BURLAMAQUI's

NATURAL

AND

POLITICAL

LAW.

IN TWO VOLUMES.

VOL. I.

THE

PRINCIPLES

OF

NATURAL LAW.

By J. J. BURLAMAQUI,

COUNSELLOR OF STATE, AND LATE PROFESSOR OF NATURAL AND CIVIL LAW AT GENEVA.

TRANSLATED BY MR. NUGENT.

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To Dr. MEAD.

SIR,

TO intrude in this manner upon your time, ſo uſefully employed in the duties of your profeſſion, would expoſe me in ſome meaſure to blame, were it upon a leſs important occaſion than that of recommending the following work to your generous protection. The dignity of the ſubject, which, handled by other pens, has been thought worthy of being inſcribed to the moſt illuſtrious perſonages of the laſt and preſent age, will plead, I hope, ſome excuſe for an addreſs, which is deſigned not ſo much to interrupt your occupations, as to avail itſelf of the ſanction of your name in introducing this work to the public. And indeed a nobler ſubject I could not ſelect for the favour of your acceptance, than that which

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a ſo

so nearly relates to the moral duties of life, and the foundation of human contentment and happineſs; a ſubject moreover illuſtrated by one of the ableſt maſters of the preſent age, whoſe extraordinary ability and ſkill in curing the diſorders of the mind, may be compared very aptly to yours in removing thoſe of the body. One of the principal encouragements I had to this addreſs, is the near relation between the following work, and thoſe elevated ſentiments with which you have been always inſpired. Such an admirable ſyſtem of moral precepts, ſuch noble maxims of true Chriſtian policy, and ſuch excellent rules for the government of our lives, cannot but be acceptable to a gentleman, who, in the whole tenor of his conduct, has been an illuſtrious example of thoſe rules and maxims which are here moſt judiciouſly eſtabliſhed. A very good opportunity this of entering upon the encomium of thoſe virtues which have ſo eminently diſtinguiſhed you at the head of your profeſſion; but the little value any commendations of mine would have, the apprehenſion I ſhould be under of being ſuſpected of

adulation,

adulation, and the danger I ſhould incur of offending your modeſty, oblige me to wave any attempt of this nature. However, I cannot help taking notice of that true magnificence with which you have at all times contributed to the advancement of learning, and whereby you have juſtly acquired the title of patron and protector of letters. In fact, the extenſive bleſſings that fortune has beſtowed upon you, have been employed not as inſtruments of private luxury, but as means of promoting thoſe arts, which have received an additional luſtre, ſince they have ſhone ſo conſpicuouſly in your perſon. Your friendſhip and correſpondence have been courted by the greateſt men of the preſent age; and your houſe, like that of Atticus, has been open to the learned of all orders and ranks, who unanimouſly reſpect you, not only as a ſupreme judge of learning and wit, but, moreover, as an *arbiter elegantiarum*, and maſter of finiſhed urbanity. Your collection of valuable curioſities and books, wherein you have rivalled the magnificence of ſovereigns, is the admiration and talk of all Europe,

and

and will be a lasting monument of your love of literature. The polite reception you have always given to the learned of foreign nations has rendered your name so respectable abroad, that you are never mentioned but with expressions denoting the high idea they entertain of your singular munificence. These, Sir, are not particular sentiments of mine; they are the sentiments of the public, whose voice I utter; they are the sentiments of your learned friends abroad, which I have been desired to repeat to you upon a late occasion, together with their compliments of thanks for the marks they have received of your great and disinterested civility. It is with pleasure I embrace this opportunity of executing my commission, and of declaring in this public manner the profound respect and esteem with which I have the honour of subscribing myself,

SIR,

Your most humble and

Obedient Servant,

Gray's Inn,
June 4, 1748.

THOMAS NUGENT.

THE TRANSLATOR TO THE READER.

THE author of the following work, M. J. J. BURLAMAQUI, *was descended from one of those noble families of Lucca, which upon embracing the Protestant religion, were obliged about two centuries ago to take shelter in Geneva. His father was counsellor and secretary of state; honours which are frequently conferred in that city upon such as acquit themselves worthily of a professorship in the academy, particularly that of law, the fittest without doubt to form able judges, magistrates and statesmen. The son, upon his return from his travels, was immediately nominated professor of this science, in which post he continued a considerable number of years, till the republic thought proper to remunerate his long and eminent services, by raising him to the same dignities as his father. The great reputation he acquired in his professorship, was less owing to his immense erudition, in which he equalled if not excelled all his predecessors, than to the quickness of his understanding, the clearness of his ideas, his sound and judicious views in the study of jurisprudence, and especially to the solidity of his principles on natural law and civil government. With regard to the occasion of his publishing these* Principles, *he observes himself in his preface, that it was in some measure*

measure to comply with the importunity of his friends, but chiefly to prevent his reputation from being injured by a precipitate impression from any of those imperfect and surreptitious copies which had been handed about by his pupils. The public indeed had flattered themselves a long time with the hopes of seeing a complete course of the law of nature and nations from this eminent hand; but his occupations and infirmity obliged him to frustrate their expectations. However, as a good introduction to this science was extremely wanted, he thought proper, till he could publish his larger work, to favour us with the following Principles, being convinced that in this, as in every other branch of learning, the most essential part is the laying of a proper and solid foundation. In fact, we daily observe that most errors in life proceed rather from wrong principles, than from ill-drawn consequences.

M. BURLAMAQUI *is so modest as to consider these Principles, as calculated only for young people, who are desirous of being initiated into the study of natural law; and yet we may venture to affirm it is a performance of general utility, but especially to such as have had the misfortune of neglecting this science in their younger days. It is a performance that must certainly be allowed to have the merit of an original undertaking, by our author's ascending always to the first principles, by his illustrating and extending them, by his connecting them with each other, and by exhibiting them frequently in a new light. But this singular beauty consists in the alliance he so carefully points out between ethics and jurisprudence, religion and politics, after the example of Plato and Tully, and the other illustrious masters of antiquity. In effect, these sciences have the same rule, and tend to the same end; their business is to unravel the system of humanity, or the plan of Providence with regard to man; and since the unity of this system is an unquestionable point, so soon as writers ascend to the principles, in order to view and contemplate the whole, it is impossible but they all should meet.*

Our

Our author's method has nothing of the ſcholaſtic turn. Inſtead of ſtarting new difficulties, he prevents them by the manner of laying his theſis; inſtead of diſputing, he reconciles. Far from purſuing any idle or too ſubtle ideas, he follows nature ſtep by ſtep, and derives his arguments from ſenſe and experience. His thoughts he unfolds with the greateſt perſpicuity and order; and his ſtile is pure, clear, and agreeable, ſuch as properly becomes a didactic work. In fine, he has the honour of preſerving the character of a chriſtian philoſopher, by inculcating the value we ought to ſet upon the light of revelation, a light which ſo advantageouſly aſſiſts the feeble glimmerings of reaſon in the high and important concerns of our civil and religious duties.

THE

AUTHOR'S

ADVERTISEMENT.

THIS Treatise on the PRINCIPLES OF NATURAL LAW, *is an introduction to a larger work, or to a complete system of the law of nature and nations; which some time or other I propose to publish. But having met with several obstructions in my attempt through a variety of occupations, and principally from my indifferent state of health, I had almost lost sight of my original design. Being informed, however, that some manuscript copies of the papers I had drawn up for my own private use, when I gave lectures of jurisprudence, were multiplied and got into a number of hands, I began to apprehend lest this work should be published against my will, in a very imperfect and mangled condition. This induced me, at length, to yield to the solicitations of my friends, by communicating the following Essay to the public. Dubious whether I shall ever be able to finish the larger work, I have endeavoured to give such an extent to these* Principles *as may render them in some measure serviceable to such as are desirous of being initiated into the knowledge of the law of nature. As for those who are masters of this subject, the present work is not designed for them: my view will be sufficiently fulfilled, if it should prove of any utility to young beginners in the study of this important science.*

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THE

THE PRINCIPLES OF NATURAL LAW.

PART I.

General PRINCIPLES of RIGHT.

CHAP. I.

Of the Nature of Man conſidered with Regard to Right: Of the Underſtanding, and whatever is relative to this Faculty.

I. MY deſign is to enquire into thoſe rules which nature alone preſcribes to man, in order to conduct him ſafely to the end, which every one has, and indeed ought to have, in view, namely, true and ſolid happineſs. The ſyſtem or aſſemblage of theſe rules, conſidered as ſo many laws impoſed by God on man, is generally diſtinguiſhed by the name of *Natural Law*. This ſcience includes the moſt important principles of morality, juriſprudence, and politics, that is, whatever is moſt intereſting in

 respect

respect as well to man as to society. There can be nothing therefore more deserving of the application of a rational being, of a being that has its perfection and felicity seriously at heart. A just knowledge of the maxims we ought to follow in the course of life, is the principal object of wisdom; and virtue consists in putting them constantly in practice, without being ever diverted from so noble a pursuit.

II. The idea of *Right*, and much more that of *Natural Right*, are undoubtedly relative to the nature of man. It is from this nature therefore, from the constitution and state of man, that we are to deduce the principles of this science.

The word *Right (Droit*)* in its original signification, comes from the verb *dirigo*, which implies to conduct a person to some certain end by the shortest road. Right, therefore, in its proper and most general sense, and that to which all others must be reduced, is whatever directs, or is properly directed. This being premised, the first thing we have to examine is, whether man is susceptible of direction and rule in respect to his actions. That we may attempt this with a greater probability of success, we are to trace matters to their very origin, and ascending as high as the nature and constitution of man, we must there unravel the principle of his actions, and the several states that properly belong to him, in order to demonstrate afterwards in what manner, and how far, he is susceptible of direction in his conduct. This is the only method of knowing what is *right*, and what is not.

III. Man is an animal endowed with understanding, and reason; a being composed of an organized body, and a rational soul.

With

* The etymology given here by the Author was intended only for the French word *Droit*.

With regard to his body, he is pretty ſimilar to other animals, having the ſame organs, properties, and wants. This is a living body, organized and compoſed of ſeveral parts; a body that moves of itſelf, and feeble in the commencement, increaſes gradually in its progreſs by the help of nouriſhment, till it arrives to a certain period, in which it appears in its flower and vigour, from whence it inſenſibly declines to old age, which conducts it at length to diſſolution. This is the ordinary courſe of human life, unleſs it happens to be abridged by ſome malady or accident.

But man, beſides the marvellous diſpoſition of his body, has likewiſe a rational ſoul, which eminently diſcriminates him from brutes. It is by this noble part of himſelf that he thinks, and is capable of forming juſt ideas of the different objects that occur to him; of comparing them together; of inferring from known principles unknown truths; of paſſing a ſolid judgment on the mutual fitneſs or agreement of things, as well as on the relations they bear to us; of deliberating on what is proper or improper to be done, and of determining conſequently to act one way or other. The mind recollects what is paſt, joins it with the preſent, and extends its views to futurity. It is capable of penetrating into the cauſes, progreſs, and conſequence of things, and of diſcovering, as it were at one glance, the intire courſe of life, which enables it to lay in a ſtore of ſuch things as are neceſſary for making a happy career. Beſides, in all this, it is not ſubject to a conſtant ſeries of uniform and invariable operations, but finds itſelf at liberty to act or not to act, to ſuſpend its actions and motions, to direct and manage them as it thinks proper.

IV. Such is the general idea we are to form of the nature of man. What reſults from hence is, that there are ſeveral ſorts of human actions: Some are purely ſpiritual, as to think, to reflect, to doubt, &c.

others are merely corporeal, as to breathe, to grow, &c. and some there are that may be called mixt, in which the soul and body have both a share, being produced by their joint concurrence, in consequence of the union which God has established between these two constituent parts of man; such as to speak, to work, &c.

Those actions, which either in their origin or direction depend on the soul, are called human or voluntary; all the rest are termed merely physical. The soul is therefore the principle of human actions; and these actions cannot be the object of rule, but inasmuch as they are produced and directed by those noble faculties with which man has been inriched by his Creator. Hence it is necessary to enter into a particular inquiry concerning this subject, and to examine closely into the faculties and operations of the soul, in order to discover in what manner they concur to the production of human actions. This will help us, at the same time, to unfold the nature of these actions, to assure ourselves whether they are really susceptible of rule, and how far they are subject to human command.

V. Let man reflect but ever so little on himself, sense and experience will soon inform him, that his soul is an agent, whose activity displays itself by a series of different operations; which having been distinguished by separate names, are likewise attributed to different faculties. The chief of these faculties are the understanding, will, and liberty. The soul is, indeed, a simple being; but this does not hinder us, when we attend to its different ways of operating, from considering it as a subject in which different powers of acting reside, and from giving different denominations to these powers. If we consider the thing in this manner, we shall find it will give a greater exactness and perspicuity to our ideas. Let us remember therefore, that these faculties are nothing else but the different powers of acting

ing inherent in the mind, by means of which it performs all its operations.

VI. The principal faculty of the ſoul, that which conſtitutes the fundamental part of its being, and ſerves, as it were, for its intrinſic light, is the underſtanding. We may define it that faculty or power by which the mind perceives, and forms ideas of things, in order to come at the knowledge of truth. Truth may be taken here in two ſignifications; either for the nature, ſtate, and mutual relations of things; or for the ideas agreeable to this nature, ſtate, and relations. To have a knowledge therefore of truth, is to perceive things ſuch as they are in themſelves, and to form ideas concerning them conformable to their nature.

VII. We muſt therefore ſet out with acknowledging as a fixt and unconteſtible principle, that the human underſtanding is naturally right, and has within itſelf a ſtrength ſufficient to arrive at the knowledge of truth, and to diſtinguiſh it from error; eſpecially in things wherein our reſpective duties are concerned, and which are requiſite to form man for a virtuous, honourable, and quiet life; provided, however, he employs all the care and attention that lies in his power.

Senſe and experience concur to convince us of the truth of this principle; which is the hinge, as it were, whereon the whole ſyſtem of humanity turns. It cannot be called in queſtion, without ſapping the foundation, and intirely ſubverting the whole ſtructure of ſociety; becauſe this would be annulling all manner of diſtinction between truth and error, and between good and evil; and by a natural conſequence of this ſubverſion, we ſhould find ourſelves reduced to the neceſſity of doubting of every thing; which is the higheſt pitch of human extravagance.

Thoſe who pretend that reaſon and its faculties are depraved in ſuch a manner, as to be no longer ca-

pable of ſerving as a ſure and faithful guide to man, either in reſpect to his duties, or particularly with regard to religion; do not reflect that they have adopted for the baſis of their ſyſtem, a principle deſtructive of all truth, and conſequently of religion. Thus we ſee that the ſacred ſcripture, far from eſtabliſhing any ſuch maxim, aſſures us*, that *when the Gentiles which have not the law, do by nature the things contained in the law; theſe having not the law, are a law to themſelves. Which ſhew the work of the law written in their hearts, their conſcience alſo bearing witneſs.*

True it is, that a bad education, vicious habits, and irregular paſſions, may offuſcate the mind; and that neglect, levity, and prejudices, precipitate men frequently into the groſſeſt errors in point of religion and morals. But this proves only that men may make a bad uſe of their reaſon, and not that the natural rectitude of the faculties is ſubverted. What we have ſtill to ſay, concerning this point, will help to ſet it in a clearer light.

VIII. Let us proceed now to a cloſer inquiry into the operations of the underſtanding. The perception, or view and knowledge of things, is commonly formed by the concurrence of two actions; one from the object, and is the impreſſion which this object makes on us; the other from the mind, and is properly a glance, or ſimple view of the ſoul, on the object it is deſirous of knowing. But as a firſt view is not always ſufficient, it is neceſſary that the mind ſhould apply itſelf for ſome time to a ſerious conſideration of the object, to the end it may acquire a juſt knowledge of things, and form thereof exact ideas. This application, with which the ſoul continues to view the object in order to know it well, is called attention; and if it turns itſelf different ways, to conſider the object on all ſides, this is termed

* Rom ii. 14. 15.

termed examen or inquiry. We may therefore affirm, that the perception or knowledge of things depends intirely, in respect to the mind, on its natural vigour and attention.

IX. It is by these helps, drawn from his own fund, that man attains at length a clear and distinct knowledge of things, and their relations; as also of ideas, and the conformity of those ideas to their originals; in short, that he acquires the knowledge of truth. We give the name of evidence, to this clear and distinct view of things, and of their mutual relations; a point to which we should be particularly attentive. For this evidence being the essential characteristic of truth, or the sure mark whereby one cannot help distinguishing it, the consequence is, that it necessarily produces such an internal conviction, as forms the highest degree of certainty. It is true that all objects do not present themselves with so strong a light, and that notwithstanding the great care and application a man may use, all that he is frequently able to attain, is only a glimmering light, which according to its strength or weakness produces different degrees of probability and seeming truth. But this must be absolutely the case of every being, whose faculties are limited: It is sufficient that man, in respect to his destination and state, is capable of knowing with certainty those things which concern his perfection and happiness; and moreover, that he is able to distinguish between probability and evidence, as also between the different degrees of probability, in order to proportion his assent to those differences. Now a person need but enter ever so little into himself, and reflect on the operations of his mind, to be convinced, beyond any possibility of doubt, that man is really possessed of this discernment.

X. The senses, taken for the sensitive faculty, the imagination also, and the memory, must be all reduced to the understanding. In fact, the senses, considered

ſidered in this manner, are nothing elſe but the underſtanding itſelf, as it makes uſe of the ſenſes and organs of the body, to perceive corporeal objects. The imagination likewiſe is nothing but the underſtanding, as it perceives abſent objects, not in themſelves, but by their images formed in the brain. The memory, in fine, is no more than the underſtanding, conſidered as poſſeſſed of the faculty of retaining the ideas it forms of things, and capable of repreſenting them to itſelf whenever there is occaſion; advantages that principally depend on the care we take in repeating frequently thoſe ideas.

XI. From what has been hitherto ſaid with regard to the underſtanding, it follows, that the object of this faculty of the ſoul is truth, with all the acts and means that lead us to it. Upon this ſuppoſition, the perfection of the underſtanding conſiſts in the knowledge of truth, this being the end for which it is deſigned.

There are two things, among others, oppoſite to this perfection, ignorance and error, which are two maladies, as it were, of the mind. Ignorance is no more than a privation of ideas or knowledge; but error is a nonconformity or oppoſition of our ideas to the nature and ſtate of things. Error being therefore the ſubverſion of truth, is much more oppoſite to it than ignorance, which is a kind of medium between truth and error.

It is to be obſerved here, that we do not ſpeak of the underſtanding, truth, ignorance, and error, purely to know what theſe things are in themſelves; our main deſign is to conſider them as principles of our actions. In this light, ignorance and error, though naturally diſtinct from one another, are generally mixt, as it were, and confounded; inſomuch, that whatſoever is ſaid of one, ought equally to be applied to the other. Ignorance is frequently the cauſe of error; but whether joined or ſeparate, they follow the ſame rules, and produce the ſame effect by the

the influence they have over our actions or omissions. Perhaps, were we to examine into things exactly, error only, properly speaking, can be looked upon as a principle of action, and not simple ignorance, which being nothing more of itself than a privation of ideas, cannot be productive of any thing.

XII. There are several sorts of ignorance and error, whose different divisions it is proper for us to observe. 1. Error considered in respect to its object, is either of the law or of the fact. 2. With regard to its origin, ignorance is voluntary or involuntary; error is vincible or invincible. 3. In relation to the influence of the error on a particular affair or action, it is esteemed essential or accidental.

Error is of the law or fact according as people are mistaken either in respect to the disposition of the law, or in regard to a fact that is not sufficiently known. For instance, it would be an error of the law, were a prince to suppose himself intitled to declare war against a neighbouring state, only because it insensibly increases in strength and power. Such was likewise the error so common formerly among the Greeks and Romans, that it was allowable for parents to expose their children. * On the contrary, the idea Abimelech had of Sarah the wife of Abraham, by taking her for an unmarried person, was an error of the fact.

The ignorance a person lies under through his own fault, or an error contracted by neglect, and which might have been avoided by using all possible care and attention, is a voluntary ignorance, or a vincible and surmountable error. Thus the polytheism of the Pagans was a vincible error; for they had only to make a right use of their reason, in order to be convinced that there was no necessity for supposing a plurality of gods. The same may be said of an opinion established among most of the ancients, that piracy

* See another example in St. Matthew, chap. xv. 4, 5.

piracy was lawful against those with whom there was no treaty subsisting, and that it was allowable to consider them as enemies. Ignorance is involuntary, and error invincible, when they are such as could neither have been prevented nor removed, even by all the care and endeavours that are morally possible; that is, judging of them according to the constitution of human things, and of common life. Thus the ignorance of the Christian religion, under which the people of America laboured, before they had any communication with the Europeans, was an involuntary and invincible ignorance.

In fine, we understand by an essential error, that whose object is some necessary circumstance in the affair, and which for this very reason has a direct influence on the action done in consequence thereof; insomuch, that were it not for this error, the action would never have been done. Hence this is denominated likewise an efficacious error. By necessary circumstances, we are to understand those which are necessarily required, either by the very nature of the thing, or by the intention of the agent, formed at the proper time, and made known by suitable indications. It was thus, for instance, an essential error in the Trojans, at the taking of their town, to shoot their darts against their own people, mistaking them for enemies, because of their being armed after the Greek manner. Again; a person marries another man's wife, supposing her to be a maid, or not knowing that her husband is still living; this regards the very nature of the thing, and is of course an essential error.

On the contrary, accidental error is that which has no necessary connexion of itself with the affair, and consequently cannot be considered as the real cause of the action. A person abuses or insults another, taking him for somebody else, or because he supposes the prince is dead, as it had been groundlessly reported, &c. These are errors merely accidental,

dental, which ſubſiſt indeed in the mind of the agent, and have accompanied him in the action, but cannot be conſidered as its real cauſe.

It is likewiſe obſervable, that theſe different qualities of ignorance or error may concur, and be found united in the ſame caſe. It is thus an error of the fact may be either eſſential or accidental; and both the one and the other may be either voluntary or involuntary, vincible or invincible.

So much may ſuffice for what regards the underſtanding. Let us proceed now to examine into the other faculties of the ſoul, which concur alſo to the production of human actions.

CHAP. II.

Continuation of the Principles relative to the nature of man. Of will and liberty.

I. IT was not ſufficient, purſuant to the views of the Creator, that the human mind ſhould be poſſeſſed of the faculty of knowing things, and of forming thereof ideas; it was likewiſe requiſite it ſhould be endowed with an active principle to ſet it in motion, and with a power whereby man, after knowing the objects that occur to him, ſhould be capable of determining to act or not to act, according as he judges proper. This faculty is what we call the will.

The will is therefore nothing elſe but that power of the ſoul, by which it is determined of itſelf, and by virtue of an active principle inherent in its nature, to ſeek for what is agreeable to it, to act after a

certain

certain manner, and to do or to omit an action, with a view of happineſs.

By *Happineſs* we are to underſtand the internal ſatisfaction of the mind, ariſing from the poſſeſſion of good; and by good whatever is ſuitable or agreeable to man for his preſervation, perfection, conveniency, or pleaſure. The idea of good determines that of evil, which in its moſt general ſignification, implies whatever is oppoſite to the preſervation, perfection, conveniency, or pleaſure of man.

II. Inſtincts, inclinations, and paſſions, are reducible to the will. Inſtincts are ſentiments excited in the ſoul by the wants of the body, which determine it to provide immediately againſt them. Such are hunger, thirſt, the averſion for whatever is hurtful, &c. The inclinations are a propenſity of the will, which leads it rather towards ſome ſorts of objects than others, but in an even, tranquil manner, a manner ſo proportioned to all its operations, that inſtead of obſtructing or interrupting, it generally facilitates them. As for the paſſions, they are, indeed, in the ſame manner as the inclinations, motions of the will towards certain objects, but motions of a more impetuous and turbulent kind, motions that diſpoſſeſs the ſoul of its natural tranquility, and hinder it from directing properly its operations. Then it is that the paſſions become moſt dangerous diſtempers. The cauſe of the paſſions is, generally the allurement of ſome ſenſible good, which ſolicits the ſoul, and impels it with too violent an impreſſion.

It is eaſy to conceive, by what has been here ſaid, that the inclinations, paſſions, and inſtincts, have a very great affinity with one another. They are all alike propenſities or motions, which have frequently the ſame objects; but there is this difference between theſe three ſpecies of motions, that inſtincts are neceſſarily the ſame in all men, by a natural conſequence

of

of their conſtitution, and of the union between the body and the ſoul; whereas the inclinations and paſſions, particularly conſidered, have nothing neceſſary in their nature, and are ſurpriſingly different in different men.

Let us make an obſervation here, which falls in very naturally: it is that we often give the name of *Heart* to the will, conſidered as ſuſceptible of the fore-mentioned motions; and the reaſon of this in all probability is, becauſe theſe motions were ſuppoſed to have their ſeat in the heart.

III. Such is the nature of the ſoul, that the will not only acts always ſpontaneouſly, that is, of its own proper motion, of its own accord, and by an internal principle; but likewiſe, that its determinations are generally accompanied with liberty.

We give the name of liberty to that force or power of the ſoul, whereby it modifies and regulates its operations as it pleaſes, ſo as to be able to ſuſpend, continue, or alter its deliberations and actions; in a word, ſo as to be capable to determine and act with choice, according as it thinks proper. It is by this excellent faculty, that man has a kind of command over himſelf and his actions; and as he is hereby rendered alſo capable of conforming to rule, and anſwerable for his conduct, it is therefore neceſſary to give a further explication of the nature of this faculty.

Will and liberty being faculties of the ſoul, they cannot be blind or deſtitute of knowledge; but neceſſarily ſuppoſe the operation of the underſtanding. How is it poſſible in fact to determine, ſuſpend, or alter our reſolutions, unleſs we know what is proper for us to chuſe? It is contrary to the nature of an intelligent and rational being to act without intellection and reaſon. This reaſon may be either ſuperficial or bad; yet it has ſome appearance at leaſt, ſome glimmering, that makes us give it a momentary approbation.

tion. Wherever there is election or choice, there must be a comparison; and a comparison implies at least a confused reflection, a kind of deliberation, though of a quick and almost imperceptible nature, on the subject before us.

The end of our deliberations is to procure us some advantage. For the will tends generally towards good, that is, to whatsoever is really or apparently proper for rendering us happy; insomuch, that all actions depending on man, and that are any way relative to his end, are for this very reason subject to the will. And as truth, or the knowledge of things, is agreeable to man; and in this signification truth is also a good, it follows therefore that truth forms one of the principal objects of the will.

Liberty, like the will, has goodness and truth for its object; but it has less extent with regard to actions; for it does not exercise itself in all the acts of the will, but only in those which the soul has a power of suspending or altering as she pleases.

IV. But if any one should inquire which are those acts wherein liberty displays itself? We answer, that they are easily known, by attending to what passes within us, and to the manner in which the mind conducts itself in the several cases that daily occur: as in the first place, in our judgments concerning true and false; secondly, in our determinations in relation to good and evil; and finally, in indifferent matters. These particulars are necessary, in order to be acquainted with the nature, use, and extent of liberty.

With regard to truth, we are formed in such a manner, that so soon as evidence strikes the mind, we are no longer at liberty to suspend our judgment. Vain would be the attempt to resist this sparkling light; it absolutely forces our assent. Who, for example, could pretend to deny that the whole is greater than its part, or that harmony and peace are preferable,

preferable, either in a family or ſtate, to diſcord, tumults, and war?

The ſame cannot be affirmed in regard to things that have leſs perſpicuity and evidence; for in theſe the uſe of liberty diſplays itſelf in its full extent. It is true our mind inclines naturally to that ſide which ſeems the moſt probable; but this does not debar it from ſuſpending its aſſent, in order to ſeek for new proofs, or to refer the whole inquiry to another opportunity. The obſcurer things are, the more we are at liberty to heſitate, to ſuſpend, or defer our determination. This is a point ſufficiently evinced by experience. Every day, and at every ſtep, as it were, diſputes ariſe, in which the arguments on both ſides leave us, by reaſon of our limited capacity, in a kind of doubt and equilibrium, which permits us to ſuſpend our judgment, to examine the thing anew, and to incline the balance at length to one ſide more than the other. We find, for example, that the mind can heſitate a long time, and forbear determining itſelf, even after a mature inquiry, in reſpect to the following queſtions: Whether an oath extorted by violence is obligatory? whether the murder of Cæſar was lawful? Whether the Roman ſenate could with juſtice refuſe to confirm the promiſe made by the Conſuls to the Samnites, in order to extricate themſelves from the *Caudine Forks*; or whether they ought to have ratified and given it the force of a public treaty?, &c.

V. Though there is no exerciſe of liberty in our judgment, when things preſent themſelves to us in a clear and diſtinct manner; ſtill we muſt not imagine that the intire uſe of this faculty ceaſes in reſpect to things that are evident. For in the firſt place, it is always in our power to apply our minds to the conſideration of thoſe things, or elſe to divert them from thence, by transferring ſomewhere elſe our attention. This firſt determination of the will, by which it is led

led to consider or not to consider the objects that occur to us, merits particular notice, because of the natural influence it must have on the very determination, by which we conclude to act or not to act, in consequence of our reflection and judgment. Secondly, we have it likewise in our power to create, as it were, evidence in some cases, by dint of attention and inquiry; whereas at first setting out, we had only some glimmerings, insufficient to give us an adequate knowledge of the state of things. In fine, when we have attained this evidence, we are still at liberty to dwell more or less on the consideration thereof; which is also of great consequence, because on this depends its greater or lesser degree of impression.

These remarks lead us to an important reflection, which may serve for answer to an objection raised against liberty. "It is not in our power (say they) "to perceive things otherwise than as they offer "themselves to our mind; now our judgments are "formed on this perception of things; and it is by "these judgments that the will is determined; The "whole is therefore necessary and independent of "liberty."

But this difficulty carries little more with it than an empty appearance. Let people say what they will, we are always at liberty to open or to shut our eyes to the light; to exert, or relax our attention. Experience shews, that when we view an object in different lights, and determine to search into the bottom of matters, we descry several things that escaped us at first sight. This is sufficient to prove that there is an exercise of liberty in the operations of the understanding, as well as in the several actions thereon depending.

VI. The second question we have to examine, is whether we are equally free in our determinations, in regard to good and evil.

To decide this point we need not stir out of ourselves; for here also by facts, and even by our internal

ternal experience, the queſtion may be determined. Certain it is, that in reſpect to good and evil conſidered in general, and as ſuch, we cannot, properly ſpeaking, exerciſe our liberty, by reaſon that we feel ourſelves drawn towards the one by an invincible propenſity, and eſtranged from the other by a natural and inſuperable averſion. Thus it has been ordered by the author of our being, whilſt man has no power in this reſpect to change his nature. We are formed in ſuch a manner, that good of neceſſity allures us; whereas evil, by an oppoſite effect, repels us, as it were, and deters us from attempting to purſue it.

But this ſtrong tendency to good, and natural averſion to evil in general, does not debar us from being perfectly free in reſpect to good and evil particularly conſidered; and though we cannot help being ſenſible of the firſt impreſſions which the objects make on us, yet this does not invincibly determine us to purſue or ſhun thoſe objects. Let the moſt beautiful and moſt fragrant fruit, repleniſhed with exquiſite and delicious juice, be unexpectedly ſet before a perſon oppreſſed with thirſt and heat, he will find himſelf inſtantly inclined to ſeize on the bleſſing offered to him, and to eaſe his inquietude by a ſalutary refreſhment. But he can alſo ſtop, and ſuſpend his action, in order to examine whether the good he propoſes to himſelf, by eating this fruit, will not be attended with evil; in ſhort, he is at liberty to weigh and deliberate, in order to embrace the ſafeſt ſide of the queſtion. Beſides, we are not only capable, with the aſſiſtance of reaſon, to deprive ourſelves of a thing, whoſe flattering idea invites us; but moreover we are able to expoſe ourſelves to a chagrin or pain, which we dread and would willingly avoid, were we not induced by ſuperior conſiderations to ſupport it. Can any one deſire a ſtronger proof of liberty?

VII. True it is notwithſtanding, that the exerciſe of this faculty never diſplays itſelf more than in in-

led to consider or not to consider the objects that occur to us, merits particular notice, because of the natural influence it must have on the very determination, by which we conclude to act or not to act, in consequence of our reflection and judgment. Secondly, we have it likewise in our power to create, as it were, evidence in some cases, by dint of attention and inquiry; whereas at first setting out, we had only some glimmerings, insufficient to give us an adequate knowledge of the state of things. In fine, when we have attained this evidence, we are still at liberty to dwell more or less on the consideration thereof; which is also of great consequence, because on this depends its greater or lesser degree of impression.

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To decide this point we need not stir out of ourselves; for here also by facts, and even by our internal

ternal experience, the question may be determined. Certain it is, that in respect to good and evil considered in general, and as such, we cannot, properly speaking, exercise our liberty, by reason that we feel ourselves drawn towards the one by an invincible propensity, and estranged from the other by a natural and insuperable aversion. Thus it has been ordered by the author of our being, whilst man has no power in this respect to change his nature. We are formed in such a manner, that good of necessity allures us; whereas evil, by an opposite effect, repels us, as it were, and deters us from attempting to pursue it.

But this strong tendency to good, and natural aversion to evil in general, does not debar us from being perfectly free in respect to good and evil particularly considered; and though we cannot help being sensible of the first impressions which the objects make on us, yet this does not invincibly determine us to pursue or shun those objects. Let the most beautiful and most fragrant fruit, replenished with exquisite and delicious juice, be unexpectedly set before a person oppressed with thirst and heat, he will find himself instantly inclined to seize on the blessing offered to him, and to ease his inquietude by a salutary refreshment. But he can also stop, and suspend his action, in order to examine whether the good he proposes to himself, by eating this fruit, will not be attended with evil; in short, he is at liberty to weigh and deliberate, in order to embrace the safest side of the question. Besides, we are not only capable, with the assistance of reason, to deprive ourselves of a thing, whose flattering idea invites us; but moreover we are able to expose ourselves to a chagrin or pain, which we dread and would willingly avoid, were we not induced by superior considerations to support it. Can any one desire a stronger proof of liberty?

VII. True it is notwithstanding, that the exercise of this faculty never displays itself more than in in-

different things. I find, for inſtance, that it depends intirely on myſelf to ſtretch out or draw back my hand; to ſit down or to walk; to direct my ſteps to the right or left, &c. On theſe occaſions, where the ſoul is left intirely to itſelf, either for want of external motives, or by reaſon of the oppoſition, and, as it were, the equilibrium of theſe motives, if it determine on one ſide, this may be ſaid to be the pure effect of its pleaſure and good will, and of the command it has over its own actions.

VIII. Let us ſtop here a while to inquire, how comes it that the exerciſe of this power is limited to particular goods and non-evident truths, without extending itſelf to good in general, or to ſuch truths as are perfectly clear. Should we happen to diſcover the reaſon thereof, it will furniſh us with a new ſubject to admire the wiſdom of the Creator in the conſtitution of man, and with a means at the ſame time of being better acquainted with the end and true uſe of liberty.

And firſt we hope there is nobody but will admit, that the end of God in creating man was to render him happy. Upon this ſuppoſition, it will be ſoon agreed, that man cannot attain to happineſs any other way than by the knowledge of truth and by the poſſeſſion of real good. This is evidently the reſult of the notions above given of good and happineſs. Let us therefore direct our reflections towards this proſpect. When things, that are the object of our reſearches, preſent themſelves to our minds with a feeble light, and are not accompanied with that ſplendor and clearneſs, which enables us to know them perfectly, and to judge of them with full certainty; it is proper and even neceſſary for us to be inveſted with a power of ſuſpending our judgment; to the end that being neceſſarily determined to acquieſce in the firſt impreſſion, we ſhould be ſtill at liberty to carry on our inquiry till we arrive to a higher degree of certainty, and if poſſible, as far as evidence itſelf.

itſelf. Were not this the caſe, we ſhould be expoſed every moment to error, without any poſſibility of being undeceived. It was therefore extremely uſeful and neceſſary to man, that under ſuch circumſtances he ſhould have the uſe and exerciſe of his liberty.

But when we happen to have a clear and diſtinct view of things and their relations, that is, when evidence ſtrikes us, it would be of no manner of ſignification to have the uſe of liberty, in order to ſuſpend our judgment. For certainty being then in its very higheſt degree, what benefit ſhould we reap by a new examen or inquiry, were it in our power? We have no longer occaſion to conſult a guide, when we ſee diſtinctly the end we are tending to, and the road we are to take. It is therefore an advantage to man to be unable to refuſe his aſſent to evidence.

IX. Let us reaſon pretty near in the ſame manner on the uſe of liberty with reſpect to good and evil. Man deſigned for happineſs, ſhould certainly have been formed in ſuch a manner, as to find himſelf under an abſolute neceſſity of deſiring, and purſuing good, and of ſhunning, on the contrary, evil in general. Were the nature of theſe faculties ſuch, as to leave him in a ſtate of indifference, ſo as to be at liberty in this reſpect to ſuſpend or alter his deſires, plain it is, that this would be eſteemed a very great imperfection in him; an imperfection that would imply a want of wiſdom in the author of his being, as a thing directly oppoſite to the end he propoſed in giving him life.

No leſs an inconveniency would it be on the other hand, were the neceſſity which man is under of purſuing good and avoiding evil to be ſuch as would inſuperably determine him to act or not to act, in conſequence of the impreſſions made on him by each object. Such is the ſtate of human things, that we are frequently deceived by appearances; it is very rare that good or evil preſents itſelf to us pure and

without mixture; but there is almost always a favourable and adverse side, an inconveniency mixt with utility. In order to act therefore with safety, and not to be mistaken in our account, it is generally incumbent upon us to suspend our first motions, to examine more closely into things, to make distinctions, calculations, and compensations; all which require the use of liberty. Liberty is therefore, as it were, a subsidiary faculty, which supplies the deficiencies of the other powers, and whose office ceaseth as soon as it has redressed them.

Hence let us conclude, that man is provided with all the necessary means for attaining to the end for which he is designed; and that in this, as in every other respect, the Creator has acted with wonderful wisdom.

X. After what has been said concerning the nature, operations, and use of liberty, it may seem perhaps unnecessary to attempt here to prove that man is indeed a free agent, and that we are as really invested with this as with any other faculty.

Nevertheless, as it is an essential principle, and one of the fundamental supports of our edifice, it is proper to make the reader sensible of the indubitable proof with which we are furnished by daily experience. Let us therefore consult only ourselves. Every one finds that he is master, for instance, to walk or sit, to speak or hold his tongue. Do not we also experience continually, that it depends intirely on ourselves to suspend our judgment, in order to proceed to a new inquiry? Can any one seriously deny, that in the choice of good and evil our resolutions are unconstrained; that, notwithstanding the first impression, we have it in our power to stop of a sudden, to weigh the arguments on both sides, and to do, in short, whatever can be expected from the freest agent? Were I invincibly drawn towards one particular good rather than another, I should feel then the same impression as that which inclines me to good in general, that

that is, an impreſſion that would neceſſarily drag me along, an impreſſion which there would be no poſſibility of reſiſting. Now experience makes me feel no ſuch violence with reſpect to any particular good. I find I can abſtain from it; I can defer uſing it; I can prefer ſomething elſe to it; I can heſitate in my choice; in ſhort I am my own maſter to chuſe, or, which is the ſame thing, I am *free*.

Should we be aſked, how comes it, that not being free in reſpect to good in general, yet we are at liberty with regard to particular goods? My anſwer is, that the natural deſire of happineſs does not inſuperably draw us towards any particular good, becauſe no particular good includes that happineſs for which we have a neceſſary inclination.

Senſible proofs, like theſe, are ſuperior to all objection, and productive of the moſt inward conviction, by reaſon it is impoſſible, that when the ſoul is modified after a certain manner, it ſhould not feel this modification, and the ſtate which conſequently attends it. What other certainty have we of our exiſtence? And how is it we know that we think, we act, but by our inward ſenſe?

This ſenſe of liberty is ſo much the leſs equivocal, as it is not momentary or tranſient; it is a ſenſe that never leaves us, and of which we have a daily and continual experience.

