, animosities and quarrels, in the peaceable unmolested possession and use, each of his own honest acquisitions, (*Orat. pro Cæcinna, n. 26.*) “ — A remarkable thing indeed, and worthy of your attention and remembrance, ye protectors of civil rights, on this very account. For what is the end of civil law ? Is it not a security for our properties and rights, which cannot be biassed by affection, bended by force, nor corrupted by money ; and which, tho’ not totally violated, yet if but deserted in the smallest degree, or if negligently observed, we are neither sure of inheriting what our fathers may leave to us, nor of making our children our heirs ? For what signifies it, to
have

have houses or lands left us by a father, if our possession be precarious and uncertain? Let an estate be yours by the fullest right, yet how can you be sure of keeping it, if this right be not sufficiently fortified, if it be not protected by civil and public law against the covetousness of the more powerful? What avails it, I say, to have an estate, if the laws relating to confines, marches, possession, use; the rights of water, passage, &c. may be changed or disturbed on any account? Believe me, many greater advantages redound to us from good laws, and the conservation of justice, than from those who leave us an inheritance. A piece of land may be left me by any one, but my secure possession and use of it depend upon the inviolability of the civil laws. My patrimony is left me by my father, but the usucapion of this estate, which puts an end to all sollicitude, and secures against all vexatious suits, is not left me by my father, but by the laws. My estate, with the rights of water, air, passage, light, &c. is left me by my father, but my security for the undisturbed possession of these rights, is an inheritance I owe to the laws. Wherefore, we ought to be no less concerned about this public patrimony, the good laws and constitutions handed down to us from our ancestors, than about our private estates; not only because these are secured to us by the laws, but because tho' one may lose his estate without hurt to any other person but himself; yet right cannot be violated without the greatest detriment and injury to the whole state, &c."

Here Cicero briefly runs through some of the principal points which ought to be settled by civil laws, agreeably to natural equity, for the encouragement of honest virtuous industry, and in order to exclude all injustice, violence and molestation; such as, succession by testament, and to intestates, possession, use, usufruct, perfect or im-

perfect dominion, services, contracts, &c. And it is the rules of equity with regard to these and such like matters, which it is the business of the moral science to deduce from certain and evident principles, for the direction of society in fixing and determining its laws. And therefore, to be a master of the moral science, it is not enough to know the first axioms of it, and its more general and obvious rules; but one must be capable of following them thro' all their remotest consequences, in these and other such complicated cases, so as to be able to judge of civil laws by them. And surely, however close attention and long reasoning this more difficult part of morality may require, it does not require long reasoning to prove, that this is the most proper study of those whose birth and fortunes furnish them with time and means for improving themselves to serve their country in the highest stations of life. Who doth not at first sight perceive that this is the character every man of birth ought to aim at, and that his education ought to be adapted to qualify him for attaining to, even that glorious one which Cicero (*ibidem*) gives of C. Aquilius? "Wherefore, let me aver it, that the authority of the person I have just mentioned, can never weigh too much with you. Aquilius, whose singular prudence the people of Rome hath so often proved, not in deceiving, but in rightly advising them, and who never severed equity from civil law. Aquilius, whose extraordinary judgment, application and fidelity, have been so long devoted to the service of the public, and have been on many occasions so ready and powerful a stay to it. One so just and good, that he seems to have been formed for giving counsel and administering justice, rather by nature than by discipline: One so wise and knowing, that he seems by his study of the laws to have acquired not merely knowledge, but likewise virtue and probity: One, in fine, whose understanding is

so clear and accurate, and his integrity so habitual and impervertible, that whatever ye draw from this fountain, ye perceive, ye feel to be pure and unadulterated." For such excellent qualities shall the memory of a *Talbot* be ever dear and precious: And hence the manifold advantages we daily receive under the upright and prudent guardianship of a *York*. And all our youth, who have the noble ambition to be equally useful, and equally loved and honoured, must pursue their paths, and add to the same incorruptible integrity, the same thorough knowledge of natural equity, and of our excellent constitution and laws *. It is in order to contribute my mite to assist

* Because this study is generally supposed to belong only to those who are to follow the law as a profession, and not to make a necessary part of liberal education, I can't choose but insert here the account that is given us of ancient education in the schools at Apollonia, to which Augustus was sent by Julius, and Mæcenas by his parents. See Dion. lib. 45. p. 307. and Velleius Paterculus, l. 2. cap. 59. with Boecler's note upon these words, — "Apolloniam eum in studia miserat." (edit. Petri Burmanni.) First, it is observed, that Julius took care to have Octavius instructed in all the arts of government, and in every thing requisite to qualify him for a suitable behaviour in the exalted station for which he had designed him. Then the several particular parts of his education are mentioned, such as the languages, rhetoric, military exercises, and which was chief, morals and politics, τὰ πολιτικά καὶ τὰ ἀρχικά; and in all these useful arts it is said the youth were instructed diligently, accurately and practically, τὸ ἀκριβῶς, τὸ ἐπιμενῶς, τὸ ἰσχυρῶς. Boecler refers to Lipsius, l. 1. polit. c. 10. where there are several observations on this subject. And how indeed can that but be a principal part in the education of young men, whose birth and fortune call them to the higher stations of life? What good purpose can their education serve if this be neglected? Or what is principal, if that be not, which is absolutely necessary to qualify them for their principal duties, and for the noble employments by which alone they can acquire glory to themselves, or do good to their country? Is the art of ruling, law-giving, or

sist them in this glorious pursuit, that I have given them this admirable abridgement of the laws of nature and nations in English, with some necessary supplements. For every science hath its elements, which, if they be well understood and carefully laid up, not in the memory but in the judgment, the science itself may be said to be mastered, it being then very easy to make progress in it. Let me only suggest here, that it will still be necessary, after having well digested this small system, to read Grotius, and together with him his best commentator Pufendorff *, and several other authors, the treatises of Bynkershoek so often commended by our Author in particular; and after having read these excellent writers, it will not be improper often to return to our Author, and review him as a good compend of them all. And to add no more on the utility of this study, as without some acquaintance with the principles of moral philosophy, it is impossible to reap more than mere amusement by reading history; so when one hath once taken in a clear view of the more important truths in morality and politics, it will be equally easy, pleasant and advantageous for him to apply these truths, as a measure or standard, to the facts or cases he meets with in history, to private or public actions, and their springs or motives, and to the laws, constitutions and policies of different states: And it would not certainly be an improper way of studying our laws, first to get well

of discharging any important office in the state, the only one that requires no preparation for it, no previous study or practice?

* I have said his best commentator; because he is constantly examining Grotius's reasonings and determinations, and very rarely differs from him. And they ought to be read together, which may be easily done, Barbeyrac in his notes upon Grotius having all along mentioned the chapters in Pufendorff where each question in Grotius is handled.

acquainted with the laws of nature (large commentaries upon which are generally at the same time commentaries upon the Roman laws, the examples being commonly taken from thence), and then to go over the same laws of nature again in order, and to enquire into our laws under each head, and try them by the laws of nature, as the Roman laws are commonly canvassed by the maxims of natural equity, in treatises upon universal law.

But tho' I could not take my leave of our author without saying these few things about the nature and use of the science to which his treatise is so good an introduction; yet the design of this supplement is chiefly to treat a little more fully than he hath done of the duties of subjects and magistrates; and here I shall only cut off some things, and add a few others to what is to be found in the learned Barbeyrac's notes upon the tenth and following sections in the eighth chapter of the seventh book of Pufendorff of the law of nature and nations.

The duties of subjects are either general or particular. The first arise from the common obligation they are under, as submitting to the same government. The others result from the different employments and particular offices with which each subject is honoured or entrusted. 1. The general duties of subjects respect their behaviour either towards the governors of state, the whole body of the people, or their fellow subjects. 1. As to the governors, every one ought to shew them the respect, fidelity and obedience which their character demands. So that subjects ought not to be factious or seditious, but to be attached to the interest of their prince, and to respect and honour him. This is certainly just. But then, in order to this, a prince must deserve love and honour. For tho' power may force submission, 'tis merit only that can create respect, give authority, or beget love. The

command to honour a king must be understood as the command to honour any other person must be understood; not as a command to honour him whether he deserves it or not; for that would be an absurd command; a command to prostitute honour and respect. 'Tis good princes alone that can be honoured, because they alone deserve it, or have the great and amiable qualities that can excite esteem. We ought even to have a veneration for the memory of good princes; but for those who have not been such, behold the judicious reflections of Montagne. “ Among those laws, says he, which relate to the dead, I take that to be the best, by which the actions of princes are to be examined and searched into after their decease. What justice could not inflict upon their persons while they were alive, and equal to, if not above the laws, is but reasonable should be executed upon their reputation when they are dead, for the benefit of their successors. This is a custom of singular advantage to those nations where it is observed, and by all good princes as much to be desired, who have reason to complain that the memories of the tyrannical and wicked should be treated with the same honours and respects as theirs. We owe indeed subjection and obedience to all our kings alike, for that respects their office; but as to esteem as well as affection, those are only owing to their virtue. Should it therefore be granted, that we are to be very patient under unworthy princes while they hold the rod over us? Yet, the relation between prince and subject being once ended, there is no reason why we should deny to our own liberty, and common justice, the publishing of our wrongs.— Livy, with abundance of truth, says, that the language of men educated in a court was always full of vanity and ostentation, and that the characters they give of their princes are seldom true,

“ true. And tho’ perhaps some may condemn the
 “ boldness of those two soldiers, one of whom being
 “ asked by Nero, why he did not love him ? an-
 “ swered him plainly to his face, I loved thee
 “ whilst thou wast worthy of it ; but since thou
 “ art become a parricide, an incendiary, a waterman,
 “ a player, and a coachman, I hate thee as thou dost
 “ deserve : And the other being asked, why he should
 “ attempt to kill him ? as warmly replied, Be-
 “ cause I could think of no other remedy against
 “ thy perpetual mischiefs. Yet who, in his right
 “ senses, will blame the public and universal testi-
 “ monies that were given of him after his death,
 “ and will be to all posterity, both of him, and of
 “ all other wicked princes like him in his tyrannies
 “ and wicked deportment ? I am scandalized, I
 “ own, that in so sacred a government as that of
 “ the Lacedemonians, there should be mixed so
 “ hypocritical a ceremony at the interment of their
 “ kings, where all the confederates and neighbours,
 “ all sorts of degrees of men and women, as well
 “ as their slaves, cut and slashed their foreheads in
 “ token of sorrow, and repeated in their cries and
 “ lamentations, that that king (let him be as wick-
 “ ed as the devil) was the best that ever they had ;
 “ by this means prostituting to his quality, the
 “ praises which only belong to merit, and that
 “ which is properly due to supreme merit, tho’
 “ lodged in the lowest and most inferior subjects,
 “ *Essay, l. 1. cap. 3.*”

2. With respect to the whole body of the peo-
 ple, it is the duty of every good subject to prefer
 the good of the public to every other motive or
 advantage whatsoever, cheerfully to sacrifice his
 fortune and life, and all that he values in the
 world, for the preservation and happiness of the
 state. Union is generally recommended to subjects
 as their duty. It is said, that union will make a
 people flourish, and dissention will ruin any people.

But

But there must be care taken to have a just notion of the meaning of those words. An union serviceable to a state, is what designs the universal good of those who live in it. For if, *e. g.* in a monarchical state, where the power of the Sovereign is limited by the laws, the principal subjects of the state should willingly, or by force, consent to submit all the laws to the prince's pleasure, such an union would not be advantageous to it in any respect. It would change a society of free people into a company of miserable slaves. The ready compliance of the Chinese to obey their king blindly, does but strengthen his tyranny, and add to their misery. But it is asserted, that the general obedience of the Chinese is of service to preserve the peace of their country, and that they enjoy by it all the advantages which the strictest union can procure. They must mean all the advantages that can be possessed in slavery. But sure there is not a free-man but had rather see the most frequent commotions than suffer an eternal slavery. Moreover, it is false to affirm that there are no intestine wars under such a form of government. The most enslaved people will, in time, grow weary of an exorbitant tyranny, and upon the first opportunity shew that the desire of liberty cannot be quite stifled in the souls of men born to freedom. This happens among the Chinese and Turks. The union of those who govern an aristocratical state would be useless, if it did not preserve the observation of the laws, and the universal good of the commonwealth. This we may understand from the history of the thirty tyrants of Athens and the Decemviri of Rome. The union of those men served only to crush the people, and make them miserable; because their principal design was to gratify their passions, without having the least respect to the public good. Union may be also considered with regard to the people, who, when the
state

state is happy, and well administred, ought to esteem themselves happy, and to obey chearfully. Now, to keep the people in so firm an union, it is requisite that not only they may be the better for it, but also that they should be sensible of their own happiness. In general, the agreement and union both of governors and people, ought to tend to the public good : from whence it follows, that whatsoever has not such a design is injurious, and ought rather to be termed a conspiracy than an union ; since the name of a virtue cannot with reason be attributed to a thing which injures and ruins a society. Public spirit is the motive that ought to lead and govern subjects. And then is one truly public-spirited, when nothing is dearer to him than the liberty and happiness of his country. Yet we must here observe, that the engagement of every particular person does in some measure depend upon the performing of what the rest are obliged to do, as well as himself, for the public good. For indeed the public good is only the consequence of the united forces and services of many conducing to the same end. If then in a state it is become customary for the generality openly to prefer their own private interest to that of the public, a good subject will not, in that case, be to blame in the least, in not caring to expose his person or his fortune by a zeal impotent and useless to his country.

Lastly, the duty of a subject towards his fellow subjects, is to live with them in a peaceable and friendly manner ; to be good humoured and complaisant to them in the affairs of human life, and to give mankind no uneasiness by peevish, morose, and obstinate temper ; and, in short, not to envy or oppose the happiness or advantages of any one.

2. The particular duties of subjects are annexed to certain employments, the discharge of which influences,

influences, in some measure, either the whole government, or only one part of it. Now, there is one general maxim with regard to them all, and that is, that no one aspire to any public employment, or even presume to accept of it, when he knows himself not duly qualified for it. What consciences must those men have, who not only accept of, but brigue for places they are absolutely unqualified for; as for example, a seat in the supreme judicatures of a nation! A trust which requires, besides great virtue, great knowledge and wisdom; a thorough acquaintance with the constitution and laws of a state, and the interests of the people. And yet (as Socrates observed very truly) the manner of the world is quite otherwise. For tho' no body undertakes to exercise a trade, to which he has not been educated, and served a long apprenticeship; and how mean and mechanical soever the calling be, several years are bestowed upon the learning of it; yet, in the case of public administrations, which is, of all other professions, the most intricate and difficult (so absurd, so wretchedly careless are we) that every body is admitted, every body thinks himself abundantly qualified to undertake them. Those commissions are made compliments and things of course, without any consideration of mens abilities, or regarding at all whether they know any thing of the matter; as if a man's quality, or the having an estate in the country, could inform his understanding, or secure his integrity, or render him capable of discerning between right and wrong, and a competent judge of his poorer (but perhaps much honest and wiser) neighbours, See *Charron sur la sagesse*. To buy public offices, or procure them by bribery, or to give it a softer name, largesses, is still more infamous and abominable, the most fordid, and the most villainous way of trading in the world. For it is plain, he that *buys in the piece, must make himself whole again*

again by selling out in parcels. Besides, this way of procuring public trusts corrupts a people, and renders them mercenary and venal, and fit to be sold. And a dishonest, corrupt people, neither deserves to be free, nor can they long preserve themselves from being bound with the fetters, their vile prostitution of honour and conscience to sordid gain demerits. Let me only add upon this head, that to a free people, who have the right of making their laws, and laying on their own taxes by their representatives, it may be justly said, as it was to the people of Israel of old, *That their evil is of themselves; whatever they suffer, they have themselves to blame for it;* and consequently, the guilt of it lies upon themselves. A horrid, inextinguishable guilt, of which the greatest misery that a nation can fall into, is but the just punishment, for which no commiseration is due to them who brought it upon themselves; but to their unhappy posterity, who must curse them, if they are not quite insensible of the value of the liberty and happiness their ancestors basely gave up, and the deplorable condition they are depressed into by the corruption and venality of those who gave them birth, *i. e.* till slavery, as long continued slavery never fails to do, detudes them into a state not far removed above that of the brutes. But we must be a little more particular with regard to the duties belonging to employments.