Thus we ſee there is nothing better eſtabliſhed in life, than the ſtrong perſuaſion which all mankind have of liberty. Let us conſider the ſyſtem of humanity, either in general or particular, we ſhall find that the whole is built upon this principle. Reflections, deliberations, reſearches, actions, judgments; all ſuppoſe the uſe of liberty. Hence the ideas of good and evil, of vice and virtue: hence, as a natural conſequence, ariſes praiſe or blame, the cenſure or approbation of our own, or other peoples conduct. The ſame may be ſaid of the affections and natural ſentiments of men towards one another, as friendſhip, benevolence, gratitude, hatred, anger, complaints,

and reproaches: none of these sentiments could take place, unless we were to admit of liberty. In fine, as this prerogative is in some measure the key of the human system, he that does not allow it to man, subverts all other, and introduces a general confusion.

XI. It is natural here to inquire, how it was ever possible for any body seriously to doubt, whether man is master of his actions, whether he is free? I should be less surprised at this doubt, were it concerning a strange or remote fact, a fact that was not transacted within ourselves. But the question is in regard to a thing, of which we have an internal immediate feeling, a constant and daily experience. Strange, that any one should call in question a faculty of the soul! May not we as well doubt of the understanding and will, as of the liberty of man? For if we are content to abide by our inward sense, there is no more room to dispute of one than of the other. But some too subtle philosophers, by considering this subject in a metaphysical light, have stript it, as it were, of its nature; and finding themselves at a loss to solve a few difficulties, they have given a greater attention to these difficulties than to the positive proofs of the thing; which insensibly led them to imagine that the notion of liberty was all an illusion. I own it is necessary, in the research of truth, to consider an object on every side, and to balance equally the arguments for and against; nevertheless we must take care we do not give to those objections more than their real weight. We are informed by experience, that in several things which in respect to us are invested with the highest degree of certainty, there are many difficulties notwithstanding, which we are incapable of resolving to our satisfaction: and this is a natural consequence of the limits of the mind. Let us conclude therefore from hence, that when a truth is sufficiently evinced by solid reasons, whatever can be objected against it, ought not to stagger or weaken our conviction, as long as they are such difficulties only as embarrass or puzzle the mind,

mind, without invalidating the proofs themſelves. This rule is ſo very uſeful in the ſtudy of the ſciences, that one ſhould keep it always in ſight *. Let us reſume now the thread of our reflections.

XII. The denomination of voluntary or human actions in general is given to all thoſe that depend on the will; and that of free, to ſuch as come within the juriſdiction of liberty, which the ſoul can ſuſpend or turn as it pleaſes. The oppoſite of voluntary is involuntary; and the contrary of free is neceſſary, or whatever is done by force or conſtraint. All human actions are voluntary, inaſmuch as there are none but what proceed from ourſelves, and of which we are the authors. But if violence, uſed by an external force, which we are incapable to reſiſt, hinders us from acting, or makes us act without the conſent of our will; as when a perſon ſtronger than ourſelves lays hold of our arm to ſtrike or wound another perſon, the action reſulting from thence being involuntary, is not, properly ſpeaking, our deed or action, but that of the agent from whom we ſuffer this violence.

The ſame cannot be ſaid of actions that are forced and conſtrained, only as we are determined to commit them, through fear of a great and imminent evil with which we are menaced: As for inſtance, were an unjuſt and cruel prince to oblige a judge to condemn an innocent perſon, by menacing to put him to death if he did not obey his orders. Actions of this ſort,

* There is a wide difference between ſeeing that a thing is abſurd, and not knowing all that regards it; between an unanſwerable queſtion in relation to a truth, and an unanſwerable objection againſt it; though a great many confound theſe two ſorts of difficulties. Thoſe only of the latter order are able to prove, that what was taken for a known truth cannot be true, becauſe otherwiſe ſome abſurdity muſt enſue. But the others prove nothing but the ignorance we are under in relation to ſeveral things that regard a known truth. Biblioth. Raiſon. Tom. 7. p. 340.

ſort, though forced in ſome ſenſe, becauſe we commit them with reluctancy, and would never conſent to them were it not for a very preſſing neceſſity; ſuch actions, I ſay, are ranked nevertheleſs among the number of voluntary actions, becauſe, after all they are produced by a deliberation of the will, which chuſes between two inevitable evils, and determines to prefer the leaſt to the greateſt. This will become more intelligible by a few examples.

A perſon gives alms to a poor man, who expoſes his wants and miſery to him; this action is at the ſame time both voluntary and free. But ſuppoſe a man that travels alone and unarmed, falls into the hands of robbers, and that theſe miſcreants menace him with inſtant death, unleſs he gives them all he has; the ſurrender which this traveller makes of his money in order to ſave his life, is indeed a voluntary action, but conſtrained at the ſame time, and void of liberty. For which reaſon there are ſome that diſtinguiſh theſe actions by the name of mixt *, as partaking of the voluntary and involuntary. They are voluntary, by reaſon the principle that produces them is in the agent itſelf, and the will determines to commit them as the leaſt of two evils: but they partake of the involuntary, becauſe the will executes them contrary to its inclination, which it would never do, could it find any other expedient to clear itſelf of the dilemma.

Another neceſſary elucidation is, that we are to ſuppoſe that the evil with which we are menaced is conſiderable enough to make a reaſonable impreſſion upon a prudent or wiſe man, ſo far as to intimidate him: and beſides that, the perſon who compels us has no right to reſtrain our liberty; inſomuch that we do not lie under an obligation of bearing with any hardſhip or inconveniency, rather than diſpleaſe him. Under theſe circumſtances, reaſon would have us

* See Puffendorf on the Law of Nature and Nations, book i. chap iv. ſect. 9.

us determine to ſuffer the leſſer evil, ſuppoſing at leaſt that they are both inevitable. This kind of conſtraint lays us under what is called a moral neceſſity; whereas, when we are abſolutely compelled to act, without being able, in any ſhape whatſoever, to avoid it, this is termed a phyſical neceſſity.

It is therefore a neceſſary point of philoſophical exactneſs to diſtinguiſh between voluntary and free. In fact, it is eaſy to comprehend, by what has been now ſaid, that all free actions are indeed voluntary; but all voluntary actions are not free. Nevertheleſs, the common and vulgar way of ſpeaking frequently confounds thoſe two terms, of which we ought to take particular notice, in order to avoid all ambiguity.

We give likewiſe the name of manners ſometimes to free actions, inaſmuch as the mind conſiders them as ſuſceptible of rule. Hence we call morality the art which teaches the rules of conduct, and the method of conforming our actions to thoſe rules.

XIII. We ſhall finiſh what relates to the faculties of the ſoul by ſome remarks, which will help us to underſtand better their nature and uſe.

1. Our faculties aſſiſt one another in their operations, and when they are all united in the ſame ſubject, they act always jointly. We have already obſerved that the will ſuppoſes the underſtanding, and that the light of reaſon ſerves for a guide to liberty. Thus the underſtanding, the will, and liberty; the ſenſes, the imagination, the memory; the inſtincts, inclinations, and paſſions; are like ſo many different ſprings, which concur all to produce a particular effect; and it is by this united concurrence we attain at length to the knowledge of truth, and the poſſeſſion of ſolid good, on which our perfection and happineſs depend.

XIV. 2. But in order to procure to ourſelves thoſe advantages, it is not only neceſſary that our faculties be

be well conſtituted in themſelves, but moreover we ought to make a good uſe of them, and maintain the natural ſubordination there is between them and the different motions which lead us towards, or divert us from, certain objects. It is not therefore ſufficient to know the common and natural ſtate of our faculties, we ſhould likewiſe be acquainted with their ſtate of perfection, and know in what their real uſe conſiſts. Now truth being, as we have ſeen, the proper object of the underſtanding, the perfection of this faculty is to have a diſtinct knowledge of truth; at leaſt of thoſe important truths, which concern our duty and happineſs. For ſuch a purpoſe, this faculty ſhould be formed to a cloſe attention, a juſt diſcernment, and ſolid reaſoning. The underſtanding thus perfected, and conſidered as having actually the principles which enable us to know and to diſtinguiſh the true and the uſeful, is what is properly called reaſon; and hence it is that we are apt to ſpeak of reaſon as of a light of the mind, and as of a rule by which we ought always to be directed in our judgments and actions.

If we conſider in like manner the will in its ſtate of perfection, we ſhall find it conſiſts in the force and habit of determining always right, that is, not to deſire any thing but what reaſon dictates, and not to make uſe of our liberty but in order to chuſe the beſt. This ſage direction of the will is properly called Virtue, and ſometimes goes by the name of Reaſon. And as the perfection of the ſoul depends on the mutual ſuccours which the faculties, conſidered in their moſt perfect ſtate, lend to one another; we underſtand likewiſe ſometimes by reaſon, taken in a more vague, and more extenſive ſenſe, the ſoul itſelf, conſidered with all its faculties, and as making actually a good uſe of them. Thus the term *reaſon* carries with it always an idea of perfection, which is ſometimes applied to the ſoul in general, and at other times to ſome of the faculties in particular.

XV. 3. The

XV. 3. The faculties, of which we are treating, are common to all mankind; but they are not found always in the ſame degree, neither are they determined after the ſame manner. Beſides, they have their periods in every man; that is, their increaſe, perfection, infeebling, and decay, in the ſame manner almoſt as the organs of the body. They vary likewiſe exceedingly in different men: one has a brighter underſtanding; another a quicker ſenſation; this man has a ſtrong imagination; while another is ſwayed by violent paſſions. And all this is combined and diverſified an infinite number of ways, according to the difference of temperaments, education, examples, and occaſions that furniſh an opportunity for exerciſing certain faculties or inclinations rather than others: for it is the exerciſe that ſtrengthens them more or leſs. Such is the ſource of that prodigious variety of geniuſes, taſtes, and habits, which conſtitutes what we call the characters and manners of men; a variety which, conſidered in general, very far from being unſerviceable, is of great uſe in the views of Providence.

XVI. But whatever ſtrength may be attributed to the inclinations, paſſions, and habits, ſtill it is neceſſary to obſerve, that they have never enough to impel man invincibly to act contrary to reaſon. Reaſon has it always in her power to preſerve her ſuperiority and rights. She is able with care and application, to correct vicious diſpoſitions, to prevent and even to extirpate bad habits; to bridle the moſt unruly paſſions by ſage precautions, to weaken them by degrees, and finally to deſtroy them intirely, or to reduce them within their proper bounds. This is ſufficiently proved by the inward feeling, that every man has of the liberty with which he determines to follow this ſort of impreſſions; proved by the ſecret reproaches we make to ourſelves, when we have been too much ſwayed by them; proved, in fine, by an infinite variety

variety of examples. True it is, that there is ſome difficulty in ſurmounting theſe obſtacles; but this is richly compenſated by the glory attending ſo noble a victory, and by the ſolid advantages from thence ariſing.

CHAP. III.

That man thus conſtituted, is a creature capable of moral direction, and accountable for his actions.

I. AFTER having ſeen the nature of man, conſidered in reſpect to right, the reſult is, that he is a creature really ſuſceptible of choice and direction in his conduct. For ſince he is capable, by means of his faculties, of knowing the nature and ſtate of things, and of judging from this knowledge; ſince he is inveſted with the power of determining between two or ſeveral offers made to him; in fine, ſince, with the aſſiſtance of liberty, he is able, in certain caſes, to ſuſpend or continue his actions, as he judges proper; it evidently follows, that he is maſter of his own actions, and that he exerciſes a kind of authority and command over them, by virtue of which he can direct and turn them which way he pleaſes. Hence it appears how neceſſary it was for us to ſet out, as we have done, with enquiring previouſly into the nature and faculties of man. For how could we have diſcovered the rules by which he is to ſquare his conduct, unleſs we antecedently know in what manner he acts, and what are the ſprings, as it were, that put him in motion?

II. Another remark, which is a conſequence of the foregoing, is, that ſince man is the immediate author of his actions, he is accountable for them; and

and in juſtice and reaſon they can be imputed to him. This is a point of which we think it neceſſary to give here a ſhort explication.

The term of *imputing* is borrowed of arithmetic, and ſignifies properly, to ſet a ſum down to ſomebody's account. To impute an action therefore to a perſon, is to attribute it to him as to its real author, to ſet it down, as it were, to his account, and to make him anſwerable for it. Now it is evidently an eſſential quality of human actions, as produced and directed by the underſtanding and will, to be ſuſceptible of imputation; that is, it is plain that man can be juſtly conſidered as the author and productive cauſe of thoſe actions, and that for this very reaſon it is right to make him accountable for them, and to lay to his charge the effects that ariſe from thence as natural conſequences. In fact, the true reaſon why a perſon cannot complain of being made anſwerable for an action, is that he has produced it himſelf knowingly and willingly. Every thing almoſt that is ſaid and done in human ſociety, ſuppoſes this principle generally received, and every body acquieſces in it from an inward conviction.

III. We muſt therefore lay down, as an inconteſtable and fundamental principle of the imputability of human actions, that every voluntary action is ſuſceptible of imputation; or to expreſs the ſame thing in other terms, that every action or omiſſion ſubject to the direction of man, can be charged to the account of the perſon in whoſe power it was to do it or let it alone; and on the contrary, every action, whoſe exiſtence or non-exiſtence does not depend on our will, cannot be imputed to us. Obſerve here, that omiſſions are ranked by civilians and moraliſts among the number of actions; becauſe they apprehend them as the effect of a voluntary ſuſpenſion of the exerciſe of our faculties.

Such is the foundation of imputability, and the true reaſon why an action or omiſſion is of an imputable

putable nature. But we muſt take particular notice, that though an action is imputable, it does not enſue from thence only, that it merits actually to be imputed. Imputability and imputation are two things, which we ſhould carefully diſtinguiſh. The latter ſuppoſes, beſides the imputability, ſome moral neceſſity of acting or not, after a certain manner; or, which amounts to the ſame, ſome obligation that requires a thing to be done or omitted that can be really done or omitted.

Puffendorf* does not ſeem to have ſufficiently diſtinguiſhed between theſe two ideas. It is enough for our preſent purpoſe to point out the diſtinction, deferring to treat of actual imputation, and to eſtabliſh the principles thereof, till we have explained the nature of obligation, and ſhewn that man is actually obliged to conform his actions to rule.

What has been hitherto advanced, properly regards the nature of the human mind; or the internal faculties of man, as they render him capable of moral direction. But in order to complete our knowledge of human nature, we ſhould view it likewiſe in its extrinſic condition, in its wants and dependencies, and in the various relations wherein it is placed; in fine, in what we may call the different ſtates of man. For it is our ſituation in life that decides the uſe we ought to make of our faculties.

CHAP. IV.

Further inquiry into what relates to human nature, by conſidering the different ſtates of man.

I. THE different ſtates of man are nothing more than the ſituation wherein he finds himſelf in

* See the Law of Nature and Nations, book i. chap. 5. Sect. 5. and the Duties of Man and a Citizen, book i. Sect. 17.

in regard to the beings that ſurround him, with their relations from thence reſulting.

We ſhall be ſatisfied with taking here a curſory view of ſome of the principal ſtates, and to render them diſtinguiſhable by their eſſential characteriſtics, without entering into an exact inquiry, which ſhould naturally take place, when treating in particular of each ſtate.

All theſe different ſtates may be ranged under two general claſſes: ſome are primitive and original; others adventitious.

II. Primitive and original ſtates are thoſe in which man finds himſelf placed by the very hand of God, independent of any human action.

Such is, in the firſt place, the ſtate of man with regard to God; which is a ſtate of abſolute dependance. For let us make but ever ſo ſmall a uſe of our faculties, and enter into the ſtudy of ourſelves, it will evidently appear that it is from this firſt Being we hold our life, reaſon, and all other concomitant advantages; and that in this and every other reſpect we experience daily, in the moſt ſenſible manner, the effects of the power and goodneſs of the Creator.

III. Another primitive and original ſtate, is that wherein men find themſelves in reſpect to one another. They are all inhabitants of the ſame globe, placed in a kind of vicinity to each other; have all one common nature, the ſame faculties, ſame inclinations, wants and deſires. They cannot do without one another; and it is only by mutual aſſiſtance they are capable of attaining to a ſtate of eaſe and tranquillity. Hence we obſerve a natural inclination in mankind that draws them towards each other, and eſtabliſhes a commerce of ſervices and benevolence between them, from whence reſults the common good of the whole, and the particular advantage of individuals. The natural ſtate therefore

of

of men among themſelves, in a ſtate of union and ſociety; ſociety being nothing more than the union of ſeveral perſons for their common advantage. Beſides, it is evident that this muſt be a primitive ſtate, becauſe it is not the work of man, but eſtabliſhed by divine inſtitution. Natural ſociety is a ſtate of equality and liberty; a ſtate in which all men enjoy the ſame prerogatives, and an intire independance on any other power but God. For every man is naturally maſter of himſelf, and equally to his fellow-creatures, ſo long as he does not ſubject himſelf to another perſon's authority by a particular convention.

IV. The oppoſite ſtate to that of ſociety, is ſolitude; that is, the condition in which we imagine man would find himſelf, were he to live abſolutely alone, abandoned to his own thoughts, and deſtitute of all commerce with thoſe of his own ſpecies. Let us ſuppoſe a man arrived to the age of maturity, without having had the advantage of education or any correſpondence at all with the reſt of mankind, and conſequently without any other knowledge but that which he has of himſelf acquired, ſuch a man would be undoubtedly the moſt miſerable of all animals. We ſhould diſcover nothing in him but weakneſs, ſavageneſs, and ignorance; ſcarce would he be able to ſatisfy the wants of his body, expoſed, poor wretch, to periſh with hunger or cold, or by the ravenous teeth of wild beaſts. What a vaſt difference between ſuch a ſtate and that of ſociety, which by the mutual ſuccours that men receive from one another, procures them all the knowledge, conveniency, and eaſe, that form the ſecurity, pleaſure, and happineſs of life? True it is, that all theſe advantages ſuppoſe that men, far from prejudicing one another, live in harmony and concord, and entertain this union by mutual good offices. This is what we call a ſtate of *peace*, whereas thoſe who endeavour to do harm, and thoſe alſo who find themſelves obliged to guard againſt it, are in a ſtate of war; a ſtate of

of violence, diametrically oppofite to that of fociety.

V. Let us obferve, in the next place, that man finds himfelf naturally attached to the earth, from whofe bofom he draws whatever is necessary for the prefervation and conveniencies of life. This fituation produces another primitive ftate of man, which is likewife deferving of our attention.

Such in effect is the natural conftitution of the human body, that it cannot fubfift intirely of itfelf, and by the fole force of its temperament. Man at all ages, ftands in need of feveral external fuccours for his nourifhment, as well as for repairing his ftrength, and keeping his faculties in proper order. For this reafon our Creator has fown plentifully around us fuch things as are neceffary for our wants, and has implanted in us at the fame time the inftincts and qualifications proper for applying thefe things to our advantage. The natural ftate therefore of man confidered in this light and in refpect to the goods of the earth, is a ftate of indigence and inceffant wants, againft which he would be incapable to provide in a fuitable manner, were he not to exercife his induftry by conftant labour. Such are the principal of thofe ftates that are called primitive and original.

VI. But man being naturally a free agent, he is capable of making great modifications in his primitive ftate, and of giving by a variety of eftablifhments a new face to human life. Hence thofe adventitious ftates are formed, which are properly the work of man, wherein he finds himfelf placed by his own act, and in confequence of eftablifhments, whereof he himfelf is the author. Let us take a curfory view of the principal of thefe ftates.

The firft that prefents itfelf to us, is the ftate of families. This is the moft natural and moft ancient of all fociteties, and the very foundation of that which

is called national; for a people or nation is only an assemblage or composition of several families.

Families begin by marriage; and it is nature itself that invites men to this union. Hence children arise, who by perpetuating the several families, prevent the extinction of human societies, and repair the breaches made every day by death.

The family state is productive of various relations; as those of husband, wife, father, mother, children, brothers, sisters, and all the other degrees of kindred, which are the first tie of human society.

VII. Man considered in his birth is weakness and impotency itself, in regard as well to the body, as to the soul. It is even remarkable, that the state of weakness and infancy lasts longer in man than in any other animal. He is beset and pressed on all sides by a thousand wants, and destitute of knowledge, as well as strength, finds himself in an absolute incapacity of relieving them: he is therefore under a particular necessity of recurring to external assistance. Providence for this reason has inspired parents with that instinct or natural tenderness, which prompts them so eagerly to delight in the most troublesome cares, for the preservation and good of those whom they have brought into the world. It is likewise in consequence of this state of weakness and ignorance in which children are born, that they are naturally subject to their parents; whom nature has invested with all the authority and power necessary for governing those, whose advantage they are to study and procure.

VIII. The property of goods is another very important establishment, which produces a new adventitious state. It modifies the right which all men had originally to earthly goods; and distinguishing carefully what belongs to individuals, ensures the quiet and peaceable enjoyment of what they possess; by which means it contributes to the maintenance of

of peace and harmony among mankind. But ſince all men had originally a right to a common uſe of whatever the earth produces for their ſeveral wants; it is evident therefore, that if this natural power is actually reſtrained and limited in divers reſpects, this muſt neceſſarily ariſe from ſome human act; and conſequently the ſtate of property, which is the cauſe of thoſe limitations, ought to be ranked among the adventitious ſtates.

IX. But among all the ſtates eſtabliſhed by the act of man, there is none more conſiderable than the civil ſtate, or that of civil ſociety and government. The eſſential character of this ſociety, which diſtinguiſhes it from the forementioned ſociety of *nature*, is the ſubordination to a ſupreme authority, excluſive of equality and independence. Mankind were originally divided into families only, and not into nations. Thoſe families lived under the paternal government of the perſon who was their chief, as their father or grandfather. But when they came afterwards to increaſe and unite for their common defence, they compoſed a natural body, governed by the will of him, or of thoſe on whom they had conferred the authority. This is the origin of what we call civil government, and of the diſtinction of ſovereign and ſubjects.

X. The civil ſtate and property of goods produced ſeveral other eſtabliſhments, which form the beauty and ornament of ſociety, and from whence ſo many adventitious ſtates ariſe: ſuch as the different poſts or offices of thoſe who have any ſhare in the government; as magiſtrates, judges, ſtate-officers, miniſters of religion, phyſicians, &c. To which may be added the polite arts, trades, agriculture, navigation, commerce, with their ſeveral dependancies, whereby human life is ſo agreeable and advantageouſly diverſified.

XI. Such are the principal ſtates produced by human conſent. And yet, as theſe different modifications of the primitive ſtate of man are the effect of his natural liberty, the new relations and different ſtates from thence ariſing, may be very well conſidered as ſo many natural ſtates; provided however that the uſe which men make of their liberty, in this reſpect, has nothing in it unconformable to their natural conſtitution, that is, to reaſon and the ſtate of ſociety.

It is therefore proper to obſerve, in relation to this ſubject, that when we ſpeak of the natural ſtate of man, we are to underſtand not only that natural and primitive ſtate, in which he is placed, as it were, by the hands of nature herſelf; but moreover all thoſe into which man enters by his own act and agreement, and that are conformable in the main to his nature, and contain nothing but what is agreeable to his conſtitution, and the end for which he was formed. For ſince man himſelf, as a free and intelligent being, is able to ſee and know his ſituation, as alſo to diſcover his ultimate end, and in conſequence thereof to take the right meaſures to attain it; it is properly in this light we ſhould conſider his natural ſtate, to form thereof a juſt idea. That is, the natural ſtate of man is, generally ſpeaking, that which is conformable to his nature, conſtitution, and reaſon, as well as to the good uſe of his faculties, conſidered in their full maturity and perfection. We ſhall be particularly attentive to this remark, the importance of which will appear more ſenſibly by the application and uſe that may be made thereof on ſeveral occaſions.

XII. Let us not forget to obſerve likewiſe, that there is this difference between the primitive and adventitious ſtates, that the former being annexed, as it were, to the nature and conſtitution of man, ſuch as he has received them from God, are, for this very reaſon,

reaſon, common to all mankind. The ſame cannot be ſaid of the adventitious ſtates; which ſuppoſing an human act or agreement, cannot of themſelves be indifferently ſuitable to all men, but to thoſe only that contrived and procured them.

Let us add, in fine that ſeveral of thoſe ſtates may be found combined and united in the ſame perſon, provided they have nothing incompatible in their nature. Thus the ſame perſon may be father of a family, judge, miniſter of ſtate, &c, all at the ſame time.

Such are the ideas we are to form of the nature and different ſtates of man; and it is of all theſe parts united and compacted together, that the intire ſyſtem of humanity is formed. Theſe are like ſo many wheels of the ſame machine, which combined and managed by a dexterous hand, conſpire all to the ſame end; and, on the contrary, unſkilfully directed, embarraſs and deſtroy each other. But how man, in fine, is enabled to conduct himſelf in this prudent manner, and what rule he is to obſerve in order to attain this happy end, is what we have ſtill to inquire, and forms the ſubject of the following chapters.

CHAP. V.

That man ought to ſquare his conduct by rule; the method of finding out this rule; and the foundations of right in general.

I. LET us begin with an explication of the terms. A rule, in its proper ſignification, is an inſtrument, by means of which we draw the ſhorteſt line from one point to another, which for this very reaſon is called a ſtraight line.

In a figurative and moral ſenſe, a rule imports nothing elſe, but a principle, or maxim, which furniſhes

man with a ſure and conciſe method of attaining to the end he propſes.

II. The firſt thing we are to inquire in regard to this ſubject * is, whether it is really agreeable to the nature of man to ſubmit his actions to a fixed and invariable rule; or whether, on the contrary, he is allowed to abandon himſelf indifferently to all the motions of his will, and thus to enjoy, without either limit or impediment, the extreme facility with which this faculty turns itſelf on all ſides, in conſequence of its natural flexibility.

The reflexions we have given in the preceding chapters, are of themſelves, and independent of any other argument, a ſufficient and convincing proof, that the nature and conſtitution of man requires the eſtabliſhment of ſome rule. Every thing in nature has its deſtination and end; and, conſequently, each creature is conducted to its end by a proper principle of direction. Man, who holds a conſiderable rank among the beings that ſurround him, participates undoubtedly of this fixt and univerſal order. And whether we conſider him in himſelf as an intelligent and rational being; or view him as a member of ſociety; or whether, in fine, we regard him as the handy-work of God, and deriving from this firſt being, his faculties, ſtate and exiſtence; all theſe circumſtances evidently indicate an end, a deſtination, and conſequently imply the neceſſity of a rule. Had man been created to live at random without any fixt and determinate view, without knowing whither he is to direct his courſe, or what road he ought to take; it is evident that his nobleſt faculties would be of no manner of uſe to him. Wherefore waving all diſquiſitions concerning the neceſſity of a rule, let us endeavour rather to diſcover what this rule is, which alone, by enlightening the underſtanding, and directing

* See Puffendorf, Law of Nature and Nations, book ii. chap. i.

recting our actions to an end worthy of him, is capable of forming the order and beauty of human life.

III. When we speak of a rule in relation to human actions, two things are manifestly supposed: the first, that human conduct is susceptible of direction, as we have already proved; the second, that man in all his steps and actions proposes to himself a scope or end which he is desirous to attain.

IV. Now let man reflect but ever so little on himself, he will soon perceive that every thing he does is with a view of happiness, and that this is the ultimate end he proposes in all his actions, or the last term to which he reduces them. This is a first truth, of which we have a continual conviction from our own internal sense. Such, in effect is the nature of man, that he necessarily loves himself, that he seeks in every thing and every where his own advantage, and can never be diverted from this pursuit. We naturally desire, and necessarily wish for good. This desire anticipates all our reflections, and is not in our own election; it predominates in us, and becomes the primum mobile of all our determinations; our hearts being never inclined towards any particular good, but by the natural impression which determines us to good in general. It is not in our power to change this bent of the will, which the Creator himself has implanted in us.

V. This system of Providence extends to all beings endowed with sense and knowledge. Even animals themselves have a like instinct; for they all love themselves, endeavouring at self preservation by all sorts of means, eagerly pursuing whatever seems good or useful to them; and turning, on the contrary, from whatever appears prejudicial or bad. The same propensity shews itself in man, not only as an instinct, but moreover as a rational inclination approved and strengthened by reflection. Hence whatsoever

ſoever preſents itſelf to us as an object proper to promote our happineſs, muſt of neceſſity pleaſe us; and every thing that appears oppoſite to our felicity, becomes of courſe the object of our averſion. The more we ſtudy man, the more we are convinced that here, in reality, lies the ſource of all our taſtes; here the grand ſpring which ſets us in motion.

VI. And indeed, if it be natural to every intelligent and rational being, to act always with a fixt view and determinate end; it is no leſs evident, that this view or end muſt be ultimately reduced to himſelf, and conſequently to his own advantage and happineſs. The deſire therefore of happineſs is as eſſential to a man, and as inſeparable from his nature, as reaſon itſelf; for reaſon, as the very etymology of the word implies, is nothing more than a calculation and account. To reaſon, is to calculate, and to draw up an account, after balancing every thing, in order to ſee on which ſide the advantage lies. It would therefore imply a contradiction, to ſuppoſe a rational being, that could abſolutely forego its intereſt, or be indifferent with regard to its own felicity.

VII. We muſt therefore take care not to conſider ſelf-love, and that ſenſe or inclination which fixes us ſo ſtrongly to our happineſs, as a principle naturally vicious, and the fruit of human depravation. This would be accuſing the author of our exiſtence, and converting his nobleſt gifts into poiſon. Whatever comes from a being ſupremely perfect, is in itſelf good; and were we to condemn the ſenſe or inclination of ſelf-love as bad in itſelf, under a pretence that by a miſconſtruction and wrong uſe thereof it is the ſource of an infinite number of diſorders, we ſhould for the very ſame motives be obliged to condemn reaſon; becauſe it is from the abuſe of this faculty that the groſſeſt errors and moſt extravagant irregularities of men proceed.

It may appear ſurprizing to ſome that we ſhould have

have ſtopt here, to inveſtigate and explain the truth of a principle, which one would imagine is obvious to every body, to the learned as well as the vulgar. And yet it was abſolutely neceſſary; becauſe this is a truth of the very laſt importance, which gives us the key, as it were, of the human ſyſtem. It is true, that all ethic writers agree that man is made for happineſs, and naturally deſires it (for how is it poſſible not to hear the voice of nature, which riſes from the very bottom of the heart?) But a great many, after acknowledging this principle, ſeem to loſe ſight of it, and not attending to the conſequences that flow from thence, they erect their ſyſtems on different, and ſometimes quite oppoſite foundations.

VIII. But if it be true that man does nothing but with a view of happineſs, it is no leſs certain that reaſon is the only way he has to attain it.

In order to eſtabliſh this ſecond propoſition or truth, we have only to attend to the very idea of happineſs, and to the notion we have of good and evil. Happineſs is that internal ſatisfaction of the ſoul which ariſes from the poſſeſſion of good; good is whatever is agreeable to man for his preſervation, perfection, entertainment, and pleaſure. Evil is the oppoſite of good.

Man inceſſantly experiences, that there are ſome things convenient, and others inconvenient to him; that the former are not all equally convenient, but ſome more than others; in fine, that this conveniency depends, for the moſt part, on the uſe he knows how to make of things, and that the ſame thing which may ſuit him, uſing it after a certain manner and meaſure, becomes unſuitable when this uſe exceeds its limits. It is only therefore by inveſtigating the nature of things, as alſo the relations they have between themſelves and with us, that we are capable of diſcovering their fitneſs or diſagreement with our felicity, of diſcerning good from evil, of ranging every thing in its proper order, of ſetting a right value

value upon each, and of regulating consequently our researches and desires.

But is there any other method of acquiring this discernment, but by forming just ideas of things and their relations, and by deducing from these first ideas the consequences that flow from thence by exact and close argumentation? Now it is reason alone that directs all these operations. Yet this is not all: for as in order to arrive at happiness, it is not sufficient to form just ideas of the nature and state of things, but it is also necessary that the will should be directed by those ideas and judgments in the series of our conduct; so it is certain, that nothing but reason can communicate and support in man the necessary strength for making a right use of liberty, and for determining in all cases according to the light of his understanding, in spite of all the impressions and motions that may lead him to a contrary pursuit.

IX. Reason is therefore the only means, in every respect, that man has left to attain to happiness, and the principal end for which he has received it. All the faculties of the soul, its instincts, inclinations, and even the passions, are relative to this end; and consequently it is this same reason that is capable of pointing out the true rule of human actions, or, if you will, she herself is this primitive rule. In fact, were it not for this faithful guide, man would lead a random life, ignorant even of what regards himself, unacquainted with his own origin and destination, and with the use he ought to make of whatever surrounds him; stumbling, like a blind man, at every step; lost, in fine, and bewildered in an inextricable labyrinth.

X. Thus we are conducted naturally to the first idea of the word *Righi*, which in its most general sense, and that to which all the particular significations, bear some relation, is nothing else but whatever

ever reaſon certainly acknowledges as a ſure and conciſe means of attaining happineſs, and approves as ſuch.

This definition is the reſult of the principles hitherto eſtabliſhed. In order to be convinced of its exactneſs, we have only to draw theſe principles together, and unite them under one proſpect. In fact, ſince right *(droit)* in its primary notion ſignifies whatever directs, or is well directed; ſince direction ſuppoſes a ſcope and an end, to which we are deſirous of attaining; ſince the ultimate end of man is happineſs; and, in fine, ſince he cannot attain to happineſs but by the help of reaſon; does it not evidently follow, that Right in general is whatever reaſon approves as a ſure and conciſe means of acquiring happineſs? It is likewiſe in conſequence of theſe principles, that reaſon giving its approbation to itſelf, when it happens to be properly cultivated, and arrived to that ſtate of perfection in which it knows how to uſe all its diſcernment, bears, by way of preference or excellence, the appellation of right reaſon, as being the firſt and ſureſt means of direction, whereby man is enabled to acquire felicity.

That we may not forget any thing in the analyſis of theſe firſt ideas, it is proper to obſerve here, that the Latins expreſs what we call *Right* by the word *jus* which properly ſignifies an order or precept *. Theſe different denominations undoubtedly proceed from this, that reaſon ſeems to command with authority whatever it avows to be a right and ſure means of promoting our felicity. And as we have only to ſeek for what is right, in order to know what reaſon commands us, hence the natural connection of theſe two ideas aroſe in reſpect to the rules of right reaſon. In a word, of two ideas naturally connected, the Latins have followed one, and we the other.

CHAP.

* Jus a jubendo: Jura enim veteres Juſa vel Juſſa vocabant. Feſtus: Juſa, Jura.

CHAP. VI.

General rules of conduct prescribed by reason. Of the nature and first foundation of obligation.

I. IT is already a great point gained, to have discovered the primitive rule of human actions, and to know this faithful guide, which is to direct the steps of man, and whose directions and counsels he may follow with an intire confidence. But let us not stop here; and since experience informs us that we are frequently mistaken in our judgments concerning good and evil, and that these erroneous judgments throw us into most dangerous irregularities, let us consult therefore our guide, and learn which are the characters of real good and evil, in order to know in what true felicity consists, and what road we are to take in order to attain it.

II. Though the general notion of good and evil be fixed in itself, and invariable, still there are various sorts of particular goods and evils, or of things that pass for such in the minds of men.

1. The first counsel therefore that reason gives us, is to examine well into the nature of good and evil, and to observe carefully their several differences, in order to set upon each thing its proper value.

This distinction is easily made. A very slight attention to what we continually experience, informs us, that man being composed of body and soul, there are consequently two sorts of goods and evils, spiritual and corporeal. The first are those that proceed only from our thoughts; the second arise from the impressions of external objects on our senses. Thus, the sensible pleasure resulting from the discovery of an important truth; or the self-approbation arising from a consciousness of having discharged our duty, &c.

&c. are goods purely ſpiritual: as the chagrin of a geometrician for being unable to find out a demonſtration; or the remorſe a perſon feels for having committed a bad action, &c. are mere ſpiritual pains. With regard to corporeal goods and evils, they are ſufficiently known; on one ſide, they are health, ſtrength, beauty; on the other, ſickneſs, weakneſs, pain, &c. Theſe two ſorts of goods and evils are intereſting to man, and cannot be reckoned indifferent, by reaſon that man being compoſed of body and ſoul, it is plain his perfection and happineſs depend on the good ſtate of theſe two parts.

2. We likewiſe obſerve, that appearances frequently deceive us, and what at firſt ſight carries with it the face of good, proves to be a real evil, whilſt an apparent evil oftentimes conceals an extraordinary good. We ſhould therefore make a diſtinction between real goods and evils, and thoſe that are falſe and apparent. Or, which amounts to pretty near the ſame thing, there is ſometimes a pure good and a pure evil, and ſometimes there is a mixture of both, which does not obſtruct our diſcerning what part it is that prevails, and whether the good or evil be predominant.

3. A third difference regards their duration. In this reſpect goods and evils have not all the ſame nature; ſome are ſolid and durable, others tranſitory and inconſtant. Whereto we may add, that there are goods and evils of which we are maſters, as it were, and which depend in ſuch a manner on ourſelves, that we are able to fix the one, in order to have a conſtant enjoyment of them, and to ſhun or get rid of the others. But they are not all of this kind; ſome goods there are that eſcape our moſt eager purſuits, whilſt ſome evils overtake us, notwithſtanding our moſt ſolicitous efforts to avoid them.

4. There

4. There are present goods and evils, which we actually feel; and future goods and evils, which are the objects of our hopes or fears.

5. There are particular goods and evils, which affect only some individuals; and others that are common and universal, of which all the members of the society partake. The good of the whole is the real good; that of one of the parts, opposite to the good of the whole, is only an apparent good, and consequently a real evil.

6. From all these remarks we may in fine conclude, that goods and evils not being all of the same species, there are consequently some differences amongst them, and that compared together, we find there are some goods more excellent than others, and evils more or less incommodious. It happens likewise, that a good compared with an evil, may be either equal or greater, or lesser; from whence several differences or gradations arise, that are worthy of special notice.

These particulars are sufficient to shew the utility of the principal rule we have given, and how essential it is to our happiness to make a just distinction of goods and evils. But this is not the only counsel that reason gives us, we are going to point out some others that are not of less importance.

III. 2. True happiness cannot consist in things that are inconsistent with the nature and state of man. This is another principle, which naturally flows from the very notion of good and evil. For whatsoever is inconsistent in the nature of a being, tends for this very reason to degrade or destroy it, to corrupt or alter its constitution; which being directly opposite to the preservation, perfection, and good of this being, subverts the foundation of its felicity. Wherefore reason being the noblest part of man, and constituting his principal essence, whatever is inconsistent with reason, cannot form his happiness. To which I add, that whatever is incompatible

compatible with the ſtate of man, cannot contribute to his felicity; and this is a point as clear as evidence can make it. Every being, that by its conſtitution has eſſential relations to other beings, which it cannot ſhake off, ought not to be conſidered merely as to itſelf, but as conſtituting a part of the whole to which it is related. And it is ſufficiently manifeſt, that it is on its ſituation in regard to the beings that ſurround it, and on the relations of agreement or oppoſition it has with them, that its good or bad ſtate, its happineſs or miſery, muſt in a great meaſure depend.

IV. 3. In order to procure for ourſelves a ſolid happineſs, it is not ſufficient to be attentive to the preſent good and evil, we muſt likewiſe examine their natural conſequences; to the end, that comparing the preſent with the future, and balancing one with the other, we muſt know before hand what may be the natural reſult.

4. It is therefore contrary to reaſon, to purſue a good that muſt certainly be attended with a more conſiderable evil *.

5. But on the contrary, nothing is more reaſonable than to reſolve to bear with an evil, from whence a greater good muſt certainly ariſe.

The truth and importance of theſe maxims are ſelf-obvious. Good and evil being two oppoſites, the effect of one deſtroys that of the other; that is to ſay, the poſſeſſion of a good, attended with a greater evil, renders us really unhappy; and on the contrary, a ſlight evil which procures us a more conſiderable good, does not hinder us from being happy. Wherefore, every thing well conſidered, the firſt ought to be avoided as a real evil, and the ſecond ſhould be courted as a real good.