1. Ministers of state, or privy counsellors, ought, with the greatest application, to study, and perfectly to know the affairs and interests of the state in all the parts of government, and to propose faithfully, and in the most proper manner, whatever appears to them to be advantageous to the public, without being influenced by either affection, passion, or any sinister views. The public good ought to be the only design of all their advice and endeavours, and not the advancement of their own private fortunes, and the promoting their

own power and greatness. Nor must they ever, by vile and nauseous flattery, countenance or encourage the criminal inclinations of the prince. 1. They ought, first of all, to be men of virtue and good principles. 2. Persons of great abilities, well acquainted with politics, and particularly well versed in the constitution, laws and interests of the nation. 3. Persons tried before, who have come off with honour and success in other trusts; men practised in business, and accustomed to difficulties. For hardships and adversities are the most improving lessons. " Fortune, says Mithridates in Salust, in the room of many advantages she has torn from me, has given me the faculty of advice and persuasion." Men, at least of ripe years, to give them steadiness, experience, and consideration; for it is one of the many unhappinesses attending youth; that persons then are easily imposed upon. 4. And finally, they ought to be men of openness, freedom and courage in all their behaviour when they are consulted with; who will use their utmost care that all their proposals be for the honour and advantage of their prince and their country; and when once they have secured this point, that the advice is good, will lay aside all flattery and disguise; detest and despise all equivocations and reservations, and craftiness of expression, by which they may seem to aim at ingratiating themselves, or to contrive that what they say may be acceptable to their master: The very reverse of those men whom Tacitus describes, " Who accommodate their language as they see occasion, and *do not so properly discourse with the prince, as with his present inclinations and circumstances.*"

2. The clergy, as being the public ministers of religion, ought to discharge their duty and function with the utmost gravity and application; should teach no doctrine, nor advance any opinion in religion, which does not appear to them to be sincerely true; and should be themselves a shining

example by their own conduct of those instructions which they deliver to the people. "Never did a covetous preacher make his hearers liberal. Never did a voluptuous clergyman persuade any one to abstain from pleasures, or to use them with moderation; at least, when those persons were discovered to be what they really are." Their bad example will do abundantly more mischief than their best sermons can do good; for example is more powerful than precept.

3. Magistrates, and all other officers of justice ought to be of easy access to every body; protect the common people against the oppressions of the more powerful; be as forward in doing justice, and that with the same impartiality to the mean and poor as to the great and rich; not spin out a cause to an unnecessary length; never suffer themselves to be corrupted by bribes and solicitations; examine thoroughly into the matter before them; and then determine it without passion or prejudice; regardless of every thing while they are doing their duty. Tho' it be an excellent qualification in a magistrate, to temper justice with prudence, and severity with gentleness and forbearance; yet it must be confessed to be much more for the common advantage, to have such magistrates as incline to the excess of rigour, than those who are disposed to mildness and easiness and compassion. For even God himself, who highly recommends, and so strictly enjoins all those humane and tender dispositions on other occasions, yet positively forbids a judge to be moved with pity. The strict and harsh magistrate is the better restraint, the stronger curb.

From the duties of inferior magistrates, let us pass to those of the supreme magistrate. And how happy is that post which every minute furnishes opportunities of doing good to thousands! But, on the other hand, how dangerous is that station which every moment exposes to the injuring of millions! The good

good which princes do, reaches even to the most distant ages; as the evils that they occasion are multiplied from generation to generation to the latest posterity. If the care of a single family be so burdensom, if a man has enough to do to answer for himself, what a weight, what a load is the charge of a whole Kingdom. Isocrates calls a Kingdom the greatest of human affairs, and such as requires more than ordinary degrees of prudence and foresight. And Cyrus well observes, that he who is above all the rest in honour and authority, should be so in goodness too.

*Virtues of a
Prince*

A prince and his court, as experience teaches us, is the standard of manners as well as of fashions. For nothing is truer than what Pliny says (Paneg. C. 45. n. 6.) *Nec tam imperio nobis opus, quam exemplo, & mitius jubetur exemplo.* "We do not want precepts so much as patterns, and example is the softest and least invidious way of commanding." The virtues requisite to a prince, and of which he ought to be the best pattern, are, 1. Piety, which is the foundation of all virtues: a solid and reasonable piety, free from hypocrisy, superstition and bigotry. 2. The love of justice and equity. For the chief design a prince was made for, is to take care that every man has his right. *And this obliges him to study not only that part of human learning, which qualifies those famous civilians, that are fit to be legislators themselves, who go up to that justice which at first regulated human society, who exactly knew what liberty nature has left us in civil government, and what freedom the necessity of states take from private people, for the good of the public: But that part of the law too, which respects the rights, and descends to the affairs of particular persons.* 3. A prince must above all things accustom himself to moderate his desires. The philosopher Arrian, de exped. Alex. says, "That it is easy to see from the example of Alexander, that whatever fine actions a man performs to out-

Piety

Justice

Moderation

ward appearance, it signifies nothing to true happiness, if one does not at the same time know how to rule and moderate himself." 4. Valour is requisite to a prince, but then it must be managed with prudence. 5. And above all, a prince ought to shine in goodness and clemency. 'Tis by no other means, but by the sole good will of the people that he can do his business; and no other qualities but humanity, truth and fidelity, can attract their goodwill. *Nihil est tam popolare quam bonitas*, says Cicero; nothing is so popular as goodness, *Orat. pro Ligar. cap. 12.* A prince who does not reign in the hearts of his people, does not reign over the better part of his subjects. Their minds are not obedient or submitted to him. 'Tis love only that can produce cordial obedience. Cicero gives us this enumeration of the virtues of a prince, *Orat pro rege Depotar. cap. 9.* "*Fortem esse, justum, severum, gravem, magnanimum, largum, beneficum, liberalem; hæ sunt regis laudes.*" And to fortitude, justice, gravity, temperance, magnanimity, liberality, beneficence, which are allowed to be virtues necessary to make a prince great and glorious. He adds another, which he says is generally thought to be a private virtue only, *viz.* frugality. "*Sed præcipue singularis & admiranda frugalitas, etsi hoc verbo, scio, reges non laudari solere. Ut volet, quisquam accipiat: ego tamen frugalitatem, id est, modestiam & temperantiam, virtutem maximam esse judico.*" Cicero tells us, *de legibus, l. 3. c. 3.* "That the good of the public ought to be the sole rule and motive of a prince's conduct, *salus populi suprema lex esto.*" And an excellent author said (*Marcus Antonin. l. 4. c. 42.*) "A prince ought always to have these two maxims in view; To do for the good of mankind all that the condition of a legislator and a king requires of him. And the other, To change his resolution, whenever men skilled in such matters give him better advice. But still the change must be made from

Valour

Clemency

Frugality.

the motives of justice, and the public interest, and never for his own pleasure, his own advantage, or his own particular glory.”

The truth of it is, that the very interest of the Sovereign requires that he should direct all his actions to the public good.

*Qui sceptrā duro sēvus imperio regit ;
Timet timentes ; metus in auctorem redit.*

Seneca in *Œdip.* v. 705.

The following quotation from Mr. de Cambrai will serve to explain and illustrate this sentence. “ Where the sovereign command is most absolute, these princes are least powerful. They take and ruin every thing, and are the sole possessors of the whole state ; but there the state languishes, the country is uncultivated, and almost desert, the towns every day decay and grow thin, and trade is quite lost. The king, who can never be such by himself, but must be such with regard to his people, undoes himself by degrees, by insensibly undoing his subjects, to whom he owes both his riches and his power ; his kingdom is drained of money and men, and the loss of the latter is the greatest, and the most irreparable of losses. His arbitrary power makes as many slaves as he has subjects ; they all seem to adore him ; and all tremble at the least motion of his eye. But see what will be the consequences upon the least revolution ; this monstrous power, raised to too excessive an height, cannot long endure ; it wants supplies from the hearts of the people ; it has wearied out, and exasperated the several ranks of men in the state, and forces all the members of that body to sigh with equal ardour for a change : and at the first blow, the idol is pulled down, and trampled under foot. Contempt, hatred, fear, resentment, jealousy ; in a word, all the passions combine together against so injurious and detestable a power. The king, who in the days
of

of his vain prosperity, could not find one person that durst tell him the truth, shall not find one in his adversity that will vouchsafe to excuse or defend him." All writers on this subject take notice of the danger of flattery to which kings, and sons of kings, are so much exposed. And on this occasion a famous saying of Carneades is commonly quoted, "That sons of princes, and other great and wealthy men, learn no art but that of horsemanship well, because their horses cannot flatter them." But there is an excellent book upon the education of a prince, lately translated into our language from the French, in which all the qualities, virtues and duties of a prince are admirably described. And therefore, I shall add no more upon this subject, but the short account Cicero gives us of Plato's doctrine concerning the business and duty of supreme magistrates, and one most beautiful passage from Cicero himself concerning empire, founded not in love, but fear. The first is in his first book of offices, chapter 25. "Rulers, or those who design to be partakers in the government, should be sure to remember those two precepts of Plato. First, To make the safety and interest of their citizens the great aim and design of all their thoughts and endeavours, without ever considering their own personal advantage. And secondly, so to take care of the republic, as not to serve the interest of any one party, to the prejudice or neglecting of all the rest. For the government of a state is much like the office of a guardian or trustee, which should always be managed for the good of the public, and not of the persons to whom it is entrusted; and those men, who, whilst they take care of one, neglect or disregard another part of the citizens, do but occasion sedition and discord, the most destructive things in the world to a state. From this root have sprung many grievous dissensions among the Athenians, and not only tumults, but even deadly civil wars in our

own republic. Things, which one who deserves to hold the reins of the government, will detest; and will give himself so to the service of the public, as to aim at no riches or power for himself; and will so take care of the whole commonwealth, as not to pass over any part of it." The other is in the second book, chapter 7. It is well observed by Ennius, *Whom men fear, they hate; and whom they hate, they wish out of the world.* But that no force of power or greatness whatever can bear up long against the stream of public hate, if it were not sufficiently known before, was of late made appear by an instance of our own. And not the violent death of that tyrant only, who by force of arms oppressed the city (which now most obeys him, when taken out of the world) but the like untimely ends of most other tyrants, who have generally been attended with the same ill fate, are a manifest token that the hatred of the people is able to ruin the most absolute power. *For obedience, proceeding from fear, cannot possibly be lasting; whereas that which is the effect of love, will be faithful for ever."*

A
DISCOURSE

UPON THE
NATURE *and* ORIGINE
OF
MORAL *and* CIVIL LAWS.

By GEORGE TURNBULL, L. L. D.



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A

DISCOURSE

Upon the NATURE and ORIGINE of

MORAL *and* CIVIL LAWS, &c.

IT will be acknowledged that subjects of importance deserve to be set in various lights. Let us therefore endeavour to set the first principles of the science of laws in a light, which, if not altogether new, yet may perhaps prove more satisfactory to several understandings, than that in which they are more commonly represented. One great thing to be avoided in the first steps of a science, is dispute about words. And we think that it will contribute not a little to this good effect in the science we now propose to explain the first foundations of in the clearest manner we can, if, for some time, we only make use of terms well known to those who are in the least acquainted with natural philosophy, in the very sense they are used in that science.

Sect. I.

Natural Philosophy is defined to be the science of the laws, according to which nature operates in producing its effects, and to which human art must conform in order to produce certain effects. And the settled methods, according to which nature works, and human arts must work, in order to produce certain effects, are called *laws of nature*.

An example or two will shew the truth and justness of these definitions. That part of natural philosophy, which is properly called *mechanics*, consists in shewing the laws of motion, and what it is in particular that constitutes the quantity of motion in a body, and in deducing from thence certain rules to be observed by human art in the contrivance of machines, in order to give them a certain useful force. And this connexion in nature is found to be the principle of mechanics, or the rule according to which machines for raising weights, or overcoming obstacles, must be constructed, *viz.* That the moment of a body being its quantity of matter inducted into its velocity, any other body, however short of another in quantity of matter, will be rendered equal to it in moment, by adding to the less heavy body, just as much more in velocity as it wants of the heavier in quantity of matter. For this plain reason, that because if a body have a quantity of matter, as four, and a velocity as two, its force of motion or moment will be four multiplied by two; *i. e.* eight; and if another body have a quantity of matter, as two, and a velocity, as four, its force or moment will likewise be as two multiplied by four; that is, as eight; *i. e.* the two will be equal in moment. This principle is therefore called *the law of mechanic powers*, or *the law of nature*, with respect to quantity of motion. And upon this principle are balances, levers, cranes, pulleys, wedges, screws, and inclined planes constructed. And he who attempts to assist mankind in raising weights, or overcoming obstacles, upon any other principle besides this, attempts to make new laws in nature, and his aim will prove absurd and lost labour. In the same manner, optics is a science which shews the laws observed by nature in the reflexion and refraxion of light, and points out the way of assisting vision, and attaining to certain other optical ends, as magnifying, diminishing, or multi-

multiplying objects, &c. And the laws observed by nature in reflecting and refracting light, are the laws of this human art; the laws according to which it must work to answer these purposes.

Sect. II.

Now, in the same sense, that in these, and other parts of natural philosophy, certain settled methods, according to which nature operates, are laws to human arts; in the same sense must any other connexions in nature be laws to other human arts, or laws to other human actions, if they are the established means or orders, according to which certain other ends can only be attained by us. If therefore there are any other ends distinct from those called *natural ends*, or *the ends of mechanical arts*; which, to distinguish them from the latter, may properly be called *moral ends*; the established connexions in nature with regard to the attainment of these latter ends, will be, properly speaking, the connexions which constitute means to moral ends; and the science of these means and ends will be properly called *moral philosophy*. And this philosophy will naturally divide itself into the same parts as natural philosophy does; *i. e.* into the part which investigates the connexions or laws of nature, and reduces effects into them; and the part which shews how certain ends may be attained by human art or action, in consequence of the settled laws of nature; the first of which is justly denominated a *theoretical*, and the other a *practical science*. So that as there are two parts in natural philosophy, one of which rests in the explication of phænomena, by reducing them into laws of nature already found out by induction from experiments; and the other of which directs human labour in pursuing ends for the conveniency or ornament of life; in like manner, there are two parts of moral philosophy, one of which is employed in investigating

by

by experiments the laws according to which phænomena of the moral kind are produced, and in reducing other phænomena into these laws so ascertained; and the other consists in deducing rules for human conduct in the pursuit of certain moral ends from the established connexions and laws of nature relative to them.

What is
meant by
moral
ends and
means.

It cannot be said, that we here take it for granted, without any proof, that there are *moral* ends and means; for in the sense we have hitherto used *moral*, we have taken nothing for granted, but that there are certain phænomena or certain ends and means, which are distinct from those commonly called *natural*, *physical*, or *mechanical*. And hardly will it be called into question, that there are phænomena, and means and ends, which do not fall within the definition of those which are the object of natural philosophy. Who will deny that there are phænomena, means and ends relative to our understanding and temper; relative to progress in knowledge, to the acquisition of habits, to constitution of civil society, and many other such like effects, which do not all belong to what is properly called *natural philosophy*? In short, none will say that the regulation of our affections and actions, in order to promote our own happiness, or the common happiness of mankind, is not an end quite distinct from that proposed in physics. And this being granted, we have gained all we plead for at present, which is, that if there be other ends, for attaining to which there are established means by nature, besides those considered in natural philosophy, such as the regulation of our inward affections, &c; these may be called *moral ends*, to distinguish them from the objects of natural philosophy. And by whatever name they are called, they are a very proper subject of enquiry for man. For it must be granted in general, to be a very proper subject

ject of human study, to enquire into all the good ends within human power, and into the established means, in order to the attainment of them. And all such establishments or connexions in nature, are, with regard to men, principles or laws, according to which they must act, if they would attain to certain ends; no end, of whatever kind, being otherwise attainable by us, than as it is the effect of certain means, or as there are certain laws constituting a certain order of operation, according to which it may be attained. All such connexions are therefore in the same sense laws of nature; and do no otherwise differ from one another, but as their respective distinct ends, physical and moral, differ. Let not, however, what hath been said be understood as if the laws of nature, with regard to the attainments of moral ends, had not a title to be called *moral laws* in another peculiar sense, which cannot belong to any other laws of nature. For we shall by and by see that they have. But if what hath been said be true, whatever other titles the laws of nature relative to moral ends, may, or may not deserve, it is certain that these laws highly merit our attention. And the following general conclusion, with regard to us, must, in consequence of what hath been premised, be incontrovertible,

SECT. III.

That the frame and constitution of man, and the connexions of things relative to him and his actions; *i. e.* in one word, the natural consequences of human affections and actions within and without man, are a natural law to man. They limit, fix or settle the effects of his behaviour and conduct; they shew what are the different results of different manners of acting; and so determine what must be done to get certain goods, and what must be done, or not done, to avoid certain evils. And

And man can no more alter these connexions of things, than he can alter the connexions upon which mechanical arts depend.

Now hence it follows, 1. That it is necessary for man to enquire into these connexions of things upon which his good or evil, his enjoyment or suffering, his happiness or misery depend, in order to attain to any goods. And, 2. That it is necessary for him to regulate his actions according to these connexions, in order to attain to any goods. And therefore these two may be called the primary laws of our nature: *viz.* the necessity we are in of knowing the connexions relative to our happiness and misery, and the necessity we are in of acting conformably to these connexions, in order to have pleasure and avoid pain. We may, if we will, call the necessary determination of every being capable of distinguishing pain from pleasure to pursue the one and avoid the other, the first law of nature. But it is more properly a determination essential to and inseparable from every reflecting being, and that which constitutes the necessity of its attending to the connexions of things relative to its happiness and misery, than a law or rule relative to the means of its happiness. The two first things therefore that offer themselves to our consideration with regard to beings capable of attaining to any goods, or of bringing any evils on themselves by their actions, are the necessity of understanding the connexions established by nature with regard to the effects or consequences of their actions, and the necessity of regulating their actions according to these fixed connexions.

Sect. IV.

Whence this law is learned, and whence it comes.