The

* See the third note of Monſ. Barbeyrac on the Duties of Man and a Citizen, book i. chap. x. ſect. 1.

The nature of human things requires us to be attentive to these principles. Were each of our actions restrained in such a manner, and limited within itself, as not to be attended with any consequence, we should not be so often mistaken in our choice, but should be almost sure of grasping the good. But informed as we are by experience, that things have frequently very different effects from what they seemed to promise, insomuch that the most pleasing objects are attended with bitter consequences, and on the contrary, a real and solid good is purchased with labour and pains, prudence does not allow us to fix our whole attention on the present. We should extend our views to futurity, and equally weigh and consider the one and the other, in order to pass a solid judgment on them, a judgment sufficient to fix properly our resolutions.

V. 6. For the same reason, we ought to prefer a greater to a lesser good; we ought always to aspire to the noblest goods that suit us, and proportion our desires and pursuits to the nature and merit of each good. This rule is so evident, that it would be losing time to pretend to prove it.

VI. 7. It is not necessary to have an intire certainty in regard to considerable goods and evils: Mere possibility, and much more so, probability, are sufficient to induce a reasonable person to deprive himself of some trifling good, and even to suffer some slight evil, with a design of acquiring a far greater good, and avoiding a more troublesome evil.

This rule is a consequence of the foregoing ones; and we may affirm, that the ordinary conduct of men shews they are sensibly convinced of the prudence and necessity thereof. In effect, what is the aim of all this tumult of business into which they hurry themselves. To what end and purpose are all

all the labours they undertake, all the pains and fatigues they endure, all the perils to which they constantly expose themselves? Their intent is to acquire some advantages which they imagine they do not purchase too dear; though these advantages are neither present nor so certain, as the sacrifices they must make in order to obtain them.

This is a very rational manner of acting. Reason requires, that in default of certainty we should take up with probability as the rule of our judgment and determination; for probability in that case is the only light and guide we have. And unless it is more eligible to wander in uncertainty, than to follow a guide; unless we are of opinion that our lamp ought to be extinguished when we are deprived of the light of the sun; it is reasonable to be directed by probability, when we are incapable to come at evidence. It is easier to attain our aim by the help of a faint or glimmering light, than by continuing in darkness.*

VII. 8. We should be solicitous to acquire a taste for true goods, insomuch that goods of an excellent

E nature,

* In the ordinary course of life, we are generally obliged to be determined by probability, for it is not always in our power to attain to a complete evidence. Seneca the philosopher has beautifully established and explained this maxim: "Huic respondebimus, "nunquam expectare nos certissimam rerum comprehensionem: "quoniam in arduo est veri exploratio: sed ea ire, qua ducit veri "similitudo. *Omne hac via procedit officium.* Sic serimus, sic "navigamus, sic militamus, sic uxores ducimus, sic liberos tollimus; "quum omnium horum incertus sit eventus. Ad ea accedimus, de "quibus bene sperandum esse credimus. Quis enim polliceatur "ferenti proventum, naviganti portum, militanti victoriam, marito "pudicam uxorem, patri pios liberos? Sequimur qua ratio, non "qua veritas trahit. Exspecta, ut nisi bene cessura non facias, et "nisi comperta veritate nihil moveris: relicto omni actu vita con-"sistit. Dum verisimilia me in hoc aut illud impellant, non vere-"bor beneficium dare ei, quem verisimile erit gratum esse."—— De Benefic. lib. 4. c. 33.

nature, and acknowledged as ſuch, ſhould excite our deſires, and induce us to make all the efforts neceſſary for getting them into our poſſeſſion.

This laſt rule is a natural conſequence of the others, aſcertaining their execution and effects. It is not ſufficient to have enlightened the mind in reſpect to the nature of theſe goods and evils that are capable of rendering us really happy or unhappy; we ſhould likewiſe give activity and efficacy to theſe principles, by forming the will ſo as to determine itſelf by taſte and habit, purſuant to the counſels of enlightened reaſon. And let no one think it impoſſible to change our inclinations, or to reform our taſtes. It is with the taſte of the mind, as with that of the palate. Experience ſhews, that we may alter both, ſo as to find pleaſure at length in things that before were diſagreeable to us. We begin to do a thing with pain and by an effort of reaſon; afterwards we familiariſe ourſelves to it by degrees; then a frequency of acts renders it eaſier to us, the repugnance ceaſes, we view the thing in a different light from what we did before; and uſe at length makes us love a thing that before was the object of our averſion. Such is the power of habit: it makes us inſenſibly feel ſo much eaſe and ſatisfaction in what we are accuſtomed to, that we find it difficult afterwards to abſtain from it.

VIII. Theſe are the principal counſels we receive from reaſon. They are in ſome meaſure a ſyſtem of maxims, which drawn from the nature of things, and particularly from the nature and ſtate of man, acquaint us with what is eſſentially ſuitable to him, and include the moſt neceſſary rules for his perfection and happineſs.

Theſe general principles are of ſuch a nature, as to force, as it were, our aſſent; inſomuch that a clear and cool underſtanding, diſengaged from the prejudice and tumult of paſſions, cannot help acknowledging their truth and prudence. Every one ſees how

how uſeful it would be to man to have theſe principles preſent always in his mind, that by the application and uſe of them in particular caſes, they may inſenſibly become the uniform and conſtant rule of his inclination and conduct.

Maxims, in fact, like theſe, are not mere ſpeculations; they ſhould naturally influence our morals, and be of ſervice to us in practical life. For to what purpoſe would it be to liſten to the advice of reaſon, unleſs we intended to follow it? Of what ſignification are thoſe rules of conduct, which manifeſtly appear to us good and uſeful, if we refuſe to conform to them? We ourſelves are ſenſible that this light was given us to regulate our ſteps and motions. If we deviate from theſe maxims, we inwardly diſapprove and condemn ourſelves, as we are apt to condemn any other perſon in a ſimilar caſe. But if we happen to conform to theſe maxims, it is a ſubject of internal ſatisfaction, and we commend ourſelves, as we commend others who have acted after this manner. Theſe ſentiments are ſo very natural, that it is not in our power to think otherwiſe. We are forced to reſpect theſe principles, as a rule agreeable to our nature, and on which our felicity depends.

IX. This agreeableneſs ſufficiently known implies a neceſſity of ſquaring our conduct by it. When we mention neceſſity, it is plain we do not mean a phyſical but moral neceſſity, conſiſting in the impreſſion made on us by ſome particular motives, which determine us to act after a certain manner, and do not permit us to act rationally the oppoſite way.

Finding ourſelves in theſe circumſtances, we ſay we are under an obligation of doing or admitting a certain thing; that is, we are determined to it by ſolid reaſons, and engaged by cogent motives, which, like ſo many ties, draw our will to that ſide. It is in this ſenſe a perſon ſays he is obliged. For whether

we are determined by popular opinion, or whether we are directed by civilians and ethic writers we find that the one and the other make obligation properly consist in a reason, which being well understood and approved, determines us absolutely to act after a certain manner preferable to another. From whence it follows, that the whole force of this obligation depends on the judgment, by which we approve or condemn a particular manner of acting. For to approve, is acknowledging we ought to do a thing; and to condemn, is owning we ought not to do it. Now *ought* and to *be obliged* are synonimous terms.

We have already hinted at the natural analogy between the proper and literal sense of the word *obliged*, and the figurative signification of this same term: Obligation properly denotes a tie; * a man *obliged* is therefore a person who is *tied*. And as a man bound with cords or chains, cannot move or act with liberty, so it is very near the same case with a person who is *obliged*; with this difference, that in the first case, it is an external and physical impediment which prevents the effect of one's natural strength; but in the second it is only a moral tie, that is, the subjection of liberty is produced by reason, which being the primitive rule of man and his faculties, directs and necessarily modifies his operations in a manner suitable to the end it proposed.

We may therefore define obligation, considered in general and in its first origin, a restriction of natural liberty, produced by reason; inasmuch as the counsels which reason gives us, are so many motives, that determine man to act after a certain manner preferable to another.

X. Such is the nature of primitive and original obligation. From thence it follows, that this obligation may be more or less strong; more or less rigorous;

* Obligatio a ligando.

rous; according as the reasons that establish it have more or less weight, and consequently as the motives from thence resulting have more or less impression on the will. For manifest it is, that the more these motions are cogent and efficacious, the more the necessity of conforming our actions to them becomes strong and indispensable.

XI. I am not ignorant, that this explication of the nature and origin of obligation is far from being adopted by all civilians and ethic writers. Some pretend, * *that the natural fitness or unfitness which we acknowledge in certain actions, is the true and original foundation of all obligation; that virtue has an intrinsic beauty which renders it amiable of itself; and that vice on the contrary is attended with an intrinsic deformity, which ought to make us detest it, and this antecedent to and independent of the good and evil, of the rewards and punishments which may arise from the practice of either.*

But this opinion, methinks, can be supported no farther than as it is reduced to that which we have just now explained. For to say that virtue has of itself a natural beauty, which renders it worthy of our love, and that vice, on the contrary, merits our aversion; is not this acknowledging, in fact, that we have *reason* to prefer one to the other? Now whatever this reason be, it certainly can never become a motive capable of determining the will, but inasmuch as it presents to us some good to acquire, or tends to make us avoid some evil; in short, only as it is able to contribute to our satisfaction, and to place us in a state of tranquillity and happiness. Thus it is ordained by the very constitution of man, and the nature of human will. For as good, in general, is the object of the will; the only motive capable of setting it in motion, or of determining it to one side preferable

* See Dr. Clark on the Evidence of Natural and revealed Religion.

preferable to another, is the hopes of obtaining this good. To abſtract therefore from all intereſt in reſpect to man, is depriving him of all motive of acting, that is, reducing him to a ſtate of inaction and indifference. Beſides, what idea ſhould we be able to form of the agreeableneſs or diſagreeableneſs of human actions, of their beauty or turpitude, of their proportion or irregularity, were not all this referred to man himſelf and to what his deſtination, his perfection, his welfare, and, in ſhort, his true felicity requires?

XII. Moſt civilians are of a different opinion from that of Dr. Clark. "* They eſtabliſh as a principle "of obligation, properly ſo called, the will of a ſu-"perior being, on whom dependance is acknowledg-"ed. They pretend there is nothing but this will, "or the orders of a being of this kind, that can bri-"dle our liberty, or preſcribe particular rules to our "actions. They add, that neither the relations of "proportion nor diſagreement which we acknow-"ledge in the things themſelves, nor the approbation "they receive from reaſon, lay us under an indiſ-"penſable neceſſity of following thoſe ideas, as the "rule of our conduct. That our reaſon being in re-"ality nothing elſe but ourſelves, nobody, properly "ſpeaking, can lay himſelf under an obligation. "From whence they conclude, that the maxims of "reaſon conſidered in themſelves, and independent "of the will of a ſuperior, have nothing obligatory "in their nature."

This manner of explaining the nature, and laying the foundation of obligation, appears to me inſufficient, becauſe it does not aſcend to the original ſource, and real principles. True it is, that the will of a ſuperior obliges thoſe who are his dependents; yet this will

* See the Judgment of an Anonymous Writer, &c. ſect. 15. This is a final work of Mr. Leibnitz, on which Mr. Barbeyrac has made ſome remarks, and which is inſerted in the fifth edition of his tranſlation of the Duties of Man and a Citizen.

will cannot have ſuch an effect, but inaſmuch as it meets with the approbation of our reaſon. For this purpoſe, it is not only neceſſary that the ſuperior's will ſhould contain nothing in itſelf oppoſite to the nature of man; but moreover it ought to be proportioned in ſuch a manner to his conſtitution and ultimate end, that we cannot help acknowledging it as the rule of our actions; inſomuch that there is no neglecting it without falling into a dangerous error; and on the contrary, the only means of attaining our end is to be directed by it. Otherwiſe, it is inconceivable how man can voluntarily ſubmit to the orders of a ſuperior, or determine willingly to obey him. Own indeed I muſt, that, according to the language of civilians, the idea of a ſuperior who commands, muſt intervene to eſtabliſh an obligation, ſuch as is commonly conſidered. But unleſs we trace things higher, by grounding even the authority of this ſuperior on the approbation he receives from reaſon, it will produce only an external conſtraint, very different from obligation, which hath of itſelf a power of penetrating the will, and moving it by an inward ſenſe; inſomuch that man is of his own accord, and without any reſtraint or violence, inclined to obey.

XIII. From all theſe remarks we may conclude, that the differences between the principal ſyſtems concerning the nature and origin of obligation, are not ſo great as they appear at firſt ſight. Were we to make a cloſer enquiry into thoſe opinions, by aſcending to their primitive ſources, we ſhould find that theſe different ideas, reduced to their exact value, far from being oppoſite, agree very well together, and ought even to concur, in order to form a ſyſtem connected properly with all its eſſential parts, in relation to the nature and ſtate of man. This is what we intend more particularly to perform hereafter*. It is proper

* See the ſecond part, chap. vi.

proper at present to observe, that there are two sorts of obligations, one internal, and the other external. By internal obligation, I understand that which is produced only by our own reason, considered as the primitive rules of conduct, and in consequence of the good or evil the action in itself contains. By external obligation, we mean that which arises from the will of a being, on whom we allow ourselves dependent, and who commands or prohibits some particular things under a commination of punishment. Whereto we must add, that these two obligations, far from being opposite to each other, have, on the contrary, a perfect agreement. For as the external obligation is capable of giving a new force to the internal, so the whole force of the external obligation ultimately depends on the internal; and it is from the agreement and concurrence of these two obligations that the highest degree of moral necessity arises, as also the strongest tie, or the propereſt motive to make impression on man, in order to determine him to pursue steadily, and never to deviate from some fixt rules of conduct, in a word, by this it is that the most perfect obligation is formed.

CHAP. VII.

Of right considered as a faculty, and of the obligation thereto corresponding.

I. BESIDES the general idea of right, such as has been now explained, considering it as the primitive rule of human actions; this term is taken in several particular significations, which we must here point out.

But, previous to every thing else, we should not forget the primitive and general notion we have given of right. For since it is from this notion, as from its principle, that the subject of this and the following chapters is deduced; if our reasonings are exact in themselves,

themſelves, and have a neceſſary connexion with the principle, this will furniſh us with a new argument in its favour. But if, unexpectedly, it ſhould turn out otherwiſe, we ſhall have at leaſt the advantage of detecting the error in its very ſource, and of being better able to correct it. Such is the effect of a juſt method: we are convinced that a general idea is exact, when the particular ideas are reducible to it as different branches to their trunk.

II. In the firſt place, Right is frequently taken for a perſonal quality, for a power of acting or faculty. It is thus we ſay, that every man has a right to attend to his own preſervation: that a parent has a right to bring up his children; that a ſovereign has a right to levy troops for the defence of the ſtate, &c.

In this ſenſe we muſt define Right, a power that man hath to make uſe of his liberty and natural ſtrength in a particular manner, either in regard to himſelf, or in reſpect to other men, ſo far as this exerciſe of his ſtrength and liberty is approved by reaſon.

Thus, when we ſay that a father has a right to bring up his children, all that is meant hereby is, that reaſon allows a father to make uſe of his liberty and natural force in a manner ſuitable to the preſervation of his children, and proper to cultivate their underſtandings, and to train them up in the principles of virtue. In like manner, as reaſon gives its approbation to the ſovereign in whatever is neceſſary for the preſervation and welfare of the ſtate, it particularly authoriſes him to raiſe troops and bring armies into the field, in order to oppoſe an enemy; and in conſequence hereof we ſay he has a right to do it. But, on the contrary, we affirm, that a prince has no right, without a particular neceſſity, to drag the peaſant from the plough, or to force poor tradeſmen from their families; that a father has no right to expoſe his children, or to put them to death, &c. becauſe theſe things, far from being approved, are expreſsly condemned by reaſon.

III. We

III. We muſt not therefore confound a ſimple power with right. A ſimple power is a phyſical quality; it is a power of acting in the full extent of our natural ſtrength and liberty; but the idea of right is more confined This includes a relation of agreeableneſs to a rule which modifies the phyſical power, and directs its operations in a manner proper to conduct man to a certain end. It is for this reaſon we ſay, that right is a moral quality. It is true there are ſome that rank power as well as right among the number of moral qualities*: but there is nothing in this eſſentially oppoſite to our diſtinction. Thoſe who rank theſe two ideas among moral entities, underſtand by power, pretty near the ſame thing as we underſtand by right; and cuſtom ſeems to authoriſe this confuſion; for we equally uſe, for inſtance, *paternal power*, and *paternal right*, &c. Be this as it will, we are not to diſpute about words. The main point is to diſtinguiſh here between *phyſical* and *moral*; and it ſeems that the word *right*, as Puffendorf himſelf inſinuates † is fitter of itſelf than *power*, to expreſs the moral idea. In ſhort, the uſe of our faculties becomes a right, only ſo far as it is approved by reaſon, and is found agreeable to this primitive rule of human actions. And whatever a man can *reaſonably* perform, becomes in regard to him a right, becauſe reaſon is the only means that can conduct him in a ſhort and ſure manner to the end he propoſes. There is nothing therefore arbitrary in theſe ideas; they are borrowed from the very nature of things, and

* See Puffendorf on the Law of Nature and Nations, book i. chap. 1. ſect. 19.

† There ſeems to be this difference between the terms of power and right; that the firſt does more expreſsly import the preſence of the ſaid quality, and does but obſcurely denote the manner how any one acquires it. Whereas the word right does properly and clearly ſhew, that the quality was fairly got, and it now fairly poſſeſſed. Puffendorf on the Law of Nature and Nations, book i. chap. i. ſect. 20.

and if we compare them to the foregoing principles, we ſhall find they flow from thence as neceſſary conſequences.

IV. If any one ſhould afterwards inquire, on what foundation it is that reaſon approves a particular exerciſe of our ſtrength and liberty, in preference to another; the anſwer is obvious. The difference of thoſe judgments ariſes from the very nature of things and their effects. Every exerciſe of our faculties, that tends of itſelf to the perfection and happineſs of man, meets with the approbation of reaſon, which condemns whatever leads to a contrary end.

V. Obligation anſwers to right, taken in the manner above explained, and conſidered in its effects with regard to another perſon.

What we have already ſaid, in the preceding chapter, concerning obligation, is ſufficient to convey a general notion of the nature of this moral quality. But in order to form a juſt idea of that which comes under our preſent examination, we are to obſerve, that when reaſon allows a man to make a particular uſe of his ſtrength and liberty, or, which is the ſame thing, when it acknowledges he has a particular right; it is requiſite, by a very natural conſequence, that in order to enſure this right to man, he ſhould acknowledge at the ſame time, that other people ought not to employ their ſtrength and liberty in reſiſting him in this point; but on the contrary, that they ſhould reſpect this right, and aſſiſt him in the exerciſe of it, rather than do him any prejudice. From thence the idea of obligation naturally ariſes; which is nothing more than a reſtriction of natural liberty produced by reaſon; inaſmuch as reaſon does not permit an oppoſition to be made to thoſe who uſe their right, but on the contrary it obliges every body to favour and abet ſuch as do nothing but what it authoriſes, rather than oppoſe or traverſe them in the execution of their lawful deſigns.

VI. Right

VI. Right therefore and obligation are, as the logicians expreſs it, two *correllative* terms: one of theſe ideas neceſſarily ſuppoſes the other; and we cannot conceive a right without a correſponding obligation. How, for example, could we attribute to a father the right of forming his children to wiſdom and virtue by a perfect education, without acknowledging at the ſame time that children ought to ſubmit to paternal direction, and that they are not only obliged not to make any reſiſtence in this reſpect, but moreover they ought to concur, by their docility and obedience, to the execution of their parents views? Were it otherwiſe, reaſon would be no longer the rule of human actions: it would contradict itſelf, and all the rights it grants to man would become uſeleſs and of no effect; which is taking from him with one hand what it gives him with the other.

VII. Such is the nature of right taken for a faculty, and of the obligation thereto correſponding. It may be generally affirmed, that man is ſuſceptible of theſe two qualities, as ſoon as he begins to enjoy life and ſenſe. Yet we muſt make ſome difference here, between right and obligation, in reſpect to the time in which theſe qualities begin to unfold themſelves in man. The obligations a perſon contracts as man, do not actually diſplay their virtue till he is arrived to the age of reaſon and diſcretion. For, in order to diſcharge an obligation, we muſt be firſt acquainted with it, we muſt know what we do, and be able to ſquare our actions by a certain rule. But as for thoſe rights that are capable of procuring the advantage of a perſon without his knowing any thing of the matter, they date their origin, and are in full force from the very firſt moment of his exiſtence, and lay the reſt of mankind under an obligation of reſpecting them. For example, the right which requires that no body ſhould injure or offend us, belongs as well to children, and even to infants that are

ſtill

ſtill in their mothers' wombs as to adult perſons. This is the foundation of that equitable rule of the Roman law, which declares, * *That infants who are as yet in their mothers' wombs, are conſidered as already brought into the world, whenever the queſtion relates to any thing that may turn to their advantage.* But we cannot with any exactneſs affirm, that an infant whether already come or coming into the world, is actually ſubject to any obligation with reſpect to other men. This ſtate does not properly commence with reſpect to man, till he has attained the age of knowledge and diſcretion.

VIII. Various are the diſtinctions of rights and obligations; but it will be ſufficient for us to point out thoſe only, that are moſt worthy of notice †.

In the firſt place, rights are natural, or acquired. The former are ſuch as appertain originally and eſſentially to man, ſuch as are inherent in his nature, and which he enjoys as man, independent of any particular act on his ſide. Acquired rights, on the contrary, are thoſe which he does not naturally enjoy, but are owing to his own procurement. Thus the right of providing for our preſervation, is a right natural to man; but ſovereignty or the right of commanding a ſociety of men, is a right acquired.

Secondly, rights are perfect, or imperfect. Perfect rights are thoſe which may be aſſerted in rigour, even by employing force to obtain the execution, or to ſecure the exerciſe thereof in oppoſition to all thoſe who ſhould attempt to reſiſt or diſturb us. Thus reaſon would impower us to uſe force againſt any one

* Qui in utero eſt, perinde ac ſi in rebus humanis eſſet, cuſtoditur, quotiens de commodo ipſius partus, quæritur. L. 7. de ſtatu homin. lib. 1. tit. 3. Another civilian eſtabliſhes this rule: Ita que pati quis injuriam, etiamſi non ſentiat, poteſt: facere nemo, niſi qui ſcit ſe injuriam facere, etiamſi neſciat cui faciat. L. 3. ſect. 2. D. de injuriis. lib. 47. tit. 10.

† See Puffendorf on the Law of Nature and Nations, book i. chap. 1. ſect. 19. and Grotius of the Rights of War and Peace, book i. chap. 1. ſect. 4, 5, 6, 7. with Barbeyrac's Notes.

one that would make an unjuſt attack upon our lives, our goods, or our liberty. But when reaſon does not allow us to uſe forcible methods, in order to ſecure the enjoyment of the rights it grants us, then theſe rights are called imperfect. Thus, notwithſtanding reaſon authoriſes thoſe, who of themſelves are deſtitute of means of living, to apply for ſuccour to other men; yet they cannot, in caſe of refuſal, inſiſt upon it by force, or procure it by open violence. It is obvious, without our having any occaſion to mention it here, that obligation anſwers exactly to right, and is more or leſs ſtrong, perfect, or imperfect, according as right itſelf is perfect or imperfect.

Thirdly, Another diſtinction worthy of our attention, is, that there are rights which may be lawfully renounced, and others that cannot. A creditor, for example, may forgive a ſum due to him, if he pleaſes, either in the whole or part; but a father cannot renounce the right he has over his children, nor leave them in an intire independence. The reaſon of this difference is, that there are rights which of themſelves have a natural connection with our duties, and are given to man only as means to perform them. To renounce this ſort of rights, would be therefore renouncing our duty, which is never allowed. But with reſpect to rights that no way concern our duties, the renunciation of them is licit, and only a matter of prudence. Let us illuſtrate this with another example. Man cannot abſolutely, and without any manner of reſerve, renounce his liberty; for this would be manifeſtly throwing himſelf into a neceſſity of doing wrong, were he ſo commanded by the perſon to whom he has made this ſubjection. But it is lawful for us to renounce a part of our liberty, if we find ourſelves better enabled thereby to diſcharge our duties, and to acquire ſome certain and reaſonable advantage. It is with theſe modifications we muſt underſtand the common maxim, *That it is allowable for every one to renounce his right.*

Fourthly;

Fourthly; Right, in fine, considered in respect to its different objects, may be reduced to four principal species. 1. The right we have over our own persons and actions, which is called *Liberty*. 2. The right we have over things or goods that belong to us, which is called *Property*. 3. The right we have over the persons and actions of other men, which is distinguished by the name of *Empire*, or *Authority*. 4. And, in fine, the right one may have over other mens things, of which there are several sorts. It suffices, at present, to have given a general notion of these different species of right. Their nature and effects will be explained, when we come to a particular inquiry into these matters.

Such are the ideas we ought to have of right, considered as a faculty. But there is likewise another particular signification of this word, by which it is taken for *law*; as when we say, that natural right is the foundation of morality and politics; that it forbids us to break our word; that it commands the reparation of damage, &c. In all these cases, right is taken for *law*. And as this kind of right agrees in a particular manner with man, it is therefore a matter of importance to clear and explain it well, which we shall endeavour to perform in the following chapters.

CHAP. VIII*.

Of Law in general.

1. IN the researches hitherto made concerning the rule of human actions, we have consulted only the nature of man, his essence, and what belongs to his internal part. This inquiry has shewn us, that man

* See Puffendorf on the Law of Nature and Nations, book i. chap. vi.

man finds within himſelf, and in his own *Reaſon*, the rule he ought to follow; and ſince the counſels which reaſon gives him, point out the ſhorteſt and ſafeſt road to his perfection and happineſs, from thence ariſes a principle of obligation, or a cogent motive to ſquare his actions by this primitive rule. But in order to have an exact knowledge of the human ſyſtem, we muſt not ſtop at theſe firſt conſiderations; we ſhould likewiſe, purſuant to the method already pointed out in this work, * transfer our attention to the different ſtates of man, and to the relations from thence ariſing, which muſt abſolutely produce ſome particular modifications in the rules he is to follow. For, as we have already obſerved, theſe rules ought not only to be conformable to the nature of man, but they ſhould be proportionable moreover to his ſtate and ſituation.

II. Now among the primitive ſtates of man, dependance is one of thoſe which merits the moſt attention, and ought to have the greateſt influence on the rule he is to obſerve. In fact, a being independent of every body elſe, has no other rule to purſue but the counſels of his own reaſon; and in conſequence of this independence he is freed from all ſubjection to another's will; in ſhort, he is abſolute maſter of himſelf and his actions. But the caſe is not the ſame with a being who is ſuppoſed to be dependent on another, as on his ſuperior and maſter. The ſenſe of this dependance ought naturally to engage the inferior to take the will of him on whom he depends for the rule of his conduct; ſince the ſubjection to which he finds himſelf, does not permit him to entertain the leaſt reaſonable hopes of acquiring any ſolid happineſs, independent of the will of his ſuperior, and of the views he may propoſe

* See chap. iii. of this part, ſect. 3.

propose in relation to him *. Besides, this has more or less extent and effect, in proportion as the superiority of the one, and the dependance of the other, is greater or less, absolute or limited. It is obvious that all these remarks are in a particular manner applicable to man; so that as soon as he acknowledges a superior, to whose power and authority he is naturally subject; in consequence of this state, he must acknowledge likewise the will of this superior to be the rule of his actions. This is the *Right* we call *Law*.

It is to be understood however, that this will of the superior has nothing in it contrary to reason, the primitive rule of man. For were this the case, it would be impossible for us to obey him. In order to render a law the rule of human actions, it should be absolutely agreeable to the nature and constitution of man, and be ultimately designed for his happiness, which reason makes him necessarily pursue. These remarks, though clear enough of themselves, will receive a greater light, when we have more particularly explained the nature of law.

III. Law I define, a rule prescribed by the sovereign of a society to his subjects, either in order to lay an obligation upon them of doing or omitting certain things, under the commination of punishment; or to leave them at liberty to act or not in other things just as they think proper, and to secure to them, in this respect, the full enjoyment of their rights.

By thus defining law, we deviate a little from the definitions given by Grotius and Puffendorf. But the definitions of these authors are, methinks, somewhat too vague, and besides do not seem to agree with law considered in its full extent. This opinion of mine will be justified by the particular explication

* See chap. vi. sect. 3.

I am going to enter upon, provided it be compared with the paſſage here referred to*.

IV. I ſay that *law is a rule*, to ſignify, in the firſt place, what law has in common with counſel; which is, that they are both rules of conduct; and ſecondly, to diſtinguiſh law from the tranſient orders which may be given by a ſuperior, and not being permanent rules of the ſubject's conduct, are not properly laws. The idea of *rule* includes principally theſe two things, *univerſality* and *perpetuity*; and both theſe characters being eſſential to rule, generally conſidered, help to diſcriminate law from any other particular will of the ſovereign.

I add, that *law is a rule preſcribed*; becauſe a ſimple reſolution confined within the ſovereign's mind, without manifeſting itſelf by ſome external ſign, can never be a law. It is requiſite that this will be notified in a proper manner to the ſubjects; ſo that they be acquainted with what the ſovereign requires of them, and with the neceſſity of ſquaring thereby their conduct. But in what manner this notification is to be made, whether *viva voce*, by writing, or otherwiſe, is a matter of mere indifference. Sufficient it is, that the ſubjects be properly inſtructed concerning the will of the legiſlator.

V. Let us finiſh the explication of the principal ideas that enter into the definition of law. Law is preſcribed by the *ſovereign*; this is what diſtinguiſhes it from *counſel*, which comes from a friend or equal; who as ſuch, has no power over us, and whoſe advices, conſequently, neither have the ſame force, nor produce the ſame obligation as law, which coming from a ſovereign, has for its ſupport the command and

* See Grotius on the Rights of War and Peace, book i. chap. i. ſect. 9. And Puffendorf, on the Law of Nature and Nations, book i. chap. vi. ſect. 4. To which we may add Monſ. Barbeyrac's Notes.

and authority of a superior*. Counsels are followed for reasons drawn from the nature of the thing; laws are obeyed, not only on account of the reasons on which they are established, but likewise because of the authority of the sovereign that prescribes them. The obligation arising from counsel is merely internal; that of law is both internal and external †.

Society, as we have already observed, is the union of several persons for a particular end, from whence some common advantages arise. The end is the effect or advantage which intelligent beings propose to themselves, and are willing to procure. The union of several persons, is the concurrence of their will to procure the end they aim at in common. But though we make the idea of society enter into the definition of law, it must not be inferred from thence, that society is a condition absolutely essential and necessary to the enacting of laws. Considering the thing exactly, we may very well form a conception of law, when the sovereign has only a single person subject to his authority; and it is only in order to enter into the actual state of things, that we suppose a sovereign commanding a society of men. We must nevertheless observe, that the relation there is between the sovereign and the subjects, forms a society between them, but of a particular kind, which we may call *society of inequality*, where the sovereign commands, and the subjects obey.

The sovereign is therefore he who has a right to command in the last resort. To command, is directing the actions of those who are subject to us, according to our own will, and with authority or the power of constraint. I say that *the sovereign commands in the last resort*, to shew that as he has the first rank in society, his will is superior to any other, and holds all the members of the society in subjection. In fine, the right of commanding is nothing more than the

* See the Law of Nature and Nations, book i. chap. vi. sect. 2.
† See above, chap. vi. sect. 13.

power of directing the actions of others with authority. And as the power of exercising one's force and liberty is no farther a right, than as it is approved and authorized by reason, it is on this approbation of reason, as the last resort, that the right of commanding is established.

VI. This leads us to inquire more particularly into the natural foundation of empire or sovereignty; or, which amounts to the same thing, what is it that confers or constitutes a right of laying an obligation on another person, and of requiring his submission and obedience. This is a very important question in itself; important also in its effects. For the more we are convinced of the reasons, which established on the one hand authority, and dependance on the other, the more we are inclined to make a real and voluntary submission to those on whom we depend. Besides, the diversity of sentiments, in relation to the manner of laying the foundation of sovereignty, is a sufficient proof that this subject requires to be treated with care and attention.

CHAP. IX.

Of the foundation of sovereignty, or the right of commanding.

I. INQUIRING here into the foundation of the right of command, we consider the thing only in a general and metaphysical manner. The question is to know the foundation of a necessary sovereignty and dependance; that is, such as is founded on the very nature of things, and is a natural consequence of the constitution of those beings to whom it is attributed. Let us therefore wave whatever relates to a particular species of sovereignty, in order to ascend to the general ideas from whence the first principles are derived. But as

as general principles, when juſt and well founded, are eaſily applied to particular caſes; it follows therefore, that the juſt foundation of ſovereignty, or the reaſons on which it is eſtabliſhed, ought to be laid in ſuch a manner, as to be eaſily applicable to the ſeveral ſpecies that fall within our knowledge. By this means, as we obſerved before, we can be fully ſatisfied with regard to the juſtneſs of the principles, or diſtinguiſh whether they are defective.

II. Another general and preliminary remark is, that there can be neither ſovereignty nor natural and neceſſary dependance between beings, which by their nature, faculties, and ſtate, have ſo perfect an equality, that nothing can be attributed to one which is not alike applicable to the other. In fact, in ſuch a ſuppoſition, there could be no reaſon, why one ſhould arrogate an authority over the reſt, and ſubject them to a ſtate of dependance, of which the latter could not equally avail themſelves againſt the former. But as this reduces the thing to an abſurdity, it follows, that ſuch an equality between ſeveral beings excludes all ſubordination, all empire and neceſſary dependance of one on the other; juſt as the equality of two weights keeps them in a perfect equilibrium. There muſt be therefore in the very nature of thoſe beings, who are ſuppoſed to be ſubordinate one to the other, an eſſential difference of qualities, on which the relation of ſuperior and inferior may be founded. But the ſentiments of writers are divided in the determination of thoſe qualities.

III. 1. Some pretend that the ſole ſuperiority of ſtrength, or, as they expreſs it, an irreſiſtible power, is the true and firſt foundation of the right of impoſing an obligation, and preſcribing laws. "This "ſuperiority of power gives, according to them, "a right of reigning, by the impoſſibility in which "it places others, of reſiſting him who has ſo great "an advantage over them *."

* See Hobbes de Cive, cap. 15. ſect. 5.

2. Others there are, who derive the origin and foundation of sovereignty, from the eminency of superior excellence of nature; "which not only renders a being independent of all those who are of an inferior nature; but moreover causes the latter to be regarded as made for the former. And of this, say they, we have a proof in the very constitution of man, where the soul governs, as being the noblest part; and it is likewise on this foundation, that the empire of man over brutes is grounded *.

3. A third opinion, which deserves also our notice, is that of Barbeyrac †. According to this judicious author, "there is, properly speaking, only one general foundation of obligation, to which all others may be reduced, and that is, our natural dependance on God, inasmuch as he has given us being, and has consequently a right to require we should apply our faculties to the use for which he has manifestly designed them. An artist, he continues, as such, is master of his own work, and can dispose of it as he pleases. Were a sculptor capable of making animated statues, this alone would intitle him to insist, that the marble shaped by his own hands, and endowed by him with understanding, shall be subject to his will.—But God is the author of the matter and form of the parts of which our being is composed, and he has given them all the faculties, with which they are invested. To these faculties therefore, he has a right to prescribe what limits he pleases, and to require that men should use them in such or such a manner, &c."

IV. Such

* See Puffendorf on the Law of Nature and Nations, book i. chap. vi. sect. 11.

† It is found in the second note on section 12 of Puffendorf on the Law of Nature and Nations, book i. chap 6. and in the third note on section 5. of the Duties of Man and a Citizen, book i. chap. 2.

IV. Such are the principal ſyſtems on the origin and foundation of ſovereignty and dependance. Let us examine them thoroughly, and in order to paſs a right judgment, let us take care not to forget the diſtinction of phyſical and moral neceſſity, nor the primitive notions of right and obligation, ſuch as have been above explained *.

1. This being premiſed, I affirm, that thoſe who found the right of preſcribing laws on the ſole ſuperiority of ſtrength, or an irreſiſtible power, eſtabliſh an inſufficient principle, and which, rigorouſly conſidered, is abſolutely falſe. In fact, it does not follow, that becauſe I am incapable to reſiſt a perſon, he has therefore a right to command me, that is, that I am bound to ſubmit to him by virtue of a principle of obligation, and to acknowledge his will as the univerſal rule of my conduct. Right being nothing elſe but that which reaſon approves, it is this approbation only which reaſon gives to him who commands, that is capable of founding his right, and, by a neceſſary conſequence, produces that inward ſenſe, which we diſtinguiſh by the name of Obligation, and inclines us to a ſpontaneous ſubmiſſion. Every obligation therefore ſuppoſes ſome particular reaſons that influence the conſcience and bend the will, inſomuch that, purſuant to the light of our own reaſon, we ſhould think it criminal to reſiſt, were it even in our power, and ſhould conclude that we have therefore no right to do it. Now a perſon that alleges no other reaſon, but a ſuperiority of force, does not propoſe a motive ſufficient to oblige the will. For inſtance, the power which may chance to reſide in a malignant being, neither inveſts him with any right to command, nor impoſes any obligation on us to obey; becauſe this is evidently repugnant even to the very idea of right and obligation. On the contrary the firſt counſel which reaſon gives us

* Chap. vi. and vii.

us in regard to a malignant power, is to resist, and, if possible to destroy him. Now if we have a right to resist, this right is inconsistent with the obligation of obeying, which is evidently thereby excluded. True it is, that if we clearly see that all our efforts will be useless, and that our resistance must only subject us to a greater evil; we should chuse to submit, though with reluctance for a while, rather than expose ourselves to the attacks and violence of a malignant power. But in this case we should be constrained, though not under an obligation. We endure, in spite of us, the effects of a superior force, and whilst we make an external submission, we inwardly feel our nature rise and protest against it. This leaves us always a full right to attempt all sorts of ways to shake off the unjust and oppressive yoke. There is therefore properly speaking, no obligation in that case; now the default of obligation implies the default of right *. We have omitted making mention here of the dangerous consequences of this system, it is sufficient at present to have refuted it by principles; and perhaps we shall have occasion to take notice of these consequences another time.

V. The other two opinions have something in them that is plausible and even true; yet they do not seem to me to be intirely sufficient. The principles they establish are too vague, and have need to be reduced to a more determinate point.

2. And, indeed, I do not see, that the sole excellency of nature is sufficient to found a right of sovereignty. I will acknowledge, if you please, this excellency, and agree to it as a truth that I am well convinced of: This is the whole effect that must naturally arise from this hypothesis. But here I make a halt; and the knowledge I have of the excellency of a superior being does not alone afford me a motive sufficient to subject myself to him, and to induce

* See chap. viii. sect. 6.

duce me to abandon my own will, in order to take his for my rule. So long as I am confined to these general heads, and am informed of nothing more, I do not feel myself inclined by an internal motion to submit; and without any reproach of conscience, I may sincerely judge, that the intelligent principle within me, is sufficient to direct my conduct. So far we confine ourselves to mere speculation. But if you should attempt to require any thing more of me, the question would then be reduced to this point: How and in what manner does this being, whom you suppose to surpass me in excellence, intend to conduct himself with regard to me; and by what effects will this superiority or excellence be displayed? Is he willing to do me good or harm, or is he, in respect to me, in a state of indifference? To these interrogations there must be absolutely some answer given; and according to the side that is chosen, I shall agree perhaps, that this being has a right to command me, and that I am under an obligation of obeying. But these reflections are, if I am not mistaken, a demonstrative proof, that it is not sufficient to allege merely and simply the excellence of a superior being, in order to establish the foundation of sovereignty.

VI. Perhaps there is something more exact in the third hypothesis. "God, say they, is the Creator of "man; it is from him he has received and holds his "life, his reason, and all his faculties, he is there-"fore master of his Work, and can of course pre-"scribe what rules he pleases. Hence our depen-"dance, hence the absolute empire of God over us "naturally arises; and this is the very origin or first "foundation of all authority."