Now that all connexions of nature, of whatever kind, whether those respecting matter and motion, and mechanical powers and arts, or those respecting the consequences of our affections and actions, can only be learned from experience, by attention to the effects

effects of different methods of operation, is too evident to be insisted upon. And therefore we shall only add upon this head, that as when speaking of the laws of nature, which are the object of natural philosophy, tho' they are shortly called laws of matter and motion; yet by them is really meant constitutions and connexions established and taking place in consequence of the will of the Author of nature: so the moment we have found out any connexions relative to happiness or misery with regard to human affections and actions, we have found certain constitutions or connexions relative to them, established and taking place by virtue of the will and appointment of the Author of nature; so that tho', speaking shortly, we call them natural laws, or moral laws of nature, yet in reality by them must be meant rules, laws or connexions of the Author of nature. For this must be true in general, that certain settled and fixed orders and connexions of things can only take place by virtue of the will of some mind sufficient to give them subsistence and efficiency. Laws, whether in physics or in morals, can only mean certain appointments by the will of the mind who gave being to the world, and by whom it subsists. If by laws the appointments of some supreme Being be not meant, they are words without any meaning. So that we may henceforth indifferently say, either the connexions of things relative to man, the laws of nature relative to moral ends attainable by man, or the law and will of the Author of nature with regard to the consequences and effects of human conduct. This we may certainly do without begging any thing in morality which we have not proved, since natural philosophers use or may use these phrases promiscuously; and we as yet only desire to be allowed to use those phrases in the same sense they are used by natural philosophers, when they speak of means and ends, or connexions in nature, according to which effects are produced,
and

and human arts must operate in order to be successful.

May we not now therefore go on to enquire, if we can find out any of the more important connexions in nature relative to our good or happiness, which are the laws of our nature, or the laws of the Author of nature with regard to our conduct, that may be called moral laws, or laws relative to moral ends.

Sect. V.

Every being is constituted capable of a particular happiness, by the particular affections belonging to its nature.

In order to this, it is plain we must enquire what affections belong to our nature. For nothing can be more evident, than that without particular affections no object could give us more pleasure than another, or to speak more properly, nothing could give us pleasure or pain: And the happiness of any one particular nature can only be the happiness or good of that particular nature. The happiness of an insect, for example, can only make an insect happy: Another nature, that is, a nature consisting of other affections, will require other objects to make it happy; that is, objects adjusted to the gratification of its particular affections. These things are very evident: For tho' after having experienced several particular pains and pleasures, we can form to ourselves a general idea of happiness, and a general idea of misery, which ideas will excite a general desire of happiness, yet there is no such thing in nature as general gratification to general desire of happiness. Every pleasure is a particular pleasure; a particular gratification to some particular affection. We may be properly said to desire happiness in general; but every gratification we meet with, is a gratification to some one particular appetite or affection in our nature. As our eyes are said to be so formed as to receive pleasure from colours; but yet it is always some particular colour or mixture of colours that gives us that pleasure we call pleasure arising

arising from colours ; so it is with regard to all other pleasures. We may class pleasures under different general names, and say very intelligibly, we would have pleasure of such a sort ; but in order to have our longing satisfied, some particular object must be applied to satisfy it : Or we may say more generally, we would have pleasure without fixing so much as upon a general class of pleasures, as pleasures of sight, of hearing, of smell, &c. But still it must be some particular object, suited to some particular affection, or particular sense of pleasure in our nature, that satisfies us in this undetermined longing or restlessness of the mind. In fine, however much philosophers talk of a general desire of happiness, and of our being actuated by this desire, which is properly called *self-love*, in all our pursuits ; yet it is particular objects, adjusted to certain particular affections in our nature, that constitute our happiness. And it is only by gratifying some one of these particular affections that we can have pleasure. Nor is it less evident that all our particular affections rest each in its object. “ The very nature of affection (says an excellent writer) consists in tending towards, and resting on its objects as an end. We do indeed often in common language say, that things are loved, desired, esteemed, not for themselves, but for somewhat further, somewhat out of and beyond them ; yet in these cases, whoever will attend, will see that these things are not in reality the objects of the affections, *i. e.* are not loved, desired, esteemed, but the somewhat further out of and beyond them. If we have no affections which rest in what are called their objects, then what is called affection, love, desire, hope, in human nature, is only an uneasiness in being at rest, an unquiet disposition to action, progress and pursuit, without end or meaning. But if there be any such thing as delight in the company of one person rather than of another, whether in the

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way of friendship, or mirth and entertainment, it is all one, if it be without respect to fortune, honour, or increasing our stores of knowledge, or any thing beyond the present time ; here is an instance of an affection absolutely resting in its object as its end, and being gratified in the same way as the appetite of hunger is satisfied with food. Yet nothing is more common than to hear it asked, what advantage a man hath in such a course, suppose of study, particular friendships, or in any other ; nothing, I say is more common, than to hear such a question put, in a way which supposes no gain, advantage, or interest, but as a means to somewhat further : And if so, then there is no such thing at all as a real interest, gain or advantage. This is the same absurdity with respect to life, as an infinite series of effects without a cause is in speculation. The gain, advantage or interest consists in the delight itself arising from such a faculty's having its object : Neither is there any such thing as happiness or enjoyment but what arises from hence. The pleasures of hope and of reflexion are not exceptions. The former being only this happiness anticipated, the latter the same happiness enjoyed over again after its time. Self-love, or a general desire of happiness, is inseparable from all sensible creatures, who can reflect upon themselves, and their own interest or happiness, so as to make that interest an object to their minds. But self-love does not constitute this or that to be our interest or good ; but our interest or good being constituted by nature, and supposed, self-love only puts upon gaining, or making use of those objects which are by nature adapted to afford us satisfaction. Happiness or satisfaction consists only in the enjoyment of those objects, which are by nature suited to our several particular appetites, passions and affections. And there is therefore a distinction between the cool principle of self-love, or general desire of our own happiness, as one part of
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our nature, and one principle of action, and the particular affections towards particular objects as another part of our nature, and another principle of action, without which there could be absolutely no such thing at all as happiness or enjoyment of any kind whatsoever." * From all which it follows, 1. That it is absurd to speak of self-love as engrossing the whole of our nature, and making the sole principle of action. And, 2. That in order to know what we ought to pursue, or what happiness we are capable of, it is absolutely necessary to know our particular affections which constitute our capacities of enjoyment or happiness, and the objects adapted by nature to them.

But why we have insisted so long on this observation, will appear when we come to mention several of our particular affections and their objects.

Sect. VI.

Now, if we attend to ourselves, we shall find that we have affections of various kinds. 1. Affections to several sensible objects, adapted by nature to give us pleasure, which may be called *sensitive appetites*, some of which are absolutely necessary to put us upon pursuits requisite to our sustenance, or the support and preservation of our bodily frame, such as hunger and thirst, &c. : and others which are not so necessary to that end, but are given us to be capacities of enjoyment, such as the pleasures we receive from light and colours by the eyes, and from sounds by the ear, &c. About these affections there is no dispute. 2. But these are not the only affections belonging to our nature. We have other affections which are called *intellectual* : such as, a capacity of receiving pleasure by the discernment of the relations of ideas or things by our understanding or reason, properly called the perception of truth, or knowledge ; a taste or sense of beauty, which may be defined to be that agreeable percep-

The particular affections belonging to human nature.

tion which objects that have uniformity amidst variety or regularity and unity of design, are adapted to afford us, &c. And, 3. Besides these there is yet another class of affections, which may be justly called *social*. Inclination to union and society, delight in the happiness of others, compassion toward the distressed or suffering, resentment against injustice or wrong, love of esteem or good reputation, desire of power to help and assist others, gratitude to benefactors, desire of friendship, and several other such like, which have some things in our fellow creatures for their objects. I do not pretend that this is a full enumeration of all the particular affections belonging to human nature. Some others shall be mentioned afterwards. But I am apt to think the principal affections constituting our nature, or our capacities of gratification and enjoyment, will be found to be reducible into one of these three classes. And let me observe with regard to them, before we go further, 1. That the greater part of these affections rest in some external object, and may therefore properly be said to have something without ourselves for their object, towards which they tend. As hunger hath food for its object, so hath the love of arts, arts for its object, and the love of reputation, reputation for its object; and as none of these objects is more or less external than another, and none of these affections is more or less distinct from self-love, or the general desire of happiness, than another; so benevolence, or delight in the good of another, hath an object which is neither more nor less external than the objects of those other above-named affections; and is an affection which is neither more nor less distinct from self-love than these other affections. And therefore all the grave perplexity with which moral writings have been tortured with respect to the interestedness and disinterestedness of certain affections, might as well have been objected against any other affections as against those,

those, the reality of which it hath been thought sufficient to explode, to say, that if they are allowed to take place in our frame, then would there be a disinterested principle of action in the nature of a being, which like every sensible being, can only be moved by self-love, or regard to itself, which is absurd. It is sufficient to evince the impertinence and absurdity of this jangling, to shew that by the same argument it may be proved, that we have no affections which tend towards and rest in external objects. And yet it is certain, that had we not particular affections towards external objects, there could absolutely be no such thing as happiness at all, or enjoyment of any kind. If by saying that all our affections must be interested, and that none of them can be disinterested, be meant that they are our own affections, and that the gratifications they afford us are gratifications to ourselves, our own pleasures, or our own perceptions, then are all our affections in that sense equally interested; they are all equally our own, for they are all equally felt by ourselves. But if by saying none of our affections are or can be disinterested, they meant, that none of our affections can tend towards, or rest in an external object: This to say, not merely that the good of others cannot be the object of any affection in our nature; but to say that nothing without us can be the object of our desire, whether animate or inanimate, which none will assert. This I mention, because all the arguments brought by certain philosophers against a principle of benevolence in our nature, turn upon an imagined contrariety between such a principle and self-love, as a principle of action. But, 2. It is in the gratifications of these particular affections in our nature, that the greater part of the enjoyments of which we are made capable by nature consists. And therefore, if we would know the laws or connexions of nature with regard to our happiness, we must know the establish-

ed laws or connexions of nature with regard to these affections, and the objects adapted to them. That is, we must know in what manner and to what degree they give pleasure to us; what are the consequences of indulging any one of them too little or too much; the several tones and proportions nature hath prescribed to them, by fixing the boundaries of pain and pleasure; their relations one to another; their agreements or disagreements; their jarrings and interferences, or coalitions and mixtures; and, in one word, as many of their effects and consequences in different circumstances of action, as we can observe, in order to know how to regulate them, so as to have the greatest pleasure and the least pain we can. The rules of our conduct, in order to have happiness, can only be deduced from the laws or rules, according to which, in consequence of the frame and constitution of our minds, and the relations we stand in to external objects, our particular affections operate, or are operated upon by objects, or by one another.

Sect. VII.

It is the business of our reason to know the nature of our affections, their objects, and the manner and consequences of their various operations.

Now, it is the business of our reason to find out these rules or laws of nature, and the rules of conduct which they indicate or point out to us. Reason is as plainly given us for this purpose, as our eyes are given us for seeing. It is the eye of the mind which is to look out for us in order to direct our paths, *i. e.* to discover what we ought to pursue, and what we ought to avoid. It must be given us for this purpose. And if we do not exercise it to this purpose, it is of no use to us. It cannot be owned to be implanted in us, without owning that it is the intention of nature that it should be exercised by us as our guide and director. Nor is there indeed any other way by which beings can be guided, who have reason to discover how they ought to regulate their affections and actions, that

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is, how their happiness requires that they should regulate them, besides their reason. Their nature admits of no other guidance. For in this does the difference consist between them and other beings, which have no reflecting or guiding principle, but are led by mere impulse toward an end, without foresight, intention or choice, that they have the direction of themselves; and being endued with a principle of observation and reflexion, are left to its guidance. Beings without reason are directed, or rather driven by particular affections excited in their minds to pursuits, which can in no sense be called their pursuits, but are properly the pursuits of the principle by which their affections are excited in them. But beings who have a reflecting and guiding principle in them, are so constituted that they may and must guide themselves; and therefore their particular affections must necessarily be considered as subjected by their frame to their guiding principle as such. Their directing principle must be considered as the superior and chief principle in them, and that to which the direction, the rule, command or guidance of all their particular affections, is committed by nature. And indeed, if we attend to our own minds, we shall find, 1. That our reason claims a superiority to itself, and talks to us (if I may so speak) with the authority of a law-giver or ruler. It often, whether we will or will not, takes to itself the power and authority of a judge, a censor, and pronounces sentence upon our conduct. And, 2. We are so framed that our greatest inward satisfaction depends upon the approbation of our reason, or our consciousness of our acting by its direction, and in conformity to its rules. Nothing gives us so much torment as the consciousness of despised and contradicted reason: and no pleasure is equal to that the mind feels when reason approves its conduct. The approbation with which a mind, conscious of its habitually giving the autho-

rity due to its guiding principle in the government of its affections and actions, applauds itself, is sincere and abiding satisfaction. So are we made ; And therefore,

The first law of nature with regard to our conduct, is to maintain reason in our mind as our guiding principle.

The first law of nature with regard to our conduct, is to maintain reason in our mind as our governing principle over all our affections and pursuits. It was said before (§ 3.), that we are under a necessity of knowing the connexions relative to our happiness, in order to conform our conduct to them, and under a necessity of conforming our conduct to them in order to be happy. And we have just now seen what that principle is which is given us by nature, both to discover the connexions relative to our happiness, and to conform our conduct to them. Whence it follows, that according to our frame, we can neither be sure of avoiding evil, nor attaining to good, unless reason be our steady ruler ; which implies two things. 1. That we be at due pains to know the connexions relative to our happiness, and to lay up this knowledge in our minds, in order to have counsel at hand upon every emergency : in order not to be surprized, and to have our directory to seek, when occasion calls upon us immediately to determine and act. And, 2. To accustom our particular affections to submit to, and receive their commands from our reason ; not to fall forth at random upon every invitation offered to them by objects, but to await the decision of our reason, and to obey it. The first is the hability or sufficiency of reason to direct. The other is its actual command. And that reason may be very well informed, and consequently very well qualified to direct us, and yet not be actually our ruler and commander, but a slave to our headstrong passions, is too evident to experience to be denied. Nor is any one who hath ever given any attention to his own mind, a stranger to the only way in which rea-
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son can become our habitual ruler and guide, and our affections become habitually subject to its government, which is the habitual accustomance or inurance of our appetites, affections and passions, to receive their orders from our reason, or the habitual upholding of our reason in the exercise of directing all our pursuits. And indeed to what purpose can the knowledge qualifying reason to direct our affections serve, but to upbraid us, if reason be not actually our habitual director ; if our passions are quite tumultuous and undisciplined, and reason hath no power over them, to restrain, direct, or govern them ? This therefore is the first law of nature pointed out by our constitution, and the necessity of nature, even to set up and maintain our reason as our governing or directing principle. Till this be done we are not masters of ourselves ; and however well any one's affections may happen to operate, in consequence of a particular happiness of constitution, or in consequence of his necessary submission to others upon whom he depends, none can have a title to the character of rational, but in proportion as his own reason is his director and ruler ; in proportion as his passions are submitted to reason, and he acts in obedience to its authority. But this rational temper may be called by different names, as it is considered in different views. It is prudence, as it discerns the connexions relative to our happiness, and the rules of our conduct resulting from thence. It is virtue or strength of mind, as it enables one to hold his passions in due discipline and subjection, and to act as prudence directs. It is self-love, as it is firm and steady adherence to the rules of happiness. It is self-command, as it is empire over ourselves, dominion over our affections and actions, all our choices and pursuits. And it is health or soundness of mind, as thus all our affections and appetites are in their regular, nat-

tural and proper order, *i. e.* duly submitted to the principle to which the authority of guiding them is due. It is indeed the whole of virtue, human excellence or duty, as this empire being once obtained, all must go right; every affection will be duly obedient to the principle that ought to govern; and thus the mind will be conscious to itself of inward order and harmony, and of being in the state it ought to be in: for no other general definition of human excellence or duty can be given, but acting conformably to reason. But still it remains to be enquired what general rules for our conduct reason discovers to us.

Sect. VIII.

It ought to be the end of education to produce the patience of thinking, or the government of reason.

We may however observe, before we go farther, 1. That unless the mind be early rendered of a temper for thinking and enquiring about the proper rules of conduct, it will not set itself to find them out, but will give up the reins to its affections, and be tossed to and fro by them in a most desultory irregular manner; and the longer this unthinking way of living takes place, the more difficult will it be to recover the mind from the tyranny of its passions, and to establish reason into its due authority and command over them. And therefore the great end of education ought to be to produce the love and patience of thinking; to establish the deliberative disposition and temper, or the habit of consulting reason, and weighing things maturely before one chooses and determines. This is the chief end of education. And if one be not obliged to wise education for this happy temper of mind, it seldom happens that one ever attains to it, till he is awakened and roused to think, by some great suffering brought upon himself, by his not having exercised his reason, but suffered his passions and appetites to drive him whithersoever they listed. The reason is, that by repeated acts, habits are formed, which

which it is exceeding difficult to undo, and which cannot be undone but by the strong opposition of reason. And therefore, if the habit of ruling ourselves by reason, be not early formed in us by right education; the habit of indulging every passion and appetite that assails us, and of living without exercising our reason, must soon become too fixed, settled and inveterate to be easily conquered. It is fit, highly fit, nay absolutely necessary for us, that the law of habits should take place in our constitution. Yet this must be the effect of it, that unless great care be taken, by proper education and discipline, early to form the reflecting and considering habit, in young minds, which is to establish the government of reason in them, it must be extremely difficult for us ever to become reasonable creatures, or to attain to self-command, and to establish our reason as our ruler and guide, in the room of appetite, humour and passion. Mr. Locke hath made admirable observations on this subject, in his excellent treatise of education.

But, 2. When the love and patience of thinking are once attained, and the sedate, deliberative temper is fairly established, it is then very easy to find out the proper rules of action, or what is the most eligible course of life and behaviour, and how the affections ought to be governed. The affections then range themselves, as it were, spontaneously into good order. The understanding is then clear and undisturbed, and duty is easily discerned. Whatever difficulty reason may find in establishing its authority, it is no sooner fixed and settled in the mind, as the ruling and commanding principle, than the rules which ought to be observed in conduct are immediately discovered. True happiness is then immediately felt to consist chiefly in the very consciousness of this temper, in the consciousness of reason's having this sway within us. And when this is looked upon to be the chief part of happiness,

When this temper is formed, happiness and duty are easily discovered.

happinefs, the chief part of our happinefs is then fomewhat dependent upon ourfelves, which nothing can deprive us of, while reafon prefides and rules in our breaft. A fource of inward confolation, far fuperior to all other enjoyments, and which is as fteady as all other things are uncertain, is thus difcovered. And the mind, which hath once fixed upon this as its main good, will be proof againft all the moft fpecious appearances of pleafures, till their pretentions have been examined, and their confiftency with this chief principle of happinefs hath been duly confidered ; and will therefore be a calm and impartial judge of what pleafures it may allow itfelf, and of what it ought not to give indulgence to. But if the mind be calm and unbiaffed, and refolved to act the part that fhall appear wifeft and beft upon due attention to the laws of nature fixing the connexions relative to our happinefs, the whole difficulty is over. Till then it is not capable of judging ; but when that point is gained, it is very eafy to judge right. In every cafe, not to judge, but to be fit to judge, is the difficult part. The firft thing therefore that our frame and conftitution points out to us as the law of our conduct, is to take care to eftablifh reafon in our mind, as the ruler, without confulting which we will not allow our paffions to indulge themfelves, and the dictates of which we are refolved fteadily to obey, that we may always enjoy that delightful confcioufnefs of having been guided by our reafon, which is by our make the greateft of all enjoyments. But to this education ought, and muft contribute ; otherwife the eftablifhment of this excellent temper, in proportion to the prevalence of which one is more or lefs a reasonable being, muft be a very difficult, a very hard task ; and to affift in conquering the contrary habit, diftreff and fuffering will be neceffary. And why fhould we not look upon the evils that are brought upon ourfelves by thoughtlefsnefs, folly,

folly, or, in one word, by not governing ourselves by reason, to be intended chiefly for this very end; even to awaken, rouse, and excite us to think, by making us feel the necessity of exercising our reason, and obeying it, instead of indulging every appetite that assails us, without considering the consequences of living in such an irrational manner! For this is self-evident, that were not agents placed in a state where certain manners of acting produce good, and others evil, there would in such a state be no place for choice and agency; for prudence and imprudence; nor consequently, for reason and self-approbation. And therefore to the existence of the highest rank of created beings, it is necessary that certain methods of acting be attended with evil consequences. For tho' we may, by adding more and more to our own active powers, conceive various species of created agents above us, till we rise in our contemplation to the Supreme Being, in whom all perfections meet, and are united in their highest degree; yet we can conceive no order of beings above mere passive ones, without conceiving them to be disposers of their own actions by their reason, understanding and choice: And as for more or less, *i. e.* a larger or lesser sphere of activity, here the known rule take place, *That more and less do not alter the species.* If any one should ask what the proper method of education is in order to produce the reasonable thinking temper? it is sufficient to answer here, that the chief business is to accustom youth early to examine the associations of ideas in their minds, and to consider whether these associations be founded in, and agreeable to nature, or not; which ought to be the unintermitted exercise during life of every one who would maintain the empire of his reason. But because this would lead me into a digression, or rather into a subject, for which we have not yet sufficiently prepared the way, we shall only refer those who ask this question

to the above mentioned treatise of Mr. Locke, and go on to take notice of some particular laws of our conduct, pointed out to us by the make of the human mind, and the circumstances in which we are placed by the Author of nature.

Sect. IX.

The first particular law which appears to those who consider the nature and circumstances of mankind is the law of industry.

The pleasures we are capable of, are gratifications to our particular affections, the principal of which have been named (§ 6); for hardly can any enjoyment we are susceptible of, be specified, which is not a gratification of one or other of these outward or inward faculties or senses of pleasure. Our pleasures may therefore be divided into two classes; the goods of the body, and the goods of the mind. For all our affections, all our senses of pleasure, either have some sensitive, or some intellectual and moral gratification for their objects. Gratification to our eyes, our ears, our touch, and our other organs of sense, are bodily gratifications. Gratifications to our discernment of truth, and our delight in it; to our taste of beauty and harmony and delight in it; to our public sense, or our delight in the happiness of others, &c. are gratifications to capacities, senses of pleasure, or affections, which, to distinguish them from those afforded by corporeal objects to our sensitive organs, may be called *intellectual* or *moral*, or *goods of the mind*. But however the goods or pleasures we are capable of be divided or classed, this is certain, with regard to them all, that they are made to be the purchase of our activity or industry to have them; they do not drop into the mouth (if we may so speak) of the sluggard; but we must exert ourselves to attain to them. As we cannot otherwise have the pleasures of sense, or the goods of the body; so no more can we, without industry and application, have the pleasures of knowledge, refined taste, benevolence, &c. And hence that antient observation concern-

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Industry.

ing the government or frame of the world with respect to man ; *θεοι τὰ γαθα τοῖς πονοις πολέυνται.* *God or nature sells all to industry.* This truth is so plain to daily experience, that we need not stay to prove it. But from this general law of nature arises a law to us, *viz.* the law of industry ; or the necessity of our activity, application or industry, in order to attain to any goods. And if we will reflect a little upon our minds, we shall find, that as no goods can be attained by us, but by exerting ourselves actively to have them ; so activity or exercise is necessary to our happiness in another sense, *i. e.* immediately, or in itself. The mind of man is made for exercise, exercise is its natural pleasure. It is of a restless temper, and must be employed. If it is not, it preys upon, and consumes itself. Nor is exercise less necessary to the health, soundness, vigour, and agreeable feeling of the body, than employment is to the strength, agility, soundness, and pleasant state of the mind. We need not insist long to prove this ; for daily experience shews, that as it happens among mankind, that whilst some are by necessity confined to labour, others are provided with abundance of things by the industry and labour of others ; so if, among the superior and easy sort, who are thus relieved from bodily drudgery, there be not something of fit and proper employment raised in the room of what is wanting in common labour ; if, instead of an application to any sort of work, such as hath an useful end in society (as letters, sciences, arts, husbandry, public affairs, &c.) there be a thorough neglect of all study or employment, a settled idleness, supineness and inactivity ; this does of necessity occasion a most uneasy, as well as disorderly state of mind ; a total dissolution of its natural vigour, which ends in peevishness, discontent, and seekly nauseating at life, and all its enjoyments. So necessary is some employment to the mind, that to supply exercise to
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it, many strange amusements and unaccountable occupations for time thought and passion have been invented by those, whom fortune hath rescued from drudgery to their backs and bellies, but good education hath not directed into proper pursuits and employments, which are their only security against utter discontent with themselves, and every thing about them, amidst the greatest abundance. Such strange occupations are their sole relief. But they are such only as they are some exercise to the mind, and prevent that languishing, fretting and nauseating, which total supineness and ease produces. And how feeble a security they are against the misery, which employment more suited to a mind capable of higher pursuits would absolutely prevent, is plain from the many bitter, sickly, discontented moments the men of pleasure, as they are absurdly called, cannot, by all their amusements, escape, compared with the equable contentedness of an honest daily labourer, conscious of the usefulness of his toil; not to mention the sedate, uniform satisfaction and cheerfulness of one, who having qualified himself for it, divides (as Scipio is said to have done) his time between elegant studies and public services to his country. The mind of man must have exercise and employment. Exercise itself is agreeable, and it is absolutely necessary to relief from the greatest of uneasinesses. And no goods can be attained without application and industry. If one would preserve his health and relish for sensitive pleasures, he must exercise his body. And if he would have the pleasures of knowledge, of refined imagination and good taste, the pleasures of power and authority, or the pleasures of benevolence and doing good, he must be diligent in the culture of his moral powers, and be ever intent upon some truly useful pursuit. If these ends do not employ him, he must either find other pursuits for himself, or he will be exceedingly unhappy. But

what other pursuits can one devise to himself besides those of which he can say any thing better, than that they employ his mind, and keep time from hanging upon his hands, as the phrase is, or, more properly speaking, murder it? Can he name any other besides those that bear any congruity to the more noble and distinguishing powers and affections of the human mind? or that he can depend upon for steady and uncloying satisfaction? any other that can be re-enjoyed by reflection? any other that will stand a cool and serious review and examination?

But that I may not be thought to proceed too fast in my conclusions, and to have determined concerning the comparative value of pursuits too hastily, all I desire to have concluded at present, is, that according to the constitution of the human mind, and in consequence of the natural state of things, no goods, no enjoyments can be procured by us without application and industry, and that we are made to be busied and employed for exercise, or to be engaged in some pursuit. The greatest abundance of outward things, tho' it relieves from certain toils, to which the necessities of life subject others; yet it does not, it cannot make one happy, if, in the room of the pursuits from which it delivers him, he do not find out some other satisfactory pursuit or employment for himself. Under this necessity hath nature laid us; nay, properly speaking, this necessity constitutes our dignity above inactive, or merely passive creatures, as free agents. For it is implied in the very notion of agency. One cannot otherwise be an agent, than as he is made to procure his happiness to himself by the active application of his powers in the pursuit of goods within his reach, if laboured for according to the way nature hath fixed and chalked out for attaining to them. And as the pleasure of considering goods as one's own acquisition, is a pleasure that a being must be so framed to have; so
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this is a very high satisfaction, and an excellent natural reward to industry. How insipid are the satisfactions in which this is not an ingredient, in comparison of those which one owes to his own skill, prudence and industry, and in which he therefore triumphs as his own purchase, his own conquest, the product of his own abilities and virtues! 'Tis only beings so framed as that they must work out their own happiness, who can be capable of self-approbation. And who doth not feel the difference with which one reflects on the goods which are not of his own procurance to himself, such as beauty and the advantages of birth, for instance, and those accomplishments which he can vindicate to himself as his own proper purchase? And where self-approbation can take place, there only can good desert, with regard to others, take place; or can there be any foundation for praise and esteem from others, without which, how dull and insipid would life be? This is the general voice of mankind.

*Ergo ut miremur te, non tua, primum aliquid da
Quod possim titulis incidere præter honores
Quos illis damus, & dedimus, quibus omnia debes.*

Thus far then are we advanced in finding out the connexions or laws of nature with regard to our happiness. We are made to work out our own happiness by our industry; we are made for activity and exercise. But how ought our industry to be directed, in consequence of what hath been observed concerning the providence which reason ought to have in our minds (§ 8)? Must not the objects of our industry be chosen by reason, and all our exercises directed by it, in order to our having the satisfaction of reflecting upon our exercise as conformable to reason; and that it may be agreeable to the connexions of nature relative to our happiness; and so prove neither vain nor hurtful but turn to good account, and not produce repentance and suffering

fering for having mistaken our end, and misapplied our labour and diligence; but contentment with ourselves for having acted with prudence, by the direction of reason for an approveable end, and in the proper manner for attaining that end. This therefore is one characteristic of our proper happiness, that it consists in a course of industry to attain ends which reason approves, under the direction and guidance of reason, as to the use of means.

Sect. X.

But another special characteristic of our proper pursuits, in consequence of our frame, and the connexions of nature relative to our happiness, will immediately appear, if we reflect how strictly mankind are bound together; by how many close ties and dependencies they are cemented; ties arising from mutual wants, and ties arising from certain affections common to mankind, exactly corresponding to their mutual wants. First of all, it is evident, that we can attain to no goods of whatever kind, external or internal, by our single industry, or without social assistances. Nothing can be more manifest than this. 2. Nor is it less evident, that there is no enjoyment, of which mankind are capable, which does not, as our excellent poet very happily expresses it, *Some may lean and bearken to our kind.*

The second particular law that appears from the consideration of human nature, and the circumstances in which mankind are placed, is the law of sociality.

If we separate communication and participation from all our pleasures of whatever kind, we really abstract from them the main ingredient that gives them relish. Take all of the social kind away from sensitive gratifications, and what remains but mere allay to some raging appetite, mere relief from pain? And as for all our other pleasures, what are they but participation, or communicating and sharing with our fellow creatures? Such is the joy of relieving the distressed, or of promoting the happiness of the deserving.

sociality

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Such is a sense of merited esteem ; such is gratitude to a benefactor ; such is creating dependence upon us, &c. And as for knowledge, however pleasant it is in itself, yet is it not doubly agreeable, when considered as qualifying us to be useful, and as procuring us authority and regard? In short, the chief article in all our pleasures, in consequence of our make, consists in mutually giving and receiving ; it is of a social kind. And we are formed, and placed as we are, that there might be variety of exercise to our social affections. Nature hath so framed us, that our chief happiness must be sought from communication and participation with others ; and so placed us, that all such dependencies might arise as were necessary to gratify our social appetites and affections. This will more fully appear afterwards, when we come to consider some of the principal dependencies by which mankind are united and cemented together ; which, tho' they be objected against by narrow thinkers, will be found to be in reality so many proofs of nature's kind care about us ; or to make proper provision for the exercises, from which alone our social happiness, or gratification to our social affections can arise, since it must consist in mutual giving and receiving, which cannot take place but where there are mutual dependencies. Mean time, let it only be observed, 1. That such is the constitution of things with respect to mankind, that no man can attain to any considerable share of the goods either of the body or of the mind by his single endeavours ; but he must, in order to that, engage many others to help and assist him : nay, such is the constitution of things, that no man can subsist in any convenient, not to say comfortable degree or manner, without receiving many services and good offices from others. Mankind are therefore, by the necessity of nature, obliged to seek mutual assistances from one another, to unite together, and to communi-

municate their industry. But, 2. Mankind are so framed, that this union and communication is in itself as agreeable as it is necessary. Our best enjoyments are acts of social communication. Assisting, relieving, herding, concerting, confederating, and such like social dealings, are all of them in themselves most pleasing and agreeable exercises. So that there is something in them that rewards them, and invites to them independently of their necessity to our having any of the conveniencies or comforts of life. Need I stay to prove this to any one who hath ever felt any of the generous emotions and workings of the soul? or to any one who can reflect upon his having at any time done a good office? For nothing is more certain, than that it is only acts of compassion, humanity, friendship, gratitude, benevolence, that afford any considerable satisfaction to the mind upon reflexion; or that it is the generous mind alone that can reiterate its actions in its reflexion, memory, or conscience, (let it be called what you will) with thorough delight; and thus feast most agreeably upon them after they are past. Indeed so social is our make, that the highest entertainment even the poetic art or ingenious fictions can give us, is by exciting generous benevolent emotions in our minds, and deeply interesting us in the affairs of others. For of the satisfaction we receive in this way, which we so readily own to be preferable to any mere sensitive enjoyment, no other account can be given but this; "*Homo sum, & nihil humanum a me alienum puto.*" Whatever concerns man, tenderly interests every man in it, in consequence of the human make. We are therefore formed by nature for social exercises; for the pursuit of public good; for offices of benevolence or charity, and for uniting together in the interchange of various acts of kindness and sociality.

And thus there appears another character of the happiness and the employment or industry we are

intended for by nature : It is industry beneficial to mankind, for which we are framed and intended : Industry proper to make human life as comfortable and agreeable as it can be rendered. For this is the industry or employment, which, in consequence of our social make, gives us the greatest pleasure. And this industry alone can give a satisfying account of itself to our reason. For this also is found to be true by experience, that no sooner is the idea of industry beneficial to mankind, or of activity to relieve mankind from as many pains, and to give them as much pleasure as we can ; no sooner is this idea presented to our reflexion, than our mind is necessarily determined to approve of it, and pronounce it the best part, nay the only commendable, worthy part one can act. And therefore we have now attained to a very distinguishing characteristic of the pleasures we ought to pursue, *i. e.* of those which are made by nature of the highest, the most unclaying, satisfactory and durable relish to us, *viz.* exercises of our abilities or powers, which tend to promote the public good. If it is said that there is no reasoning in all this deduction, but simply appeal to experience : let me ask how we can prove any quality, affection or power to belong to us, or any sensation to be pleasant, but from experience ? What are all the conclusions of natural philosophers, but inductions from experience, the experience of our senses ? And is outward experience a proper proof of matters of outward experience ; and inward experience not a proper proof of matters of inward experience ? If it is objected, that experience proves that some men have high pleasure in acts of cruelty and malice : to this I answer, the gradual degeneracy of the mind into savageness and malignity, can be accounted for from the laws according to which social affections, and a moral or public sense are impaired and corrupted. But that any degree of this state of mind cannot

cannot be happiness, is plain, since where there is a total apostacy, an absolute degeneracy from all candour, equity and trust, sociableness or friendship, there is none who will not acknowledge the absolute misery of such a temper of mind. For sure here, as in other distempers, the calamity must of necessity keep pace and hold proportion with the disease, the corruption. It is impossible that it can be complete misery, to be absolutely immoral and inhumane, and not be proportionable misery or ill, to be so in any however so small a degree. And indeed, tho' there were no considerable ill in any single exercise of inhumanity and unsociality, yet it must be contrary to interest, as it necessarily tends, in consequence of the structure of our minds, that is, the dependence of our affections, and the law of habits, to bring on the habitual temper, which is so readily owned by every one to be consummate misery, and to render incapable of any enjoyment, even amidst the most luxurious circumstances of sensitive gratification. But having insisted very fully on this subject in another treatise; and chiefly, because it is impossible to set the sociability of our nature in a clearer and stronger light than my Lord Shaftsbury has done, in his *Essay on virtue*, I shall only add, that if it be really true (as I think he has demonstrated) that, in consequence of the constitution of the human mind, and of the connexions relative to our happiness, the affections which work towards public good do likewise work towards the greatest good of every individual, then are we by a necessity of nature under obligation to be social, humane, and well affectioned towards our kind: And consequently, sociality is a law of nature to us. For this being the case, in it hath nature, whose constitutions we cannot alter, placed our chief happiness. But this general truth will be yet more evident, when we consider the particular dependencies by which mankind are strictly linked and tied together;

Sect. XI.