The sum of what is here alleged to found the empire of God over man, is reduced to his supreme power. But does it follow from thence only, and by an immediate and necessary consequence, that he has a right to prescribe laws to us? That is the question.

queſtion. The ſovereign power of God enables him to diſpoſe of man as he has a mind, to require of him whatever he pleaſes, and to lay him under an abſolute neceſſity of complying: For the creature cannot reſiſt the Creator, and by its nature and ſtate it finds itſelf in ſo abſolute a dependance, that the Creator may, if ſo is his pleaſure, even annihilate and deſtroy it. This we own, is certain; and yet it does not ſeem ſufficient to eſtabliſh the right of the Creator. There is ſomething more than this requiſite to form a moral quality of a ſimple power, and to convert it into right *. In a word, it is neceſſary as we have more than once obſerved, that the power be ſuch as ought to be approved by reaſon; to the end that man may ſubmit to it willingly, and by that inward ſenſe which produces obligation.

Here I beg leave to make a ſuppoſition that will ſet the thing in a much clearer light. Had the Creator given exiſtence to the creature only to render it unhappy, the relation of Creator and creature would ſtill ſubſiſt, and yet we could not poſſibly conceive, in this ſuppoſition, either right or obligation. The irreſiſtible power of the Creator might indeed conſtrain the creature; but this conſtraint would never form a reaſonable obligation, a moral tie; becauſe an obligation of this nature always ſuppoſes the concurrence of the will, and an approbation or an acquieſcence on the part of man, from whence a voluntary ſubmiſſion ariſes. Now this acquieſcence could never be given to a being, that would exert his ſupreme power only to oppreſs his creature, and render it unhappy.

The quality therefore of Creator is not alone and of itſelf ſufficient to eſtabliſh the right of command, and the obligation of obeying.

VII. But if to the idea of Creator we join (which Barbeyrac probably ſuppoſed, though he has not diſtinctly expreſſed it) the idea of a being perfectly wiſe

* See chap. vii. ſect. 3.

wise and sovereignly good, who has no desire of exercising his power but for the good and advantage of his creatures; then we have every thing necessary to found a legitimate authority.

Let us only consult ourselves, and suppose, that we not only derive our existence, life, and all our faculties from a being infinitely superior to us in power; but moreover, that we are perfectly convinced that this being, no less wise than powerful, had no other aim in creating us, but to render us happy, and that with this view he is willing to subject us to laws: certain it is, that under these circumstances, we could not avoid approving of such a power, and the exercise thereof in respect to us. Now this approbation is acknowledging the right of the superior; and consequently the first counsel that reason gives us, is to resign ourselves to the direction of such a master, to subject ourselves to him, and to conform all our actions to what we know in relation to his will. And why so? because it is evident to us, from the very nature of things, that this is the surest and shortest way to arrive at happiness, the end to which all mankind aspire. And from the manner we are formed, this knowledge will be necessarily attended with the concurrence of our will, with our acquiescence, and submission; insomuch that if we should act contrary to those principles, and any misfortune should afterwards befall us, we could not avoid condemning ourselves, and acknowledging, that we have justly drawn upon ourselves the evil we suffer. Now this is what constitutes the true character of obligation, properly so called.

VIII. If we have therefore a mind to embrace and take in the whole, in order to form a complete definition, we must say that the right of sovereignty arises from a superiority of power, accompanied with wisdom and goodness.

I say, in the first place, *a superiority of power*, because an equality of power, as we have observed in the

the very beginning, excludes all empire, all natural and neceſſary ſubordination; and beſides ſovereignty and command would become uſeleſs and of no manner of effect, were they not ſupported by a ſufficient power. What would it avail a perſon to be a ſovereign, unleſs he were poſſeſſed of effectual methods to enforce his orders and make himſelf obeyed?

But this is not yet ſufficient; wherefore I ſay, in the ſecond place, that this power ought to be *wiſe and benevolent: wiſe*, to know and to chuſe the propereſt means to make us happy; and *benevolent*, to be generally inclinable to uſe thoſe means that tend to promote our felicity.

In order to be convinced of this, it will be ſufficient to remark three caſes, which are the only ones that can be here ſuppoſed. Either he is, with reſpect to us, an indifferent power, that is, a power willing to do us neither good nor harm, as no ways intereſting himſelf in what concerns us; or he is a malignant power; or, in fine, he is a propitious and benevolent power.

In the firſt caſe, our queſtion cannot take place. How ſuperior ſoever a being is in regard to me, ſo long as he does not concern himſelf about me, but leaves me intirely to myſelf; I remain in as complete a liberty, in reſpect to him, as if he were not known to me, or as if he did not at all exiſt *. Wherefore there is no authority on his ſide, nor obligation on mine.

But

* And therefore though that notion of the Epicureans was moſt ſenſeleſs and impious, in which they deſcribed the Gods, as enjoying their own happineſs with the higheſt peace and tranquillity, far removed from the troubleſome care of human buſineſs, and neither ſmiling at the good, nor frowning at the wicked deeds of men; yet they rightly enough inferred, that upon this ſuppoſition, all religion, and all fear of divine powers, was vain and uſeleſs. Puffendorf, Law of Nature and Nations, book i. chap. vi. ſect. 11. See Cicero de Nat. Deor. lib. 1. cap. 2.

But if we ſuppoſe a malignant power; reaſon, far from approving, revolts againſt him, as againſt an enemy, ſo much the more dangerous, as he is inveſted with greater power. Man cannot acknowledge ſuch a power has a right; on the contrary, he finds himſelf authorized to leave no meaſure untried to get rid of ſo formidable a maſter, in order to be ſheltered from the evils with which he might otherwiſe be unjuſtly afflicted.

But let us ſuppoſe a being equally wiſe and beneficent. Man, inſtead of being able to refuſe him his approbation, will feel himſelf inwardly and naturally inclined to ſubmit and acquieſce intirely in the will of ſuch a being, who is poſſeſſed of all the qualities neceſſary to conduct him to his ultimate end. By his *power*, he is perfectly able to procure the good of thoſe who are ſubject to him, and to remove whatever may poſſibly injure them. By his *wiſdom*, he is thoroughly acquainted with the nature and conſtitution of thoſe on whom he impoſes laws, and knows their faculties and ſtrength, and in what their real intereſts conſiſt. He cannot therefore be miſtaken, either in the deſigns he propoſes for their benefit, or in the means he employs in order to attain them. In fine, *goodneſs* inclines ſuch a ſovereign to be really willing to render his ſubjects happy, and conſtantly to direct to this end the operations of his wiſdom and power. Thus the aſſemblage of theſe qualities, by uniting in the very higheſt degree all that is capable of deſerving the approbation of reaſon, comprizes whatſoever can determine man, and lay him under an internal as well as external obligation of ſubmiſſion and obedience. Here therefore lies the true foundation of the right of ſovereignty.

IX. In order to bind and ſubject free and rational creatures, there is no neceſſity, properly ſpeaking, for more than an empire or authority, whoſe wiſdom and lenity would forcibly engage the approbation of reaſon,

reason, independent of the motives excited by the apprehension of power. But as it easily happens, from the manner that men are formed, that either through levity and neglect, or passion and malice, they are not so much struck as they ought, with the wisdom of the legislator, and with the excellency of his laws; it was therefore proper there should be an efficacious motive, such as the apprehension of punishment, in order to have a stronger influence over the will. For which reason it is necessary that the sovereign should be armed with power and force, to be better able to maintain his authority. Let us not separate therefore these different qualities, which form, by their concurrence, the right of the sovereign. As power alone, unaccompanied with benevolence, cannot constitute any right; so benevolence, destitute of power and wisdom, is likewise insufficient for this effect. For from this only, that a person wishes another well, it does not follow, that he is his master: neither are a few particular acts of benevolence sufficient for that purpose. A benefit requires no more than gratitude and acknowledgment; for in order to testify our gratitude, it is not necessary we should subject ourselves to the power of our benefactor. But let us join these ideas, and suppose, at one and the same time, a sovereign power, on which every one actually and really depends; a sovereign wisdom, that directs this power; and a supreme goodness, by which it is animated. What can we desire more, to establish, on the one side, the most eminent authority, and, on the other, the greatest subordination? We are compelled then, as it were, by our own reason, which will not so much as suffer us to deny, that such a superior is invested with a true right to command, and that we are under a real obligation to obey *.

X. The

* It may indeed be said, that the foundation of external obligation is the will of a superior (see above, chap. vi. sect. 13.) provided

X. The notions of ſovereign and ſovereignty being once ſettled, it is eaſy to fix thoſe of ſubjection and dependance.

Subjects therefore are perſons, that are under an obligation of obeying. And as it is power, wiſdom, and benevolence, that conſtitute ſovereignty; we muſt ſuppoſe, on the contrary, in ſubjects the weakneſs and wants, from whence dependance ariſes.

It is therefore right in Puffendorf to remark*, that what renders man ſuſceptible of an obligation produced by an external principle, is that he naturally depends on a ſuperior, and that moreover as a free and intelligent being, he is capable of knowing the rules given him, and of chuſing to conform his actions to them. But theſe are rather conditions neceſſarily ſuppoſed, and of themſelves underſtood, than the exact and immediate cauſes of ſubjection. More important it is to obſerve, that as the power of obliging a rational creature is founded on the ability and will of making him happy, if he obeys; unhappy, if he diſobeys; this ſuppoſes that this creature is capable of good and evil, ſenſible of pleaſure and pain, and beſides that his ſtate of happineſs or miſery may be either increaſed or diminiſhed. Otherwiſe, he might be forced indeed, by a ſuperior power, to act after a certain manner, but he could not be properly obliged.

XI.

provided this general propoſition be afterwards explained by the particulars into which we have entered. But when ſome add, that force has nothing to do with the foundation of this obligation, and that it only ſerves to enable the ſuperior to exert his right (ſee Barbeyrac's 1ſt note on the 9th ſection of Puffendorf's large work, book 1. chap. 6) this notion does not appear to me to be exact, and methinks that this abſtract manner of conſidering the thing ſubverts the very foundation of the obligation here in queſtion. There can be no external obligation without a ſuperior, nor a ſuperior without force, or, which is the ſame thing, without power: force therefore or power is a neceſſary part of the foundation of obligation.

* See the Duties of Man and a Citizen, book 1. chap. 2. ſect. 4. And the Law of Nature and Nations, book 1. chap. 6. ſect. 6, 8.

XI. Such is the true foundation of ſovereignty and dependance; a foundation that might be ſtill better eſtabliſhed by applying theſe general principles to the particular ſpecies of known ſovereignty or empire, ſuch as that of God over man, that of a prince over his ſubjects, and the power of fathers over their children. We ſhould be convinced thereby, that all theſe ſpecies of authority are originally founded on the principles above eſtabliſhed; which would ſerve for a new proof of the truth of thoſe principles *, But it is ſufficient to have hinted here in general at this remark; the particulars we reſerve for another place.

An authority eſtabliſhed on ſuch a foundation, and which comprizes whatever can be imagined moſt efficacious and capable to bind man, and to incline him to be ſteadily directed by certain rules of conduct, undoubtedly forms the compleateſt and ſtrongeſt obligation. For there is no obligation more perfect than that which is produced by the ſtrongeſt motives to determine the will, and the moſt capable, by their preponderancy, to prevail over all other contrary reaſons‡. Now every thing concurs here to this effect: the nature of the rules preſcribed by the ſovereign, which of themſelves are the fitteſt to promote our perfection and felicity; the power and authority with which he is inveſted, whereby he is enabled to decide our happineſs or miſery; and in fine, the intire confidence we have in him, becauſe of his power, wiſdom, and goodneſs. What can we imagine more to captivate the will, to gain the heart, to oblige man, and to produce within him the higheſt degree of moral neceſſity, which conſtitutes the moſt perfect obligation? I ſay, *moral neceſſity*; for we are not to deſtroy the nature of man; he remains always what he is, a free and intelligent being; and as ſuch, the ſovereign

* See ſection 1. ‡ See chap. vi. ſect. 10.

vereign undertakes to direct him by his laws. Hence it is that even the ſtrickeſt obligations never force the will; but rigorouſly ſpeaking, man is always at liberty to comply or not, though, as we commonly ſay, at his riſk and peril. But if he conſults reaſon, and is willing to follow its dictates, he will take particular care to avoid exerciſing this metaphyſical power, in oppoſition to the views of his ſovereign; an oppoſition that muſt terminate in his own miſery and ruin.

XII. We have already obſerved, that there are two ſorts of obligation *; the one internal, which is the work of reaſon only, and founded on the good or evil we perceive in the very nature of things: the other external, which is produced by the will of him whom we acknowledge our ſuperior and maſter. Now the obligation produced by law unites theſe two ſorts of ties, which by their concurrence ſtrengthen each other, and thus form the compleateſt obligation that can poſſibly be imagined. It is probably for this reaſon, that moſt civilians acknowledge no other obligation probably ſo called, but that which is the effect of law, and impoſed by a ſuperior. This is true, if we mean only an external obligation, which indeed is the ſtrongeſt tie of man. But it muſt not be inferred from thence that we ought to admit no other ſort of obligation. The principles we eſtabliſhed, when enquiring into the firſt origin and the nature of obligation generally conſidered, and the particular remarks we have juſt now made on the obligation ariſing from law, are ſufficient, if I am not miſtaken, to evince that there is a primitive, original, and internal obligation, which is inſeparable from reaſon, and ought neceſſarily to concur with the external obligation, in order to communicate to the latter all the neceſſary force for determining and bending the will, and for influencing effectually the human heart.

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* See chap. vi. ſect. 13.

By diſtinguiſhing rightly theſe ideas, we ſhall find perhaps, that this is one way of reconciling opinions, which ſeem to be wide from each other, only becauſe they are miſunderſtood *. Sure it is at leaſt, that the manner in which we have explained the foundation of ſovereignty and dependance, coincides, in the main, with Puffendorf's ſyſtem, as will eaſily appear by comparing it with what this author ſays, whether in his large work, or in his abridgment †.

CHAP. X.

Of the end of laws; of their characters, differences, &c.

I. SOME perhaps will complain, that we have dwelt too long on the nature and foundation of ſovereignty. But the importance of the ſubject required us to treat it with care, and to unravel properly its principles. Beſides, we apprehend, that nothing could contribute better to a right knowledge of the nature of law; and we ſhall preſently ſee that whatever in fact remains for us ſtill to ſay concerning this ſubject, is deduced from the principles juſt now eſtabliſhed.

In the firſt place, it may be aſked, what is the end and deſign of laws?

This queſtion preſents itſelf in two different lights; namely, with reſpect to the ſubject, and with regard to the ſovereign: a diſtinction that muſt be carefully obſerved.

The

* See part the ſecond, chap. vi.

† See the Law of Nature and Nations, book i. chap. vi. ſect. 5. 6, 8, and 9. And the Duties of Man and a Citizen, book i. chap. ii. ſect. 3, 4, 5.

The relation of the ſovereign to his ſubjects forms a kind of ſociety between them, which the ſovereign directs by the laws he eſtabliſhes*. But as ſociety naturally requires there ſhould be ſome proviſion made for the good of all thoſe who are the conſtituent parts thereof, it is by this principle we muſt judge of the end of laws: and this end conſidered with reſpect to the ſovereign, ought to include nothing in it oppoſite to the end of theſe very laws conſidered with regard to the ſubject.

II. The end of the law in regard to the ſubject is, that he ſhould conform his actions to it, and by this means acquire happineſs. As for what concerns the ſovereign, the end he aims at for himſelf, by giving laws to his ſubjects, is the ſatisfaction and glory ariſing from the execution of the wiſe deſigns he propoſes, for the preſervation of thoſe who are ſubject to his authority. Theſe two ends of the law ſhould never be ſeparated, one being naturally connected with the other; for it is the happineſs of the ſubject that forms the ſatisfaction and glory of the ſovereign.

III. We ſhould therefore take care not to imagine that laws are properly made in order to bring men under a yoke. So idle an end would be quite unworthy of a ſovereign, whoſe goodneſs ought to be equal to his power and wiſdom, and who ſhould always act up to theſe perfections. Let us ſay rather, that laws are made to oblige the ſubject to purſue his real intereſt, and to chuſe the ſureſt and beſt way to attain the end he is deſigned for, which is happineſs. With this view the ſovereign is willing to direct his people better than they could themſelves, and gives a check to their liberty, leſt they ſhould make a bad uſe of it contrary to their own and the

* See chap. viii. ſect. 5.

public good. In ſhort, the ſovereign commands rational beings; it is on this footing he treats with them: all his ordinances have the ſtamp of reaſon; he is willing to reign over their hearts; and if at any time he employs force, it is in order to bring back to reaſon thoſe who have unhappily ſtrayed from it, contrary to their own good and that of ſociety.

IV. Wherefore Puffendorf, methinks, ſpeaks ſomewhat looſely in the compariſon he draws between law and counſel, where he ſays, "That counſel "tends to the ends propoſed by thoſe to whom it is "given, and that they themſelves can judge of thoſe "ends, in order to approve or diſapprove them.— "Whereas law aims only at the end of the perſon "that eſtabliſhes it, and if ſometimes it has views in "regard to thoſe for whom it is made, it is not "their buſineſs to examine them—this depends in-"tirely on the determination of the legiſlator *." It would be a much juſter way, methinks, of expreſſing the thing, to ſay, that laws have a double end, relative to the ſovereign and the ſubject; that the intent of the ſovereign in eſtabliſhing them, is to conſult his own ſatisfaction and glory, by rendering his ſubjects happy; that theſe two things are inſeparable; and that it would be doing injuſtice to the ſovereign to imagine he thinks only of himſelf, without any regard to the good of thoſe who are his dependants. Puffendorf ſeems here as well as in ſome other places, to give a little too much into Hobbes's principles.

V. We defined law, a rule which lays an obligation on ſubjects of doing or omitting certain things, and leaves them at liberty to act or not to act in other matters, according as they judge proper, &c. This is what we muſt explain here in a more particular manner.

A fo-

* See the Law of Nature and Nations, book i. chap. vi. ſect. 1.

A ſovereign has undoubtedly a right to direct the actions of thoſe who are ſubject to him, according to the ends he has in view. In conſequence of this right, he impoſes a neceſſity on them of acting or not acting after a particular manner in certain caſes; and this obligation is the firſt effect of the law. From thence it follows, that all actions, not poſitively commanded or forbidden, are left within the ſphere of our natural liberty; and that the ſovereign is hereby ſuppoſed to grant every body a permiſſion to act in this reſpect as they think proper; and this permiſſion is a ſecond effect of the law. We may therefore diſtinguiſh the law taken in its full extent, into an obligatory law, and a law of ſimple permiſſion.

It is true Grotius*, and after him Puffendorf, are of opinion that permiſſion is not properly, and of itſelf, an effect or conſequence of the law, but a mere inaction of the legiſlator. ‡ *Whatever things*, ſays Puffendorf, *the law permits, thoſe it neither commands nor forbids, and therefore it really doth nothing at all concerning them.*

But though this different manner of conſidering the thing be not perhaps of any great conſequence, yet Barbeyrac's opinion, ſuch as he has explained it in his notes on the forecited paſſages, appears to be much more exact. A permiſſion ariſing from the legiſlator's ſilence cannot be conſidered as a ſimple inaction. The legiſlator does nothing but with deliberation and wiſdom. If he is ſatisfied with impoſing, only in ſome caſes, an indiſpenſable neceſſity of acting after a certain manner, and does not extend this neceſſity further, it is becauſe he thinks it agreeable to the end he propoſes, to leave his ſubjects at liberty in ſome caſes to do as they pleaſe. Wherefore, the ſilence of the legiſlator imports a poſitive though tacit

* See the Rights of War and Peace, book i. chap. i. ſect. 9.
‡ See the Law of Nature and Nations, book i. chap. vi. ſect. 15.

permiſſion of whatſoever he has not forbidden or commanded, though he might have done it, and would certainly have done it, had he thought proper. Inſomuch that as the forbidden or commanded actions are poſitively regulated by the law, actions permitted are likewiſe poſitively determined by the ſame law, though after their manner and according to the nature of the thing. In fine, whoever determines certain limits, which he declares we ought not to exceed, does hereby point out how far he permits and conſents we ſhould go. Permiſſion therefore is as poſitive an effect of the law as obligation.

VII. This will appear ſtill more evident, if we conſider that having once ſuppoſed that we all depend on a ſuperior, whoſe will ought to be the univerſal rule of our conduct, the rights attributed to man in this ſtate, by virtue of which we may act ſafely and with impunity, are founded on the expreſs or tacit permiſſion received from the ſovereign or the law. Beſides, every body agrees, that the permiſſion granted by the law, and the right from thence reſulting, lay other men under an obligation not to reſiſt the perſon that uſes his right, but rather to aſſiſt him in this reſpect, than to do him any prejudice. Obligation, therefore, and permiſſion are naturally connected with each other; and this is the effect of the law, which likewiſe authorizes thoſe, who are diſturbed in the exerciſe of their rights, to employ force, or to have recourſe to the ſovereign, in order to remove theſe impediments. Hence it is, that after having mentioned in the diſfinition of law, that it leaves us in certain caſes at liberty to act or not to act, we added, that it ſecures the ſubjects in the full enjoyment of theſe rights*.

VIII. The nature and end of laws ſhew us their matter or object. The matter of laws in general are all

* See chap. viii. ſect. 3.

all human actions, internal and external; thoughts, and words, as well as deeds; those which relate to another, and those which terminate in the person itself; so far, at least, as the direction of those actions may essentially contribute to the particular good of each person, to that of society in general, and to the glory of the sovereign.

IX. This supposes naturally the three following conditions. 1. That the things ordained by the law be possible to fulfil; for it would be folly, and even cruelty, to require of any person, under the least commination of punishment, whatever is and always has been above his strength. 2. The law must be of some utility; for reason will never allow any restraint to be laid on the liberty of the subject, merely for the sake of the restraint, and without any benefit or advantage arising to him. 3. In fine, the law must be in itself just; that is, conformable to the order and nature of things, as well as to the constitution of man: this is what the very idea of rule requires, which, as we have already observed, is the same as that of law.

X. To these three conditions, which we may call the internal characteristics of law, namely, that it be possible, just, and useful, we may add two other conditions, which in some measure are external; one, that the law be made sufficiently known; the other, that it be attended with a proper sanction.

1. It is necessary that the laws be sufficiently notified to the subject *; for how could he regulate his actions and motions by those laws, if he had never any knowledge of them? The sovereign ought therefore to publish his laws in a solemn, clear, and distinct manner. But, after that, it is the subject's business to be acquainted with the will of the sovereign; and

* See chap. viii. sect. 4.

and the ignorance or error he may lie under in this respect, cannot, generally speaking, be a legitimate excuse in his favour. This is what the civilians mean, when they lay down as a maxim, * *That ignorance or error in regard to the law is blameable and hurtful.* Were it not so, the laws would be of no effect, but might always, under a pretext of ignorance, be eluded with impunity.

XI. 2. The next thing requisite is, that the law be attended with a proper sanction.

Sanction is that part of the law, which includes the penalty enacted against those who trangress it. With regard to the penalty, it is an evil with which the sovereign menaces those subjects who should presume to violate his laws, and which he actually inflicts, whenever they violate them: and this with a design of procuring some good; such as to correct the culpable, and to admonish the rest; but ultimately, that his laws being respected and observed, society should enjoy a state of security, quiet, and happiness.

All laws have therefore two essential parts: the first is the disposition of the law, which expresseth the command or prohibition; the second is the sanction, which pronounces the penalty; and it is the sanction that gives it the proper and particular force of law. For were the sovereign contented with merely ordaining or forbidding certain things, without adding any kind of menace; this would be no longer a law prescribed by authority, but merely a prudent counsel.

It is not however absolutely necessary that the nature or quality of the punishment be formally specified in the law; it is sufficient that the sovereign declares

* Regula est, juris quidem ignorantiam cuique nocere. Digest. lib. 22. tit. 6. leg. 9. pr.

clares he will punish, reserving to himself the species and degree of chastisement according to his prudence *.

We must also observe, that the evil which constitutes the punishment properly so called, ought not to be a natural production, or a necessary consequence of the action intended to be punished. It should be, as it were, an occasional evil, and inflicted by the will of the sovereign. For whatever the action may have bad of itself and dangerous in its effects and inevitable consequences, it cannot be reckoned as proceeding from the law, since it would equally happen without it. The menaces therefore of the sovereign must, in order to have some weight, be inflictive of such punishments as differ from the evil that necessarily arises from the nature of the thing †.

XII. It may be asked, in fine, whether the sanction of laws may not as well consist in the promise of a recompence, as in the commination of punishment? I answer, that this depends, in general, on the will of the sovereign, who may use either of these ways; or even employ them both, according as his prudence directs. But since the question is to know, which is the most effectual method the sovereign can use, in order to enforce the observance of his laws; and since it is certain that man is naturally more sensibly affected by evil than good, it seems more proper to establish the sanction of law in the commination of punishment, than in the promise of recompence. People are seldom induced to violate the law, unless it be with the hope of procuring at least some apparent good. The best way therefore to prevent this deception

* Ex quo etiam intelligitur omni legi civili annexam esse pœnam, vel explicite, vel implicite; nam, ubi pœna neque scripto, neque exemplo alicujus qui pœnas legis jam transgressæ dedit, definitur, ibi subintelligitur pœnam arbitrariam esse, nimirum ex arbitrio pendere legislatoris. Hobbes de Cive, cap. 14. sect. 8.

† See Locke's Essay on Human Understanding, book 2, chap. 28. sect. 6.

ception, is to remove the bait that allures them, and to annex, on the contrary, a real and inevitable evil to disobedience. Suppose, for instance, two legislators, willing to establish the same law, proposed, one of them great rewards, and the other severe punishments, the latter would undoubtedly dispose men more effectually to compliance than the former. The most specious promises do not always determine the will; but the view of a rigorous punishment staggers and intimidates it *. But if the sovereign, by a particular effect of his bounty and wisdom, is willing to join these two means, and to enforce the law by a double motive of observance; there is then nothing wanting to complete its force, since in every respect it is a perfect sanction.

XIII. The obligation which the laws impose, have as great an extent as the right of the sovereign; and consequently it may be said in general, that all those who are dependent on the legislator, are subject to this obligation. But each law in particular obliges those subjects only, to whom the subject matter may be applied; and this is easily known from the very nature of each law, by which the intention of the legislator is sufficiently expressed.

Nevertheless it sometimes happens, that particular persons are exempted from the obligation of observing the law; and this is what we call dispensation, on which we have a few remarks to make.

1. If the legislator can intirely abrogate a law, by a much stronger reason he can suspend the effect thereof, with regard to any particular person.

2. But we must likewise acknowledge, that none but the legislator himself is invested with this power.

3. He never ought to use it without very good reasons, and then he should act with moderation, and

* See Puffendorf, Law of Nature and Nations, book ii. chap. vi. sect. 14. with Barbeyrac's Notes.

and according to the rules of equity and prudence. For were he, without discretion or choice, to favour too great a number of people with dispensations, he would enervate the authority of the law; or were he to refuse it in cases perfectly alike, so unreasonable a partiality would certainly be attended with jealousy and discontent.

XIV. As for what concerns the duration of laws, and the manner in which they are abolished, we are to observe the following principles:

1. In general the duration of a law, as well as its first establishment, depends on the free will and pleasure of the sovereign, who cannot reasonably tie up his own hands in this respect.

2. And yet every law, of itself and by its nature, is supposed perpetual, when it contains nothing in its disposition, or in the circumstances attending it, that evidently denotes a contrary intention of the legislator, or that may induce us reasonably to presume that it was only a temporary ordinance. The law is a rule; now every rule is of itself perpetual; and, generally speaking, when the sovereign establishes a law, it is not with a design to repeal it.

3. But as the state of things may happen to alter in such a manner, that the law, grown useless or hurtful, can be no longer put in execution; the sovereign can, and ought, in that case, to repeal and abolish it. It would be absurd and pernicious to society, to pretend that laws once enacted ought to subsist for ever, let what inconveniency soever arise.

4. This repeal may be made in two different manners, either expressly or tacitly. For when the sovereign, well acquainted with the state of things, neglects for a long time to enforce the observance of the laws, or formally permits, that affairs relating thereto be regulated in a manner contrary to his disposition; from thence a strong presumption arises of the abrogation of this law, which falls thus of itself,

itſelf, though the legiſlator has not expreſsly abolifhed it.

It is plain we have only glanced here upon the general principles. As for the application that ought to be made of them to each ſpecies of laws, it requires ſome modification, purſuant to their different nature. But it is not our buſineſs to enter here into thoſe particulars.

XV. Law may be divided, 1. Into divine or human, according as it has God or man for its author.

2. Divine law may be ſubdivided into two ſorts, namely, natural, and poſitive or revealed.

Natural law is that which ſo neceſſarily agrees with the nature and ſtate of man, that without obſerving its maxims, the peace and happineſs of ſociety can never be preſerved. As this law has an eſſential agreeableneſs with the conſtitution of human nature, the knowledge thereof may be attained merely by the light of reaſon; and hence it is called natural.

Poſitive or revealed law is that which is not founded on the general conſtitution of human nature, but only on the will of God; though in other reſpects this law is eſtabliſhed on very good reaſons, and procures the advantage of thoſe who receive it.

We meet with examples of theſe two ſorts of laws in the ordinances which God gave formerly to the Jews. It is eaſy to diſtinguiſh ſuch as were natural, from thoſe that, being merely ceremonial or political, had no other foundation than the particular will of God, accommodated to the actual ſtate of that people.

With regard to human laws, conſidered ſtrictly as ſuch, viz. as originally proceeding from a ſovereign who preſides over ſociety, they are all poſitive. For though ſome natural laws are made the ſubject of human laws, they do not derive their obligatory force from the human legiſlator; ſince they would oblige

equally

equally without any intervention on his part, becauſe they come from God.

Before we leave theſe definitions, we muſt not forget to obſerve, that the ſcience or art of making and explaining laws, and of applying them to human actions, goes by the general name of *Juriſprudence.*

CHAP. XI.

Of the morality of human actions *.

I. LAW being the rule of human actions, in a comparative view, we obſerve that the latter are either conformable or oppoſite to the former; and this ſort of qualification of our actions in reſpect to the law, is called *morality.*

The term of *morality* comes from *mores* or manners. Manners, as we have already obſerved, are the free actions of man, conſidered as ſuſceptible of direction and rule. Thus we call morality the relation of human actions to the law, by which they are directed; and we give the name of moral philoſophy to the collection of thoſe rules by which we are to regulate our actions.

II. The morality of actions may be conſidered in two different lights: 1. In regard to the manner in which the law diſpoſes of them; and 2. In relation to the conformity or oppoſition of thoſe ſame actions to the law.

In the firſt conſideration, human actions are either commanded, or forbidden, or permitted.

As we are indiſpenſably obliged to do what is commanded, and to abſtain from what is forbidden by

* See the Law of Nature and Nations, book i. chap. vii. and the Duties of Man and a Citizen, book i. chap. ii. ſect. 11. &c.

by a lawful superior, civilians consider commanded actions as necessary, and forbidden actions as impossible. Not that man is deprived of a physical power of acting contrary to law, and incapable, if he has a mind, of exercising this power. But since his acting after this manner would be opposite to right reason, and inconsistent with his actual state of dependance; it is to be presumed that a reasonable and virtuous man, continuing and acting as such, could not make so bad a use of his liberty; and this presumption is in itself too reasonable and honourable for humanity, not to meet with approbation. *Whatever* (say the Roman lawyers *) *is injurious to piety, reputation, or modesty, and in general to good manners, ought to be presumed impossible.*

III. With regard to permitted actions, they are such as the law leaves us at liberty to do, if we think proper †. Upon which we must make two or three remarks.

1. We may distinguish two sorts of permission; one full and absolute, which not only gives us a right to do certain things with impunity, but moreover is attended with a positive approbation of the legislator: The other is an imperfect permission, or a kind of toleration, which implies no approbation but a simple impunity.

2. The permission of natural laws always denotes a positive approbation of the legislator; and whatever happens in consequence thereof, is innocently done, and without any violation of our duty. For it is evident, that God could not positively permit the least thing that is bad in its nature.

3. It is otherwise in respect to the permission of human laws. We may, indeed, justly and with certainty

* Nam quæ facta lædunt pietatem, existimationem, verecundiam nostram, et [ut generaliter dixerim] contra bonos mores fiunt, nec facere nos posse credendum est. L. 15. D. de condit. Institut.

† See chap. 10. sect. 5.

certainty infer, that a ſovereign has not thought proper to forbid or puniſh ſome particular things; but it does not always from thence follow, that he really approves thoſe things, and much leſs that they may be innocently done, and without any breach of duty.

IV. The other manner in which we may view the morality of human actions, is with regard to their conformity or oppoſition to the law. In this reſpect, actions are divided into good or juſt, bad or unjuſt, and indifferent.

An action morally good or juſt, is that which in itſelf is exactly conformable to ſome obligatory law, and morover is attended with the circumſtances and conditions required by the legiſlator.

I ſaid, 1. *A good or juſt action*; for there is properly no difference between the goodneſs and juſtice of actions; and there is no neceſſity to deviate here from the common language, which confounds theſe two ideas. The diſtinction which Puffendorf makes between theſe two qualities is quite arbitrary, and even he himſelf afterwards confounds them *.

2. I ſaid, an action *morally good*; becauſe we do not conſider here the intrinſic and natural goodneſs of actions, by virtue of which they redound to the phyſical good of man; but only the relation of agreeableneſs they have to the law, which conſtitutes their moral goodneſs. And though theſe two ſorts of goodneſs are always found inſeparably united in things ordained by natural law, yet we muſt not confound theſe two different relations.

V. In fine, to diſtinguiſh the general conditions, whoſe concurrence is neceſſary in order to render an action

* Compare what he ſays in the Law of Nature and Nations, book i. chap. vii. ſect. 7. in the beginning, with ſect. 4. of the ſame chapter.

action morally good, with respect to the agent; I have added, *that this action ought to be in itself exactly conformable to the law, and accompanied moreover with the circumstances and conditions required by the legislator.* And first, it is necessary that this action should comply exactly, and through all its parts, with the tenor of what the law ordains. For as a right line is that whose points correspond to the rule without the least deviation, in like manner an action, rigorously speaking, cannot be just, good, or right, unless it agrees exactly, and in every respect with the law. But even this is not sufficient; the action must be performed also pursuant to the manner required and intended by the legislator. And in the first place, it is necessary to be done with a competent knowledge, that is, we must know that what we do is conformable to the law: otherwise the legislator would have no regard for the action, and our labour would be intirely lost. In the next place, we must act with an upright intention and for a good end, namely, to fulfil the views of the legislator, and to pay a due obedience to the law: For if the agent's intention be bad, the action, instead of being deemed good, may be imputed to him as vicious. In fine, we should act through a good motive, I mean a principle of respect for the sovereign, of submission to the law, and from a love of our duty; for plain it is, that all these conditions are required by the legislator.

VI. What has been above affirmed concerning good actions, sufficiently shews us the nature of those which are bad or unjust. These are, in general, such as of themselves, or by their concomitant circumstances, are contrary to the disposition of an obligatory law, or to the intention of the legislator.

There are therefore, two general springs of injustice in human actions; one proceeds from the action considered in itself, and from its manifest opposition to what is commanded or prohibited by the law

law. Such as, for example, the murder of an innocent person. And all these kinds of actions intrinsically bad can never become good, whatever may be in other respects the intention or motive of the agent. We cannot employ a criminal action as a lawful means to attain an end in itself good; and thus we are to understand the common maxim *evil must not be done, that good may come of it.* But an action intrinsically and as to its substance good, may become bad, if it be accompanied with circumstances directly contrary to the legislator's intention; as, for instance, if it be done with a bad view, and through a vicious motive. To be liberal and generous towards our fellow-citizens, is a good and commendable thing in itself; but if this generosity is practised merely with ambitious views, in order to become insensibly master of the commonwealth, and to oppress the public liberty; the perversity of the motive, and the injustice of the design, render this action criminal.

VII. All just actions are, properly speaking, equally just; by reason that they have all an exact conformity to the law. It is not the same with unjust or bad actions; which, according as they are more or less opposite to the law, are more or less vicious; similar in this respect to curve lines, which are more or less so, in proportion as they deviate from the rule. We may therefore be several ways wanting in our duty. Sometimes people violate the law deliberately, and *with malice prepense;* which is undoubtedly, the very highest degree of iniquity, because this kind of conduct manifestly indicates a formal and reflective contempt of the legislator and his orders; but sometimes we are apt to sin through neglect and inadvertency, which is rather a fault than a crime. Besides, it is plain that this neglect has its degrees, and may be greater or lesser, and deserving of more or less censure. And as in every thing unsusceptible of an exact

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and mathematical measure, we may always distinguish at least three degrees, namely, two extremes and a middle: Hence the civilians distinguish three degrees of fault or negligence; a gross fault, a slight one, and a very slight one. It is sufficient to have mentioned these principles, the explication and distinct account whereof will naturally take place, when we come to the particular questions relating to them.

VIII. But we must carefully observe, that what essentially constitutes the nature of an unjust action, is its direct opposition or contrariety to the disposition of the law, or to the intention of the legislator; which produces an intrinsic defect in the matter or form of that action. For though in order to render an action morally good, it is necessary, as we have already observed, that it be intirely conformable to the law, with respect as well to the substance, as to the manner and circumstances; yet we must not from thence conclude, that the defect of some of those conditions always renders an action positively bad or criminal. To produce this effect, there must be a direct opposition, or formal contrariety between the action and the law; a simple defect of conformity being insufficient for that purpose. This defect is, indeed, sufficient to render an action not positively good or just: however, it does not become therefore bad, but only indifferent. For example, if we perform an action good in itself, without knowing for what reason, or even that it is commanded by the law; or if we act through a different motive from that prescribed by the law, but in itself innocent and not vicious; the action is reputed neither good nor bad, but merely indifferent.

IX. There is therefore such a thing as indifferent actions, which hold a middle rank, as it were, between just and unjust. These are such as are neither commanded nor prohibited, but which the law leaves

leaves us at liberty to do or to omit, according as we think proper. That is, those actions are referred to law of simple permission, and not to an obligatory law.

Now that such actions there are, is what no one can reasonably question. For what a number of things are there, which being neither commanded nor forbidden by any law, whether divine or human, have consequently nothing obligatory in their nature, but are left to our liberty, to do or to omit, just as we think proper? It is therefore an idle subtlety in schoolmen to pretend that an action cannot be indifferent, unless it be in an abstract consideration, as stripped of all the particular circumstances of person, time, place, intention, and manner. An action divested of all these circumstances, is a mere *Ens rationis*, and if there be really any indifferent actions, as undoubtedly there are, they must be relative to particular circumstances of person, time, and place, &c.

X. Good or bad actions may be ranged under different classes, according to the object to which they relate. Good actions referred to God, are comprised under the name of *Piety*. Those which relate to ourselves, are distinguished by the words, *Wisdom*, *Temperance*, *Moderation*. Those which concern other men, are included under the terms of *Justice* and *Benevolence*. We only anticipate here the mentioning of this distinction, because we must return to it again when we come to treat of natural law. The same distinction is applicable to bad actions, which belong either to *Impiety*, *Intemperance*, or *Injustice*.

XI. It is common to propose several divisions of justice. That we may not be silent on this article, we shall observe.

1. That justice may, in general, be divided into perfect or rigorous, and imperfect or not rigorous.

The former is that by which we perform towards our neighbour whatever is due to him in virtue of a perfect or rigorous right, that is, the execution of which he may demand by forcible means, unless we satisfy him freely and with a good will; and it is in this strict sense that the word *Justice* is generally understood. The second is that by which we perform towards another the duties owing to him only in virtue of an imperfect and non-rigorous obligation, which cannot be insisted upon by violent methods; but the fulfilling of them is left to each person's honour and conscience*. These kinds of duties are generally comprehended under the appellations of humanity, charity, or benevolence, in opposition to rigorous justice, or justice properly so called. This division of justice coincides with that of Grotius, into *expletive* and *attributive*.