The natural and necessary dependence of mankind, points out to us the order in which our social affections ought to operate.

Which we now proceed to point out, that we may shew the particular order in which nature at once impels and obliges us to exercise and gratify our social affections. Nature may, as we have already seen, be very properly said to oblige, or lay us under a necessity of regulating our affections and actions in the way that the constitution of our mind, and the circumstances in which we are placed, make necessary to our happiness. And nature may be said to impel us to exert our affections in the way in which they naturally tend to work or exert themselves. And if we attend to our affections, and the order in which they naturally tend to operate or exert themselves, we will find that it is that very order which our constitution and circumstances make necessary to our well being and happiness; so exactly are our constitution and our circumstances adapted the one to the other. It is plain that social affections could not have their proper exercises, except where many mutual dependencies take place; because giving and receiving, or communication, can not take place but where there are mutual wants. Now, our mutual wants and dependencies must be wants and dependencies either with respect to the goods of the body, or the goods of the mind. For all our goods, as hath been observed (§ 9), are reducible into these two classes: Wherefore, mutual wants and dependencies in these respects, are necessary to the exercises of our social affections, or to our social enjoyments. Take away from mankind all the exercises of social affection, and we reduce them into a state of mere indolence and inactivity, and leave nothing in human life to employ men agreeably, or actuate them warmly or strongly: We take away all that gives the highest relish to life, all its most touching and interesting exercises and employments. But if we take away the objects of affections

fections or exercises, we to all intents and purposes destroy the affections themselves; for it is to all intents and purposes the same, whether they do not take place in a constitution, or taking place, have not objects to call them forth into action and employ them. The differences therefore which obtain among mankind, in consequence of the different talents, genius's and temperatures of mind, or of different circumstances, necessarily occasioning different operations, various degrees and turns of the same powers and affections, do indeed serve to cement and unite mankind together, and to produce a constitution of things, in which alone our social affections can have various proper exercises; a constitution of things, in which alone various social enjoyments can take place. And therefore, with regard to us,

All nature's difference keeps all nature's peace.

This will be evident, if we but consider what the affections and employments are which give us social enjoyment. For how can benevolence, love of power, compassion, charity, gratitude, or any other affection, which hath the qualities, conditions, and actions of others for their objects, take place but where wants are supplied, dependence is created, happiness is given; or where beings can mutually gratify one another in various manners, by mutually adding to one another's happiness and enjoyment, or alleviating one another's pains? But it will still be more evident, when we consider the dependencies which actually obtain among mankind, and the affections in human nature, corresponding to these dependencies. Now, 1. In general, to the very support of our bodies, many labours are necessary, and consequently, various communications of labour: nor are various united labours less necessary to our having the pleasures which arise from knowledge, and the improvements of the understanding and imagination.

gination. These two facts are too evident to stand in need of any proof. And in order to our having enjoyments of both these kinds by united labours, mankind are endued with various talents, various genius's and turns of mind. Some are fitted for one kind of labour and employment, and some for another. Every one stands in need of many, and every one is peculiarly adapted by nature to assist the rest in some particular way. It is in order to promote a general commerce among mankind, that through the whole globe, the habitation of mankind, every climate, every country, produces something peculiar to it, which is necessary to the greater convenience, or at least to the greater comfort and ornament of the inhabitants in every other. So in every country, throughout all mankind in general, there prevails a division of talents, genius's and abilities, which makes every one necessary in a particular way to the general good, or at least renders every one capable of contributing something towards general happiness, by the application of his talents in their proper way, or to the end for which they are peculiarly adapted. And indeed in the narrowest view we can take of human happiness, that is, even when we confine it to our bodily subsistence, to eating, drinking, protection against the injuries of weather, and such other conveniencies, which will be readily acknowledged not to be all that mankind are qualified to have and enjoy, even tho' we should quite abstract from the higher pursuits of understanding and imagination, in the improvements of arts and sciences, from every thing that comes under the notion of ornament, elegance or grandeur; yet even in this confined view, many labours, various industry is necessary. And consequently, men are laid by a necessity of nature under obligation mutually to engage one another, to unite their labours, and communicate their industry for one another's subsistence. But as men would
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have but very little pleasure in labour, and the communications of their industry which are necessary to their subsistence, were not exercise, as hath been observed (§ 9), naturally agreeable to men, and were we not so constituted as to have immediate pleasure in social communication, in every social exercise; so men, as we are constituted, cannot engage one another in mutual assistance, but by shewing each his willingness to assist the rest, and his sincere cordial regard to the well-being and interest of the whole body. Every one, in order to be liked and regarded by others, must at least put on the shew of liking and regarding others; for one would otherwise be looked upon as a common enemy, and as such be abandoned, nay, hated and persecuted by all men. And let me just observe here, in opposition to those who assert that there is not really any benevolence or regard to the interests of others in human nature, but that it is self-love which assumes the affected appearance of it, in order to deceive, well knowing the necessity of seeming to love others, in order to be assisted by them, as our necessities require. Let me observe, that were there not generally prevailing among mankind a real principle of sociality and benevolence, this imposition, this counterfeit regard to others, would not be able to answer its end. Were all men utterly devoid of any such principle, and were the appearance of sociality every where counterfeited, the false appearance would nowhere take; it would nowhere be believed, and nothing like trust, or harmony and union could prevail among mankind, but they would live in continual jealousies and suspicions. So that of necessity it must be owned, that there is in the generality of mankind naturally a real principle of sociality and benevolence. This is plain from the necessary effect of one's being discovered to have acted under a mask of benevolence and honest regard to others; for in that case, hardly can any power or strength

strength such a person may have acquired, protect him against just resentment. Such a one must indeed be strongly defended to secure himself against the condign vengeance of mankind. And whatever his power may be, in consequence of his wrath and guards, or armies attached to him by his wealth, hanging upon him by the teeth (to use the phrase of a very great author), yet he cannot avoid being hated by all the rest, and he cannot be loved even by them who are thus tied to him: And consequently, it is no wonder, that every one of this character, and in this situation with regard to mankind, in consequence of his known character, hath ever been found most compleatly miserable; tormented by galling fears, suspicions and jealousies. There never was a tyrant who was not in this terrible condition, as Cicero observes, Offices, book 2.

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Mankind then are not only under a necessity by nature of being social, but they are actually provided with affections which make them such, as well as with the various talents necessary to a variety of industry, and communication of industry. So that thus far nature obliges and impels to the same course of life, *viz.* a course of social industry and communication, a course of honest and cordial interchanges of mutual assistances and services. 2. But besides this general dependence diffused throughout the whole species, there are dependencies of another kind among mankind, to which likewise there are correspondent affections in human nature, that without such dependencies would not have exercise or employment. The Author of nature hath spread over mankind a natural aristocracy, which appears in every assembly of mankind. Some are superior in understanding to the greater part, in every casual or designed meeting of men, consisting of suppose ten, twenty, or any other number. And what is the natural effect of this, in consequence of the hu-
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Aristocracy
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man frame? Superiority in wisdom, by fitting to give proper counsel in matters of common concernment, naturally produces esteem, veneration, submission, and gratitude in those who feel the benefit of their superior wisdom, or to whom it serves as a light to direct them; that is, it gives authority to the men of superior wisdom; and it excites cordial dependence and confidence upon them in the breasts of those who reap the advantages of it. And thus those who excel in wisdom, have the pleasure of having authority and respect paid to them. And those who receive counsel and direction from them, have the pleasure of being instructed by them, and the sincere satisfaction which arises from gratitude and affection to benefactors, which is naturally so strong, that it is hard to say who are happiest, those who give, or those who receive. This we may observe, from the pleasure with which youth receive information from a prudent affectionate teacher: and in general, from the warm and zealous affection with which persons obliged attach themselves to a wise and generous patron, follow his directions: and espouse his interest.

*Condition, circumstance is not the thing:
Bliss is the same, in subject or in king,
In who obtain defence, or who defend,
In him who is, or him who finds a friend.*

Essay on man.

But let it be observed, that this is only the case while those of superior parts shew a sincere regard in their counsels and directions to the general good; and do not attempt to deceive those who depend upon them into hurtful measures, with a selfish narrow view. For so soon as that is perceived, veneration is changed into contempt and hatred. And thus the superior in parts deprives himself of one chief reward of superior prudence, which is, the authority, leading and dependence it would otherwise

wife give him. History is full of instances, which are so many clear proofs of this. The Roman history in particular, in the language of which republic, as an excellent author hath observed, the influence of superiority in wisdom united with benevolence, was called *auctoritas patrum*; and the veneration paid by the people to it was called *verecundia plebis*. There is in every man naturally a desire of power. It indeed enlarges and becomes stronger, in proportion as the mind enlarges and opens. But it is so strong, even in the meanest, that unless they depend, or hang upon others by the teeth, they may be led, but they will not be driven. If nature had not implanted in all men a desire of power, and a strong sensibility to wrong and injury, the veneration which superiority in parts naturally inspires, would have rendered the generality of mankind, who stand in need of leading and direction, too submissive, too tame and humble. But notwithstanding the natural aristocracy diffused over mankind, yet such is the general temper of mankind, that not only superiority in parts, without benevolence, will not gain respect and submission, but even a stricter and closer dependence will hardly be able to keep men in subjection when power over them is abused, if it can by any means be shaken off. 3. And this leads me to take notice of another kind of dependence among mankind; a dependence necessarily resulting from inequality in property. I need not stay to prove that earth, the habitation of men, being given by nature to be possessed and appropriated by the industry of the first occupants, the world could no sooner be tolerably well peopled, but in every district there would be inequality of property. I need not stay to prove how this would naturally happen in consequence of the manner in which mankind is propagated by successive generations, the natural aristocracy among mankind, which hath

hath been mentioned, and other causes; nor to shew what revolutions in property, commerce, not to mention force, will naturally be ever bringing about, where the balance of property is not fixed by civil laws and constitutions; far less need I stay to prove that an over-balance of property will produce power or dominion proportional to it. These things have been sufficiently explained by the most ingenious Harrington. All that it belongs to our present purpose to observe with relation to it, is, that as inferiorities and superiorities, with regard to the good of the body as well as of the mind, are necessary to social communication; necessary to make mankind mutually dependent, or to lay a foundation for mutual giving and receiving; so, with respect to external dependencies, or hanging by the teeth, that must necessarily take place among mankind in consequence of unequal property, men are furnished by nature with all the affections such dependencies require, in order to render them a means of agreeable union and coherence, or to found upon them very various social commerce. For, 1. Men have a principle of benevolence to excite them to take delight in doing good, and in being serviceable to one another. And, 2. They have a sensibility to oppression and injustice, which impels them to ward against injury, and resent it with great vehemence. Wherefore, as without some sort of dependencies there could be no such thing as social commerce; so mankind could not be better provided by nature than they are for reaping all the advantages of mutual dependencies, and for securing themselves against all the inconveniencies that can arise from mutual dependency. And as reciprocal dependence lays mankind under a necessity of social communication; so the natural affections with which men are endued, point out to us the manner in which social communication ought to be carried on. For benevolence

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naturally produces love and gratitude. But no one can be so powerful as not to want assistance in many respects ; and the indignation against injury, and aversion to slavery or absolute subjection, natural to mankind, will render power very ineffectual to true happiness without benevolence. Since that alone can excite love, affection, trust, or esteem ; and he who knows himself to be hated and despised, must be very unhappy amidst the greatest affluence of outward enjoyments, as well as very insecure of long possessing them. Thus therefore nature hath made the exercises of benevolence, good-will, compassion, generosity, gratitude, fidelity, integrity and friendship, to be, in every respect, the happiness of mankind, and the happiness of every individual. And therefore, of the mutual wants and dependencies among mankind, which some look upon as an objection against the good government of the world, it may justly be said,

*To these we owe true friendship, love sincere,
Each home-felt joy which life inherits here.*

Essay on man.

But this will yet more clearly appear, when we consider, 4. The necessary dependence of children upon their parents, in consequence of the manner in which nature hath appointed the propagation of mankind, and the affections which nature hath implanted in men, in order to direct and impel them to the care of their infant-offspring, and to the propagation of mankind in the way necessary to the general happiness of mankind. It is evident, that proper care cannot be taken of infants, as they come into the world in a most helpless condition, unless their parents unite together in concern about bringing them up to a state capable of doing for themselves. Neither their bodies nor their minds can otherwise be taken
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due care of. Now, in order to excite us to this care, nature hath implanted in us several strong affections, all centering in it as their end; so that a great part of human happiness, a great part of our most agreeable employments, really consists in parental cares, and filial returns to such cares. There is not only a strong mutual sympathy between the sexes, founded in, and supported by many mutual wants and ties. But mankind have a strong natural inclination to continue themselves in a new race, which they may look upon as their own; to which a regular union between the sexes, in such a manner, that love and fidelity may be most securely depended upon, is evidently necessary. And no sooner are children born to parents in such a way, that there is no doubt of their being the offspring of faithful embraces, than a warm love springs up in their minds towards this progeny, which is considerably increased by our sense of their absolute dependence upon our care, and soon receives an additional warmth from the gratitude, love and attachment to us, which they very early discover, and which become firmer, by becoming more rational, in proportion to the care parents take of what is principal in relation to their childrens happiness, the formation of their minds. Desire to be a parent, and the head of a family, is an affection that early sprouts up in every mind, and hath betimes a great share in all our pursuits. And when the marital and parental ties are once formed, then nature points our views more immediately towards our offspring and family, as the most proper object of our care. And this is evidently the manner in which benevolence should operate in order to the general happiness of mankind. Thus nature makes certain persons nearer and dearer to one another, and by so doing ascertains or appropriates to every one certain more immediate objects of his concern and affection; and, at the same time,

time, instead of severing or dividing mankind by this means into so many separate bodies, with separate interests, binds mankind together by so many more ties. For every one, who hath a warm attachment to the welfare of many endeared to him by special bonds and affections, must feel a stronger obligation, than those who are strangers to such motives, to gain the love of mankind, without which his own power to do good to such would be of very little consequence, however great it might be with it. There is this remarkable difference between the instinct of brutes, that impels them to the care of their offspring, and the natural affections of mankind.

*Not man alone, but all that roam the wood,
Or wing the sky, or roll along the flood;
Each loves itself, but not itself alone,
Each sex desires alike, till two are one;
Nor ends the pleasure with the fierce embrace,
They love themselves a third time in their race.
Thus beast and bird their common charge attend,
The mothers nurse it, and the sires defend;
The young dismiss'd to wander earth or air,
There stops the instinct, and there ends the care.
The link dissolves, each seeks a fresh embrace,
Another love succeeds another race.*

*A longer care man's helpless kind demands,
That longer care contracts more lasting bands;
Reflexion, reason, still the ties improve,
At once extend the interest and the love.
With choice we fix, with sympathy we burn,
Each virtue in each passion takes its turn;
And still new needs, new helps, new habits rise,
That graft benevolence on charities.*

Essay on man.

Now nature, by thus ordering the propagation of mankind, and enduing us with corresponding affections as parents and as children, assigns to every

ry one a more immediate and particular task or care; the faithful discharge of which by each in his sphere, would make human life all peace, love and harmony. Our general benevolence hath thus a particular bias, which points it into its proper road, or into its first cares and principal employments. Were mankind to be propagated as they are, and we not endued with the affections which are really implanted in us by nature, to how many bad chances, with regard to their education more especially, would mankind be exposed in their infant-state? And, on the other hand, if we had not those natural affections in us which tend to regular propagation, in order to have certain children, and to due care of our thus certain offspring; would not we want many sincere pleasures, many warm, interesting, delightful cares? Would it not our general benevolence want a strong source for nourishing and supporting it? And would not be left too vague and undetermined by nature? But being constituted as we are, our benevolence is properly directed, and properly invigorated; and nature hath given us affections to impel us to what necessity obliges us; with affections which makes every one feel immediate satisfaction in that regular exertion of benevolence, which the interest of all in general requires. Thus, while every man touches us as such, certain particulars strongly call upon our special attention; and we have each a particular province assigned to us by the natural tendency of our affections, the faithful discharge of which is contributing a very great share towards the public good. And this determination of our mind to particular exercises of benevolence, is so far from stinting and confining benevolence, or from having a natural tendency to degenerate into a narrow *clannish* disposition, that it naturally produces a fellow-feeling with all other parents and their cares, *i. e.* with all mankind; and renders the mind in general much

more tender and sympathizing than it can be without frequently feeling such kindly emotions. For this plain reason, that humanity and benevolence, like all other affections, grow stronger and stronger by exercise; or, in other words, repeated exercises form a general temper correspondent to them.

We have now therefore found that nature lays us under the necessity of social communication, and impels us to it by strong affections; and lays us under the necessity of social communication in a certain order, to which it likewise prompts and impels us by very strong affections, giving particular determinations to our benevolence, or assigning a nearer, a more immediate province to it. And hitherto certainly we have found our nature to be very well constituted, even in that respect against which the greatest objections have been made (*viz.* differences or inequalities among mankind): and hitherto also we have found the obligations arising from our constitution, and the connexions of things relative to our happiness, to be very obvious. They stare every one, who considers human nature with any attention, so to speak, in the face.

SECT. XII.

But we will still perceive another security in our constitution against the degeneracy of family attachments into too narrow, confined, and partial benevolence, when we consider another determination in our nature, excellently adapted to check not only self-love, but partial affection of whatever sort, whether towards relatives by blood or friends; and admirably adapted to the circumstances of human life in general; which is the sympathy and pity distress immediately excites in the human breast, violently interesting us in the miseries of others. An embodied state must necessarily be liable to various calamities, in consequence of the very laws of matter and motion, which make the best, the most orderly,

Other affections in the human mind explained.

Sympathy.

derly, convenient and beautiful system, as our mundane system is well known to natural philosophers to be. And nature hath, by wise and kind care, implanted in the human heart a principle of compassion, which is admirably well adjusted to such a condition. For by this we are impelled to sympathize with the afflicted, and to run without delay to their relief. And how much doth even sympathy itself alleviate pain and suffering! Such is the nature of compassion, that it considers or attends to no more but distress, is immediately excited, and directly pushes to give the relief which the calamity calls for, without counting kindred, or so much as asking who the sufferer is; and gives indeed no small pain, when help is not in our power. Now, surely nature could not have more clearly pointed out to us the order in which our benevolence ought to work, than by determining it to receive such an impression, such a tendency from distress. It is true, this affection may be too strong to answer its end, as it plainly is, when it quite overpowers and enfeebles one. And by pains taken to harden the heart, it may, on the other hand, become very weak, nay, be almost quite crazed out of the mind. But have we not reason to guide all our affections to their proper end, obedience to which is, as hath been observed, our first duty or obligation by the laws of our nature? And what can be more evident to a considering person, than that the end of this passion is to knit mankind together, and to give them a fellow-feeling with one another, that they might thus be kept from injuring one another, and be prompted to assist one another in the calamities and distresses to which all men in common are obnoxious? Or who will say, that tho' there be a mixture of pain in this affection, yet it is not, notwithstanding, so agreeable an emotion of the mind, that the pleasures arising from the exercises of it, make a counterbalance to the bodily evils resulting

Compassion.

from the necessity of nature sufficient to vindicate providence, when we reflect at the same time upon the many other goods arising from the same excellent laws which make these evils necessary? That the exercise of compassion is a high satisfaction, the tragic art, the principal charm of which lies in violently moving and agitating our pity, is a sufficient proof. And indeed, by the consent of all mankind, a breast quite devoid of compassion, is pronounced inhuman; *i. e.* unfit for human life; a stranger to the best feelings, the most agreeable and becoming emotions of the human heart. The reason is, because such are in fact found to be equally strangers to natural affections, to friendship, to a sense of honour, and consequently to all the richest sources of human delight; the richest sources of human delight for these affections being removed, what remains but the palate, and a few other organs of sense, in the whole list of human means or capacities of gratification? But wherever compassion prevails, there nature hath given a particular determination to our benevolence, the use of which to mankind in general is very evident; there nature hath made a connexion with regard to public and private happiness that merits our attention; there nature hath given a sense, a capacity of pleasure, that deserves our care and keeping: it cannot be impaired or corrupted, without sadly diminishing the provision nature hath made for our enjoyment, for the happiness of every individual, as well as the common happiness of our kind. Every road that nature hath made to true happiness, is a law of nature to us. And therefore, if natural affections belong to us, or if compassion belongs to us, they are, in this sense, laws of nature to man, that they indicate to us a certain course of affection and action, which nature hath made to be one considerable source of enjoyment to us. For can happiness be found but where nature hath placed it?

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Can we change and alter the natures of things at our pleasure, and make any thing painful or agreeable as we will? If we cannot, we must take nature's paths, and seek happiness where nature has laid it. But nature hath placed it in industry, benevolence, natural affection, compassion, and the prescience of reason. These are the chief sources from which we must draw it. We can no more alter these connexions than we can change the laws of motion and gravity. They are therefore laws to us in the same sense, that the laws of motion are laws to human arts for the attainment of their ends.

But the human mind is a very complicated structure: It is composed not of one, but many principles of action, all of which are sources of very considerable enjoyment, and at the same time mutual checks or poises one to another, in order to point and lead us into, and keep us in the course of behaviour, which is at once the interest of every individual, and of the whole species. Several such have been already mentioned, and there are yet two others, the use of which in our frame well deserve our attention. 1. The first is a principle of resentment. By this we mean not merely sudden anger, which is nothing else but the necessary operation of self-defence, or sensibility to danger and hurt, and hath hurt as such for its object; for this is common to man with all sensible creatures: But we understand that indignation which injury or wrong, as such, necessarily excites in our mind, which supposes a sense of injustice or injury, and can only take place in minds capable of distinguishing equity and iniquity. In this do these two principles, which are often confounded together, in treating of the human affections, differ, that one hath suffering for its object and motive cause, the other that suffering only which is apprehended to be injurious. It is opposition, sudden hurt, violence, which naturally

Other affections adapted to our dependencies and necessities explained.

Resentment.

excites sudden or momentary anger ; reflexion on the real demerit or fault of him who offers that violence, or is the cause of that opposition or hurt, is not necessary to occasion this mere sensation or feeling. It is mere instinct, as merely so, as the disposition to shut our eyes upon the apprehension of something falling into them, and no more necessarily implies any degree of reason. For it works in infants, in the lower species of animals, and (not seldom) in men towards them, in none of which instances this passion can be imagined to be the effect of reason, or any thing but mere instinct or sensation. And no doubt the reason and end for which man was made thus liable to this passion, was to qualify and arm him to prevent (or perhaps chiefly) to resist and defeat sudden violence, considered merely as such, and without regard to the fault of him who is the author of it.

But resentment, which on account of what it hath in common with sudden anger, may be called deliberate anger, is not naturally excited by mere harm, but in order to move it, harm must be apprehended as injurious or wrong. “ This is so much (says an excellent author) understood by mankind, that a person would be reckoned quite distracted, who should coolly resent an harm, which had not to himself the appearance of injury or wrong.” Now that the reason and end for which this principle is implanted in us by nature, is to fill us with indignation against injury, and to excite us to resist, defeat and punish it, is evident ; for this is the end to which it naturally tends. And therefore, with regard to it, it is plain, that it is in its nature a social affection : it is a fellow-feeling which each individual hath in behalf of the whole species. For tho’ injury to ourselves must affect us more intimately than injury done to others, in consequence of the nearer sensibility to one’s self, which is inseparable from the constitution of every sensible being ; yet we find that
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the way in which injuries to others affect us, is exactly the same in kind. To be convinced of this, we need only attend to the manner in which a feigned story of baseness and villainy works up this passion in us. And such being the nature of this passion, it is far from being any defect or fault in our constitution, or from being in the least degree a-kin to malice: It is, on the contrary, so connected with a sense of moral good and evil, or of virtue and vice, that it could not take place without it; and may be properly said to be resentment or indignation against vice and wickedness. Far less still can this affection in our constitution be reckoned of a pernicious tendency, when we consider it as united in our frame with the other affections we have already mentioned, as compassion in particular; for as it is counter-balanced by them, and intended to co-operate with them, it can be designed for no other end but to make the resistance and opposition to vice which vice demerits, and not to give pain for the sake of tormenting others. For our compassion being moved by the suffering of another as such, and our resentment being only excited by wrong as such, we are thus by nature equally furnished for repelling injuries, and for commiserating innocent sufferers. Reason hath thus, as it were, two handles to guide us by, whether in repelling injuries, or in pitying sufferers, by each of which the other is kept within due bounds. Compassion is of use to moderate resentment, and resentment to hinder compassion from misplacing its tenderness upon the undeserving and vicious, to the prejudice of innocence and merit. So social then is our frame, that there is no passion in our nature which delights immediately in misery as such. But, on the contrary, misery always excites compassion, unless when it is apprehended as the just desert of injury. And so far is resentment generally from being too strong in human nature, that however eagerly it may desire and pursue

sue the punishment of injustice, yet the punishment, which is the end of the passion, is no sooner gained, than commonly it gives way to compassion to such a degree, that it requires keeping the injustice of the sufferer very fully and strongly in our view, not to succumb entirely to pity. 2. But I have chiefly mentioned this principle in our nature here, as it, together with what I am now to take notice of, *viz.* the love of fame and power, renders mankind capable of several great actions. For if we examine narrowly into what it is that impels the human mind to dangerous and bold achievements, and gives heroic spirits such high delight in pursuits seemingly so opposite to self-love, we will find that these are the sources in our nature, from whence the delight in them, and the motives to them principally flow; I say, principally flow, because no doubt a moral sense of beauty in actions (of which afterwards) hath no small share in true heroism; and religious principles, as they are of a very proper nature to promote true fortitude, patience and courage, so they have often produced the greatest actions, the bravest heroes.

Whence the hazardous enterprizes with which the history of all ages and countries is filled, that strike us with such admiration and amazement? To what do historians ascribe them? And to what source does every reader chiefly refer them in his own mind? Is it not to the love of power or empire, and the love of fame? Now surely, if these be the main incentives to achievements, in which life and all its advantages are so boldly risked; we may justly conclude, that the love of power and fame may arrive to a very great pitch of vigour and force in the human mind. And such indeed are the circumstances of several most renowned actions in history, that so much of the motives to them must needs be ascribed to these sources, as makes it very proper in an analysis of the human

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Love of Fame.

moral sense

religious Principles.

affections, to give particular attention to the love of fame and power, and the ends for which they are implanted in us by nature. Now, into whatever extravagancies the love of fame and power may run; (as what passion in our nature may not be perverted, and so degenerate into something very wild, foolish and hurtful) yet they are implanted in us for very useful purposes. Let us consider the two separately. 1. The love of fame. Is it not a passion that takes its rise from sociability, and that strongly cements us to the interests of our kind? For what is it at bottom but regard to the esteem and love of mankind? Can we love mankind without desiring to be respected, esteemed and honoured by them? or can we like actions which tend to gain us the love of mankind, without liking the love they tend to gain? Love of fame is inseparable from sociality; and true honour consisting in the merited real esteem of mankind, is a noble aim; not a mean or mercenary view, but a truly generous and laudable motive. Nay, so nearly allied is this praise-worthy ambition to virtue, that he who despises fame will soon forsake the paths which lead to it. And therefore Cicero justly says, *Vult plane virtus honorem nec est virtutis alia merces.* 2. As for the love of power. It is absolutely necessary to beings made for progress in perfection, and to extend and enlarge their faculties. For what else is it at bottom, but desire to expand and enlarge ourselves, to dilate and widen our sphere of activity? Without this impulse, without being made to receive high delight from the consciousness of our growing and advancing in perfection, in knowledge, in authority, in power to serve others, and promote their interests, how listless and inactive would our minds be? And how listless indeed, sluggish and inactive are the minds, where the love of encreasing all their powers, the desire of being as independent of others, and as sufficient to themselves as they can be,

be, does not prevail in some degree! 3. And in a life subject to evils of various sorts, to many natural calamities, and many greater moral ones, arising from the perverted, corrupt affections of men, how necessary are both these principles to fortify our minds with patience and courage, and to qualify us to oppose and defeat these evils? Where these passions do not obtain in a great degree, how easy a conquest are a people to every proud usurper or tyrant; how tamely and submissively do they yield their necks to the yoke of arbitrary power? But as useful as these noble principles are in our nature, and as great a share as they have in the great actions which chiefly render the history of human life capable of attracting or detaining our attention, yet all must not be ascribed to them. For that just resentment against injury, just indignation against oppression, tyranny and despotic insolence, often kindle the hero's breast with a generous ardour to destroy and root out these enemies of mankind, and make him rush intrepidly into the thickest dangers to rescue his fellow-creatures, his country, from slavery and misery;— that this passion is often the patriot's chief motive in his most perilous and brave enterprizes, almost the only thing he hath in his view to animate and invigorate him, might be proved by many shining instances from history. But all that it belongs to our present purpose to observe is, that none of these passions are inconsistent with a social principle, but on the contrary take their rise from it: it is the only root from which they can spring: Nor are these affections weakened or perverted by any other means than those which equally weaken or pervert every other generous or great affection in our minds. Thus, the same long subjection to arbitrary power, which almost quite effaces all ideas of liberty, all greatness, boldness and freedom of mind, is it not likewise observed to render them, who have been long inured to it, sluggish, indolent, ungenerous, revengeful, and rather nearer to the temper

temper of monkeys or buffoons in all respects, than to the spirit and temper of men? However these principles or dispositions may be corrupted, they are to us, as they naturally stand in our frame, sources of very noble pleasures, and motives to very great and laudable activity. We cannot suppose them removed out of our constitution, without reducing mankind to a very low and contemptible creature, in comparison of what it is the natural tendency of these affections to render us, as they are united in our frame with benevolence, compassion, and natural affections to our parents and offspring. They cannot be taken from us, without cutting off from mankind all capacity of the greater pursuits that now adorn and bless human life. Nor can they indeed be objected against in our frame, when they are thus considered. And when the Author of nature is blamed by any philosopher for having implanted them in our frame, they are represented by such as making the only principles of action in our minds; and are thus disjoined from other principles in us, with which they are naturally united, and consequently intended by nature to co-operate. But certainly, in order to judge of a constitution, we must consider all its parts as they mutually respect one another, and by these mutual respects make a whole. Thus we judge of all other constitutions or structures, natural or artificial. And thus likewise ought we to judge of the fabric of the human mind.

SECT. XIII.

Now, having thus analyzed the human mind into the chief principles, dispositions or affections of which it is compounded; what follows, but that, this mind so constituted is a law to itself; or that it, and the connexions relative to it, which have likewise been explained as we proceeded in this resolution of the human mind into its component parts, make to man the laws and rules of his actions?

Recapitulation.

tions? Thus laws of conduct are constituted to man for the government of his affections, in order to the attainment of happiness in the same manner that the laws of matter and motion constitute rules to human arts for the attainment of their ends. In the same sense that it is necessary for man to act consonantly to the properties of air and water, in order to gain certain purposes, such as raising water, &c. in the same sense are the connexions relative to our affections, laws or rules to us, how to regulate and direct them, in order to avoid certain evils and to obtain certain goods. We have not in this enquiry meddled with a question, the manner of handling which hath greatly perplexed the science of morality, *viz.* the freedom of human will: For this evident reason, that it neither more nor less concerns morals, than it does an enquiry into the connexions of nature, whence the rules in mechanical arts must be deduced. This is manifest. Because, if man be not at all master of his actions, it must be as much in vain to direct him how to act in any one way, as how to direct him in any other. Directions and counsels, or exhortations, can only be of use with respect to things in human power. But if directions, counsels, or exhortations, with regard to industry in cultivating mechanical arts for the benefit or ornament of human life, can be of any use to man, then must man be acknowledged to be master of almost all the powers, faculties and affections to which any other counsels, directions or exhortations can be addressed. For then must he be master of getting knowledge, if he will; master of applying himself to study and labour; he must be capable of being moved by representations of what the interests of society require, and of making that the end of his pursuits; master of despising toil and hardships in that view; and master of aiming at fame and honour, by doing some laudable service to mankind in that way. But if he be so far master of his af-

fections

Why we do not here enter into the dispute about liberty and necessity.

fections and actions, which affections and actions is he not master of in the same sense? Indeed all the grave sophistry about liberty and necessity, with which moral enquiries have been so sadly embarrassed, to the great obstruction of true and useful knowledge, might as well be prefixed to a system of physics as of morals. For if they prove any thing at all, they prove that mankind ought to fold their arms, and let things go as they will. If they prove, or are designed to prove this, are not rules about sowing in seed-time in order to reap in harvest, rules about building ships, or any other machines, as idle as rules about the government of the affections? And if they are not designed to prove this, what are they intended for? For till this is proved to be a necessary consequence of God's foreknowledge, or of our being influenced by motives, or of whatever other truth from which necessity is thought to follow,—till this be proved, what is called *necessity*, cannot be contrary to what is called *liberty*, viz. our having certain things in our power, or our being the disposers or masters of our actions. In fine, whatever proves any thing repugnant to our liberty, must prove that we are not at all masters of doing, or not doing as we will in any case; that we have no power, no dominion, no sphere of activity; or, in one word, that we are not agents: and this being proved, mechanical arts, which are rules to certain actions, or rules for our attaining certain ends, are just as much affected by it, as the science of morals, which is a system of rules to certain other actions, or for our attaining certain other ends. The arguments brought against human liberty, were never said only to prove that necessity extends merely a certain length, and no further. Nor can it be said; for if they prove any thing at all, they must prove universal necessity. And if they do indeed prove universal necessity, then human action in every sense is absurd, and
confe-

consequently all rules to human actions of any sort or kind are equally absurd; or by the universal necessity they are said to prove, and brought to prove, is meant a necessity with which human agency is very consistent; which will be to say, that they are brought to prove, and do prove that we are not agents in a sense that is however very compatible with our being agents. Surely the controversy about liberty and necessity must be of very little moment, nay, a very idle, impertinent logomachy, if any asserters of necessity think that the necessity they plead for is absolutely consistent with our being masters of our actions, our having a sphere of power which we are capable of using well or abusing, as we please. For never was liberty understood to mean more than dominion and power, and accountableness, in consequence of our being disposers of our actions. And so in this case their necessity is our liberty. But if they really mean an universal necessity, absolutely repugnant to our agency, *i. e.* to our having the disposal of our actions, which renders rules and directions about actions absurd, as proceeding upon a false supposition; then are those, who treat of gaining certain natural ends by certain actions adjusted to natural connexions, as much concerned in the controversy as moralists, when they treat of attaining certain other ends by actions adjusted to other natural connexions. And for this reason, we may dismiss it as a question which does not particularly concern our subject; but every subject equally, which supposes man to be an agent.