2. We might subdivide rigorous justice into that which is exercised between equals, and that which takes place between superior and inferior§. The former contains as many different species as there are duties, which one man may in rigour require of every other man, considered as such, and one citizen of every fellow-citizen. The latter includes as many species as there are different societies, where some command, and others obey‖.

3. There are other divisions of justice, but such as seem useless, and far from being exact. For example, that of universal and particular justice, taken in the manner as Puffendorf explains it, appears incorrect, inasmuch as one of the numbers of the division

* See chap. vii. sect. 8.

§ This amounts to the same thing very near as the Jus rectorium and æquatorium of Grotius. Book i. chap. 1. sect. 3. num. 3.

‖ See Buddæus, Elementa Philos. Pract. part ii. chap. iii. sect. 46.

ſion is included in the other *. The ſubdiviſion of particular juſtice into diſtributive and commutative, is incomplete; becauſe it includes only what is due to another, by virtue of ſome pact or engagement, notwithſtanding there are many things which our neighbour may require of us in rigour, without any regard to pact or convention. And we may obſerve in general, by reading what Grotius and Puffendorf have wrote concerning this ſubject, that they are at a loſs themſelves, to give a clear and exact idea of theſe different kinds of juſtice. Hence it is maniſeſt, that we had better wave all theſe ſcholaſtic diviſions, contrived in imitation of thoſe of Ariſtotle, and abide by our firſt diviſion. And indeed, it is only out of reſpect to the common opinion, that we have taken any notice thereof †.

XII. Beſides what we may call the quality of moral actions, they have likewiſe a kind of quantity, which, by comparing the good actions to one another, as alſo the bad in the ſame manner, leads us to a ſort of relative eſtimation, in order to mark the greater or leſſer degree of evil to be found in each. We ſhall give here the principles neceſſary for this eſtimation.

1. Theſe actions may be conſidered with regard to their object. The nobler the object, the higher the excellence of the good action done towards this object; and a bad action, on the contrary, becomes more criminal.

2. In reſpect to the quality and ſtate of the agent. Thus a favour or benefit received of an enemy, excels

* Law of Nature and Nations, book i. chap. viii. ſect. 8. And the Duties of Man and a Citizen, book i. chap. ii. ſect. 14. with Barbeyrac's Notes.

† See Grotius, Rights of War and Peace, book i. chap. i. ſect. 3. and Puffendorf on the Law of Nature and Nations, book i. chap. vii. ſect. 9, 10, 11, 12. with Barbeyrac's Notes.

cels that which is conferred upon us by a friend. And, on the contrary, an injury done us by a friend, is more ſenſible, and more atrocious, than that which is committed by an enemy.

3. In reference to the very nature of the action, according as there is more or leſs trouble to perform. The more a good action is difficult, ſuppoſing every thing elſe equal, the more worthy it is of praiſe and admiration. But the eaſier it is to abſtain from a bad action, the more it is blameable and enormous in compariſon to another of the ſame ſpecies.

4. In relation to the effects and conſequences of the action. An action is ſo much the better or worſe, in proportion as we foreſee that its conſequences muſt be more or leſs advantageous or hurtful.

5. We may add the circumſtances of time, place, &c. which are alſo capable of making the good or bad actions ſurpaſs one another in excellence or badneſs. We have borrowed theſe remarks from one of Barbeyrac's notes on Puffendorf *.

XIII. Let us obſerve, in fine, that morality is attributed to perſons as well as actions; and as actions are good or bad, juſt or unjuſt, we ſay likewiſe of men, that they are good or bad, virtuous or vicious.

A virtuous man is he that has a habit of acting conformably to the laws and his duty. A vicious man is one that has the oppoſite habit.

Virtue therefore conſiſts in a habit of acting according to the laws; and vice in the contrary habit.

I ſaid that virtue and vice are habits. Hence to judge properly of theſe two characters, we ſhould not ſtop at ſome particular action; we ought to consider

* See Law of Nature and Nations, book i. chap. viii. ſect. 5. note 1.

consider the whole series of the life and ordinary conduct of man. We should not therefore rank among the number of vicious men, those who through weakness, or otherwise, have been sometimes induced to commit a bad action; as on the other hand, those who have done a few acts of virtue, do not merit the title of honest men. There is no such thing to be found in the world as virtue in every respect complete; and the weakness inseparable from man, requires we should not judge him with full rigour. Since it is allowed that a virtuous man may, through weakness and surprize, commit some unjust action; so it is but right we should likewise allow, that a man who has contracted several vicious habits, may notwithstanding, in particular cases, do some good actions, acknowledged and performed as such. Let us not suppose men worse than they really are, but take care to distinguish the several degrees of iniquity and vice, as well as those of probity and virtue.

THE END OF THE FIRST PART.

THE

THE PRINCIPLES OF NATURAL LAW.

PART II.

Of the Law of Nature.

CHAP. I.

In what the Law of Nature consists, and that there is such a thing. First, considerations drawn from the existence of God and his authority over us.

AFTER having settled the general principles of law, our business is now to apply them to natural law in particular. The questions we have to examine in this second part are of no less importance than to know, whether man, by his nature and constitution, is really subject to laws properly so called? What are these laws? Who is the superior that imposes them? By what method or means is it possible to know them? What consequence may follow from our negligence in this respect? And, in fine, what advantage on the contrary may arise from the observance of these laws?

II. Let

II. Let us begin with a proper definition of the terms. By natural law we underſtand, a law that God impoſes on all men, and which they are able to diſcover and know by the ſole light of reaſon, and by attentively conſidering their ſtate and nature.

Natural law is likewiſe taken for the ſyſtem, aſſemblage, or body of the laws of nature.

Natural juriſprudence is the art of attaining to the knowledge of the laws of nature, of explaining and applying them to human actions.

III. But whether there be really any natural laws, is the firſt queſtion that preſents itſelf here to our inquiry. In order to make a proper anſwer, we muſt aſcend to the principles of natural theology, as being the firſt and true foundation of the law of nature. For when we are aſked, whether there are any natural laws, this queſtion cannot be reſolved, but by examining the three following articles. 1. Whether there is a God? 2. If there is a God, whether he has a right to impoſe laws on man? 3. Whether God actually exerciſes his right in this reſpect, by really giving us laws, and requiring we ſhould ſquare thereby our actions? Theſe three points will furniſh the ſubject of this and the following chapters.

IV. The exiſtence of God, that is, of a firſt, intelligent, and ſelf-exiſtent being, on whom all things depend as on their firſt cauſe, and who depends himſelf on no one; the exiſtence, I ſay, of ſuch a being, is one of thoſe truths that ſhew themſelves to us at the firſt glance. We have only to attend to the evident and ſenſible proofs, that preſent themſelves to us, as it were, from all parts.

The chain and ſubordination of cauſes among themſelves, which neceſſarily requires we ſhould fix on a firſt cauſe; the neceſſity of acknowledging a firſt mover; the admirable ſtructure and order of the univerſe; are all ſo many demonſtrations of the exiſtence

istence of God, within the reach of every capacity. Let us unfold them in a few words.

V. 1. We behold an infinite number of objects, which form all together the assemblage we call the universe. Something therefore must have always existed. For were we to suppose a time in which there was absolutely nothing, it is evident that nothing could have ever existed; because whatsoever has a beginning, must have a cause of its existence; since nothing can produce nothing. It must be therefore acknowledged that there is some eternal being, who exists necessarily and of himself; for he can be indebted to no one else for his origin; and it implies a contradiction that such a being does not exist.

Moreover, this eternal being, who necessarily and of himself subsists, is endued with reason and understanding. For to pursue the same manner of arguing, were we to suppose a time in which there were nothing but inanimate beings, it would have been impossible for intelligent beings, such as we now behold, ever to exist. Intellection can no more proceed from a blind and unintelligent cause, than a being, of any kind whatsoever, can come from nothing. There must therefore have always existed a father of spiritual beings, an eternal mind, the source from whence all others derive their existence. Let what system soever be adopted concerning the nature and origin of the soul, our proof subsists still in its full force. Were it even to be supposed that the cogitative part of man is no more than the effect of a certain motion or modification of matter; yet we should still want to know how matter acquired this activity, which is not essential to it, and this particular and so much admired organization, which it cannot impart to itself. We should inquire, who is it that has modified the body in a manner proper to produce such wonderful operations as those of intellection, which reflects, which acts on the very body itself with command, which surveys the earth, and measures the

heavens,

heavens, recollects past transactions, and extends its views to futurity. Such a master-piece must come from the hands of an intelligent cause; wherefore it is absolutely necessary to acknowledge a first, eternal, and intelligent being.

VI. An eternal spirit, who has within himself the principle of his own existence, and of all his faculties, can be neither changed nor destroyed; neither dependent nor limited; he should even be invested with infinite perfection, sufficient to render him the sole and first cause of all, so that we may have no occasion to seek for any other.

But does not (some will ask) this quality of an eternal and intelligent being, belong to matter itself, to the visible world, or to some of the parts thereof?

I answer, that this supposition is absolutely contrary to all our ideas. Matter is not essentially and of itself intelligent; nor can it be supposed to acquire intellection but by a particular modification received from a cause supremely intelligent. Now this first cause cannot have such a modification from any other being; for he thinks essentially and of himself; wherefore he cannot be a material being. Besides, as all the parts of the universe are variable and dependent, how is it possible to reconcile this with the idea of an infinite and all perfect being?

As for what relates to man, his dependance and weakness are much more sensible than those of other creatures. Since he has no life of himself, he cannot be the efficient cause of the existence of others. He is unacquainted with the structure of his own body, and with the principle of life; incapable of discovering in what manner motions are connected with ideas, and which is the proper spring of the empire of the will. We must therefore look out for an efficient, primitive, and original cause of mankind, beyond the human chain, be it supposed ever so long; we must trace the cause of each part of the world beyond this material and visible world.

VII.

VII. 2. After this first proof drawn from the necessity of a first, eternal, and intelligent being, distinct from matter; we proceed to a second, which shews us the Deity in a more sensible manner, and more within the reach of common capacities. The proof I mean, is the contemplation of this visible world, wherein we perceive a motion and order, which matter has not of itself, and must therefore receive from some other being.

Motion or active force is not an essential quality of body: extension is of itself rather a passive being; it is easily conceived at rest, and if it has any motion, we may well conceive it may lose it without being stript of its existence; it is a quality or state that passes, and is accidentally communicated from one body to another. The first impression must therefore proceed from an extrinsic cause; and as Aristotle has well expressed it. * *The first mover of bodies must not be moveable himself, must not be a body.* This has been also agreed to by Hobbes. † *But the acknowledging*, says he, *of one God eternal, infinite, and omnipotent, may more easily be derived, from the desire men have to know the causes of natural bodies, and their several virtues and operations, than from the fear of what was to befall them in time to come. For he that from any effect he seeth come to pass, should reason to the next and immediate cause thereof, and from thence to the cause of that cause, and plunge himself profoundly in the pursuit of causes; shall at last come to this, that there must be (as even the heathen philosophers confessed) one first mover; that is, a first and eternal cause of all things; which is that which men mean by the name of God.*

VIII. 3. But if matter has not been able to move of itself, much less was it capable to move to the exact

* Aristot. Metaphys.

† Leviathan, chap. xii. p. 53. edit. 1651.

exact degree, and with all the determinations, necessary to form such a world as we behold, rather than a confused chaos.

In fact, let us only cast our eyes on this universe, and we shall every where discover, even at the first glance, an admirable beauty, regularity, and order; and this admiration will increase in proportion, as in searching more closely into nature, we enter into the particulars of the structure, proportion, and use of each part. For then we shall clearly see, that every thing is relative to a certain end, and that these particular ends though infinitely varied among themselves, are so dextrously managed and combined, as to conspire all to a general design. Notwithstanding this amazing diversity of creatures, there is no confusion: we behold several thousand different species, which preserve their distinct form and qualities. The parts of the universe are proportioned and balanced, in order to preserve a general harmony; and each of those parts has exactly its proper figure, proportions, situation, and motion, either to produce its particular effect, or to form a beautiful whole.

It is evident therefore, that there is a design, a choice, a visible reason in all the works of nature; and consequently there are marks of wisdom and understanding, obvious, as it were, even to our very senses.

IX. Though there have been some philosophers who have attributed all these phænomena to chance, yet this is so ridiculous a thought, that I question whether a more extravagant chimera ever entered into the mind of man. Is it possible for any one to persuade himself seriously, that the different parts of matter having been set in some unaccountable manner in motion, produced of themselves the heavens, the stars, the earth, the plants, and even animals and men, and whatever is most regular in the organization? A man that would pass the like judgment

judgment on the leaſt edifice, on a book or picture, would be looked upon as a mad extravagant perſon. How much more ſhocking is it to common ſenſe, to attribute to chance ſo vaſt a work, and ſo wonderful a compoſition as this univerſe?

X. It would be equally frivolous to allege the eternity of the world, in order to exclude a firſt intelligent cauſe. For beſides the marks of novelty we meet with in the hiſtory of mankind, as the origin of nations and empires, and the invention of arts and ſciences, &c. beſides the aſſurance we have from the moſt general and moſt ancient tradition that the world has had a beginning (a tradition which is of great weight in regard to a matter of fact, like this) beſides, I ſay, all this, the very nature of the thing does not allow us to admit of this hypotheſis no more than that of chance. For the queſtion is ſtill to explain whence comes this beautiful order, this regular ſtructure and deſign, in a word, whence proceed thoſe marks of reaſon and wiſdom that are ſo viſibly diſplayed in all parts of the univerſe. To ſay that it has been always ſo, without the intervention of an intelligent cauſe, does not explain the thing, but leaves us in the ſame embarraſſment, and advances the ſame abſurdity as thoſe who a while ago were ſpeaking to us of chance. For this is in reality telling us that whatever we behold throughout the univerſe, is blindly ranged, without deſign, choice, cauſe, reaſon, or underſtanding. Hence the principal abſurdity of the hypotheſis of chance, occurs likewiſe in this ſyſtem; with this difference only, that by eſtabliſhing the eternity of the world, they ſuppoſe a chance that from all eternity hit upon order; whereas thoſe who attribute the formation of the world to the fortuitous junction of its parts, ſuppoſe that chance did not ſucceed till a certain time, when it fell in at length with order after an infinite number of trials and fruitleſs combinations. Both acknow-

ledge

ledge therefore no other cause but chance, or properly speaking, they acknowledge none at all; for chance is no real cause, it is a word that cannot account for a real effect, such as the arrangement of the universe.

It would not be a difficult matter to carry these proofs to a much greater length, and even to increase them with an additional number. But this may suffice for a work of this kind; and the little we have said, intitles us, methinks, to establish the existence of a *First Cause*, or of a *Creator*, as an incontestable truth, that may serve henceforward for the basis of all our reasonings.

XI. As soon as we have acknowledged a Creator, it is evident that he has a supreme right to lay his commands on man, to prescribe rules of conduct to him, and to subject him to laws; and it is no less evident, that man on his side finds himself, by his natural constitution, under an obligation of subjecting his actions to the will of this supreme Being.

We have already shown *, that the true foundation of sovereignty in the person of the sovereign, is power united with wisdom and goodness; and that, on the other hand, weakness and wants in the subjects, are the natural cause of dependance. We have only therefore to see, whether all these qualities of sovereign are to be found in God; and whether men, on their side, are in a state of infirmity and wants so as to depend necessarily on him for their happiness.

XII. It is beyond doubt, that he who exists necessarily and on himself, and has created the universe, must be invested with an infinite power. As he has given existence to all things by his own will, he may likewise preserve, annihilate, or change them as he pleases.

But

* See part i. chap. ix.

But his wisdom is equal to his power. Having made every thing, he must know every thing as well the causes as the effects from thence resulting. We see besides in all his works the most excellent ends, and a choice of the most proper means to attain them; in short, they all bear, as it were, the stamp of wisdom.

XIII. Reason informs us, that God is a being essentially good; a perfection which seems to flow naturally from his wisdom and power. For how is it possible for a being, who of this nature is infinitely wise and powerful, to have any inclination to hurt? Surely no sort of reason can ever determine him to it. Malice, cruelty, and injustice, are always a consequence of ignorance or weakness. Let man therefore consider but ever so little the things which surround him, and reflect on his own constitution, he will discover both within and without himself the benevolent hand of his Creator who treats him like a father. It is from God we hold our life and reason; it is he that supplies most abundantly our wants, adding the useful to the necessary, and the agreeable to the useful. Philosophers observe, that whatever contributes to our preservation has been arrayed with some agreeable quality. * Nourishment, repose, action, heat, cold, in short, whatever is useful to us, pleases us in its turn, and so long as it is useful. Should it cease to be so, because things are carried to a dangerous excess, we have notice therefore by an opposite sensation. The allurement of pleasures invites us to use them when they are necessary for our wants; disrelish and lassitude induce us to abstain from them, when they are likely to hurt us. Such is the happy and sweet œconomy of nature, which an-

* See an excellent treatise published at Geneva, (for Barrillot and son, in 12mo, 1747,) intitled, "The Theory of Agreeable Sensations;" where, after pointing out the rules that nature follows in the distribution of pleasure, the principles of natural theology and ethics are established.

nexes a pleasure to the moderate exercise of our senses and faculties, insomuch that whatever surrounds us becomes a source of satisfaction, when we know how to use it with discretion. What can be more magnificent, for example, than this great theatre of the world in which we live, and this glittering decoration of heaven and earth, exhibiting a thousand agreeable objects to our view? What satisfaction does not the mind receive from the sciences, by which it is exercised, enlarged, and improved? What conveniencies do not we draw from human industry? What advantages do not we derive from an intercourse with our equals! What charms in their conversation! What sweetness in friendship, and the other connections of the heart! When we avoid the excess and abuse of things, the greatest part of human life abounds with agreeable sensations. And if to this we add, that the laws which God gives us, tend, as hereafter we shall see, to perfect our nature, to prevent all kinds of abuse, and to confine us to a moderate use of the good things of life, on which the preservation, excellence, and happiness, as well public as private, of man depends, what more is there wanting to convince us, that the goodness of God is not inferior either to his wisdom or power?

We have therefore a superior undoubtedly invested with all the qualities necessary to found the most legitimate and most extensive authority: And since on our side experience shews us, that we are weak and subject to divers wants; and since every thing we have, we have from him, and he is able either to augment or diminish our enjoyments; it is evident, that nothing is wanting here to establish on the one side the absolute sovereignty of God, and on the other our unlimited dependance.

CHAP.

CHAP II.

That God, in consequence of his authority over us, has actually thought proper to prescribe to us laws or rules of conduct.

I. TO prove the existence of God, and our dependance in respect to him, is establishing the right he has of prescribing laws to man. But this is not sufficient; the question is, whether he has actually thought proper to exercise this right. He can undoubtedly impose laws on us; but has he really done it? and though we depend on him for our life, and for our physical faculties, has he not left us in a state of independance in respect to the moral use to which we are to apply them? This is the third and capital point we are still left to examine.

II. We have made some progress already in this research, by discovering all the circumstances necessary to establish an actual legislature. On the one side we find a superior, who by his nature is possessed, in the very highest degree, of all the conditions requisite to establish a legitimate authority; and on the other we behold man, who is God's creature, endowed with understanding and liberty, capable of acting with knowledge and choice, sensible of pleasure and pain, susceptible of good and evil, of rewards and punishments. Such an aptitude of giving and receiving laws cannot be useless. This concurrence of relations and circumstances undoubtedly denotes an end, and must have some effect; just as the particular organization of the eye shews we are destined to see the light. Why should God have made us exactly fit to receive laws, if he intended none for us? This would be creating so many idle and useless faculties. It is therefore not only possible, but very probable, that our destination in general is such,

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unless the contrary should appear from much stronger reasons. Now instead of there being any reason to destroy this first presumption, we shall see that every thing tends to confirm it.

III. 2. When we consider the beautiful order which the supreme wisdom has established in the physical world, it is impossible to persuade ourselves, that he has abandoned the spiritual or moral world to chance and disorder. Reason, on the contrary, tells us, that a wise being proposes to himself a reasonable end in every thing he does, and that he uses all the necessary means to attain it. The end which God had in view with regard to his creatures, and particularly with respect to man, cannot be any other, on the one side, than his glory; and on the other, the perfection and happiness of his creatures, so far as their nature or constitution will admit. These two views, so worthy of the Creator, are perfectly combined. For the glory of God consists in manifesting his perfections, his power, his goodness, wisdom, and justice; and these virtues are nothing else but the love of order and of the good of the whole. Thus a being absolutely perfect and supremely happy, willing to conduct man to that state of order and happiness which suits his nature, cannot but be willing at the same time to employ whatever is necessary for such an end; and consequently he must approve of those means that are proper, and disapprove of such as are improper for attaining it. Had the constitution of man been merely physical or mechanical, God himself would have done whatever is expedient for his work: But man being a free and intelligent creature, capable of discernment and choice, the means which the Deity uses to conduct him to his end, ought to be proportioned to his nature, that is, such as man may engage in, and concur with, by his own actions.

Now as all means are not equally fit to conduct us to a certain end, all human actions cannot therefore be indifferent. Plain it is, that every action, contrary

trary to the ends which God has propoſed, is not agreeable to the divine Majeſty; and that he approves, on the contrary, thoſe which of themſelves are proper to promote his ends. Since there is a choice to be made, who can queſtion but our Creator is willing we ſhould take the right road; and that, inſtead of acting fortuitouſly and raſhly, we ſhould behave like rational creatures, by exerciſing our liberty, and the other faculties he has given us, in the manner moſt agreeable to our ſtate and deſtination, in order to promote his views, and to advance our own happineſs, together with that of our fellow-creatures?

IV. Theſe conſiderations aſſume a new force, when we attend to the natural conſequences of the oppoſite ſyſtem. What would become of man and ſociety, were every one to be ſo far maſter of his actions, as to do every thing he lifted, without having any other principle of conduct than caprice or paſſion; let us ſuppoſe, that God abandoning us to ourſelves, had not actually preſcribed any rules of life, or ſubjected us to laws; moſt of our talents and faculties would be of no manner of uſe to us. To what purpoſe would it be for man to have the light of reaſon, were he to follow only the impulſe of inſtinct, without watching over his conduct? What would it avail him to have the power of ſuſpending his judgment, were he to yield ſtupidly to the firſt impreſſions? And of what ſervice would reflection be, were he neither to chuſe nor deliberate; and were he, inſtead of liſtening to the counſels of prudence, to be hurried away by blind inclinations? Theſe faculties, which form the excellence and dignity of our nature, would not only be rendered hereby intirely frivolous, but, moreover, would become prejudicial even by their excellence; for the higher and nobler the faculty is, the more the abuſe of it proves dangerous.

This would be not only a great misfortune for man, conſidered alone, and in reſpect to himſelf; but would

would ſtill prove a greater evil to him when viewed in the ſtate of ſociety. For this more than any other ſtate requires laws, to the end that each perſon may ſet limits to his pretenſions, without invading another man's right. Were it otherwiſe, licentiouſneſs muſt be the conſequence of independence. To leave men abandoned to themſelves, is leaving an open field to the paſſions, and paving the way for injuſtice, violence, perfidy and cruelty. Take away natural laws, and that moral tie which ſupports juſtice and honeſty in a whole nation, and eſtabliſhes alſo particular duties either in families, or in the other relations of life; man would be then the moſt ſavage and ferocious of all animals. The more dexterous and artful he is, the more dangerous he would prove to his equals; his dexterity would degenerate into craft, and his art into malice. Then we ſhould be diveſted of all the advantages and ſweets of ſociety; and thrown into a ſtate of war and libertiniſm.

V. 3. Were any one to ſay, that man himſelf would not fail to remedy theſe diſorders, by eſtabliſhing laws in ſociety; (beſide that human laws would have very little force were they not founded on the principles of conſcience;) this remark ſhews there is a neceſſity for laws in general, whereby we gain our cauſe. For if it be agreeable to the order of reaſon that men ſhould eſtabliſh a rule of life among themſelves, in order to be ſcreened from the evils they might apprehend from one another, and to procure theſe advantages that are capable of forming their private and public happineſs; this alone ought to convince us, that the Creator, infinitely wiſer and better than ourſelves, muſt have undoubtedly purſued the ſame method. A good parent that takes care to direct his children by his authority and counſels, is able to preſerve peace and order in his family; is it then to be imagined, that the common father of mankind ſhould neglect to give us the like

aſſiſtance?

assistance? and if a wise sovereign has nothing so much at heart as to prevent licentiousness by salutary regulations; how can any one believe that God, who is a much greater friend to man than man is to his equals, has left all mankind without direction and guide, even on the most important matters, on which our whole happiness depends? Such a system would be no less contrary to the goodness than to the wisdom of God. We must therefore have recourse to other ideas, and conclude that the Creator having, through a pure effect of his bounty, created man for happiness, and having implanted in him an insuperable inclination to felicity, subjecting him at the same time to live in society, he must have given him also such principles as are capable of inspiring him with a love of order, and rules to point out the means of procuring and attaining it.

VI. 4. But let us enter into ourselves, and we shall actually find, that what we ought to expect in this respect from the divine wisdom and goodness, is dictated by right reason, and by the principles engraved in our hearts.

If there be any speculative truths that are evident, or if there be any certain axioms that serve as a basis to sciences; there is no less certainty in some principles that are laid down in order to direct our conduct, and to serve as the foundation of morality. For example; *That the all-wise and all-bountiful Creator merits the respects of the creature: That man ought to seek his own happiness. That we should prefer the lesser to the greater evil: That a benefit deserves a grateful acknowledgment: That the state of order excels that of disorder, &c.* Those maxims, and others of the same sort, differ very little in evidence from these, *The whole is greater than its part; or the cause precedes the effect, &c.* Both are dictated by pure reason; and hence we feel ourselves forced, as it were, to give our assent to them. These general principles are seldom contested; if there be any dis-

pute,

pute, it relates only to their application and consequences. But so soon as the truth of those principles is discovered, their consequences, whether immediate or remote, are entirely as certain, provided they be well connected; the whole business being to deduce them by a train of close and conclusive argumentations.

VII. In order to be sensible of the influence which such principles, with their legitimate consequences ought to have over our conduct, we have only to recollect what has been already said in the first part of this work *, concerning the obligation we are under of following the dictates of reason. As it would be absurd in speculative matters, to speak and judge otherwise than according to that light which makes us discern truth from falshood; so it would be no less prepostorous to deviate in our conduct from those certain maxims which enable us to discern good from evil. When once it is manifest, that a particular manner of acting is suitable to our nature, and to the great end we have in view; and that another, on the contrary, does not suit our constitution or happiness; it follows, that man, as a free and rational creature, ought to be very attentive to this difference, and to take his resolutions accordingly. He is obliged to it by the very nature of the thing; because it is absolutely necessary when a person is desirous of the end, to be desirous also of the means; and he is obliged to it moreover, because he cannot mistake the intention and will of his superior in this respect.

VIII. In effect, God being the author of the nature of things, and of our constitution, if, in consequence of this nature and constitution, we are reasonably determined to judge after a certain manner, and to act according to our judgment, the Creator sufficiently

* Chap. vi.

ſufficiently manifeſts his intention, ſo that we can no longer be ignorant of his will. The language therefore of reaſon is that of God himſelf. When our reaſon tells us ſo clearly, *that we muſt not return evil for good*, it is God himſelf, who by this internal oracle gives us to underſtand what is good and juſt, what is agreeable to him and ſuitable to ourſelves. We ſaid that it is not at all probable, that the good and wiſe Creator ſhould have abandoned man to himſelf, without a guide and direction for his conduct. We have here a direction that comes from him; and ſince he is inveſted in the very higheſt degree, as we have already obſerved, with the perfections on which a legitimate ſuperiority is founded, who can pretend to queſtion that the will of ſuch a ſuperior is a law to us? The reader, I ſuppoſe, has not forgot the conditions requiſite to conſtitute a law; conditions that are all to be met with in the preſent caſe. 1. There is a rule. 2. This rule is juſt and uſeful. 3. It comes from a ſuperior on whom we entirely depend. 4. In fine, it is ſufficiently made known to us, by principles engraved in our hearts, and even by our own reaſon. It is therefore a law properly ſo called, which we are really obliged to obſerve. But let us inquire a little further, by what means this natural law is diſcovered, or, which amounts to the ſame thing, from what ſource we muſt derive it. What we have hitherto proved only in a general manner, will be further illuſtrated and confirmed by the particulars on which we are now going to enlarge. For nothing can be a ſtronger proof of our having hit upon the true principles, than when unfolding and conſidering them in their different branches, we find they are always conformable to the nature of things.

CHAP.

CHAP. III.

Of the means by which we discern what is just and unjust, or what is dictated by natural law; namely, 1. moral instinct, and 2. reason.

I. WHAT has been said in the preceding chapter already shews, that God has invested us with two means of perceiving or discerning moral good and evil: the first is only a kind of instinct; the second is reason or judgment.

Moral instinct I call that natural bent or inclination which prompts us to approve of certain things as good and commendable, and to condemn others as bad and blameable, independent of reflection. Or if any one has a mind to distinguish this instinct by the name of moral sense, as Mr. Hutchinson has done, I shall then say, that it is a faculty of the mind, which instantly discerns, in certain cases, moral good and evil, by a kind of sensation and taste, independent of reason and reflection.

II. Thus at the sight of a man in misery or pain, we feel immediately a sense of compassion, which prompts us to relieve him. The first emotion that strikes us, after receiving a benefit, is to acknowledge the favour, and to thank our benefactor. The first disposition of one man towards another, abstracted from any particular reason he may have of hatred or fear, is a sense of benevolence, as towards his fellow-creature, with whom he finds himself connected by a conformity of nature and wants. We likewise observe, that without any great thought or reasoning, a child, or untutored peasant, is sensible that ingratitude is a vice, and exclaims against perfidy, as a black and unjust action, which highly shocks him, and is absolutely repugnant to his nature. On the contrary, to keep one's word, to be grateful for a benefit, to pay every body their due,

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to honour our parents, to comfort those who are in distress or misery, are all so many actions which we cannot but approve and esteem as just, good, honest, beneficent, and useful to mankind. Hence the mind is pleased to see or hear such act of equity, sincerity, humanity, and beneficence; the heart is touched and moved; and reading them in history we are seized with admiration, and extol the happiness of the age, nation, or family, distinguished by such noble examples. As for criminal instances, we cannot see or hear them mentioned, without contempt or indignation.

III. If any one should ask, from whence comes this emotion of the heart, which prompts us, almost without any reasoning or inquiry, to love some actions and to detest others; the only answer I am able to give, is, that it proceeds from the author of our being, who has formed us after this manner, and whom it has pleased that our nature or constitution should be such, that the difference of moral good and evil should, in some cases, affect us exactly in the same manner as physical good and evil. It is therefore a kind of instinct, like several others which nature has given us, in order to determine us with more expedition and vigour, where reflection would be too slow. It is thus we are informed of our corporeal wants by our inward sense; while our outward senses acquaint us with the quality of the objects that may be useful or prejudicial to us, in order to lead us, as it were, mechanically to whatever is requisite for our preservation. Such is also the instinct that attaches us to life, and the desire of happiness, the *primum mobile* of all our actions. Such is likewise the almost blind but necessary tenderness of parents towards their children. The pressing and indispensable wants of man required he should be directed by the way of sense, which is always quicker and readier than that of reason.

IV.

IV. God has therefore thought proper to uſe this method in reſpect to the moral conduct of man, by imprinting within us a ſenſe or taſte of virtue and juſtice, which anticipates, in ſome meaſure, our reaſon, decides our firſt motions, and happily ſupplies, in moſt men, the want of attention or reflection. For what numbers of people would never trouble their heads with reflecting? What multitudes are there of ſtupid wretches, that lead a mere animal life, and are ſcarce able to diſtinguiſh three or four ideas, in order to form what is called a ratiocination? It was therefore our particular advantage, that the Creator ſhould give us a diſcernment of good and evil, with a love for the one, and an averſion for the other, by means of a quick and lively kind of faculty, which has no neceſſity to wait for the ſpeculations of the mind.

V. If any one ſhould diſpute the reality of theſe ſenſations, by ſaying they are not to be found in all men, becauſe there are ſavage people who ſeem to have none at all; and even among civilized nations we meet with ſuch perverſe and ſtubborn minds, as do not appear to have any notion or ſenſe of virtue: I anſwer, 1. that the moſt ſavage people have nevertheleſs the firſt ideas above-mentioned; and if there are ſome who ſeem to give no outward ſigns or demonſtrations thereof, this is owing to our not being ſufficiently acquainted with their manners; or becauſe they are intirely ſtupified, and have ſtifled almoſt all ſentiments of humanity; or, in fine, by reaſon that in ſome reſpects they fall into an abuſe contrary to theſe principles, not by rejecting them poſitively, but through ſome prejudice that has prevailed over their good ſenſe and natural rectitude, and inclines them to make a bad application of theſe principles. For example, we ſee ſavages who devour their enemies whom they have made priſoners, imagining it to be the right of war, and that ſince they

they have liberty to kill them, nothing ought to hinder them from benefiting by their flesh, as their proper spoils. But those very savages would not treat in that manner their friends or countrymen: They have laws and rules among themselves; sincerity and plain dealing are esteemed there as in other places, and a grateful heart meets with as much commendation among them as with us.

VI. 2. With regard to those who in the most enlightened and civilized countries seem to be void of all shame, humanity, or justice, we must take care to distinguish between the natural state of man, and the depravation into which he may fall by abuse, and in consequence of irregularity and debauch. For example, what can be more natural than paternal tenderness? And yet we have seen men who seemed to have stifled it, through violence of passion, or by force of a present temptation, which suspended for a while this natural affection. What can be stronger than the love of ourselves and of our own preservation? It happens, nevertheless, that whether through anger, or some other motion which throws the soul out of its natural position, a man tears his own limbs, squanders his substance, or does himself some great prejudice, as if he were bent on his own misery and destruction.

VII. 3. In fine, if there are people, who coolly, and without any agitation of mind, seem to have divested themselves of all affection and esteem for virtue; (besides, that monsters like these are as rare, I hope, in the moral as in the physical world;) we only see thereby the effects of an exquisite and inveterate depravation. For man is not born thus corrupted; but the interest he has in excusing and palliating his vices, the habit he has contracted, and the sophistical arguments to which he has recourse, may stifle, in fine, or corrupt the moral sense of which we have been speaking; as we see that every other faculty of

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the ſoul or body may by long abuſe be altered or corrupted. Happily nevertheleſs we obſerve, that our ſpiritual ſenſes are leſs ſubject than our corporeal ones to depravity and corruption. The principle is almoſt always preſerved; it is a fire, that when it ſeems even to be extinct, may kindle again and throw out ſome glimmerings of light, as we have ſeen examples in very profligate men, under particular conjunctures.

VIII. But notwithſtanding God has implanted in us this inſtinct or ſenſe, as the firſt means of diſcerning moral good and evil, yet he has not ſtopt here; he has alſo thought proper that the ſame light which ſerves to direct us in every thing elſe, that is, reaſon, ſhould come to our aſſiſtance, in order to enable us the better to diſcern and comprehend the true rules of conduct.

Reaſon I call the faculty of comparing ideas, of inveſtigating the mutual relations of things, and from thence inferring juſt conſequences. This noble faculty, which is the directreſs of the mind, ſerves to illuſtrate, to prove, to extend, and apply what our natural ſenſe already gave us to underſtand, in relation to juſtice and injuſtice. As reflection, inſtead of diminiſhing paternal tenderneſs, tends to ſtrengthen it, by making us obſerve how agreeable it is to the relation of father and ſon, to the advantage not only of a family, but of the whole ſpecies; in like manner the natural ſenſe we have of the beauty and excellence of virtue, is conſiderably improved by the reflections we are taught by reaſon, in regard to the foundations, motives, relations, and the general as well as particular uſes of that ſame virtue, which ſeemed ſo beautiful to us at firſt ſight.

IX. We may even affirm, that the light of reaſon has three advantages here in reſpect to this inſtinct or ſenſe.

1. It

1. It contributes to prove its truth and exactness; in the same manner as we observe in other things that study and rules serve to verify the exactness of taste, by shewing us it is neither blind nor arbitrary, but founded on reason, and directed by principles: or as those who are quick sighted, judge with greater certainty of the distance or figure of an object, after having compared, examined, and measured it quite at their leisure, than if they had depended intirely on the first sight. We find likewise that there are opinions and customs, which make so strong and so general an impression on our minds, that to judge of them only by the sentiment they excite, we should be in danger of mistaking prejudice for truth. It is reason's province to rectify this erroneous judgment, and to counterbalance this effect of education, by setting before us the true principles on which we ought to judge of things.

X. 2. A second advantage which reason has in respect to simple instinct, is, that it unfolds the ideas better, by considering them in all their relations and consequences. For we frequently see that those, who have had the first motion, find themselves embarrassed and mistaken when they are to apply it to a case of the least delicate or complicated nature. They are sensible indeed of the general principles, but they do not know how to follow them through their different branches, to make the necessary distinctions or exceptions, or to modify them according to time and place. This is the business of reason, which it discharges so much the better, in proportion as there is care taken to exercise and improve it.

XI. 3. Reason not only carries its views farther than instinct, with respect to the unfolding and application of principles; but has also a more extensive sphere, in regard to the very principles it discovers, and the objects it embraces. For instinct has been given us only for a small number of simple cases, relative

relative to our natural ſtate, and which require a quick determination. But beſides thoſe ſimple caſes, where it is proper that man ſhould be drawn and determined by the firſt motion; there are caſes of a more compoſite nature, which ariſe from the different ſtates of man, from the combination of certain circumſtances, and from the particular ſituation of each perſon; on all which it is impoſſible to form any rules but by reflection, and by an attentive obſervation of the relations and agreements of each thing.

Such are the two faculties with which God has inveſted us, in order to enable us to diſcern between good and evil. Theſe faculties happily joined, and ſubordinate one to the other, concur to the ſame effect. One gives the firſt notice, the other verifies and proves it; one acquaints us with the principles, the other applies and unfolds them; one ſerves for a guide in the moſt preſſing and neceſſary caſes, the other diſtinguiſhes all ſorts of affinity or relation, and lays down rules for the moſt particular caſes.

It is thus we are enabled to diſcern what is good and juſt, or, which amounts to the ſame thing, to know what is the divine will, in reſpect to the moral conduct we are to obſerve. Let us unite at preſent theſe two means, in order to find the principles of the law of nature.

CHAP. IV.

Of the principles from whence reaſon may deduce the law of nature *.

I. IF we ſhould be afterwards aſked, what principles ought reaſon to make uſe of, in order to judge of what relates to the law of nature, and to deduce

* See on this, and the following chapter, Puffendorf's Law of Nature and Nations, book ii. chap. iii.

deduce or unfold it; our anſwer is in general, that we have only to attend to the nature of man, and to his ſtates or relations; and as theſe relations are different, there may be likewiſe different principles, that lead us to the knowledge of our duties.

But before we enter upon this point, it will be proper to make ſome preliminary remarks on what we call *principles of natural law*; in order to prevent the ambiguity or equivocation, that has often entangled this ſubject.

II. 1. When we inquire here, which are the firſt principles of natural law, the queſtion is, which are thoſe truths or primitive rules, whereby we may effectually know the divine will in regard to man; and thus arrive, by juſt conſequences, to the knowledge of the particular laws and duties which God impoſes on us by right reaſon?

2. We muſt not therefore confound the principles here in queſtion, with the efficient and productive cauſe of natural laws, or with their obligatory principle. It is unqueſtionable, that the will of the ſupreme Being is the efficient cauſe of the law of nature, and the ſource of the obligation from thence ariſing. But this being taken for granted, we have ſtill to inquire how man may attain to the knowledge of this will, and to the diſcovery of thoſe principles, which acquainting us with the divine intention, enable us to deduce from thence all our particular duties, ſo far as they are diſcoverable by reaſon only. A perſon aſks, for example, whether the law of nature requires us to repair injuries, or to be faithful to our engagements? If we are ſatisfied with anſwering him, that the thing is inconteſtable, becauſe ſo it is ordered by the divine will; it is plain that this is not a ſufficient anſwer to his queſtion; and that he may reaſonably inſiſt to have a principle pointed out, which ſhould really convince him that ſuch in effect is the will of the Deity; for this is the point he is in ſearch of.

III. Let us afterwards obſerve, that the firſt principles of natural laws, ought to be not only true, but likewiſe ſimple, clear, ſufficient, and proper for thoſe laws.

They ought to be true; that is, they ſhould be taken from the very nature and ſtate of the thing. Falſe or hypothetic principles muſt produce conſequences of the ſame nature; for a ſolid edifice can never be raiſed on a rotten foundation. They ought to be ſimple and clear of their own nature, or at leaſt eaſy to apprehend or unfold. For the laws of nature being obligatory for all mankind, their firſt principles ſhould be within every body's reach, ſo that whoever has common ſenſe may be eaſily acquainted with them. It would be very reaſonable therefore to miſtruſt principles that are far-fetched, or of too ſubtle and metaphyſical a nature.

I add, that theſe principles ought to be ſufficient and univerſal. They ſhould be ſuch as one may deduce from thence, by immediate and natural conſequences, all the laws of nature, and the ſeveral duties from thence reſulting; inſomuch that the expoſition of particulars be properly only an explication of the principles; in the ſame manner, pretty near, as the production or increaſe of a plant is only an unfolding of the ſeed.

And as moſt natural laws are ſubject to divers exceptions, it is likewiſe neceſſary that the principles be ſuch as include the reaſons of the very exceptions; and that we may not only draw from thence all the common rules of morality, but that they alſo ſerve to reſtrain theſe rules, according as place, time, and occaſion require.

In fine, thoſe firſt principles ought to be eſtabliſhed in ſuch a manner, as to be really the proper and direct foundation of all the duties of natural law; inſomuch that whether we deſcend from the principle to deduce the conſequences, or whether we aſcend from the conſequences to the principle, our reaſonings

ſonings ought always to be immediately connected, and their thread, as it were, never interrupted.

IV. But generally ſpeaking, it is a matter of mere indifference, whether we reduce the whole to one ſingle principle, or eſtabliſh a variety of them. We muſt conſult and follow in this reſpect a judicious and exact method. All that can be ſaid on this head, is, that it is not at all neceſſary to the ſolidity or perfection of the ſyſtem, that all natural laws be deduced from one ſingle and fundamental maxim: nay, perhaps the thing is impoſſible. Be that as it may, it is idle to endeavour to reduce the whole to this unity.

Such are the general remarks we had to propoſe. If they prove juſt, we ſhould reap this double advantage from them, that they will inſtruct us in the method we are to follow, in order to eſtabliſh the true principles of natural law; and at the ſame time they will enable us to paſs a ſolid judgment on the different ſyſtems concerning this ſubject. But it is time now to come to the point.

V. The only way to attain to the knowledge of natural law, is to conſider attentively the nature and conſtitution of man, the relations he has to the beings that ſurround him, and the ſtates from thence reſulting. In fact, the very term of *natural law*, and the notion we have given of it, ſhew that the principles of this ſcience muſt be taken from the very nature and conſtitution of man. We ſhall therefore lay down two general propoſitions, as the foundation of the whole ſyſtem of the law of nature.

First Propoſition.

Whatever is the nature and original conſtitution of man, and appears a neceſſary conſequence of this nature and conſtitution, certainly indicates the inten-

tion or will of God with respect to man, and consequently acquaints us with the law of nature.

Second Proposition.

But in order to have a complete system of the law of nature, we must not only consider the nature of man, such as it is in itself; it is also necessary to attend to the relations he has to other beings, and to the different states from thence arising: otherwise it is evident we should have only an imperfect and defective system.

We may therefore affirm, that the general foundation of the system of natural law, is the nature of man considered under the several circumstances that attend it, and in which God himself has placed him for particular ends; inasmuch as by this means we may be acquainted with the will of God. In short, since man holds from the hand of God himself whatever he possesses, as well with regard to his existence, as to his manner of existing; it is the study of human nature only, that can fully instruct us concerning the views which God proposed to himself in giving us our being, and consequently with the rules we ought to follow, in order to accomplish the designs of the Creator.

VI. For this purpose we must recollect what has been already said of the manner in which man may be considered under three different respects or states, which embrace all his particular relations. In the first place, we may consider him as God's creature, from whom he has received his life, his reason, and all the advantages he enjoys. Secondly, man may be considered in himself as a being, composed of body and soul, and endowed with many different faculties; as a being that naturally loves himself, and necessarily desires his own felicity. In fine, we may consider him as forming a part of the species, as placed on the earth near several other beings of a similar

ſimilar nature, and with whom he is inclined, nay, by his natural condition, obliged to live in ſociety. Such, in fact, is the ſyſtem of humanity, from whence reſults the moſt common and natural diſtinction of our duties, taken from the three different ſtates here mentioned; duties towards God, towards ourſelves, and towards the reſt of mankind *.

VII. In the firſt place, ſince reaſon brings us acquainted with God as a ſelf-exiſtent being, and ſovereign Lord of all things, and in particular as our Creator, Preſerver and Benefactor; it follows therefore that we ought neceſſarily to acknowledge the ſovereign perfection of this ſupreme Being, and our abſolute dependance on him; which by a natural conſequence inſpires us with ſentiments of reſpect, love, and fear, and with an intire ſubmiſſion to his will. For why ſhould God have thus manifeſted himſelf to mankind, were it not that their reaſon ſhould teach them to entertain ſentiments proportioned to the excellence of his nature, that is, they ſhould honour, love, adore, and obey him?

VIII. Infinite reſpect is the natural conſequence of the impreſſion we receive from a proſpect of all the divine perfections. We cannot refuſe love and gratitude to a being ſupremely beneficent. The fear of diſpleaſing or offending him, is a natural effect of the idea we entertain of his juſtice and power, and obedience cannot but follow from the knowledge of his legitimate authority over us, of his bounty, and ſupreme wiſdom, which are ſure to conduct us by the road moſt agreeable to our nature and happineſs.

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* We meet with this diviſion in Cicero: Philoſophy, ſays he, teaches us in the firſt place the worſhip of the deity; ſecondly, the mutual duties of men, founded on human ſociety; and, in fine, moderation and greatneſs of ſoul. "Hæc (philoſophia) nos pri-" mum ad illorum [deorum] cultum, deinde ad jus hominum quod " ſitum eſt in generis humani ſocietate, tum ad modeſtiam magnitu-" dinemque animi erudivit." Cic. Tuſc. quæſt. lib. 1. cap. 26.

The assemblage of these sentiments, deeply engraved in the heart, is called *Piety*.

Piety, if it be real, will shew itself externally two different ways, by our morals, and by outward worship. I say, 1. By *our morals*, because a pious man, sincerely penetrated with the above-mentioned sentiments, will find himself naturally inclined to speak and act after the manner he knows to be most conformable to the divine will and perfections: this is his rule and model; from whence the practice of the most excellent virtues arises.

2. But besides this manner of honouring God, which is undoubtedly the most necessary and most real, a religious man will consider it as a pleasure and duty to strengthen himself in these sentiments of piety, and to excite them in others. Hence external worship, as well public as private, is derived. For whether we consider this worship as the first and almost only means of exciting, entertaining, and improving religious and pious sentiments in the mind; or whether we look upon it as a homage, which men, united by particular or private societies, pay in common to the Deity; or whether, in fine, both these views are joined, reason represents it to us as a duty of indispensable necessity.

This worship may vary indeed in regard to its form; yet there is a natural principle which determines its essence, and preserves it from all frivolous and superstitious practice; viz. that it consists in instructing mankind, in rendering them pious and virtuous, and in giving them just ideas of the nature of God, as of also what he requires from his creatures.

The different duties here pointed out, constitute what we distinguish by the name of *Religion*. We may define it, a connexion which attaches man to God, and to the observance of his laws, by those sentiments of respect, love, submission and fear, which the perfections of a supreme Being, and our intire dependance on him, as an all-wise and all-bountiful Creator, are apt to excite in the human mind.

Thus

Thus by ſtudying our nature and ſtate, we find, in the relation we have to the Deity, the proper principle from whence thoſe duties of natural law, that have God for their object, are immediately derived.

IX. If we ſearch afterwards for the principle of thoſe duties that regard ourſelves, it will be eaſy to diſcover them, by examining the internal conſtitution of man, and inquiring into the Creator's views in regard to him, in order to know for what end he has endowed him with thoſe faculties of mind and body that conſtitute his nature.

Now it is evident, that God, by creating us, propoſed our preſervation, perfection, and happineſs. This is what manifeſtly appears, as well by the faculties with which man is inveſted, which all tend to the ſame end; as by the ſtrong inclination that prompts us to purſue good, and ſhun evil. God is therefore willing, that every one ſhould labour for his own preſervation and perfection, in order to acquire all the happineſs of which he is capable according to his nature and ſtate.

This being premiſed, we may affirm that ſelf-love (I mean an enlightened and rational love of ourſelves) may ſerve for the firſt principle with regard to the duties which concern man himſelf; inaſmuch as this ſenſation being inſeparable from human nature, and having God for its author, gives us clearly to underſtand in this reſpect the will of the ſupreme Being.

Yet we ſhould take particular notice, that the love of ourſelves cannot ſerve us as a principle and rule, but inaſmuch as it is directed by right reaſon, according to the exigencies or neceſſities of our nature and ſtate.

For thus only it becomes an interpreter of the Creator's will in reſpect to us; that is, it ought to be managed in ſuch a manner, as not to offend the laws of religion or ſociety. Otherwiſe this ſelf-love would become the ſource of a thouſand iniquities; and ſo far from being of any ſervice, would prove

a ſnare

a ſnare to us, by the prejudice we ſhould certainly receive from thoſe very iniquities.

X. From this principle, thus eſtabliſhed, it is eaſy to deduce the natural laws and duties that directly concern us. The deſire of happineſs is attended, in the firſt place, with the care of our preſervation. It requires next, that (every thing elſe being equal) the care of the ſoul ſhould be preferred to that of the body. We ought not to neglect to improve our reaſon, by learning to diſcern truth from falſhood, the uſeful from the hurtful, in order to acquire a juſt knowledge of things that concern us, and to form a right judgment of them. It is in this that the perfection of the underſtanding, or wiſdom, conſiſts. We ſhould afterwards be determined, and act conſtantly according to this light, in ſpite of all contrary ſuggeſtion and paſſion. For it is properly this vigour or perſeverance of the ſoul, in following the counſels of wiſdom, that conſtitutes virtue, and forms the perfection of the will, without which the light of the underſtanding would be of no manner of uſe.

From this principle all the particular rules ariſe. You aſk, for example, whether the moderation of the paſſions be a duty impoſed upon us by the law of nature? In order to give you an anſwer, I inquire, in my turn, whether it is neceſſary to our preſervation, perfection, and happineſs? If it be, as undoubtedly it is, the queſtion is decided. You have a mind to know whether the love of occupation, the diſcerning between permitted and forbidden pleaſures, and moderation in the uſe of ſuch as are permitted, whether, in fine, patience, conſtancy, reſolution, &c. are natural duties; I ſhall always anſwer, by making uſe of the ſame principle; and, provided I apply it well my anſwer cannot but be right and exact; becauſe the principle conducts me certainly to the end, by acquainting me with the will of God.

XI.

XI. There remains ſtill another point to inveſtigate, namely, the principle from whence we are to deduce thoſe natural laws that regard our mutual duties, and have ſociety for their object. Let us ſee whether we cannot diſcover this principle, by purſuing the ſame method. We ought always to conſult the actual ſtate of things, in order to take their reſult.

I am not the only perſon upon earth; I find myſelf in the middle of an infinite number of other men, who reſemble me in every reſpect; and I am ſubject to this ſtate, even from my nativity, by the very act of Providence. This induces me naturally to think, it was not the intention of God that each man ſhould live ſingle and ſeparate from the reſt; but that, on the contrary, it was his will they ſhould live together, and be joined in ſociety. The Creator might certainly have formed all men at the ſame time, though ſeparated from one another, by inveſting each of them with the proper and ſufficient qualities for this kind of ſolitary life. If he has not followed this plan, it is probably becauſe it was his will that the ties of conſanguinity and birth ſhould begin to form a more extenſive union, which he was pleaſed to eſtabliſh amongſt men.

The more I examine, the more I am confirmed in this thought. Moſt of the faculties of man, his natural inclinations, his weakneſs, and wants, are all ſo many indubitable proofs of this intention of the Creator.

XII. Such in effect is the nature and conſtitution of man, that out of ſociety he could neither preſerve his life, nor diſplay and perfect his faculties and talents, nor attain any real and ſolid happineſs. What would become of an infant, were there not ſome benevolent and aſſiſting hand to provide for his wants? He muſt periſh, if no one takes care of him; and this ſtate of weakneſs and ignorance requires even a long and continued aſſiſtance. View him when grown

up

up to manhood, you find nothing but rudeness, ignorance, and confused ideas, which he is scarce able to convey; abandon him to himself, and you behold a savage, and perhaps a ferocious animal; ignorant of all the conveniencies of life, sunk in idleness, a prey to spleen and melancholy, and almost incapable of providing against the first wants of nature. If he attains to old age, behold him relapsed into infirmities that render him almost as dependent on external aid as he was in his infancy. This dependance shews itself in a more sensible manner in accidents and maladies. What would then become of man, were he to be in a state of solitude? There is nothing but the assistance of our fellow-creatures that is able to preserve us from divers evils, or redress them, and render life easy and happy, in whatsoever state or situation of life.

We have an excellent picture of the use of society, drawn by Seneca*. *On what*, says he, *does our security depend, but on the service we render one another? It is this commerce of benefits that makes life easy, and enables us to defend ourselves against any sudden insults or attacks. What would be the fate of mankind,*

* Quo alio tuti sumus, quam quod mutuis juvamur officiis? Hoc uno instructior vita contraque incursiones subitas munitior est, beneficiorum commercio. Fac nos singulos, quid sumus? præda animalium et victimæ, ac bellissimus et facillimus sanguis. Quoniam cæteris animalibus in tutelam sui satis virium est: quæcunque vaga nascuntur, et actura vitam segregem, armata sunt. Hominem imbecillitas cingit; non unguium vis, non dentium, terribilem cæteris fecit. Nudum et infirmum societas munit. Duas res dedit quæ illum obnoxium cæteris, validissimum facerent, rationem et societatem. Itaque, qui par est nulli poterat, si seduceretur, rerum potitur. Societas illi dominium omnium animalium dedit: Societas terris genitum, in alienæ naturæ transmisit imperium, et dominari etiam in mari jussit. Hæc morborum impetus arcuit, senectuti adminacula prospexit, solatia contra dolores dedit. Hæc fortes nos facit, quod licet contra fortunam advocare. Hanc societatem tolle, et unitatem generis humani, qua vita sustinetur, scindes. Senec. de Benef. lib. 4. cap. 18.

mankind, were every one to live apart? So many men, so many victims to other animals, an easy prey, in short, feebleness itself. In fact, other animals have strength sufficient to defend themselves: Those that are wild and wandering, and whose ferocity does not permit them to herd together, are born, as it were, with arms; whereas man is on all sides encompassed with weakness, having neither arms, nor teeth, nor claws to render him formidable. But the strength, he wants by himself, he finds when united with his equals. Nature, to make amends, has endowed him with two things which give him a considerable force and superiority, where otherwise he would be much inferior; I mean reason and sociability, whereby he who alone could make no resistance, becomes master of the whole. Society gives him an empire over other animals; society is the cause, that, not satisfied with the element on which he was born, he extends his command over the sea. It is this same union that supplies him with remedies in his diseases, assistance in his old age, and comfort in his pains and anxieties; it is this that enables him, as it were, to bid defiance to fortune. Take away society, and you destroy the union of mankind, on which the preservation and the whole happiness of life depends.

XIII. As society is so necessary to man, God has therefore given him a constitution, faculties, and talents, that render him very proper for this state. Such is, for example, the faculty of speech, which enables us to convey our thoughts with facility and readiness, and would be of no manner of use out of society. The same may be said with regard to our propensity to imitation, and of that surprising mechanism which renders all the passions and impressions of the soul so easy to be communicated. It is sufficient a man appears to be moved, in order to move and soften others *. If a person accosts us with

* Homo sum; humani nihil a me alienum puto. Ter. Heauton.

with joy painted on his countenance, he excites in us the like ſentiment of joy. The tears of a ſtranger affect us, even before we know the cauſe thereof *; and the cries of a man related to us only by the common tie of humanity, make us fly to his ſuccour by a mechanical movement previous to all deliberation.

This is not all. We ſee that nature has thought proper to diſtribute differently her talents among men, by giving to ſome an aptitude to perform certain things, which to others are impoſſible; while the latter have received, in their turn, an induſtry denied to the former. Wherefore, if the natural wants of men render them dependent on one another, the diverſity of talents, which qualifies them for mutual aid, connects and unites them. Theſe are ſo many evident ſigns of man's being deſigned for ſociety.

XIV. But if we conſult our own inclinations, we ſhall likewiſe find, that our hearts are naturally bent to wiſh for the company of our equals, and to dread an intire ſolitude as an irkſome and forlorn ſtate. And though there have been inſtances of people who have thrown themſelves into a ſolitary life, yet we cannot conſider this in any other light but as the effect of ſuperſtition, or melancholy, or of a ſingularity extremely remote from the ſtate of nature. Were we to inveſtigate the cauſe of this ſocial inclination, we ſhould find it was very wiſely beſtowed on us by the author of our being; by reaſon that it is in ſociety man finds a remedy for the greateſt part of his wants, and an occaſion for exerciſing moſt of his faculties; it is in ſociety he is capable of feeling and diſplaying thoſe ſenſations on which nature has intailed ſo much ſatisfaction and pleaſure; I mean, the

* Ut ridentibus arrident, ita flentibus adſunt
Humani vultus. — Hor. de Arte poet. v. 101.

the ſenſations of benevolence, friendſhip, compaſſion, and generoſity. For ſuch are the charms of ſocial affections, that from thence our pureſt enjoyments ariſe. Nothing in fact, is ſo ſatisfactory and flattering to man, as to think he merits the eſteem and friendſhip of others. Science acquires an additional value, when it can diſplay itſelf abroad; and our joy becomes more ſenſible, when we have an opportunity of teſtifying it in public, or of pouring it into the boſom of a friend: it is redoubled by being communicated: for our own ſatisfaction is increaſed by the agreeable idea we have of giving pleaſure to our friends, and of fixing them more ſteadily in our intereſt. Anxiety, on the contrary, is alleviated and ſoftened by ſharing it with our neighbour; juſt as a burden is eaſed when a good-natured perſon helps us to bear it.

Thus every thing invites us to the ſtate of ſociety; want renders it neceſſary to us, inclination makes it a pleaſure, and the diſpoſitions we naturally have for it, are a ſufficient indication of its being really intended by our Creator.

XV. But as human ſociety can neither ſubſiſt, nor produce the happy effects for which God has eſtabliſhed it, unleſs mankind have ſentiments of affection and benevolence for one another; it follows therefore, that our Creator and common Father is willing that every body ſhould be animated with theſe ſentiments, and do whatever lies in their power to maintain this ſociety in an agreeable and advantageous ſtate, and to tie the knot ſtill cloſer by reciprocal ſervices and benefits.

This is the true principle of the duties which the law of nature preſcribes to us in reſpect to other men. Ethic writers have given it the name of *Sociability*, by which they underſtand that diſpoſition which inclines us to benevolence towards our fellow-creatures, to do them all the good that lies in our power, to reconcile our own happineſs to that of others, and

to render our particular advantage subordinate to the common and general good.

The more we study our own nature, the more we are convinced that this sociability is really agreeable to the will of God. For, besides the necessity of this principle, we find it engraved in our heart; where, if the Creator has implanted on one side the love of ourselves, the same hand has imprinted on the other a sentiment of benevolence for our fellow-creatures. These two inclinations though distinct from one another, have nothing opposite in their nature; and God who has bestowed them upon us, designed they should act in concert, in order to help, and not to destroy each other. Hence good natured and generous hearts feel a most sensible satisfaction in doing good to mankind, because in this they follow the inclination they received from nature.

XVI. From the principle of sociability, as from their real source, all the laws of society, and all our general and particular duties towards other men, are derived.

1. This union which God has established among men requires, that in every thing relating to society, the public good should be the supreme rule of their conduct, and that guided by the counsels of prudence, they should never pursue their private advantage to the prejudice of the public: For this is what their state demands, and is consequently the will of their common Father.

2. The spirit of sociability ought to be universal. Human society embraces all those with whom we can have possibly any communication; because it is founded on the relations they all bear to one another, in consequence of their nature and state *.

3. Reason afterwards informs us, that creatures of the same rank and species, born with the same faculties

* See Puffendorf, Law of Nature and Nations, book iii. chap. iii. sect. 15.

faculties to live in ſociety, and to partake of the ſame advantages, have in general an equal and common right. We are therefore obliged to conſider ourſelves as naturally equal, and to behave as ſuch; and it would be bidding defiance to nature, not to acknowledge this principle of equity (which by the civilians is called *æquabilitas juris)* as one of the firſt foundations of ſociety. It is on this the *lex talionis* is founded, as alſo that ſimple but univerſal and uſeful rule, that we ought to have the ſame diſpoſitions in regard to other men, as we deſire they ſhould have towards us, and to behave in the ſame manner towards them as we are willing they ſhould behave to us in the like circumſtances.

4. Sociability being a reciprocal obligation among men, ſuch as through malice or injuſtice break the band of ſociety, cannot reaſonably complain, if thoſe they have injured do not treat them as friends, or even if they proceed againſt them by forcible methods.

But though we have a right to ſuſpend the acts of benevolence in regard to an enemy, yet we are never allowed to ſtifle its principle. As nothing but neceſſity can authoriſe us to have recourſe to force againſt an unjuſt aggreſſor, ſo this ſame neceſſity ſhould be the rule and meaſure of the harm we do him; and we ought to be always diſpoſed to reconcilement ſo ſoon as he has done us juſtice, and we have nothing farther to apprehend.

We muſt therefore diſtinguiſh carefully between a juſt defence of one's own perſon, and revenge. The firſt does but ſuſpend, through neceſſity, and for a while, the exerciſe of benevolence, and has nothing in it oppoſite to ſociability. But the other ſtifling the very principle of benevolence, introduces, in its ſtead, a ſentiment of hatred and animoſity, a ſentiment vicious in itſelf, contrary to the public good, and expreſsly condemned by the law of nature.

XVII.

XVII. These general rules are very fertile of consequences.

We should do no wrong to any one, either in word or action; and we ought to repair all damages by us committed; for society could not subsist, were acts of injustice tolerated.

We ought to be sincere in our discourse, and steady to our engagements; for what trust could men repose in one another, and what security could they have in commercial life, were it lawful to violate their plighted faith?

We not only ought to do to every man the good he properly deserves, but moreover we should pay him the degree of esteem and honour due to him, according to his estate and rank; because subordination is the link of society, without which there can be no order either in families, or in civil governments.

But if the public good requires that inferiors should obey, it demands also that superiors should preserve the rights of those who are subject to them, and should govern their people only in order to render them happy.

Again: men are captivated by the heart, and by favours; now nothing is more agreeable to humanity; or more useful to society, than compassion, lenity, beneficence, and generosity. This is what induced Cicero to say *, *There is nothing truer than that excellent maxim of Plato, viz. that we are not born for ourselves alone, but likewise for our country and friends: And if, according to the Stoics, the productions*

* Sed quoniam (ut præclare scriptum est a Platone) non nobis solum nati sumus, ortusque nostri partem patria vindicat, partem amici: atque [ut placet Stoicis] quæ in terris gignuntur, ad usum hominum omnia creari, homines autem hominum causa esse generatos, ut ipsi inter se alii prodesse possent: in hoc naturam debemus ducem sequi, et communes utilitates in medium afferre, mutatione officiorum, dando, accipiendo; tum opera, tum facultatibus devincere hominum inter homines societatem. Cic. de Offic. lib. 1. cap. 7.

productions of the earth are for men, and men themselves for the good and assistance of one another; we ought certainly, in this respect, to comply with the design of nature, and promote her intention, by contributing our share to the general interest, by mutually giving and receiving good turns, and employing all our care and industry, and even our substance, to strengthen that love and friendship which should always prevail in human society.

Since therefore the different sentiments and acts of justice and good, are the only and true bonds that knit men together, and are capable of contributing to the stability, peace, and prosperity of society, we must look upon those virtues as so many duties that God imposes on us, for this reason, because whatever is necessary to his design, is of course conformable to his will.

XVIII. We have therefore three general principles of the laws of nature relative to the above mentioned three states of man: And these are, 1. Religion. 2. Self love. 3. Sociability or benevolence towards our fellow-creatures.

These principles have all the characters above required. They are *true*, because they are taken from the nature of man, in the constitution and state in which God has placed him. They are *simple*, and within every body's reach, which is an important point; because, in regard to duties, there is nothing wanting but principles that are obvious to every one; for a subtlety of mind that sets us upon singular and new ways, is always dangerous. In fine, these principles are *sufficient* and very *fertile*; by reason they embrace all the objects of our duties, and acquaint us with the will of God in the several states and relations of man.

XIX. True it is, that Puffendorf reduces the thing within a lesser compass, by establishing sociability alone as the foundation of all natural laws. But it

 has

has been justly observed, that this method is defective. For the principle of sociability does not furnish us with the proper and direct foundation of all our duties. Those which have God for their object, and those which are relative to man himself, do not flow directly and immediately from this source, but suppose man in solitude: He would still have several duties to discharge, such as to love and honour God, to preserve himself, to cultivate his faculties as much as possible, &c. I acknowledge that the principle of sociability is the most extensive, and that the other two have a natural connection with it; yet we ought not to confound them, as if they had not their own particular force, independent of sociability. These are three different springs, which give motion and action to the system of humanity; springs distinct from one another, but which act all at the same time pursuant to the views of the Creator.

XX. Be it said nevertheless, in justification of Puffendorf, and according to a judicious observation made by Barbeyrac, that most of the criticisms on the former's system, as defective in its principle, have been pushed too far. This illustrious restorer of the study of natural law declares, his design was properly no more than to explain the natural duties of man*: Now for this purpose he had occasion only for the principle of sociability. According to him, our duties towards God form a part of natural theology; and religion is interwoven in a treatise of natural law, only as it is a firm support of society. With regard to the duties that concern man himself, he makes them depend partly on religion, and partly on sociability†. Such is Puffendorf's system: He would

* See the Law of Nature and Nations, book 2. chap. 3. sect. 19. Specim. controversi. cap. 5. sect. 25. Spicilegium controversiarum, cap. 1. sect. 14.

† See the Duties of Man and a Citizen, book 1. chap. 3. sect. 7.

would certainly have made his work more perfect, if embracing all the ſtates of man, he had eſtabliſhed diſtinctly the proper principles agreeable to each of thoſe ſtates, in order to deduce afterwards from thence all our particular duties: For ſuch is the juſt extent we ought to give to natural law.

XXI. This was ſo much the more neceſſary, as notwithſtanding our duties are relative to different objects, and deduced from diſtinct principles, yet they have, as we have already hinted, a natural connection; inſomuch that they are interwoven, as it were, with one another, and by mutual aſſiſtance, the obſervance of ſome renders the practice of others more eaſy and certain. It is certain, for example, that the fear of God joined to a perfect ſubmiſſion to his will, is a very efficacious motive to engage men to diſcharge what directly concerns themſelves, and to do for their neighbour and for ſociety whatever the law of nature requires. It is alſo certain, that the duties which relate to ourſelves contribute not a little to direct us with reſpect to other men. For what good could the ſociety expect from a man, who would take no care to improve his reaſon, or to form his mind and heart to wiſdom and virtue? On the contrary, what may not we promiſe ourſelves from thoſe who ſpare no pains to perfect their faculties and talents, and are puſhed on towards this noble end, either by the deſire of rendering themſelves happy, or by that of procuring the happineſs of others? Thus whoſoever neglects his duty towards God, and deviates from the rules of virtue in what concerns himſelf, commits thereby an injuſtice in reſpect to other men, becauſe he ſubtracts ſo much from the common happineſs. On the contrary, a perſon who is penetrated with ſuch ſentiments of piety, juſtice, and benevolence, as religion and ſociability require, endeavours to make himſelf happy, becauſe, according to the plan of Providence, the perſonal felicity of every man is inſeparably connect-

ed, on the one ſide with religion, and on the other with the general happineſs of the ſociety of which he is a member; inſomuch that to take a particular road to happineſs is miſtaking the thing, and rambling quite out of the way. Such is the admirable harmony, which the divine wiſdom has eſtabliſhed between the different parts of the human ſyſtem. What could be wanting to complete the happineſs of man, were he always attentive to ſuch ſalutary directions?

XXII. But as the three grand principles of our duties are thus connected, ſo there is likewiſe a natural ſubordination between them, that helps to decide which of thoſe duties ought to have the preference in particular circumſtances or caſes, when they have a kind of conflict or oppoſition that does not permit us to diſcharge them all alike.

The general principle to judge rightly of this ſubordination is, that the ſtronger obligation ought always to prevail over the weaker. But to know afterwards which is the ſtronger obligation, we have only to attend to the very nature of our duties, and their different degrees of neceſſity and utility; for this is the right way to know in that caſe the will of God. Purſuant to theſe ideas, we ſhall give here ſome general rules concerning the caſes above mentioned.

1. The duties of man towards God ſhould always prevail over any other. For of all obligations, that which binds us to our all-wiſe and all-bountiful Creator, is without doubt the neareſt and ſtrongeſt.

2. If what we owe to ourſelves comes in competition with our duty to ſociety in general, ſociety ought to have the preference, Otherwiſe, we ſhould invert the order of things, deſtroy the foundations of ſociety, and act directly contrary to the will of God, who by ſubordinating the part to the whole, has laid us under an indiſpenſable obligation of never deviating from the ſupreme law of the common good.

3. But

3. But if, every thing elſe equal, there happens to be an oppoſition between the duties of ſelf-love and ſociability, ſelf-love ought to prevail. For man being directly and primarily charged with the care of his own preſervation and happineſs, it follows therefore that in a caſe of intire inequality, the care of ourſelves ought to prevail over that of others.

4. But if, in fine, the oppoſition is between duties relating to ourſelves or between two duties of ſociability, we ought to prefer that which is accompanied with the greateſt utility, as being the moſt important *.

XXIII. What we have hitherto explained, properly regards the natural law called *obligatory*, viz. that which having for its object thoſe actions wherein we diſcover a neceſſary agreeableneſs or diſagreeableneſs to the nature and ſtate of man, lays us therefore under an indiſpenſable obligation of acting or not acting after a particular manner. But in conſequence of what has been ſaid above†, we muſt acknowledge that there is likewiſe a law of *ſimple permiſſion*, which leaves us at liberty in particular caſes to act or not; and by laying other men under a neceſſity of giving us no let or moleſtation, ſecures to us in this reſpect the exerciſe and effect of our liberty.

The general principle of this law of permiſſion is, that we may reaſonably, and according as we judge proper, do or omit whatever has not an abſolute and eſſential agreeableneſs or diſagreeableneſs to the nature and ſtate of man; unleſs it be a thing expreſsly ordained or forbidden by ſome poſitive law, to which we are otherwiſe ſubject.

The truth of this principle is obvious. The Creator having inveſted man with ſeveral faculties, and among

* See Barbeyrac's fifth note on ſection 15, of the third chap. book 2, of the Law of Nature and Nations.

† See part 1. chap. x. ſect. 5, and 6.

among the reſt with that of modifying his actions as he thinks proper; it is plain that in every thing in which he has not reſtrained the uſe of thoſe faculties, either by an expreſs command or a poſitive prohibition, he leaves man at liberty to exerciſe them according to his own diſcretion. It is on this law of permiſſion all thoſe rights are founded, which are of ſuch a nature as to leave us at liberty to uſe them or not, to retain or renounce them in the whole or in part; and in conſequence of this renunciation, actions in themſelves permitted, happen ſometimes to be commanded or forbidden by the authority of the ſovereign, and become obligatory by that means.

XXIV. This is what right reaſon diſcovers in the nature and conſtitution of man, in his original and primitive ſtate. But as man himſelf may make divers modifications in his primitive ſtate, and enter into ſeveral adventitious ones; the conſideration of thoſe new ſtates falls likewiſe upon the objects of the law of nature, taken in its full extent; and the principles we have laid down ought to ſerve likewiſe for a rule in the ſtates in which man engages by his own act and deed.

Hence occaſion has been taken to diſtinguiſh two ſpecies of natural law; the one primary, the other ſecondary.

The primary or primitive natural law is that which immediately ariſes from the primitive conſtitution of man, as God himſelf has eſtabliſhed it, independent of any human act.

Secondary natural law is that which ſuppoſes ſome human act or eſtabliſhment; as a civil ſtate, property of goods, &c.

It is eaſy to comprehend, that this ſecondary natural law is only a conſequence of the former; or rather it is a juſt application of the general maxims of natural law to the particular ſtates of mankind, and to the different circumſtances in which they find them-

themſelves by their own act; as it appears in fact, when we come to examine into particular duties.

* Some perhaps will be ſurprized, that in eſtabliſhing the principles of natural law, we have taken no notice of the different opinions of writers concerning this ſubject. But we judged it more adviſeable to point out the true ſources from whence the principles were to be drawn, and to eſtabliſh afterwards the principles themſelves, than to enter into a diſcuſſion which would have carried us too far for a work of this nature. If we have hit upon the true one, this will be ſufficient to enable us to judge of all the reſt; and if any one deſires a more ample and more particular inſtruction, he may eaſily find it, by conſulting Puffendorf, who relates the different opinions of civilians, and accompanies them with very judicious reflections§.

CHAP. V.

That natural laws have been ſufficiently notified; of their proper characteriſtics, the obligation they produce, &c.

I. AFTER what has been hitherto ſaid in relation to the principles of natural laws, and the way we come to know them, there is no need to aſk whether God has ſufficiently notified thoſe laws to man. It is evident we can diſcover all their principles, and deduce from thence our ſeveral duties by that natural light which to no man has been ever refuſed. It is in this ſenſe we are to underſtand what is commonly ſaid, that this law is naturally known to

* See Grotius, Rights of War and Peace, book i. chap. 1. ſect. 10. and Puffendorf, Law of Nature and Nations, book ii. chap. 3. ſect. 22.

§ See Puffendorf, Law of Nature and Nations, book i. chap. 3. ſect. 1.---14.

to all mankind. For to think with ſome people, that the law of nature is innate, as it were, in our minds, and actually imprinted in our ſouls from the firſt moment of our exiſtence; is ſuppoſing a thing that is not at all neceſſary, and is moreover contradicted by experience. All that can be ſaid on this ſubject, is, that the moſt general and important maxims of the law of nature, are ſo clear and manifeſt, and have ſuch a proportion to our ideas, and ſuch an agreeableneſs to our nature, that ſo ſoon as they are propoſed to us, we inſtantly approve of them; and as we are diſpoſed and accuſtomed from our infancy to feel theſe truths, we conſider them as born with us.

II. But we muſt take care to obſerve, that when we ſay man may acquire the knowledge of natural laws, by uſing his reaſon; we do not exclude the ſuccours he may receive from elſewhere. Some there are, who having taken a particular care to cultivate their minds, are qualified to enlighten others, and to ſupply, by their inſtructions, the rudeneſs and ignorance of the common run of mankind. This is agreeable to the plan of Providence. God having deſigned man for ſociety, and given him a conſtitution relative to this end, and different helps which men receive of one another, ought to be equally ranked among natural means, with thoſe which every one finds within himſelf, and draws from his own fund.

In effect, all men are not of themſelves capable to unfold methodically the principles of natural laws, and the conſequences from thence reſulting. It is ſufficient that middling capacities are able to comprehend at leaſt thoſe principles, when they are explained to them, and to feel the truth and neceſſity of the duties that flow from thence, by comparing them with the conſtitution of their own nature. But if there be ſome capacities of a ſtill inferior order, they are generally led by the impreſſions of example, cuſtom,

cuſtom, authority, or ſome preſent and ſenſible utility. Be this as it will, every thing rightly conſidered, the law of nature is ſufficiently notified to impower us to affirm, that no man at the age of diſcretion, and in his right ſenſes, can allege for a juſt excuſe, an invincible ignorance on this article.

III. Let us make a reflection which preſents itſelf here very naturally. It is, that whoſoever attends ſeriouſly to the manner in which we have eſtabliſhed the principles of the laws of nature, will ſoon find, that the method we have followed is a freſh proof of the certainty and reality of thoſe laws. We have waved all abſtract and metaphyſical ſpeculations, in order to conſult plain fact, and the nature and ſtate of things. It is from the natural conſtitution of man, and from the relations he has to other beings, that we have taken our principles; and the ſyſtem from thence reſulting, has ſo ſtrict and neceſſary a connection with this nature and ſtate of man, that they are abſolutely inſeparable. If to all this we join what has been already obſerved in the foregoing chapters, we cannot methinks, miſtake the laws of nature, or doubt of their reality, without renouncing the pureſt light of reaſon, and running into Pyrrhoniſm.

IV. But as the principles of the laws of nature are, through the wiſdom of the Creator, eaſy to diſcover, and as the knowledge of the duties they impoſe on us, is within the reach of the moſt ordinary capacities; it is alſo certain, that theſe laws are far from being impracticable. On the contrary, they bear ſo manifeſt a proportion to the light of right reaſon, and to our moſt natural inclinations; they have alſo ſuch a relation to our perfection and happineſs, that they cannot be conſidered otherwiſe than as an effect of the divine goodneſs towards man. Since no other motive but that of doing good, could ever induce a being, who is ſelf-exiſtent, and ſupremely

premely happy, to form creatures endowed with underſtanding and ſenſe; it muſt have been in conſequence of this ſame goodneſs that he firſt vouchſafed to direct them by laws. His view was not merely to reſtrain their liberty; but he thought fit to let them know what agreed with them beſt, what was moſt proper for their perfection and happineſs; and in order to add greater weight to the reaſonable motives that were to determine them, he joined thereto the authority of his commands*.

This gives us to underſtand why the laws of nature are ſuch as they are. It was neceſſary, purſuant to the views of the Almighty, that the laws he preſcribed to mankind, ſhould be ſuitable to their nature and ſtate; that they ſhould have a tendency of themſelves to procure the perfection and advantage of individuals, as well as of the ſpecies; of particular people, as well as the ſociety. In ſhort, the choice of the end determined the nature of the means.

V. In fact, there are natural and neceſſary differences in human actions, and in the effects of them produced. Some agree of themſelves with the nature and ſtate of man, while others diſagree, and are quite oppoſite thereto; ſome contribute to the production and maintenance of order, others tend to ſubvert it; ſome procure the perfection and happineſs of mankind, others are attended with their diſgrace and miſery. To refuſe to acknowledge theſe differences would be ſhutting one's eyes to the light, and confounding it with darkneſs. Theſe are differences of a moſt ſenſible nature; and whatever a perſon may ſay to the contrary, ſenſe and experience will always refute thoſe falſe and idle ſubtleties.

Let us not therefore ſeek any where elſe but in the very nature of human actions, in their eſſential differences

* See part I. chap. x. ſect. 3.

ferences and confequences, for the true foundation of the law of nature, and why God forbids fome things, while he commands others. Thefe are not arbitrary laws, fuch as God might not have given, or have given others of a quite different nature. Supreme wifdom can no more than fupreme power act any thing abfurd and contradictory. It is the very nature of things that always ferves for the rule of his determinations. God was at liberty, without doubt, to create or not to create man; to create him fuch as he is, or to give him quite a different nature. But having determined to form a rational and fociable being, he could not prefcribe any thing unfuitable to fuch a creature. We may even affirm, that the fuppofition which makes the principles and rules of the law of nature depend on the arbitrary will of God, tends to fubvert and deftroy even the very idea of natural law. For if thefe laws were not a neceffary confequence of the nature, conftitution, and ftate of man, it would be impoffible for us to have a certain knowledge of them, except by a very clear revelation, or by fome other formal promulgation on the part of God. But agreed it is, that the law of nature is, and ought to be known by the mere light of reafon. To conceive it therefore as depending on an arbitrary will, would be attempting to fubvert it, or at leaft would be reducing the thing to a kind of Pyrrhonifm; by reafon we could have no natural means of being fure that God commands or forbids one thing rather than another. Hence, if the laws of nature depend originally on divine inftitution, as there is no room to queftion; we muft likewife agree, that this is not a mere arbitrary inftitution, but founded, on one fide, on the very nature and conftitution of man; and, on the other, on the wifdom of God, who cannot defire an end without defiring at the fame time the means that alone are fit to obtain it.