The conclusion from the whole preceding reasoning.

And therefore, to go on with our conclusion, we say, that the connexions which we have found to be fixed by nature, relative to our happiness, are laws of nature to our conduct in the same sense that the connexions in nature, relative to certain physical ends, are laws with regard to certain physical arts. They are laws we cannot alter, but to which we must conform, in order to attain our greatest happiness.

happinefs, our beft enjoyments, or greateft goods. And they are laws appointed by the Author of nature to our conduct. For all established connexions in nature muft mean connexions appointed and upheld, or fubfifting by virtue of the will of the Author of nature, who gave being to all things, and to all orders and connexions of things (§ 3). Now, all this being true, it follows, that man is in the fame fenfe made for prudence and felf-government; for induftry; for acting with reafon, and agreeably to its dictates; for benevolence, or the purfuit of public good; for paternal cares and filial gratitude; for indignation againft injury and oppreffion, and for compaffion towards our fuffering or diftreffed fellow-creatures; it follows, I fay, that we are made for thefe ends in the fame fenfe that the eye is made to fee, the ear to hear, that a certain ftructure is made for flying, and another for fwimming and living in water, or that bodies are made to gravitate in proportion to their quantities of matter, or are to be confidered as having that property in human arts. The Author of nature, who hath made the one kind of connexions, hath likewise made and fixed the other. And if the preceding account of human nature, or of our internal principles and difpofitions, and the connexions relative to them be true, to fay man is not made for the exercifes above-mentioned, to which we may now certainly give the name of virtues, without taking any thing in morals for granted, is to fay, a being endued with a governing principle, by which it is intended he fhould govern himfelf, is not intended to be fo governed; which is to affert, that a governing principle is not, in its nature and end, a governing principle: it is to fay, a being endued with a governing principle, the ufe and end of which is to give him felf-command, or the mafterfhip of his affections, is not made to be mafter of his affections by his governing principle; which is to affert, that he hath a principle which hath an end and

use which it hath not : It is to say, that a being who hath social affections, and a principle of benevolence, determined, or adapted to receive different kindly impressions from different objects, is not intended to have these social, affectionate, generous impressions, nor to exercise these affections ; but has them for no end at all, or for a quite opposite and contrary end. In fine, let any man consider these virtues, and compare them with the make of the human mind, and all our internal principles and dispositions, and then say that man is made for imprudence, folly, wilfulness, and precipitancy ; to be tossed to and fro by tumultuous contradictory affections, without any order or government ; and to be cruel, tyrannical, abusive, oppressive, uncompassionate, quite unsocial. Let him say what reason he can give for affirming that the eye is made to enjoy the light, the ear to receive pleasure from music ; or, in one word, what reason he can give for saying any thing natural or artificial is made for an end, that will not equally oblige him to say, man is framed, made and intended for rational government of his affections, for benevolence, and the other virtues which have been named. If he says, whatever affections men may have, man is made to pursue his pleasure, let him shew how men can have pleasure but from the gratifications of particular affections ; and let him shew that the affections we have named are not belonging to human nature, or that they are not belonging to it as sources of pleasure and enjoyment. In fine, let him shew what other enjoyments human nature is provided for which are superior to the presidence of reason, affections disciplined by reason, and exerting themselves in the order of benevolence that hath been described. We reason from fact or experiment ; and what we have maintained, can only be refuted by shewing our analysis of the human mind not to be fact. For if the resolution of the human mind
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that hath been given be just, our conclusion stands upon the same bottom with all the reasonings in natural philosophy concerning the structures, properties, laws, and final causes of things. The only thing that can be objected against this deduction of the ends for which men are made and intended, is, that men are in fact very irregular; that the affections of mankind are generally very tumultuous and undisciplined, and there is much malignity, ill-humour, envy and hatred amongst them; and that the love of power and fame do not generally lead men to benevolent, but rather to mischievous actions. But let mankind be represented as villainous as they have ever been said to be, by any philosopher or politician; or, if you will, more black and deformed than any hath ever yet called them, it will not shake or weaken our reasoning. For though that be not true, but, on the contrary, a very false charge, yet we can sufficiently account for the vilest corruptions that ever have, or ever can take place among mankind, very consistently with the preceding analysis of human nature, and the deduction of our duties; *i. e.* our natural ends, from that analysis. 1. First of all, there is no other conceivable way of furnishing or qualifying any agent for pursuing the virtues above-named, but by giving them the affections above described, and reason to conduct them. There is no way of qualifying one for doing all under the direction of reason, but by giving him faculties to be guided by reason, and reason to guide them. There is no other way of qualifying one for benevolence, but by giving him a benevolent disposition, and so disposing him, as that he may feel great pleasure in its exercises. Let the objectors against human nature point out what else could be done. Let them name what is wanting to make us rational and benevolent in our behaviour, that nature hath not done for us. If

Objection
why there
is so little
virtue, so
much vice
among
mankind.

they say reason is too weak in human nature, or does not grow up fast enough to do us great service as a guide, this leads to the second thing to be considered on this head. 2. Which is, that reason must grow and improve by culture. It can only become strong by exercise and improvement. It can only become so powerful as to be habitually our fixed and settled guide and ruler, by repeated acts. For thus alone can any habits be wrought in us; thus alone can any affections, dispositions, principles, or powers and faculties of action in us become habits; *i. e.* become strong and prevalent. Repeated exercise is the sole way of acquiring habits. It is therefore the sole way of perfecting reason, or any faculty or principle in our constitution; and what other way can we conceive, by which it is better to attain to perfection of any kind than by industry, diligence, and repeated acts? But if this be a necessary or fit law of our nature, in order to our attainment to perfection, that habits should be formed by repeated exercise, and only be so formed; must not the effect of this be, that bad and hurtful habits will be contracted by repeated bad exercises, and that false or wrong associations of ideas will be very powerful, very difficult to be disjoined or undone? Must not the effect of it be, that if bad habits are suffered to grow up to a great degree of strength in our minds by bad education, or through carelessness about our education, and reason is not early accustomed to rule and govern in young minds, that rational dominion over the affections will be very difficultly acquired; the sensitive appetites will be exceeding riotous; and every passion that has been often called forth, or incited to indulge itself by tempting shews of pleasure, will become imperious, headstrong, and unruly? For it must be remembered, that we are not merely intellectual beings, but that we have senses and corporeal appetites, which

which will necessarily become, in consequence of the law of habits, too strong for reason and benevolence to govern, if they are not early accustomed to the government and discipline of reason. And it must likewise be remembered, that our opinions of goods must regulate our affections; and therefore, if false ideas have been imbibed early, and have long passed unexamined, uncontroverted in the mind, these wrong associations of ideas, and false judgments of things, will be very hard to overcome; it will be extremely difficult to eradicate or correct them. But what is all this, but, in one word, a long habit of acting without reason, or of despising reason, instead of inuring our ideas, fancies, opinions, and appetites, to receive their direction from our reason, and to act under its présidence and government. And therefore, in speaking of our being made to consult reason, and act under its conduct and guidance, we took notice of the necessity of right education, in order to establish reason early into our governing principle (§ 8). But having elsewhere * discoursed at great length of the power of habits, and the way in which they are formed, and of the chief sources of corrupt affections amongst mankind, it is sufficient to take notice here in general, that there are almost no vices amongst mankind which could take place amongst them, were we not endued by nature with the best affections; affections necessary to make us social, benevolent, great and good. They are corruptions or misguidances of them. Every hurtful affection is a very good one perverted. Accordingly Mr. Locke hath shewn us in his excellent *treatise on education*, how easily all the vices may be early engendered, nay, brought to a very great height of obstinacy by bad example and wrong methods of education; but he hath, at the same time, shewn us how all the vir-

* Principles of moral philosophy.

tues may be yet more easily formed in tender minds. And indeed there is no character in human life however enormous, that shews any affection naturally belonging to us, which is not of the greatest use, however hurtful its wrong turns, degeneracies, perversions or corruptions may be. Nor is there any other cause of degeneracy and corruption but bad habit, or not accustoming ourselves to exert our reason, and to act under its direction; which, how nature could have better furnished us for doing, than by giving us reason capable of high improvements; or have better impelled us to do, than by making us to see from examples, and feel from our own experience, as it does, the dismal effects of not acting rationally, the sad consequences of not consulting, or not obeying our reason, and of rashly giving way to every passion or appetite that circumstances may tempt into hurtful indulgences to specious semblance of pleasure, is inconceivable.

*Nature well known, no miracles remain,
Comets are regular, and Clodio plain.*

Pope's Ethic. Ep. to Lord Cobham.

For howsoever odd, whimsical, or foolish the ruling passion in any heart may be, it is some passion necessary to excellent enjoyments and gratifications, that is become so odd, fantastical, or unreasonable. If it is any sensual appetite that is the ruler, and triumphs over all other affections of whatever kind, intellectual or social, will it follow from hence, that we ought not to have had senses, or to have been capable of sensitive pleasure? If it is the lust of power that has got the ascendant over benevolence in any one, to such a degree, that it is become his maxim; *Si violandum est jus, regnandi gratia violandum est; aliis rebus pietatem colas.*

*If ever we break the ties of right,
'Tis when a kingdom is the glorious prize:
In other things be strictly just.*

Which

Which is almost as great a height of villainy as it can arrive at. Yet ought the desire of power to have had no place in our frame, or is it of no use in it? Or finally, because the desire of getting riches to support a vain and extravagant way of living, if not severely checked, gradually corrupts the honestest minds, and at last engages them in pursuits, which some time before they could not think of without abhorrence; are for this reason all desire of property and power, of pre-eminence and honour, or even of elegance and grandeur, passions, absolutely condemnable in themselves, and to which human nature ought to have been an utter stranger? What we learn from *Salust*, *Sueton*, and other Authors, is by no means improbable, *viz.* That *Julius Cæsar* had never attempted to destroy the liberties of his country, had he been able to have paid the debts which he had contracted by his excessive prodigality; and that abundance of people sided either with him or *Pompey*, only because they wanted wherewithal to supply their luxury, and were in hopes of getting by the civil wars, enough to support and maintain their former pride and greatness. But does it follow from hence, that all taste of elegance, all desire of glory, all love of power and wealth, are absolutely pernicious, and that they ought to have no place in our frame, or that we ought to have been made totally incapable of forming any ideas or affections that could ever degenerate into such perverse opinions and lusts? How much more just and truly philosophical is this reasoning in our excellent poet concerning human passions.

*Envy, to which th' ignoble mind's a slave,
Is emulation in the learned and brave :
Lust, thro' some certain strainers well refin'd,
Is gentle love, and charms all womankind.
Nor virtue, male and female can we name,
But what will grow on pride, or grow on shame.*

Of the NATURE and ORIGINE

*Thus nature gives us (let it check our pride)
 The virtue nearest to our vice ally'd ;
 Reason, the bias turns to good from ill,
 And Nero reigns a Titus, if he will.
 The fiery soul abhorr'd in Cataline,
 In Decius charms, in Curtius is divine.
 The same ambition can destroy, or save,
 And makes a patriot, as it makes a knave.*

Essay on Man.

Nature, in order to make a necessary diversity of tempers among mankind, must either have made some particular affection originally stronger in one breast, and another in another ; or have so ordered the situations of mankind, that the same original affections should of necessity take various turns in consequence of different circumstances calling forth more frequently, some one and some another affection, equally natural to all men. But what follows from hence, but that there is a vice, or a hurtful turn, into which every affection is in peculiar danger of degenerating, as is well known to poets, who describe characters, and place them in various circumstances of actions ? Sure it does not follow that any of the affections implanted in the human mind by nature, ought to be wanting. Take them away, and the vices or diseases to which they are incident, will likewise be removed : But so will the perfections or virtues to which they may rise and be improved by due culture, likewise be sent a packing. And to what a low size will men be thus reduced ? Tho' it be reason that forms the virtues, yet our affections are the principles or materials that are formed into virtues by reason. Reason would indeed have nothing to guide, nothing to work upon, if we were not endued with all the affections, from the misguidances of which the most hurtful disturbances of human life proceed.

Now what is the result of this, but that man is excellently furnished by nature for attaining, by the due discipline of the affections implanted in him, to prudence, to self-command, to benevolence, to fortitude, and to all that is called virtue; and that this is the end for which he is so made and framed, in the same sense that any thing is said to be made for the end to which its frame and constitution is well adapted; that this is his happiness, his perfection, the ultimate scope and design of his frame and all the laws relative to it, in any sense of end, scope or design.

Man is made for virtue and virtuous happiness.

Sect. XIV.

'Tis true, we are not merely intellectual beings; we have senses and sensitive appetites, as well as moral capacities and social affections (§ 6): But it hath appeared, that we are made to govern all our appetites and affections by our reason; that our sensitive appetites ought to be under its command, and not to be allowed to obscure it, far less to triumph over it, and trample it under foot; and that our sensitive appetites are so far from engrossing or making the whole of our constitution, that we have other affections, the regular exercises of which, under the presidence and direction of reason, are our highest and noblest enjoyments. This hath been fully proved. And therefore, let it be now observed, that kind nature hath not only placed our happiness in the virtuous exercises which have been described, but hath so constituted and framed us, that the ideas of the presidence of reason, and of benevolence, can no sooner be presented to our minds than we must necessarily assent to and approve those two general rules of life, "That reason ought to hold the reins of government in our minds." And, "That benevolence, or regard to public good, ought to be the reigning affection in them." None can reflect upon these two rules without perceiving

Another proof of this, from the moral sense natural to us.

Of our
moral
sense.

ceiving their fitness, and that immediately without making any calculations about their consequences. And therefore we may justly say with an excellent author (Domat in his *treatise of laws*) “ That the first principles of morality or laws, have a character of truth, which touches and persuades more than that of the principles of other human sciences ; that whereas the principles of other sciences, and the particular truths which depend upon them, are only the objects of the mind, and not of the heart, and that they do not even enter into the minds of all persons ; the first principles of morals or laws, and the particular rules essential to these principles, have a character of truth which every body is capable of knowing, and which affects the mind and the heart alike. The whole man is penetrated by them, and more strongly convinced of them, than of the truths of all the other human sciences.” Or with another admirable moralist (Hutcheson in his *Enquiry, &c.*) “ The Author of nature has much better furnished us for virtuous conduct, than many philosophers seem to imagine, or at least are willing to grant, by almost as quick and powerful instructions as we have for the preservation of our bodies. He has given us strong affections to be the springs of each virtuous action, and made virtue a lovely form, that we might easily distinguish it from its contrary, and be made happy by the pursuit of it. As the Author of nature has determined us to receive by our outward senses, pleasant or disagreeable ideas of objects, according as they are useful or hurtful to our bodies, and to receive from uniform objects the pleasures of beauty and harmony, to excite us to the pursuit of knowledge, and to reward us for it ; in the same manner, he has given us a moral sense to direct our actions, and to give us still nobler pleasures ; so that while we are only intending the good of others, we undesignedly promote our own greatest private good.” But having elsewhere handled

handled this subject at great length, it will be sufficient to remark here, 1. That in consequence of the sense of beauty in outward forms, and of the sense of beauty in affections, actions and characters, with which the human mind is endued, all the pleasures which man is intended by nature to pursue, may properly be comprized under the general notion of order or beauty : For they have all this general or common character, that they proceed from well disciplined and regulated affections, and they all tend to produce order within and without the mind. What is the presidence of reason, but reason maintaining order and harmony ; and what do the regular exercises of benevolence which have been described produce, but inward and outward harmony ? What makes the pleasure of contemplation and knowledge, besides the views of regularity, order and harmony ? What is it that charms the imagination in any of the imitative arts ? Or what hath what is called *good taste* for its object and scope, besides order and harmony in composition ? And how gross and contemptible are all the pleasures of sense, when we abstract from them all elegance, all symmetry, proportion and order ? Man therefore, may in general be said to be framed by nature to pursue order and harmony. And this is indeed the pursuit of the Author of nature himself, universal order and harmony, or, which is the same, universal good. But,

2. As the presidence of reason over all our appetites and affections, and the prevalence of benevolence in our temper, cannot be considered by us without being perceived, or rather felt to be our most reasonable and becoming part, nor the opposite character be reflected upon, without being disapproved and condemned by us ; so we cannot consider the Author of nature, without immediately perceiving, that he deserves our highest adoration and love ; and that benevolence, and the rational government of our affections, can alone render us like him, or recom-

By this moral sense we are led to conceive the virtues above described as commanded by God the Author of nature.

mend us to his favour, upon whom all our interests depend. We must of necessity own an universal cause, by which all things are made, and are upheld in being and governed. And our moral sense of what is the best, the most perfect disposition of mind, naturally leads us at once to ascribe perfect reason and benevolence to the first cause of all things, our Creator: And to apprehend it, 1. To be his will, that we should act a rational and benevolent part in all our conduct." And, 2. "That according to the constitution of things in his universal government, such conduct must be the only road to true happiness in the sum of things; so that whatever difficulties and trials may be necessary to the first state of rational agents, for their improvement in moral perfection, yet upon the whole, sincere virtue shall make happy, and confirmed vice shall render miserable." These truths are obvious necessary consequences, from the idea of an all-perfect Maker and Governor of the universe. But these truths being fixed, then are we under obligation to benevolence and rational government, in this strict and proper sense of obligation, "That the Author and Governor of the Universe, our Lord and Creator, wills or commands us to exert our reason, as the Governor of our affections, and to pursue in all our conduct the good of our kind." The virtues for which we have found man to be furnished and intended, do, when considered in this light, take the character of laws in a sense applicable to them only, *i. e.* of universal unalterable commands laid upon us by the Author of nature, the Sovereign disposer of all our interests. The connexions observed by nature in the production of physical effects, are very properly called laws of matter and motion, or laws by which the Author of nature has willed that matter should operate, or more properly be operated upon; and they are of necessity laws to human arts, since human art cannot accomplish any end but by acting in conformity to them,

And consequently to be enjoined by moral laws properly so called.

them. But the connexions relative to our moral powers, our reason, our social affections, and the subordinacy of all our appetites and affections to reason, in consequence of which certain rules must be observed by us in order to private and public happiness, are not only laws to us in this respect, that we can only attain to our best enjoyments by acting conformably to them ; they are also laws to us in this sense, that acting conformably to them is agreeable to our Creator ; and it is his will that we should conform our conduct to them. So that they are not merely moral laws, as they are laws of nature respecting moral ends ; but they are moral laws in this respect, that they are rules for the conduct of our life and manners, which cannot be transgressed or departed from without incurring guilt in the sight of God, without offending against his will and authority, and rendering ourselves obnoxious to all the consequences of his regard to virtue or moral perfection, and his disapprobation or detestation of vice. They are rules which he hath necessarily determined our minds to approve, and to conceive as his commands, as often as we consider them, and take a view of the perfections which must belong to the Divine Mind. And therefore, they are laws that come up to this definition of a law, *viz.* “ The will of a superior who hath a just title to command, and sufficient power to enforce conformity to his commands.” And indeed it is when prudence, temperance, fortitude, benevolence, and all the other virtues are considered in this light, that they alone can have their full force. For in this light only are they fully and perfectly considered ; or till we conceive of them in this view, we have not an adequate notion of all the obligations to conform our practice to them, which essentially belong to them. It will be readily acknowledged, that two motives must needs have more force than one. But this is not all : No view that can be taken

ken of the virtues above described, can have so much power to influence mankind as the conception of them under the notion of the divine will or law, not commanding arbitrarily or without reason, but for the good of rational agents ; since what is thus apprehended or considered, must work upon us in various manners ; excite our emulation to be like the most perfect of Beings, and agreeable to him ; stir up our gratitude to engage us to act the part he approves and commands ; influence our hope with high expectations of great advantages from his love and favour ; and raise our fear of offending him to a due pitch of reverence towards his authority.

Regard to
the divine
law is re-
ligion.

Now, regard to virtue, influenced by these considerations, is properly called religion. And that man is made for religion, as well as for virtue, is evident, since we cannot reason at all about the nature of things, without being led to apprehend a first Supreme Cause : nor can we represent to ourselves the perfections of an eternal all-sufficient Mind, the Creator and Governor of the Universe, without being filled with the highest veneration towards him, and his will with relation to our conduct. And meditation upon the divine perfections, is in reality the noblest source of delight to the human mind, and an exercise that hath the sweetest, the benignest influence upon the temper. But not to insist at present upon the pleasures which a just sense of God and divine providence afford to the mind ; if the being of a God be owned, it must certainly be true, that we are under religious obligation to that rational government of our affections, and to the benevolence, for which we have been found to be so excellently furnished and fitted by nature, *i. e.* under obligation to this conduct, in order to approve ourselves to God ; under obligation to it, as the conduct he commands, and will reward. And this being true, this conduct is our duty. And in every sense are we obliged to be virtuous. We shall

shall therefore only add, 1. That the sacred writings give us a very just view of the whole of our duties, arising from our nature, and our relation to our Creator, the Author and Ruler of the universe, when they are reduced there into two commandments, the first of which is to love God, and the other to love mankind; or when it is there asserted that love is the fulfilment of the law of God. And there is no other law which commands every one to love himself, because no one can love himself better than by keeping the law which enjoins love to God and love to our fellow-creatures. Self-love is not so properly a law, as it is a principle inseparable from all beings capable of that reflection, without which they would be incapable of governing their actions, distinguishing rules for their conduct, or pursuing ends. And for this reason the sacred writings do not mention self-love as a law; but they suppose this general desire of happiness as a principle necessarily inherent in us, which is to be directed by reason, *i. e.* by such rules or laws as reason is able to discover, by due attention to the relations and connexions of things. And these rules it justly reduces sometimes to two, the love of God, and the love of mankind; and sometimes to one general law, *love*.

2. Yet it may very justly be said, that the whole of our duty consists in well regulated self-love, or in the pursuit of our true happiness. For our greatest happiness consists, by our constitution, in such government of our affections by reason as hath been described, in the exercises of devotion towards God, and the approbation of our moral sense or conscience. As our duties cannot be inferred but from the internal principles of action implanted by the Author of nature in our minds, and the connexions relative to them; so indeed no commands repugnant to our internal principle, and the connexions relative to them, repugnant to what the

Author

The harmony of this account of our nature and duties with the scripture doctrine.

Author of nature hath placed our happiness and perfection in, can come from the Author of nature. Now, the two great commands which revelation tells us are the whole of human duty, the whole of religion and virtue, love to God, and love to mankind, are the very laws which our constitution prescribes, or makes necessary to be observed by us in all our conduct, in order to attain to the greatest happiness our nature is capable of. They are indicated or pointed out to us by nature with so much clearness, that we may see plainly, that if any man is ignorant of them, it is only because he does not know himself, or does not reflect upon the frame of his mind; and turn his eyes inward to consider the internal principles of action with which he is endued; and therefore nothing is more astonishing than the blindness that hinders any one from seeing them. 3. Tho' many disputes have been raised about the meaning of, as, in the divine commandment, *to love our neighbour as ourself*, by those who like jangling; yet it plainly means the same with that other precept, *to do as we would be done by*; the equity of which is so plain, that it hath been acknowledged in all ages and countries of the world as a most perfect summary of all the duties we can owe one to another, and to be a directory, which cannot be applied in any case, without immediately perceiving, or rather feeling what we ought to do. This Grotius, Puffendorf, and Barbeyrac, have fully proved. 4. These two commands have a most strict and intimate alliance. One cannot love God without loving mankind; nor love mankind, and having an idea of an infinitely good supreme Being, the Creator of all things, and the common Father of mankind, not love this all-perfect Being. And the best security men can have for their living together in harmony and love, is from the prevalence of true religion, or of a just notion of a supreme Being, and due regard to

his

his will and authority, among them. It is, in its nature or tendency, the strongest bond of society. And from experience, or the history of mankind, there is reason to say with Cicero, "I know not, but that upon taking away religion and piety, all faith and society of human kind, and even the most excellent of virtues, justice, would soon leave the world."

Upon the whole therefore, when we proceed from considering the constitution of the human mind, and the connexions and relations of things respecting man, to the contemplation of the supreme Author of mankind and of these connexions, and of the whole frame of things, we have good ground to conclude, with the same antient, in a passage of his books *de republica*, preserved to us by Lactantius. "There is indeed a law agreeable to nature, and founded in it, which is no other than right reason, made known to all men, constant and immutable, that calls us to duty by commands, and deters us from fraud and villany by threats; neither are its commands and threats in vain to the good, tho' they may make but little impresson upon the wicked and corrupt. This law we can neither disannul nor diminish; nor is it possible that it should be totally reversed; the senate or the people cannot free us from its authority. Nor do we need any explainer of it besides our own consciences. It will not be different at Rome and at Athens, now or hereafter, but will eternally and unchangeably bind all persons in all places; God himself, the universal Master and King, being its Founder and Author. 'Tis He who is the Establisher, the Enactor, the Interpreter of this law; which, whosoever refuses to obey, shall be afraid to look into his own mind, or converse with himself, because he contemns and vilifies his nature; and shall thus undergo the severest penalties, tho' he should escape every thing else which falls under our common name and notion
of

of punishment." And thus I am naturally led to consider the origine and design of civil laws.

Sect. XV.

Theſe two
laws are
the found-
ation of
civil laws.

Now, we may be very ſhort on this head. For, having found what are the laws and rules men muſt obſerve, in order to attain to the greateſt perfection and happineſs their nature is capable of, it is plain, that the rules and laws they ought to obſerve, or agree to obſerve, when they unite together in certain civil or political bodies for the promotion of their common happineſs, can be no other than thoſe very laws of nature which have been delineated. And it is very eaſy to trace the civil laws in well regulated ſtates into the principles above explained as their foundations. The laws of a civil or political ſtate may be divided into theſe three claſſes; the laws relating to the private property, quiet and happineſs of perſons; the laws relating to religion; and thoſe which concern the public order of the government. The firſt comprehends the laws which regulate covenants or contracts of all kinds, the ſecurity of property, alienation and preſcription, regular propagation and education, guardianships, ſucceſſions, teſtaments, and other matters of the like nature. Now, all theſe laws are, or ought to be nothing elſe in their ſpirit, but the order of that love which we reciprocally owe to one another. Thus the ſpirit and ſubſtance of all the laws, with regard to engagements or covenants, conſiſts in forbidding all infidelity, treachery, double dealing, deceit and knavery, and all other ways of doing hurt and wrong. Thus the regular propagation and education of mankind, or the natural order in which our benevolence ought to exert itſelf, are the foundation of all the laws relating to marriage, and to parental and filial duties, and to unlawful conjunctions. The ſame is likewiſe the foundation of the laws relative to ſucceſſions. For the order of ſucceſſions is
founded

founded on the necessity of continuing and transmitting the state of society from one generation to another ; which is done, by making certain persons to succeed in the place of those who die, and enter upon their rights and offices, their relations and engagements, which are capable of passing to posterity. Good laws of this kind have their foundation on the order in which our benevolence ought to exert itself in parents to children, and reciprocally in children to parents ; and on that perfect security of property which is necessary to encourage industry ; for men are spurred to industry, not merely by regard to themselves, but by regard to their posterity ; and would be very indifferent about making acquisitions, were they not sure of disposing of them as they please, and of transmitting them after they are gone to those they love best, and are most nearly interested in. Many other laws have their foundation in the same principles, and are merely intended to secure the perpetuity of property, such as the regulations about prescription ; or to render contracts of various sorts about labour and property equally free and certain. Sumptuary laws have their foundation likewise in the care that parents ought to have of making and leaving suitable provisions to their children ; and, in general, in the necessity of promoting industry, and discouraging that idleness, effeminacy and debauchery, which is known to be the source of so many direful ills, and the greatest bane of mankind ; the very reverse of all that renders human society either great or happy.

The laws of religion, under which we may comprehend all regulations with regard to education, the main design of which is to tincture the mind early with just notions of God and of human duties, and to form good habits and dispositions ; as well as regulations about public worship : these have their foundation in the strict alliance between religion and virtue, in the chief duty of pa-

rents towards their children, and in the general interest of society, which is universal virtue.

The public laws are those which fix or regulate the order of making, and of executing laws for the general good. And what these ought to be, must likewise be determined from the nature of mankind, and of that happiness which they are made and intended for by nature. Men may very properly be said to be intended for that civil state, in which, it is plain, from experience, the happiness for which mankind are formed by nature, may be best attained. And the orders of such a civil state must be deduced from the lines of them, as a great author expresses it, which appear in human nature. *It is according to them, says he, that this building must be limned.* But we are not now to enter into this curious and important enquiry. All we would take notice of, with regard to the civil laws, which it is the design of civil society to make and execute, is, I. That in all well-regulated states, the sum and substance of what is called its civil laws, are really laws of natural and universal obligation. Whatever hath the force of civil law in civil courts, derives that force from civil authority. Yet the chief part of civil law is really natural law. What belongs particularly to the civil law, may be reduced, as Pufendorff observes, to these two heads: To certain forms prescribed, and certain methods to be observed in civil affairs, either in transferring rights, or else in laying obligations upon persons, which shall be looked upon to be valid in the civil courts; and to the several ways how a man is to prosecute his rights in the same courts. So that if we give the law of nature all that belongs to it, and take away from the Civilians what they have hitherto promiscuously treated of, we shall bring the civil law to a much narrower compass than it at first sight appears to be. In all commonwealths the natural law supplies the defects of the civil. And

And in all commonwealths natural law ought to be the substance of the civil law; and the regulations it adds about things which the law of nature prescribes only in a general and indefinite manner, ought to be conformable to the spirit and scope of the law of nature. For which reason, Hobbes calls the law of nature *the unwritten civil law*; and the constitutions of particular commonwealths, justly adapted to the public good, (which, as Cicero says, ought to be the end of all laws, and is the best comment upon, and interpretation of them) are properly called, by some authors, *appendages* to the law of nature. 2. But all the laws of nature have not the force of civil laws allowed them in commonwealths; but such only, upon the observation of which the common quiet of mankind intirely depends; as well because the controversies about the violation of them would be very perplexed and intricate, as to prevent the multiplication of litigious suits; and also, that the good and virtuous might not be deprived of the most valuable part of their character, the doing well out of reverence to their Creator, and sincere love to mankind, without regard to the fears of human penalties. For this they must necessarily lose, when there is no distinction made whether a man doth well out of love to virtue, or out of fear of punishment. 3. Civil laws are justly said to respect external actions only, whereas moral laws principally regard the habit of the mind, because civil punishments can only be applied against what appears. Yet it is an antient and true observation, that the best and most useful laws, and which are approved of by all such as are subject to them, are of no use, unless subjects be trained up and educated in a manner of living conformable to them. *Plato* says, that to lay the foundations of a good government, we must first begin by the education of children, and must make them as virtuous as possible; as an experienced

gardiner employs his care about the young and tender plants, and then goes on to others.

*Quid leges sine moribus
Vane proficiunt.*

Hor. l. 3. Od. 24.

Hocrates (in Areopagit.) tells us, “ The Athenians
 “ did not believe that virtue derived so much ad-
 “ vantage and assistance in its growth from good
 “ statutes as from custom and practice. The great-
 “ est part of men must, said they, of necessity
 “ frame their minds according to those patterns by
 “ which they were first taught and instructed ; but
 “ a numerous and accurate establishment of laws,
 “ is really a sign of the ill condition of the common-
 “ wealth, edicts and ordinances being then heap’d
 “ upon one another, when governments find them-
 “ selves obliged to endeavour the restraining of
 “ vice, as it were by banks and mounds. That it
 “ became wise magistrates, not to fill the public
 “ places with proclamations and decrees, but to take
 “ care that the subjects should have the love of ju-
 “ stice and honesty firmly rooted in their minds.
 “ That not the orders of the senate or people, but
 “ good and generous education was the thing which
 “ made a government happy : Inasmuch as men
 “ would venture to break through the nicest exact-
 “ ness of political constitutions, if they had not
 “ been bred up under a strict obedience to them.
 “ Whereas those who had been formed to virtue
 “ by a regular and constant discipline, were the on-
 “ ly persons who by their just conformity could
 “ make good laws obtain a good effect. The prin-
 “ cipal design of the Athenians, when they made
 “ these reflexions, was not how they might punish
 “ disorders, but how they might find a way of mak-
 “ ing the people to be willing not to do any thing
 “ that might deserve punishment. This last view
 “ seem’d to them worthy of themselves and their
 “ employment. But as for the other, or an exact
 “ appli-

“ application to punish people, they thought it a
 “ business proper only for an enemy. And there-
 “ fore they took care of all the subjects in general,
 “ but particularly of the youth.”

Thus I have endeavoured to deduce the laws of nature, and the end of civil society and its laws, by an analysis of the human mind, from our internal principles and dispositions. For the virtue or excellence of any being can be nothing else but its nature brought to the perfection of which it is capable. And therefore, the virtue, excellence, or happiness of a being must be deduced from its constitution and situation. *Virtus enim in cujusque rei natura supremum est & perfectio.*—*Tum oculi, in oculi natura, supremum & perfectio; tum hominis in hominis natura supremum & perfectio.*—*Hominis virtus est hominis naturæ perfectio, nam & equi virtus est ea, quæ naturam ejus ad supremum perducit.*” Timæus Locrus de anima mundi, & Metopus Pythagoreus de virtute. So Cicero de legibus, l. 1. n. 15. & de finibus passim.

F I N I S.



E R R A T A.

Page 58. § 69. l. 3. dele *that*. p. 86. § 100. l. 2. dele *a*.
p. 109. l. 36. read *a civil state and a rightly*. p. 112. l. 42.
for *incapable* read *capable*. p. 259. l. 23. instead of *they*, read
be. p. 269. l. 37. instead of *seekly*, read *sickly*. p. 270. l. 30.
after *exercises*, read *be directed*.

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