VI. It is not amiss to observe here, that the manner in which we establish the foundation of the law of nature, does not differ in the main from the principles of Grotius. Perhaps this great man might have explained his thoughts a little better. But we must own that his commentators, without excepting Puffendorf himself, have not rightly understood his meaning, and consequently have passed a wrong censure on him, by pretending, that the manner in which he established the foundation of the law of nature, is reduced to a vicious circle. *If we ask*, says Puffendorf*, *which are those things that form the matter of natural laws? the answer is, that they are those which are honest or dishonest of their own nature. If we inquire afterwards, what are those things that are honest or dishonest of their own nature? there can be no other answer given, but that they are those which form the matter of natural laws.* This is what the critics put into the mouth of Grotius.

But let us see whether Grotius says really any such thing. *The law of nature*, says he §, *consists in certain principles of right reason, which informs us, that an action is morally honest or dishonest, according to the necessary agreeableness or disagreeableness it has with a rational and sociable nature; and consequently that God, who is the author of nature, commands or forbids such actions.* Here I can see no circle: For putting the question, whence comes the natural history or turpitude of commanded or forbidden actions? Grotius does not answer in the manner they make him; on the contrary, he says that this honesty or turpitude proceeds from the necessary agreeableness or disagreeableness of our actions with a rational and social nature ‡.

VII.

* See Puffendorf, Law of Nature and Nations, book ii. chap. iii. sect. 4. Apol. sect. 19.

§ See Grotius, Rights of War and Peace, book i, chap. i. sect. x.

‡ See Barbeyrac's fifth note on the Law of Nature and Nations, book ii. chap. iii. sect. 4.

VII. After having ſeen that the laws of nature are practicable of themſelves, evidently uſeful, highly conformable to the ideas which right reaſon gives us of God, ſuitable to the nature and ſtate of man, perfectly agreeable to order, and, in fine, ſufficiently notified; there is no longer room to queſtion but laws inveſted with all theſe characteriſtics are obligatory, and lay men under an indiſpenſable obligation of conforming their conduct to them. It is even certain, that the obligation which God impoſes on us by this means, is the ſtrongeſt of all, by reaſon of its being produced by the concurrence and union of the ſtrongeſt motives, ſuch as are moſt proper to determine the will. In fact, the counſels and maxims of reaſon oblige us, not only becauſe they are in themſelves very agreeable, and founded on the nature and immutable relations of things; but moreover by the authority of the ſupreme Being, who intervenes here, by giving us clearly to underſtand he is willing we ſhould obſerve them, becauſe of his being the author of this nature of things, and of the mutual relations they have among themſelves. In fine, the law of nature binds us by an internal and external obligation at the ſame time; which produces the higheſt degree of moral neceſſity, and reduces liberty to the very ſtrongeſt ſubjection, without deſtroying it*.

Thus the obedience due to natural law is a ſincere obedience, and ſuch as ought to ariſe from a conſcientious principle. The firſt effect of thoſe laws is to direct the ſentiments of our minds, and the motions of the heart. We ſhould not diſcharge what they require of us, were we externally to abſtain from what they condemn, but with regret and againſt our will. And as it is not allowable to deſire what we are not permitted to enjoy; ſo it is our duty not only to practiſe what we are commanded, but

* See part i. chap. 6. ſect. [illegible].

but likewise to give it our approbation, and to acknowledge its utility and justice.

VIII. Another essential characteristic of the laws of nature is, that they be universal, that is, they should oblige all men without exception. For men are not only all equally subject to God's command; but moreover, the laws of nature having their foundation in the constitution and state of man, and being notified to him by reason, it is plain they have an essential agreeableness to all mankind, and oblige them without distinction; whatever difference there may be between them in fact, and in whatever state they are supposed. This is what distinguishes natural from positive laws; for a positive law relates only to particular persons or societies.

IX. It is true that Grotius*, and after him several divines and civilians, pretend that there are divine, positive, and universal laws, which oblige all men from the very moment they are made sufficiently known to them. But in the first place, were there any such laws, as they could not be discovered by the sole light of reason, they must have been very clearly manifested to all mankind; a thing which cannot be fully proved: And if it should be said, that they oblige only those to whom they are made known; this destroys the idea of universality attributed to them, by supposing that those laws were made for all men. Secondly, the divine, positive, and universal laws, ought to be moreover of themselves beneficial to all mankind, at all times, and in all places; and this the wisdom and goodness of God require. But for this purpose those laws should have been founded on the constitution of human nature

* See the Rights of War and Peace, book i. chap. 1. sect. 15, with Barbeyrac's notes.

ture in general, and then they would be true natural laws †.

X. We have already obſerved, that the laws of nature though eſtabliſhed by the divine will, are not the effect of an arbitrary diſpoſition, but have their foundation in the very nature and mutual relations of beings. Hence it follows, that natural laws are immutable, and admit of no diſpenſation. This is alſo a proper characteriſtic of theſe laws, which diſtinguiſhes them from all poſitive law, whether divine or human.

This immutability of the laws of nature has nothing in it repugnant to the independence, ſupreme power, or liberty of an all-perfect Being. Since he himſelf is the author of one conſtitution, he cannot but preſcribe or prohibit ſuch things as have a neceſſary agreeableneſs or diſagreeableneſs to this very conſtitution; and conſequently he cannot make any change, or give any diſpenſation, in regard to the laws of nature*. It is a glorious neceſſity in him not to contradict himſelf; it is a kind of impotency falſely ſo called, which far from limiting or diminiſhing his perfections, adds to their external character, and points out all their excellency.

XI. Conſidering the thing as has been now explained, we may ſay, if we will, that the laws of nature are eternal; though to tell the truth, this expreſſion is very incorrect of itſelf, and more adapted to throw obſcurity than clearneſs upon our ideas. Thoſe who firſt took notice of the eternity of the laws of nature, did it very probably out of oppoſition to the novelty and frequent mutations of civil laws. They meant only, that the law of nature is antecedent,

† See Barbeyrac's ſixth note on Puffendorf's Law of Nature and Nations, book i. chap xi. ſect. 18.

* See Puffendorf, Law of Nature and Nations, book ii. chap. iii. ſect. 6. and Grotius, Rights of War and Peace, book i. chap. i. ſect. 10.

dent, for example, to the laws of Moses, of Solon, or of any other legislator, in that it is coeval with mankind; and so far they were in the right. But to affirm, as a great many divines and moralists have done, that the law of nature is coeternal with God, is advancing a proposition, which reduced to its just value is not exactly true; by reason that the laws of nature being made for man, its actual existence supposeth that of mankind. But if we are only to understand hereby, that God had the ideas thereof from all eternity, then we attribute nothing to the laws of nature but what is equally common to every thing that exists*.

We cannot finish this article better than with a beautiful passage of Cicero, preserved by Lactantius. § *Right reason*, says this philosopher, *is indeed a true law, agreeable to nature, common to all men, constant, immutable, eternal. It prompts men to their duty by its command, and deters them from evil by its prohibitions.—It is not allowed to retrench any part of this law, or to make any alteration therein, much less to abolish it intirely. Neither the senate nor people can dispense with it; nor does it require any interpretation,*

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§ Est quidem vera lex, recta ratio, naturæ congruens, diffusa in omnes, constans, sempiterna, quæ vocet ad officium jubendo, vetando a fraude deterreat; quæ tamen neque probos frustra jubet, aut vetat; nec improbos jubendo aut vetando movet. Huic legi nec abrogari fas est, neque derogari ex hac aliquid licet; neque tota abrogari potest. Nec vero aut per senatum, aut per populum solvi hac lege possumus: neque est quæ rendus explanator aut interpres ejus alius. Nec erit alia lex Romæ, alia Athenis, alia nunc, alia posthac; sed omnes gentes, et omni tempore, una lex et sempiterna et immutabilis continebit; unusque erit communis quasi magister et imperator omnium Deus. Ille legis hujus inventor, disceptator, lator: cui qui non parebit ipse se fugiet, ac naturam hominis, aspernatur; atque hoc ipso luet maximas pœnas etiamsi cætera supplicia, quæ putantur, effugerit. Cicero de Republ. lib. 3. apud Lactant. Instit. Divin. lib. 6. cap. 8.

tion, being clear of itself and intelligible. It is the same at Rome and Athens; the same to-day and to-morrow. It is the same eternal and invariable law, given at all times and places, to all nations; because God, who is the author thereof, and has published it himself, is always the sole master and sovereign of mankind. Whosoever violates this law, renounces his own nature, divests himself of humanity, and will be rigorously chastised for his disobedience, though he were to escape what is commonly distinguished by the name of punishment.

But let this suffice in regard to the law of nature considered as a rule to individuals. In order to embrace the entire system of man, and to unfold our principles in their full extent, it is necessary we say something likewise concerning the rules which nations ought to observe between each other, and are commonly called *the law of nations.*

CHAP. VI.

Of the Law of Nations.

1. AMONG the various establishments of man, the most considerable without doubt is that of civil society, or the body politic, which is justly esteemed the most perfect of societies, and has obtained the name of *State* by way of preference.

Human society is simply, of itself, and with regard to those who compose it, a state of equality, and independence. It is subject to God alone; no one has a natural and primitive right to command; but each person may dispose of himself, and of what he possesses, as he thinks proper, with this only restriction, that he keeps within the bounds of the law of nature, and do no prejudice or injury to any man.

The civil state makes a great alteration in this primitive one. The establishing a sovereignty, subverts

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The civil state makes a great alteration in this primitive one. The establishing a sovereignty, subverts

this independence wherein men were originally with regard to one another; and subordination is substituted in its stead. The sovereign becoming the depositary as it were of the will and strength of each individual, which are united in his person, all the other members of the society becomes subjects, and find themselves under an obligation of obeying and conducting themselves pursuant to the laws imposed upon them by the sovereign.

II. But how great soever the change may be which government and sovereignty make in the state of nature, yet we must not imagine that the civil state properly subverts all natural society, or that it destroys the essential relations which men have among themselves, or those between God and man. This would neither be physically or morally possible: on the contrary, the civil state supposes the nature of man, such as the Creator has formed it; it supposes the primitive state of union and society, with all the relations this state includes; it supposes, in fine, the natural dependance of man with regard to God and his laws. Government is so far from subverting this first order, that it has been rather established with a view to give it a new degree of force and consistency. It was intended to enable us the better to discharge the duties prescribed by natural laws, and to attain more certainly the end for which we were created.

III. In order to form a just idea of civil society, we must say, that it is no more than natural society itself modified in such a manner, as to have a sovereign that commands, and on whose will whatever concerns the happiness of society, ultimately depends; to the end that under his protection and through his care mankind may surely attain the felicity to which they naturally aspire.

IV.

IV. All ſocieties are formed by the concurrence or union of the wills of ſeveral perſons, with a view of acquiring ſome advantage. Hence it is that ſocieties are conſidered as bodies, and receive the appellation of moral perſons, by reaſon that thoſe bodies are in effect animated with one ſole will, which regulates all their movements. This agrees particularly with the body politic or ſtate. The ſovereign is the chief or head, and the ſubjects the members; all their actions that have any relation to ſociety, are directed by the will of the chief. Hence ſo ſoon as ſtates are formed, they acquire a kind of perſonal properties: and we may conſequently, with due proportion, attribute to them whatever agrees in particular with man; ſuch as certain actions and rights that properly belong to them, certain duties they are obliged to fulfil, &c.

V. This being ſuppoſed, the eſtabliſhment of ſtates introduces a kind of ſociety amongſt them, ſimilar to that which is naturally between men; and the ſame reaſons which induce men to maintain union among themſelves, ought likewiſe to engage nations or their ſovereigns to keep up a good underſtanding with one another.

It is neceſſary therefore there ſhould be ſome law among nations, to ſerve as a rule for mutual commerce. Now this law can be nothing elſe but the law of nature itſelf, which is then diſtinguiſhed by the name of the law of nations. *Natural law*, ſays Hobbes very juſtly, * *is divided into the natural law of man, and the natural law of ſtates*: and the latter is what we call the *law of nations*. Thus natural law and the law of nations are in reality one and the ſame thing, and differ only by an external denomination. We muſt therefore ſay, that the law of nations properly ſo called, and conſidered as a law proceeding from a

 ſuperior

* De Cive, cap. 14. ſect. 4.

ſuperior, is nothing elſe, but the law of nature itſelf, not applied to men conſidered ſimply as ſuch; but to nations, ſtates, or their chiefs, in the relations they have together, and the ſeveral intereſts they have to manage between each other.

VI. There is no room to queſtion the reality and certainty of ſuch a law of nations obligatory to its own nature, and to which nations, or the ſovereigns that rule them, ought to ſubmit. For if God, by means of right reaſon, impoſes certain duties between individuals, it is evident he is likewiſe willing that nations, which are only human ſocieties, ſhould obſerve the ſame duties between themſelves *.

VII. But in order to ſay ſomething more particular concerning this ſubject, let us obſerve that the natural ſtate of nations, in reſpect to each other, is that of ſociety and peace. This ſociety is likewiſe a ſtate of equality and independence, which eſtabliſhes a parity of right between them; and engages them to have the ſame regard and reſpect for one another. Hence the general principle of the law of nations is nothing more than the general law of ſociability, which obliges all nations that have any intercourſe with one another, to practice thoſe duties to which individuals are naturally ſubject.

Theſe remarks may ſerve to give us a juſt idea of that art, ſo neceſſary to the directors of ſtates and diſtinguiſhed commonly by the name of *Polity*. Polity conſidered with regard to foreign ſtates, is that ability and addreſs by which a ſovereign provides for the preſervation, ſafety, proſperity and glory of the nation he governs, by reſpecting the laws of juſtice and humanity; that is, without doing any injury to other ſtates, but rather by procuring their advantage, ſo much as in reaſon can be expected. Thus the

* See chap. v. ſect. 8.

the polity of ſovereigns is the ſame as prudence among private people; and as we condemn in the latter any art or cunning, that makes them purſue their own advantage to the prejudice of others, ſo the like art would be cenſurable in princes, were they bent upon procuring the advantage of their own people by injuring other nations. The *Reaſon of ſtate*, ſo often alleged to juſtify the proceedings or enterpriſes of princes, cannot really be admitted for this end, but inaſmuch as it is reconcileable with the common intereſt of nations, or, which amounts to the ſame thing, with the unalterable rules of ſincerity, juſtice, and humanity.

VIII. Grotius indeed acknowledges that the law of nature is common to all nations; yet he eſtabliſhes a poſitive law of nations contradiſtinct from the law of nature; and reduces this law of nations to a ſort of human law, which has acquired a power of obliging in conſequence of the will and conſent of all or of a great many nations*. He adds, that the maxims of this law of nations are proved by the perpetual practice of people, and the teſtimony of hiſtorians.

But it has been juſtly obſerved that this pretended law of nations, contradiſtinct from the law of nature, and inveſted nevertheleſs with a force of obliging, whether the people conſent to it or not, is a ſuppoſition deſtitute of all foundation §.

For 1. all nations are with regard to one another in a natural independence and equality. If there be therefore any common law between them, it muſt proceed from God their common ſovereign.

2. As for what relates to cuſtoms eſtabliſhed by an expreſs or tacit conſent among nations, their cuſtoms

* See Grotius, Rights of War and Peace: preliminary diſcourſe, ſect. 18. and book i. chap. i. ſect. 14.

§ See Puffendorf, Law of Nature and Nations, book ii. chap. iii. ſect. xxiii. with Barbeyrac's notes.

toms are neither of themselves nor universally, nor always obligatory. For from this only that several nations have acted towards one another for a long time after a particular manner in particular cases, it does not follow that they have laid themselves under a necessity of acting always in the same manner for the time to come, and much less that other nations are obliged to conform to those customs.

3. Again: those customs are so much the less capable of being an obligatory rule of themselves, as they may happen to be bad or unjust. The profession of a corsair or pirate was, by a kind of consent, esteemed a long while lawful, between nations, that were not united by alliance or treaty. It seems likewise, that some nations allowed themselves the use of poisoning arms in time of war*. Shall we say that these were customs authorised by the law of nations, and really obligatory in respect to different people? Or shall we not rather consider them as barbarous practices; from which every just and well-governed nation ought to refrain? We cannot therefore avoid appealing always to the law of nature, the only one that is really universal, whenever we want to judge whether the customs established between nations have any obligatory effect.

4. All that can be said on this subject is, that when customs of an innocent nature are introduced among nations; each of them is reasonably supposed to submit to those customs, so long as they have not made any declaration to the contrary. This is all the force or effect that can be given to received customs; but a very different effect from that of a law properly so called.

IX. These remarks give us room to conclude, that the whole might perhaps be reconciled, by distinguishing two species of laws and nations. There is certainly

* See Virgil, Æneid, book x. ver. 139. with the 15th note of the Abbe des Fontaines.

tainly an universal, necessary, and self-obligatory law of nations, which differs in nothing from the law of nature, and is consequently immutable, insomuch that the people or sovereigns cannot dispense with it, even by common consent, without transgressing their duty. There is, besides, another law of nations, which we may call arbitrary and free, as founded only on an express or tacit convention; the effect of which is not of itself universal; being obligatory only in regard to those who have voluntarily submitted thereto, and only so long as they please, because they are always at liberty to change or repeal it. To which we must likewise add, that the whole force of this sort of law of nations ultimately depends on the law of nature, which commands us to be true to our engagements. Whatever really belongs to the law of nations, may be reduced to one or other of these two species, and the use of this distinction will easily appear by applying it to particular questions which relate either to war, for example, to ambassadors, or to public treaties, and to the deciding of disputes which sometimes arise concerning these matters between sovereigns*.

X. It

* Let us remark here by the way, that the ideas of the ancient Roman lawyers concerning the law of nations, are not always uniform; which creates some confusion. Some there are that understand by the LAW OF NATIONS those rules of right that are common to all men, and established amongst themselves pursuant to the light of reason; in opposition to the particular laws of each people. (See the 9th law in the Digest. de Justitia & Jure book 1. tit. 1.) And then the law of nations signified also the law of nature. Others distinguished between these two species, as Ulpian has done in law 1. of the title now mentioned. They gave the name of law of nations to that which agrees with a man as such; in opposition to that which suits him as an animal. (See Puffendorf, Law of Nature and Nations, book 2. chap. 3. §. 3. note 10.) Some, in fine, comprised the one and the other under the idea of natural law. (See law XI. Digest. de Justitia & Jure.) And hence it comes, that the better sort of Latin writers give indifferently the name of natural

X. It is a point of importance to attend to the origin and nature of the law of nations, such as we have now explained them. For besides that it is always advantageous to form just ideas of things, this is still more necessary in matters of practice and morality. It is owing perhaps to our distinguishing the law of nations from natural laws, that we have insensibly accustomed ourselves to form quite a different judgment between the actions of sovereigns and those of private people. Nothing is more usual than to see men condemned in common, for things which we praise, or at least excuse in the persons of princes. And yet it is certain, as we have already shewn, that the maxims of the law of nations have an equal authority with those of the law of nature, and are equally respectable and sacred, because they have God alike for their author. In short, there is only one sole and the same rule of justice for all mankind. Princes who infringe the law of nations, commit as great a crime as private people, who violate the law of nature: and if there be any difference in the two cases it must be charged to the prince's account*, whose unjust actions are always attended with more dreadful consequences than those of private people†.

CHAP.

natural law, or the law of nations, to that which relates to either. This we find in the following passage of Cicero, where he says, that by the law of nature, that is, by the law of nations, one man is not allowed to pursue his advantage at the expence of another. Neque vero hoc solum NATURA, id est, JURE GENTIUM —— constitutum est, ut non liceat sui commodi causa, alteri nocere. De Offic. lib. 3. chap. 5. See Mr. Noodt's Commentary on the Digest, book i. tit. i. where this able lawyer explains very well the ambiguity of the distinction of natural law, and the law of nations, according to the different language of ancient civilians.

* See part i. chap. xi. §. 12.

† It is Monsieur Bernard that furnishes us with these reflections: If a private person, says he, offends without cause a person of the same

CHAP VII.

Whether there is any morality of actions, any obligation or duty, ANTECEDENT TO THE LAWS OF NATURE, *and independent of the idea of a legiſlator?*

I. THE morality of human actions being founded, in general, on the relation of agreeableneſs or diſagreeableneſs between thoſe actions and the law, according as we have ſhewn in the eleventh chapter of the firſt part; there is no difficulty, when once we acknowledge the laws of nature, to affirm, that the morality of actions depends on their conformity or oppoſition to thoſe very laws. This is a point on which all civilians and ethic writers are agreed. But they are not ſo unanimous in regard to the firſt principle or original cauſe of obligation and morality.

A great many are of opinion, that there is no other principle of morality but the divine will, manifeſted by the laws of nature. The idea of *morality*, ſay they, neceſſarily includes that of obligation; obligation ſuppoſes law; and law a legiſlator. If therefore we abſtract from all law, and conſequently from a legiſlator, we ſhall have no ſuch thing as right,

ſame ſtation, his action is termed an injuſtice; but if a prince attacks another prince without cauſe, if he invades his territories, and ravages his towns and provinces, this is called waging war, and it would be temerity to think it unjuſt. To break or violate contracts or agreements, is eſteemed a crime among private people: but among princes, to infringe the moſt ſolemn treaties, is prudence, is underſtanding the art of government. True it is, that ſome pretext is always ſought for, but thoſe who trump up theſe pretexts, give themſelves very little trouble whether they are thought juſt or not, &c. Nouvelles de la Republique des Lettres, Mars 1761. page 340, 341.

right, obligation, duty or morality, properly so called*.

Others there are, who acknowledge indeed that the divine will is really a principle of obligation, and consequently a principle of the morality of human actions; but they do not stop here. They pretend, that antecedent to all law, and independent of a legislator, there are things which of themselves, and by their own nature, are honest or dishonest; that reason having once discovered this essential and specific difference of human actions, it imposes on man a necessity of performing the one and omitting the other; and that this is the first foundation of obligation, or the original source of morality and duty.

II. What we have already said concerning the primitive rule of human actions, and the nature and origin of obligation†, may help to throw some light on the present question. But in order to illustrate it better, let us turn back and resume the thing from its first principles, by endeavouring to assemble here, in a natural order, the principal ideas that may lead us to a just conclusion.

1. I observe in the first place, that every action considered purely and simply in itself as a natural motion of the mind or body, is absolutely indifferent; and cannot in this respect claim any share of morality.

This is what evidently appears; forasmuch as the same natural action is esteemed sometimes lawful and even good, and at other times unlawful or bad. To kill a man, for instance, is a bad action in a robber; but it is lawful or good in an executioner, or in a citizen or soldier that defends his life or country,

* See Puffendorf, Law of Nature and Nations, book i. chap. ii. §. 6.

† See part i. chap. v. and vi.

try, unjuſtly attacked: a plain demonſtration that this action conſidered in itſelf, and as a ſimple operation of the natural faculties, is abſolutely indifferent and deſtitute of all morality,

2. We muſt take care to diſtinguiſh here between the phyſical and moral conſideration. There is undoubtedly a kind of natural goodneſs or malignity in actions, which by their own proper and internal virtue are beneficial or hurtful, and produce the phyſical good or evil of man. But this relation between the action and its effect is only phyſical; and if we ſtop here, we are not yet arrived at morality. It is pity we are frequently obliged to uſe the ſame expreſſions for the phyſical and moral ideas, which is apt to create ſome confuſion. It were to be wiſhed that languages had a greater exactneſs in diſtinguiſhing the nature and different relations of things by different names.

3. If we proceed further, and ſuppoſe that there is ſome rule of human actions, and compare afterwards theſe actions to the rule; the relation reſulting from this compariſon is what properly and eſſentially conſtitutes morality*.

4. From thence it follows, that in order to know which is the principal or efficient cauſe of the morality of human actions, we muſt previouſly be acquainted with their rule.

5. Finally let us add, that this rule of human actions may in general be of two ſorts, either internal or external; that is, it may be either found in man himſelf, or it muſt be ſought for ſomewhere elſe. Let us now make an application of theſe principles.

III. We have already ſeen † that man finds within himſelf ſeveral principles to diſcern good from evil and that theſe principles are ſo many rules of his conduct.

The

* See part i. chap. xi. ſect. 1.

† Part i. chap. v. and part ii. chap. iii.

The first directive principle we find within ourselves is a kind of instinct, commonly called moral sense; which pointing out readily, though confusedly and without reflection, the most sensible and most striking part of the difference between good and evil, makes us love the one, and gives us an aversion for the other, by a kind of natural sentiment.

The second principle is reason, or the reflection we make on the nature, relations and consequences of things; which gives us a more distinct knowledge, by principles and rules, of the distinction between good and evil in all possible cases.

But to these two internal principles, we must join a third, namely, the divine will. For man being the handy work of God, and deriving from the Creator his existence, his reason, and all his faculties; he finds himself thereby in an absolute dependance on that supreme being, and cannot help acknowledging him as his lord and sovereign. Therefore, as soon as he is acquainted with the intention of God in regard to his creature, this will of his master becomes his supreme rule, and ought absolutely to determine his conduct.

IV. Let us not separate these three principles. They are indeed distinct from one another, and have each their particular force; but in the actual state of man they are necessarily united. It is sense that gives us the first notice; our reason adds more light; and the will of God, who is rectitude itself, gives it a new degree of certainty; adding withal the weight of his authority. It is on all these foundations united, we ought to raise the edifice of natural law, or the system of morality.

Hence it follows, that man being a creature of God, formed with design and wisdom, and endowed with sense and reason; the rule of human actions, or the true foundation of morality, is properly the will of the supreme Being, manifested and interpreted, either by moral sense or by reason. These two natural

natural means, by teaching us to diſtinguiſh the relation which human actions have to our conſtitution, or, which is the ſame thing, to the ends of the Creator, inform us what is morally good or evil, honeſt or diſhoneſt, commanded or forbidden.

V. It is already a great matter to feel and to know good and evil; but this is not enough; we muſt likewiſe join to this ſenſe and knowledge, an obligation of doing the one, and abſtaining from the other. It is this obligation that conſtitutes duty, without which there would be no moral practice, but the whole would terminate in mere ſpeculation. But which is the cauſe and principle of obligation and duty? Is it the very nature of things diſcovered by reaſon? Or is it the divine will? This is what we muſt endeavour here to determine.

VI. The firſt reflection that occurs to us here, and to which very few, methinks, are ſufficiently attentive, is, that every rule whatſoever of human actions, carries with it a moral neceſſity of conforming thereto, and produces conſequently a ſort of obligation. Let us illuſtrate this remark.

The general notion of rule preſents us with the idea of a ſure and expeditious method to attain a particular end. Every rule ſuppoſes therefore a deſign, or the will of attaining to a certain end, as the effect we want to produce, or the object we intend to procure. And it is perfectly evident, that were a perſon to act merely for the ſake of acting, without any particular deſign or determinate end; he ought not to trouble his head about directing his actions one way more than another; he ſhould never mind either counſel or rule. This being premiſed, I affirm that every man who propoſes to himſelf a particular end, and knows the means or rule which alone can conduct him to it, and put him in poſſeſſion of what he deſires, ſuch a man finds himſelf under a neceſſity of following this rule, and of conforming

forming his actions to it. Otherwise he would contradict himself; he would and he would not; he would desire the end, and neglect the only means which by his own confession are able to conduct him to it. Hence I conclude, that every rule, acknowledged as such, that is, as a sure and only means of attaining the end proposed, carries with it a sort of obligation of being thereby directed. For so soon as there is a *reasonable necessity* to prefer one manner of acting to another, every reasonable man, and who intends to behave as such, finds himself thereby engaged and tied, as it were, to this manner, being hindered by his reason from acting to the contrary. That is, in other terms, he is really obliged; because obligation in its original idea, is nothing more than a restriction of liberty, produced by reason, inasmuch as the counsels which reason gives us, are motives that determine us to a particular manner of acting, preferable to any other. It is therefore true, that all rules are obligatory.

VII. This obligation, indeed, may be more or less strong, more or less strict, according as the reasons on which it is founded are more or less numerous, and have more or less power and efficacy of themselves to determine the will.

If a particular manner of acting appears to me evidently fitter than any other for my preservation and perfection, fitter to procure my bodily health and the welfare of my soul; this motive alone obliges me to act in conformity to it: And thus we have the first degree of obligation. If I find afterwards, that besides the advantage now mentioned, such a conduct will secure the respect and approbation of those with whom I converse; this is a new motive which strengthens the preceding obligation, and adds still more to my engagement. But if, by pushing my reflections still farther, I find at length that this manner of acting is perfectly agreeable to the intention of my Creator, who is willing and intends

tends I ſhould follow the counſels which reaſon gives me, as ſo many real laws he preſcribes to me himſelf; it is viſible, that this new conſideration ſtrengthens my engagement, ties the knot ſtill faſter, and lays me under an indiſpenſable neceſſity of acting after ſuch or ſuch a manner. For what is there more proper to determine finally a rational being, than the aſſurance he has of procuring the approbation and benevolence of his ſuperior, by acting in conformity to his will and orders; and of eſcaping his indignation, which muſt infallibly purſue a rebellious creature?

VIII. Let us follow now the thread of the conſequences ariſing from theſe principles.

If it be true, that every rule of itſelf is obligatory, and that reaſon is the primitive rule of human actions; it follows, that reaſon only, independent of the law, is ſufficient to impoſe ſome obligation on man, and conſequently to furniſh room for morality and duty, commendation and cenſure.

There will remain no manner of doubt on this ſubject, if abſtracting for a moment from ſuperiority and law we examine at firſt the ſtate of man alone, conſidered merely as a rationable being. Man propoſes to himſelf his own good, that is, the welfare of his body and ſoul. He ſearches afterwards for the means of procuring thoſe advantages; and ſo ſoon as he has diſcovered them, he approves of ſome particular actions, and condemns others; and conſequently he approves or condemns himſelf, according as he acts after a manner conformable or oppoſite to the dictates of his reaſon. Does not all this evidently demonſtrate, that reaſon puts a reſtraint on liberty, and lays us therefore under an obligation of doing or abſtaining from particular things?

Let us proceed. Suppoſe that man in the forementioned ſtate becomes the father of a family, and has a mind to act reaſonably; would it be an indifferent

ferent thing to him, to take care of, or to neglect his children, to provide for their subsistence and education, or to do neither one nor the other? Is it not, on the contrary, evident, that as this different conduct necessarily procures either the good or evil of his family; the approbation or censure which reason gives it, renders it morally good or bad, worthy of praise or blame?

It would be an easy matter to pursue this way of arguing, and apply it to all the states of man. But what we have already said, shews it is sufficient to consider man as a rational being, to be convinced that reason pointing out the road which alone can lead him to the end he aims at, lays him under a necessity of following this road, and of regulating thereby his conduct; that consequently reason alone is sufficient to establish a system of morality, obligation, and duties; because when once we suppose it is reasonable to do or to abstain from certain things, this is really owning our obligation.

IX. "But the idea of obligation," some will say, "imports necessarily a being that obliges, and who "ought to be distinct from the person obliged. To "suppose that he who obliges, and he who is "obliged, are one and the same person, is supposing "that a man may make a contract with himself; "which is quite absurd. Right reason is, in reality, "nothing but an attribute of the person obliged; "it cannot be therefore a principle of obligation; "no body being capable of imposing on himself an "indispensable necessity of acting or not acting after "such or such a manner. For supposing a necessity, "it must not be removeable at the will and pleasure "of the person subject to it; otherwise it would "be void of effect. If therefore the person on "whom the obligation is imposed, is the same as he "who imposes it, he can disengage himself from it "whenever he pleases; or, rather, there is no obli-

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X. This objection is more ſpacious than ſolid. In fact, thoſe who pretend that there is properly neither obligation nor morality without a ſuperior and law, ought neceſſarily to ſuppoſe one of theſe two things: 1. Either that there is no other rule of human actions beſides law: 2. Or if there be any other, none but law is an obligatory rule.

The firſt of theſe ſuppoſitions is evidently unſupportable: and after all that has been ſaid concerning this ſubject, we think it quite uſeleſs to ſtop here to refute it. Either reaſon has been idly and without a deſign beſtowed upon man, or we muſt allow it to be the general and primitive rule of his actions and conduct. And what is there more natural than to think that a rational being ought to be directed by reaſon? If we ſhould endeavour to evade this argument, by ſaying, that though reaſon be the rule of human actions, yet there is nothing but law that can be an obligatory rule; this propoſition cannot be maintained, unleſs we conſent to give the name of obligation to ſome other reſtriction of liberty, as well as to that which is produced by the will and order of a ſuperior; and then it would be a mere diſpute about words. Or elſe we muſt ſuppoſe, that there neither actually is, nor can even be conceived, any obligation at all, without the intervention of the will of a ſuperior; which is far from being actually true.

The ſource of the whole miſtake, or the cauſe of the ambiguity, is our not aſcending to the firſt principles, in order to determine the original idea of obligation. We have already ſaid, and again we ſay it, that every reſtriction of liberty, produced or approved

* Nemo ſibi debet (ſays Seneca de Benef. lib. 5. cap. 8.) hoc verbum debere non habet niſi inter duos locum.

ferent thing to him, to take care of, or to neglect his children, to provide for their subsistence and education, or to do neither one nor the other? Is it not, on the contrary, evident, that as this different conduct necessarily procures either the good or evil of his family; the approbation or censure which reason gives it, renders it morally good or bad, worthy of praise or blame?

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The firſt of theſe ſuppoſitions is evidently unſupportable: and after all that has been ſaid concerning this ſubject, we think it quite uſeleſs to ſtop here to refute it. Either reaſon has been idly and without a deſign beſtowed upon man, or we muſt allow it to be the general and primitive rule of his actions and conduct. And what is there more natural than to think that a rational being ought to be directed by reaſon? If we ſhould endeavour to evade this argument, by ſaying, that though reaſon be the rule of human actions, yet there is nothing but law that can be an obligatory rule; this propoſition cannot be maintained, unleſs we conſent to give the name of obligation to ſome other reſtriction of liberty, as well as to that which is produced by the will and order of a ſuperior; and then it would be a mere diſpute about words. Or elſe we muſt ſuppoſe, that there neither actually is, nor can even be conceived, any obligation at all, without the intervention of the will of a ſuperior; which is far from being actually true.

The ſource of the whole miſtake, or the cauſe of the ambiguity, is our not aſcending to the firſt principles, in order to determine the original idea of obligation. We have already ſaid, and again we ſay it, that every reſtriction of liberty, produced or approved

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ferent thing to him, to take care of, or to neglect his children, to provide for their subsistence and education, or to do neither one nor the other? Is it not, on the contrary, evident, that as this different conduct necessarily procures either the good or evil of his family; the approbation or censure which reason gives it, renders it morally good or bad, worthy of praise or blame?

It would be an easy matter to pursue this way of arguing, and apply it to all the states of man. But what we have already said, shews it is sufficient to consider man as a rational being, to be convinced that reason pointing out the road which alone can lead him to the end he aims at, lays him under a necessity of following this road, and of regulating thereby his conduct; that consequently reason alone is sufficient to establish a system of morality, obligation, and duties; because when once we suppose it is reasonable to do or to abstain from certain things, this is really owning our obligation.

IX. "But the idea of obligation," some will say, "imports necessarily a being that obliges, and who "ought to be distinct from the person obliged. To "suppose that he who obliges, and he who is "obliged, are one and the same person, is supposing "that a man may make a contract with himself; "which is quite absurd. Right reason is, in reality, "nothing but an attribute of the person obliged; "it cannot be therefore a principle of obligation; "no body being capable of imposing on himself an "indispensable necessity of acting or not acting after "such or such a manner. For supposing a necessity, "it must not be removeable at the will and pleasure "of the person subject to it; otherwise it would "be void of effect. If therefore the person on "whom the obligation is imposed, is the same as he "who imposes it, he can disengage himself from it "whenever he pleases; or, rather, there is no obli-

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by right reason, forms a real obligation. That which properly and formally obliges, is the dictate of our conscience, or the internal judgment we pass on such or such a rule, the observance whereof appears to us just, that is, conformable to the light of right reason.

XI. "But does not this manner of reasoning, "some will reply, contradict the clearest notions, "and subvert the ideas generally received, which "make obligation and duty depend on the interven-"tion of a superior, whose will manifests itself by "the law? What sort of thing is an obligation im-"posed by reason, or which a man imposeth upon "himself? Cannot he always get rid of it, when he "has a mind; and if the creditor and debtor, as we "have already observed, be one and the same per-"son, can it be properly said that there is any such "thing as a debt?"

This reply is grounded on an ambiguity, or supposes the thing in question. It supposes all along, that there neither is nor can be, any other obligation, but that which proceeds from a superior or law. I agree, that such is the common language of civilians; but this makes no manner of alteration in the nature of the thing. What comes afterwards proves nothing at all. It is true that man may, if he has a mind, withdraw himself from the obligations which reason imposes on him; but if he does, it is at his peril, and he is forced himself to acknowledge, that such a conduct is quite unreasonable. But to conclude from thence that reason alone cannot oblige us, is going too far; because this consequence would equally invalidate the obligation imposed by a superior. For, in fine, the obligation produced by law is not subversive of liberty; we have always a power to submit to it or not, and run the hazard of the consequence. In short, the question is not concerning force or constraint, it is only in relation to a moral tie,

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XII. True it is, that duty, purſuant to its proper and ſtrict ſignification, is a debt; and that when we conſider it thus, it preſents the idea of an action which ſomebody has a right to require of us. I agree likewiſe, that this manner of conſidering duty is juſt in itſelf. Man conſtitutes part of a ſyſtem, or whole; in conſequence whereof he has neceſſary relations to other beings; and the actions of man viewed in this light, having always ſome relation to another perſon, the idea of duty, commonly ſpeaking, includes this relation. And yet, as it frequently happens in morality, that we give ſometimes a more extenſive, and at other times a more limited ſenſe to the ſame term, nothing hinders us from beſtowing the more ample ſignification on the word *duty*, by taking it in general for an action conformable to right reaſon. And then, it may be very well ſaid, that man conſidered even alone, and as a ſeparate being, has particular duties to fulfil. It is ſufficient for this end, that there be ſome actions which reaſon approves, and others which it condemns. Theſe different ideas have nothing in them that is oppoſite; on the contrary, they are perfectly reconciled, and receive mutual ſtrength and aſſiſtance from each other.

XIII. The reſult of what we have been now ſaying, is as follows.

1. Reaſon being the firſt rule of man, it is alſo the firſt principle of morality, and the immediate cauſe of all primitive obligation.

2. Man being, by his nature and ſtate, in a neceſſary dependance on the Creator, who has formed him with deſign and wiſdom, and propoſed ſome particular views to himſelf in creating him; the will of God is another rule of human actions,

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3. We may therefore say, there are in general two sorts of morality or obligation; one antecedent to the law, and the work of reason; the other subsequent to the law, and properly the effect thereof; it is on this that the fore-mentioned distinction of internal and external obligation is founded*.

4. True it is, that those different species of obligation have not all the same force. That which arises from the law, is without doubt the most perfect; it lays the strongest restriction on liberty, and merits therefore the name of obligation by way of preference. But we must not from thence infer that it is the only one, and that there can be none of any other kind. One obligation may be real, though it be different from, and even weaker than another.

5. It is so much the more necessary to admit these two sorts of obligation and morality, as that which renders the obligation of law the most perfect, is its uniting the two species; being internal and external both at the same time†. For were there no attention given to the very nature of the laws, and were the things they command or prohibit, not to merit the approbation or censure of reason; the authority of the legislator would have no other foundation but that of power; and laws being then no more than the effect of an arbitrary will, they would produce rather a constraint, properly so called, than any real obligation.

These remarks are especially, and in the exactest manner, applicable to the laws of nature. The obligation these produce is of all others the most efficacious and extensive: because, on one side, the disposition of these laws is in itself very reasonable, being founded on the nature of the actions, their specific differences, and the relation or opposition they

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7. From theſe remarks it follows, that thoſe two ways of eſtabliſhing morality, whereof one ſets up reaſon and the other the will of God for its principle, ought not to be placed in oppoſition, as two incompatible ſyſtems, neither of which can ſubſiſt without deſtroying or excluding the other. On the contrary we ſhould join theſe two methods, and unite the two principles, in order to have a complete ſyſtem of morality, really founded on the nature and ſtate of man. For man, as a rational being, is ſubject to reaſon; and as a creature of God, to the will of the ſupreme Being. And as theſe two qualities have nothing oppoſite or incompatible in their nature, conſequently theſe two rules, reaſon and the divine will, are perfectly reconciled; they are even naturally connected, and ſtrengthened by their junction. And indeed it could not be otherwiſe; for, in fine, God himſelf is the author of the nature and mutual relations of things; and particularly of the nature of man, of his conſtitution, ſtate, reaſon, and faculties: The whole is the work of God, and ultimately depends on his will and inſtitution.

XIV. This manner of eſtabliſhing the foundation of obligation and duty, is ſo far from weakening the ſyſtem of natural law or morality, that we may affirm, it rather gives it a greater ſolidity and force. This is tracing the thing to the very ſource; it is laying the foundation of the edifice. I grant that in order to reaſon well on morality, we ought to take things as they are, without making abſtractions; that is, we ſhould attend to the nature and actual ſtate of man, by uniting and combining all the circumſtances that eſſentially enter into the ſyſtem of humanity.

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But

But this does not hinder us from considering likewise the system of man in its particulars, and as it were by parts, to the end, that an exact knowledge of each of those parts may help us to understand better the whole. It is the only method we can take in order to attain this end.

XV. What has been hitherto set forth, may help to explain and justify at the same time a thought of Grotius in his preliminary discourse, sect. 11. This author having established, after his manner, the principles and foundation of natural law, on the constitution of human nature, adds, *that all he has been saying would in some measure take place, were we even to grant there was no God; or that he did not concern himself about human affairs.* It is obvious, by his very manner of expressing himself, that he does not intend to exclude the divine will from the system of natural law. This would be mistaking his meaning; because he himself establishes this will of the Creator as another source of right. All he means is, that independent of the intervention of God, considered as a legislator, the maxims of natural law having their foundation in the nature of things and in the human constitution: reason alone imposes already on man a necessity of following those maxims, and lays him under an obligation of conforming his conduct to them. In fact, it cannot be denied but that the ideas of order, agreeableness, honesty, and conformity to right reason, have at all times made an impression on man, at least to a certain degree, and among nations somewhat civilized. The human mind is formed in such a manner, that even those who do not comprehend these ideas in their full exactness and extent, have, nevertheless, a confused notion thereof, which inclines them to acquiescence so soon as they are proposed.

XVI. But while we acknowledge the reality and certainty of those principles, we ought likewise

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to own, that if we proceed no farther, we are got but half way our journey; this would be unreasonably attempting to eſtabliſh a ſyſtem of morality independent of religion. For were we even to grant, that ſuch a ſyſtem is not deſtitute of all foundation; yet it is certain it could never produce of itſelf ſo effectual an obligation, as when it is joined with the divine will. Since the authority of the ſupreme Being gives the force of laws, properly ſo called, to the maxims of reaſon, theſe maxims acquire thereby the higheſt degree of ſtrength they can poſſibly have, to bind and ſubject the will, and to lay us under the ſtricteſt obligation. But (once more we repeat it) to pretend therefore, that the maxims and counſels of reaſon conſidered in themſelves, and detached, as it were, from God's command, are not at all obligatory, is carrying the thing too far; it is concluding beyond our premiſes, and admitting only one ſpecies of obligation. Now this is not only unconformable to the nature of things, but, as we have already obſerved, it is weakening even the obligation reſulting from the will of the legiſlator. For the divine ordinances make a much ſtronger impreſſion on the mind, and are followed with a greater ſubjection in the will, in proportion as they are approved by reaſon, as being in themſelves perfectly agreeable to our nature, and extremely conformable to our conſtitution and ſtate.

CHAP. VIII.

Conſequences of the preceding chapter: reflections on the diſtinctions of juſt, honeſt, and uſeful.

I. THE reflections contained in the foregoing chapter give us to underſtand that there is a vaſt deal of ambiguity and miſtake in the different ſentiments of writers, in relation to morality or the foundation of natural laws. They do not always aſ-

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cend to the first principles, neither do they define and distinguish exactly; they suppose an opposition between ideas that are reconcileable, and ought even to be joined together. Some reason in too abstract a manner on the human system; and following only their own metaphysical speculations, never attend sufficiently to the active state of things, and to the natural dependance of man. Others, considering principally this dependance, reduce the whole to the will and orders of the sovereign master, and seem thus to lose sight of the very nature and internal constitution of man, from which it cannot however be separated. These different ideas are just in themselves; yet we must not establish the one, by excluding the other, or by explaining it to the other's prejudice. Reason on the contrary, requires us to unite them, in order to find the true principles of the human system, whose foundations must be sought for in the nature and state of man.

II. It is very common to use the words *utility*, *justice*, *honesty*, *order*, and *fitness*; but these different notions are seldom defined in an exact manner, and some of them are frequently confounded. This want of exactness must necessarily create ambiguity and confusion; wherefore, if we intend to make things clear, we must take care to define and distinguish properly.

An useful action may, methinks, be defined, that which of itself tends to the preservation and perfection of man.

A just action, that which is considered as conformable to the will of a superior who commands.

An action is called honest, when it is considered as conformable to the maxims of right reason, agreeable to the dignity of our nature, deserving of the approbation of man, and consequently procuring respect and honour to the person that does it.

By order, we can understand nothing else but the disposition of several things relative to a certain end, and proportioned to the effect we intend to produce.

Finally,

Finally, as to fitneſs or agreeableneſs, it bears a very great affinity with order. It is a relation of conformity between ſeveral things, one of which is of itſelf proper for the preſervation and perfection of the other, and contributes to maintain it in a good and advantageous ſtate.

III. We muſt not therefore confound the words *juſt*, *uſeful*, and *honeſt*; for they are three diſtinct ideas. But though diſtinct from one another, they have no oppoſition; they are three relations, which may all agree, and be applied to one ſingle action, conſidered under different reſpects. And if we aſcend ſo high as the firſt origin, we ſhall find that they are all derived from one common ſource, or from one and the ſame principle, as three branches from the ſame ſtock. This general principle is the approbation of reaſon. Reaſon neceſſarily approves whatever conducts us to real happineſs; and as that which is agreeable to the preſervation and perfection of man; that which is conformable to the will of the ſovereign maſter on whom he depends; and that which procures him the eſteem and reſpect of his equals; as all this, I ſay, contributes to his happineſs, reaſon cannot but approve of each of theſe things ſeparately conſidered, much leſs can it help approving, under different reſpects, an action in which all theſe properties are found united.

IV. For ſuch is the ſtate of things, that the ideas of juſt, honeſt, and uſeful, are naturally connected, and as it were inſeparable; at leaſt if we attend, as we ought to do, to real, general, and laſting utility. We may ſay, that ſuch an utility becomes a kind of characteriſtic to diſtinguiſh what is truly juſt, or honeſt, from what is ſo only in the erroneous opinions of men. This is a beautiful and judicious remark of Cicero.

Cicero. * *The language and opinions of men are very wide*, says he, *from truth and right reason, in separating the honest from the useful, and in persuading themselves that some honest things are not useful, and other things are useful but not honest. This is a dangerous notion in human life.—Hence we see that Socrates detested those sophists, who first separated those two things in opinion, which in nature are really joined.*

In fact, the more we investigate the plan of divine providence, the more we find the Deity has thought proper to connect the moral good and evil with the physical, or, which is the same thing, the just with the useful. And though in some particular cases the thing seems otherwise, this is only an accidental disorder, which is much less a natural consequence of the system, than an effect of the ignorance or malice of man. Whereto we must add, that in case we do not stop at the first appearances, but proceed to consider the human system in its full extent, we shall find, that every thing well considered, and all compensations made, these irregularities will be one day or other redressed, as we shall more fully shew when we come to treat of the sanctions of natural laws.

V. Here a question is sometimes proposed; whether a thing be just, because God commands it, or whether God commands it, because it is just?

Pursuant

* In quo lapsa consuetudo deflexit de via, sensimque eo deducta est, ut honestatem ab utilitate secernens, et constituerit honestum esse aliquod quod utile non esset, et utile quod non honestum: qua nulla pernicies major hominum vitæ potuit adferri. Cic. de Offic. lib. 2. cap. 3. Itaque accepimus, Socratem exsecrari solitum eos, qui primum hæc natura cohærentia opinione distraxissent. Idem, lib. 3. cap. 13. See likewise Grotius, Rights of War and Peace, Preliminary Discourse, sect. 17, and following; and Puffendorf, Law of Nature and Nations, book ii. chap. iii. sect. 10. 11.

Purſuant to our principles, the queſtion is not at all difficult. A thing is juſt, becauſe God commands it; this is implied by the definition we gave of juſtice. But God commands ſuch or ſuch things, becauſe theſe things are reaſonable in themſelves, conformable to the order and ends he propoſed to himſelf in creating mankind, and agreeable to the nature and ſtate of man. Theſe ideas, though diſtinct in themſelves, are neceſſarily connected, and can be ſeparated only by metaphyſical abſtraction.

VI. Let us, in fine, obſerve that this harmony or ſurpriſing agreement, which naturally occurs between the ideas of juſt, honeſt, and uſeful, conſtitutes the whole beauty of virtue, and informs us at the ſame time in what the perfection of man conſiſts.

In conſequence of the different ſyſtems above mentioned, moraliſts are divided with regard to the latter point. Some place the perfection of man in ſuch a uſe of his faculties as is agreeable to the nature of his being. Others in the uſe of our faculties and the intention of our Creator. Some, in fine, pretend that man is perfect, only as his manner of thinking and acting is proper to conduct him to the end he aims at, namely, his happineſs.

But what we have above ſaid ſufficiently ſhews, that theſe three methods of conſidering the perfection of man, are very little different, and ought not to be ſet in oppoſition. As they are interwoven with one another, we ought rather to combine and unite them. The perfection of man conſiſts really in the poſſeſſion of natural or acquired faculties, which enable us to obtain, and actually put us in poſſeſſion of ſolid felicity; and this in conformity to the intention of our Creator, engraved in our nature, and clearly manifeſted by the ſtate wherein he has placed us*.

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* Theory of Agreeable Senſations, chap. vii.

A modern writer has judiciously said; *that to obey only through fear of authority, or for the hope of recompence, without esteeming or loving virtue for the sake of its own excellency; is mean and mercenary. On the contrary, to practise virtue with an abstract view of its fitness and natural beauty, without having any thought of the Creator and Conductor of the universe; is failing in our duty to the first and greatest of Beings. He only who acts jointly through a principle of reason, through a motive of piety, and with a view of his principal interest, is an honest, wise, and pious man; which constitutes without comparison, the worthiest and completest of characters.*

CHAP. IX.

Of the application of natural laws to human actions; and first of conscience.*

I. AS soon as we have discovered the foundation and rule of our duties, we have only to recollect what has been already said in the eleventh chapter of the first part of this work, concerning the morality of actions, to see in what manner natural laws are applied to human actions, and what effect ought from thence to result.

The application of the laws to human actions is nothing else, but the judgment we pass on their morality, by comparing them with the law; a judgment whereby we pronounce that those actions being either good, bad, or indifferent, we are obliged either to perform or omit them, or that we may use our liberty in this respect: and that according to the side we have taken, we are worthy of praise or blame, approbation or censure.

This

* See the Law of Nature and Nations, book i. chap. iii sect. 4. and following; and the Duties of Man and a Citizen, book i. chap. i. sect. 5, 6.

This is done in two different manners. For either we judge on this footing of our own actions, or of those of another person. In the first case, our judgment is called conscience; but the judgment we pass on other men's actions, is termed imputation. These are, undoubtedly, subjects of great importance, and of universal use in morality, which deserve therefore to be treated with some care and circumspection.

II. Conscience is properly no more than reason itself, considered as instructed in regard to the rule we ought to follow, or to the law of nature; and judging of the morality of our own actions, and of the obligations we are under in this respect, by comparing them to this rule, pursuant to the ideas we entertain thereof.

Conscience is also very frequently taken for the very judgment we pass on the morality of actions; a judgment which is the result of perfect reasoning, or the consequence we infer from two express or tacit premisses. A person compares two propositions one of which includes the law, and the other the action; and from thence he deduces a third, which is the judgment he makes of the quality of his action. Such was the reasoning of Judas: *Whosoever delivers up an innocent man to death, commits a crime*; here is the law. *Now this is what I have done*; here is the action. *I have therefore committed a crime:* this is the consequence, or judgment which his conscience passed on the action he committed.

III. Conscience supposes therefore a knowledge of the law; and particularly of the law of nature, which being the primitive source of justice, is likewise the supreme rule of conduct. And as the laws cannot serve us for rule, but inasmuch as they are known, it follows therefore, that conscience becomes thus the immediate rule of our actions: for it is evident we cannot conform to the law, but so far as we have notice thereof.

IV. This

IV. This being premised, the *first rule* we have to lay down concerning this matter, is, that we must enlighten our conscience, as well as consult it, and follow its counsels.

We must enlighten our conscience; that is, we must spare no care or pains to be exactly instructed with regard to the will of the legislator, and the disposition of his laws, in order to acquire just ideas of whatever is commanded, forbidden, or permitted. For plain it is, that were we in ignorance or error in this respect, the judgment we should form of our actions would be necessarily vicious, and consequently lead us astray. But this is not enough. We must join to this first knowledge, the knowledge also of the action. And for this purpose, it is not only necessary to examine this action in itself; but we ought likewise to be attentive to the particular circumstances that accompany it, and the consequences that from thence may follow. Otherwise we should run the risk of being mistaken in the application of the laws, whose general decisions admit of several modifications, according to the different circumstances that accompany our actions; which necessarily influences their morality, and of course our duties. Thus it is not sufficient for a judge to be well acquainted with the tenor and purport of the law, before he pronounces sentence; he should likewise have an exact knowledge of the fact and all its different circumstances.

But it is not merely with a view of enlightening our reason, that we ought to acquire all this knowledge; it is principally in order to apply it occasionally to the direction of our conduct. We should therefore, whenever it concerns us to act, consult previously our conscience, and be directed by its counsels. This is properly an indispensable obligation. For, in fine, conscience being, as it were, the minister and interpreter of the will of the legislator, the counsels it gives us, have all the force and authority

authority of a law, and ought to produce the ſame effect upon us.

V. It is only therefore by enlightening our conſcience, that it becomes a ſure rule of conduct, whoſe dictates may be followed with a perfect confidence of exactly fulfilling our duty. For we ſhould be groſly miſtaken, if under a notion that conſcience is the immediate rule of our actions, we were to believe that every man may lawfully do whatever he imagines the law commands or permits. We ought firſt to know whether this notion or perſuaſion is juſtly founded. For as Puffendorf* obſerves, conſcience has no ſhare in the direction of human actions, but inaſmuch as it is inſtructed concerning the law, whoſe office it properly is to direct our actions. If we have therefore a mind to determine and act with ſafety, we muſt on every particular occaſion obſerve the two following rules, which are very ſimple of themſelves, eaſy to practiſe, and naturally follow our firſt rule, of which they are only a kind of elucidation†.

Second rule. Before we determine to follow the dictates of conſcience, we ſhould examine thoroughly whether we have the neceſſary lights and helps to judge of the things before us. If we happen to want theſe lights and helps, we can neither decide, nor much leſs undertake any thing, without an inexcuſable and dangerous temerity. And yet nothing is commoner than to tranſgreſs againſt this rule. What multitudes, for example, determine on religious diſputes, or difficult queſtions concerning morality or politics, though they are no way capable of judging or reaſoning about them?

Third rule. Suppoſing that in general we have neceſſary lights and helps to judge of the affair before

* See the Law of Nature and Nations, book i. chap. iii. ſect. 4.

† See Barbeyrac's firſt note on the Duties of Man and a Citizen, book i. chap. i. ſect. 5.

fore us, we muſt afterwards ſee whether we have actually made uſe of them; inſomuch, that without a new inquiry we may follow what our conſcience ſuggeſts. It happens every day that for want of attending to this rule, we let ourſelves be quietly prevailed upon to do a great many things, which we might eaſily diſcover to be unjuſt, had we given heed to certain clear principles, the juſtice and neceſſity of which is univerſally acknowledged.

When we have made uſe of the rules here laid down, we have done whatever we could and ought; and it is morally certain, that by thus proceeding we can be neither miſtaken in our judgment, nor wrong in our determinations. But if, notwithſtanding all theſe precautions, we ſhould happen to be miſtaken, which is not abſolutely impoſſible; this would be an infirmity, inſeparable from human nature, and would carry its excuſe along with it in the eye of the ſupreme legiſlator.

VI. We judge of our actions either before, or after we have done them; wherefore there is an antecedent and a ſubſequent conſcience.

This diſtinction gives us an opportunity to lay down a *fourth rule*; which is, that a prudent man ought to conſult his conſcience before and after he has acted.

To determine to act, without having previouſly examined, whether what we are going to do be good or evil, manifeſtly indicates an indifference for our duty, which is a moſt dangerous ſtate in reſpect to man; a ſtate capable of throwing him into the moſt fatal exceſſes. But as, in this firſt judgment, we may happen to be determined by paſſion, and to proceed with precipitation, or upon a very ſlight examen; it is therefore neceſſary to reflect again on what we have done, either in order to be confirmed in the right ſide, if we have embraced it; or to correct our miſtake

mistake if possible, and to guard against the like faults for the future. This is so much the more important, as experience shews us, that we frequently judge quite different between a past and a future transaction; and that the prejudices or passions which may lead us astray, when we are to take our resolution, oftentimes disappear either in the whole or part, when the action is over; and leave us then more at liberty to judge rightly of the nature and consequences of the action.

The habit of making this double examen, is the essential character of an honest man; and indeed nothing can be a better proof of our being seriously inclined to discharge our several duties.

VII. The effect resulting from this revisal of our conduct, is very different, according as the judgment we pass on it, absolves or condemns us. In the first case, we find ourselves in a state of satisfaction and tranquillity, which is the surest and sweetest recompence of virtue. A pure and untainted pleasure accompanies always those actions that are approved by reason; and reflection renews the sweets we have tasted, together with their remembrance. And indeed what greater happiness is there than to be inwardly satisfied, and to be able with a just confidence to promise ourselves the approbation and benevolence of the sovereign Lord on whom we depend? If, on the contrary, conscience condemns us, this condemnation must be accompanied with inquietude, trouble, reproaches, fear, and remorse; a state so dismal, that the ancients have compared it to that of a man tormented by the furies. *Every crime*, says the satyrist, *is disapproved by the very person that commits it; and the first punishment the criminal feels, is, that he cannot avoid being self-condemned, were he even to find means of being acquitted before the prætor's tribunal.*

Exemplo quodcunque malo committitur, ipsi
Displicet auctori: prima hæc est ultio, quod, se

Judice, nemo nocens absolvitur, improba quamvis
Gratia fallaci prætoris vicerit urna.

Juven. Sat. 13. ver. 1.

He that commits a sin, shall quickly find
The pressing guilt lie heavy on his mind;
Though bribes or favour shall assert his cause,
Pronounce him guiltless, and elude the laws:
None, quits himself; his own impartial thought
Will damn, and conscience will record the fault.

Creech.

Hence the subsequent conscience is said to be quiet or uneasy, good or bad.

VIII. The judgment we pass on the morality of our actions is likewise susceptible of several different modifications, that produce new distinctions of conscience, which we should here point out. These distinctions may, in general, be equally applied to the first two species of conscience above mentioned; but they seem more frequently and particularly to agree with the antecedent conscience.

Conscience is therefore either decisive or dubious according to the degree of persuasion a person may have concerning the quality of the action.

When we pronounce decisively, and without any hesitation, that an action is conformable or opposite to the law, or that it is permitted, and consequently we ought to do or omit it, or else that we are at liberty in this respect; this is called a decisive conscience. If, on the contrary, the mind remains in suspense, through the conflict of reasons we see on both sides, and which appear to us of equal weight, insomuch that we cannot tell to which side we ought to incline; this is called a dubious conscience. Such was the doubt of the Corinthians, who did not know whether they should eat things sacrificed to idols, or whether they ought to abstain from them. On the one side, the evangelical liberty seemed to permit it; on the other, they were restrained through apprehension of seeming

ſeeming to give thereby a kind of conſent to idolatrous acts. Not knowing what reſolution to take, they wrote to St. Paul to remove their doubt.

This diſtinction makes room alſo for ſome rules.

Fifth Rule. We do not intirely diſcharge our duty, by doing with a kind of difficulty and reluctance, what the deciſive conſcience ordains; we ought to ſet about it readily, willingly, and with pleaſure*. On the contrary to determine without heſitation or repugnance, againſt the motions of ſuch a conſcience, is ſhowing the higheſt degree of depravation and malice, and renders a perſon incomparably more criminal than if he were impelled by a violent paſſion or temptation‡.

Sixth Rule. With regard to a dubious conſcience, we ought to uſe all endeavours to get rid of our uncertainty, and to forbear acting, ſo long as we do not know whether we do good or evil. To behave otherwiſe, would indicate an indirect contempt of the law, by expoſing one's ſelf voluntarily to the hazard of violating it, which is a very bad conduct. The rule now mentioned ought to be attended to, eſpecially in matters of great importance.

Seventh Rule. But if we find ourſelves in ſuch circumſtances as neceſſarily oblige us to determine to act, we muſt then, by a new attention endeavour to diſtinguiſh the ſafeſt and moſt probable ſide, and whoſe conſciences are leaſt dangerous. Such is generally the oppoſite ſide to paſſion; it being the ſafeſt way, not to liſten too much to our inclinations. In like manner, we run very little riſk of being miſtaken in a dubious caſe, by following rather the dictates of charity than the ſuggeſtion of ſelf-love.

IX. Beſides the dubious conſcience, properly ſo called, and which we may likewiſe diſtinguiſh by the

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* See part ii. chap. v. ſect. 7.

‡ See Grotius, Rights of War and Peace, book ii. chap. xxi. ſect. 10.

name of irresolute, there is a scrupulous conscience, produced by slight and frivolous difficulties that arise in the mind, without seeing any solid reason for doubting.

Eighth Rule. Such scruples as these ought not to hinder us from acting, if it be necessary; and as they generally arise either from a false delicacy of conscience, or from gross superstition, we should soon get rid of them, were we to examine the thing with attention.

X. Let us afterwards observe, that the decisive conscience, according as it determines good or evil, is either right or erroneous.

Those, for example, who imagine we ought to abstain from strict revenge, though the law of nature permits a legitimate defence, have a right conscience. On the other hand, those who think that the law which requires us to be faithful to our engagements, is not obligatory towards heretics, and that we may lawfully break through it in respect to them, have an erroneous conscience.

But what must we do in case of an erroneous conscience?

Ninth Rule. I answer, that we ought always to follow the dictates of conscience, even when it is erroneous, and whether the error be vincible or invincible.

This rule may appear strange at first sight, since it seems to prescribe evil; because there is no manner of question, but that a man who acts according to an erroneous conscience, espouses a bad cause. Yet this is not so bad, as if we were to determine to do a thing, with a firm persuasion of its being contrary to the decision of the law; for this would denote a direct contempt of the legislator and his orders, which is a most criminal disposition. Whereas the first resolution, though bad in itself, is nevertheless the effect of a laudable disposition to obey the legislator, and conform to his will.

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But it does not from thence follow, that we are always excusable in being guided by the dictates of an erroneous conscience; this is true only when the error happens to be invincible. If on the contrary it is surmountable, and we are mistaken in respect to what is commanded or forbidden, we sin either way, whether we act according to, or against the decisions of conscience. This shews (to mention it once more) what an important concern it is to enlighten our conscience, because, in the case just now mentioned, the person with an erroneous conscience is actually under a melancholy necessity of doing ill, which-ever side he takes. But if we should happen to be mistaken with regard to an indifferent thing, which we are erroneously persuaded is commanded or forbidden, we do not sin in that case, but when we act contrary to the light of our own conscience.

XI. In fine, there are two sorts of right conscience; the one clear and demonstrative, and the other merely probable.

The clear and demonstrative conscience is that which is founded on certain principles, and on demonstrative reasons, so far as the nature of moral things will permit; insomuch that one may clearly and distinctly prove the rectitude of a judgment made on such or such an action. On the contrary, though we are convinced of the truth of a judgment, yet if it be founded only on verisimilitude, and we cannot demonstrate its certainty in a methodical manner, and by incontestible principles, it is then only a probable conscience.

The foundations of probable conscience are in general authority and example, supported by a confused notion of a natural fitness, and sometimes by popular reasons, which seem drawn from the very nature of things. It is by this kind of conscience that the greatest part of mankind are conducted, there being very few who are capable of knowing the indispensa-

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ble neceſſity of their duties, by deducing them from their firſt ſources by regular conſequences; eſpecially when the point relates to maxims of morality, which being ſomewhat remote from the firſt principles, require a longer chain of reaſonings. This conduct is far from being unreaſonable. For thoſe who have not ſufficient light of themſelves to judge properly of the nature of things, cannot do better than recur to the judgment of enlightened perſons; this being the only reſource left them to act with ſafety. We might in this reſpect compare the perſons above-mentioned to young people whoſe judgment has not yet required its full maturity, and who ought to liſten and conform to the counſels of their ſuperiors. The authority therefore, and example of ſage and enlightened men, may, in ſome caſes, in default of our own lights, prove a reaſonable principle of determination and conduct.

But, in fine, ſince thoſe foundations of probable conſcience are not ſo ſolid as to permit us abſolutely to build upon them, we muſt therefore eſtabliſh as a *Tenth Rule*, that we ought to uſe all our endeavours to increaſe the degree of veriſimilitude in our opinions, in order to approach as near as poſſible to the clear and demonſtrative conſcience; and we muſt not be ſatisfied with probability, but when we can do no better.

CHAP. X.

Of the merit and demerit of human actions; and of their imputation relative to the laws of nature.*

I. IN explaining the nature of human actions, conſidered with regard to right†, we obſerved, that

* See on this, and the following chapter, Puffendorf's Law of Nature and Nations, book i. chap. v. and chap. ix.

† Part i. chap. iii.

that an essential quality of these actions is to be susceptible of imputation; that is, the agent may be reasonably looked upon as the real author thereof, may have it charged to account, and be made answerable for it: insomuch that the good or bad effects from thence arising, may be justly attributed and referred to him, as to the efficient cause concerning which we have laid down this principle, that every voluntary action is of an imputable nature.

We give in general the name of moral cause of an action to the person that produced it, either in the whole or part, by a determination of his will; whether he executes it himself physically and immediately, so as to be the author thereof; or whether he procures it by the act of some other person, and becomes thereby its cause. Thus whether we wound a man with our own hands, or set assassins to waylay him, we are equally the moral cause of the evil from thence resulting.

It was observed likewise, that we must not confound the imputability of human actions with their actual imputation. The former, as has been just now mentioned, is a quality of the action; the latter is an act of the legislator, or judge, who lays to a person's charge an action that is of an imputable nature.

II. Imputation is properly therefore a judgment by which we declare, that a person being the author or moral cause of an action commanded or forbidden by the laws, the good or bad effects that result from this action, ought to be actually attributed to him; that he is consequently answerable for them, and as such is worthy of praise or blame, of recompence or punishment.

This judgment of imputation, as well as that of conscience, is made by applying the law to the action, and comparing one with the other, in order to decide afterwards the merit of the fact, and to make

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the author consequently feel the good or evil, the punishment or recompence which the law has thereto annexed. All this necessarily supposes an exact knowledge of the law and of its right sense, as well as of the fact and such circumstances thereof, as may any way relate to the determination of the law. A want of this knowledge must render the application false, and the judgment erroneous.

III. Let us produce a few examples. One of the *Horatii*, who remained conqueror in the combat between the brothers of this name, and the three *Curiatii*, inflamed with anger against his sister for bewailing the death of one of the Curiatii her lover, and for bitterly reproaching him therewith, instead of congratulating him for his victory, slew her with his own hand. He was accused before the *Duumvirs*; and the question was, whether the law against murderers ought to be applied to the present case, in order to make him undergo the punishment? This was the true opinion of the judges, who in fact condemned the young Roman. But an appeal being made to the people, they judged quite otherwise. Their notion was, that the law ought not to be applied to the fact; because a Roman lady, who seemed to be more concerned about her own particular interest, than sensible of the good of her country; might in some measure be considered and treated as an enemy; wherefore they pronounced the young man innocent. Let us add another example of an advantageous imputation, or of a judgment of recompence. Cicero, in the beginning of his consulate, discovered the conspiracy of Catiline, which menaced the republic with ruin. In this delicate conjuncture he behaved with so much prudence and address, that the conspiracy was stifled without any noise or sedition, by the death of a few of the criminals. And yet J. Cæsar, and some other enemies of Cicero, accused him before the people, for having

ing put citizens to death contrary to rule, and before the ſenate or people had paſſed judgment againſt them. But the people attending to the circumſtances of the fact, to the danger the republic had eſcaped, and to the important ſervice Cicero had done, ſo far from condemning him as an infringer of the laws, decreed him the glorious title of *father of his country*.

IV. In order to ſettle the principles and foundations of this matter, we muſt obſerve, 1. That we ought not to conclude the actual imputation of an action merely for its imputability. An action, to merit actual imputation, muſt neceſſarily have the concurrence of theſe two conditions: firſt, that it be of an imputable nature, and ſecondly, that the agent be under ſome obligation of doing or omitting it. An example will clear up the thing. Let us ſuppoſe two young men with the ſame abilities and conveniencies, but under no obligation of knowing algebra: one of them applies himſelf to this ſcience, and the other does not; though the action of the one and the other's omiſſion, are by themſelves of an imputable nature; yet in this caſe they can be neither good nor bad. But were we to ſuppoſe that theſe two young men are deſigned by their prince, the one for ſome office of ſtate, and the other for military employment; in this caſe, their application or neglect in inſtructing themſelves in juriſprudence, for example, or in the mathematics, would be juſtly imputed to them. The reaſon is, they are both indiſpenſably obliged to acquire ſuch knowledge as is neceſſary for diſcharging properly the offices or employments to which they are called. Hence it is evident, that as imputability ſuppoſeth the power of acting or not acting; actual imputation requires, moreover, that a perſon be under an obligation of doing either the one or the other.

V. 2. When

V. 2. When we impute an action to a perſon, we render him, as has been already obſerved, anſwerable for the good or bad conſequences of what he has done. From thence it follows, that in order to make a juſt imputation, there muſt be ſome neceſſary or accidental connexion between the thing done or omitted, and the good or bad conſequences of the action or omiſſion; and beſides, the agent muſt have had ſome knowledge of this connexion, or at leaſt he muſt have been able to have a probable foreſight of the effects of this action. Otherwiſe the imputation cannot take place, as will appear by a few examples A gunſmith ſells arms to a man who has the appearance of a ſenſible, ſedate perſon, and does not ſeem to have any bad deſign. And yet this man goes inſtantly to make an unjuſt attack on another perſon, and kills him. Here the gunſmith is not at all chargeable, having done nothing but what he had a right to do; and beſides he neither could nor ought to have foreſeen what happened. But if a perſon careleſsly leaves a pair of piſtols charged on a table, in a place expoſed to every body, and a child inſenſible of the danger, happens to wound or kill himſelf; the former is certainly anſwerable for the misfortune: by reaſon this was a clear and immediate conſequence of what he has done, and he could and ought to have foreſeen it.

We muſt reaſon in the ſame manner with reſpect to an action productive of ſome good. This good cannot be attributed to a perſon that has been the cauſe of it without knowledge or thought thereof. But in order to merit thanks and acknowledgment, there is no neceſſity of our being intirely ſure of ſucceſs; it is ſufficient there was room to reaſonably preſume it, and were the effects abſolutely to fail, the intention would not be the leſs commendable.

VI. 3. But in order to aſcend to the firſt principles of this theory, we muſt obſerve, that as man

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is ſuppoſed to be obliged by his nature and ſtate to follow certain rules of conduct; the obſervance of thoſe rules conſtitutes the perfection of his nature and ſtate; and, on the contrary, the infringing of them forms the degradation of both. Now we are made after ſuch a manner, that perfection and order pleaſe us of themſelves; while imperfection and diſorder, and whatever relates thereto, naturally diſpleaſe us. Conſequently, we acknowledge that thoſe who anſwering the end they were deſigned for, perform their duty, and contribute thus to the good and perfection of the human ſyſtem, are deſerving of our approbation, eſteem, and benevolence; that they may reaſonably expect theſe ſentiments in their favour, and have ſome ſort of a right to the advantageous effects which naturally ariſe from thence. We cannot, on the contrary, avoid condemning thoſe, who through a bad uſe of their faculties, degrade their own ſtate and nature; we confeſs they are worthy of diſapprobation and blame, and that it is agreeable to reaſon, the bad effects of their conduct ſhould fall upon themſelves. Such are the foundations of merit and demerit.

VII. Merit therefore is a quality which intitles us to the approbation, eſteem, and benevolence of our ſuperiors or equals, and to the advantages from thence reſulting. Demerit is an oppoſite quality, which rendering us worthy of the cenſure and blame of thoſe with whom we converſe, obliges us, as it were, to acknowledge that it is reaſonable they ſhould entertain thoſe ſentiments towards us; and that we are under a melancholy obligation of bearing the bad effects that flow from thence.

Theſe notions of merit, and demerit, have therefore, it is plain, their foundation in the very nature of things, and are perfectly agreeable to common ſenſe and the notions generally received. Praiſe and blame, where people judge reaſonably, always follow the quality of actions, according as they are morally

rally good or bad. This is clear with respect to the legislator: He must contradict himself in the grossest manner, were he not to approve what is conformable, and to condemn what is opposite to his laws. And as for those that depend on him, this very dependance obliges them to regulate their judgment on this subject.

VIII. 4. We have already * observed, that some actions are better than others, and that bad ones may likewise be more or less so, according to the different circumstances that attend them, and the disposition of the person that performs them. Merit and demerit have therefore their degrees; they may be greater or lesser. Wherefore when we are to determine exactly how far an action ought to be imputed to a person, we should have regard to these differences; and the praise or blame, the recompence or punishment, ought likewise to have their degrees in proportion to the merit or demerit. Thus according as the good or evil proceeding from an action is more or less considerable; according as there was more or less facility or difficulty to perform or to abstain from this action; according as it was done with more or less reflection and liberty; and finally, according as the reasons that ought to have determined us thereto, or diverted us from it, were more or less strong, and the intention and motives were more or less noble and generous; the imputation is made after a more or less efficacious manner, and its effects are more or less profitable or pernicious.

IX. 5. Imputation, as we have already hinted, may be made by different persons; and it is easy to comprehend, that in those different cases, the effects thereof are not always the same; but that they must be more or less important, according to the quality of

* Part i. chap. xi. sect. 12.

of the persons, and the different right they have in this respect. Sometimes imputation is confined simply to praise or blame; and at other times it goes further. This gives us room to distinguish two sorts of imputation, one simple, and the other efficacious. The first consists only in approving or disapproving the action; insomuch that no other effect arises from thence with regard to the agent. But the second is not confined to blame or praise; it produces moreover some good or bad effect with regard to the agent; that is some real and positive good or evil that befalls him.

X. 6. Simple imputation may be made indifferently by every one, whether they have or have not a particular and personal interest in the doing or omitting of the action: it is sufficient they have a general and indirect interest. And as we may affirm that all the members of society are interested in the due observance of the laws of nature, hence they have all a right to praise or condemn another man's actions according as they are conformable or contrary to those laws. They have even a kind of obligation in this respect. The regard they owe to the legislator and his laws, requires it of them; and they would be wanting in their duty to society and to individuals, were they not to testify, at least by their approbation or censure, the esteem they have for probity and virtue, and their aversion, on the contrary, to iniquity and vice.

But with regard to efficacious imputation, in order to render it lawful, we should have a particular and direct interest in the performing or omitting of the action. Now those who have such an interest, are, firstly, persons whom it concerns to regulate the actions; secondly, such as are the object thereof, namely, those towards whom we act, and to whose advantage or prejudice the thing may turn. Thus a sovereign who has enacted laws, who commands certain things with a promise of recompence, and

prohibit,

prohibits others under a commination of punishment, ought without doubt to concern himself about the observation of his laws, and has consequently a right to impute the actions of his subjects after an efficacious manner, that is, to reward or punish them. The same may be said of a person who has received some injury or damage by another man's action: this very thing gives him a right to impute the action efficaciously to its author, in order to obtain a just satisfaction, and a reasonable indemnification.

XI. 7. It may therefore happen, that several persons have a right to impute each on his side, the same action to the person that did it; because this action may interest them in different respects. And in that case, if any of the persons concerned has a mind to relinquish his right, by not imputing the action to the agent so far as it concerns himself; this does not in any shape prejudice the right of the rest, which is no way in his power. When a man does me an injury, I may indeed forgive him, as to what concerns myself; but this does not diminish the right the sovereign may have to take cognizance of the injury, and to punish the author, as an infringer of the law, and a disturber of the civil order and government. But if those who are interested in the action, are willing not to impute it, and all jointly forgive the injury and the crime; in this case the action ought to be morally esteemed as never committed, because it is not attended with any moral effect.

XII. 8. Let us, in fine, observe, that there is some difference between the imputation of good and bad actions. When the legislator has established a certain recompence for a good action, he obliges himself to give this recompence, and he grants a right of demanding it to those who have rendered themselves worthy thereof by their submission and obedience. But

But with respect to penalties enacted against bad actions, the legislator may actually inflict them, if he has a mind, and has an incontestible right to do it; insomuch that the criminal cannot reasonably complain of the evil he is made to undergo, because he has drawn it upon himself through his disobedience. But it does not from thence ensue, that the sovereign is obliged to punish to the full rigour; he is always master to exercise his right, or to shew grace; to intirely remit or to diminish the punishment; and he may have very good reasons for doing either.

CHAP XI.

Application of those principles to different species of actions in order to judge in what manner they ought to be imputed.

I. WE might be satisfied with the general principles above laid down, were it not useful to make an application of them, and to point out particularly those actions or events for which we are, or are not answerable.

1. And in the first place it follows, from what has been hitherto said, that we may impute to a person every action or omission, of which he is the author or cause, and which he could or ought to have done or omitted.

2. The actions of those that have not the use of reason, such as infants, fools and madmen, ought not to be imputed to them. The want of knowledge hinders, in such cases, imputation. For these persons being incapable of knowing what they are doing, or of comparing it with the laws; their actions are not properly human actions, nor do they include any morality. If we scold or beat a child, it is not by way of punishment; it is only a simple correction,

correction, by which we propose principally to hinder him from contracting a bad habit.

3. With regard to what is done in drunkenness, this state voluntarily contracted does not hinder the imputation of a bad action.

II. 4. We do not impute things that are really above a person's strength; no more than the omission of a thing commanded, if there has been no opportunity of doing it. For the imputation of an omission manifestly supposes these two things; first, that a person has had sufficient strength and means to act; and secondly, that he could have made use of those means, without any prejudice to some other more indispensable duty, or without drawing upon himself a considerable evil, to which there was no obligation of being exposed. It must be understood however, that the person has not brought himself into an incapacity of acting through his own fault; for then the legislator might as lawfully punish those who have reduced themselves to this incapacity, as if they had refused to act when they were capable of complying. Such was at Rome the case of those who cut off their thumbs, in order to disable themselves from handling arms and to be exempted from the service. In like manner a debtor is not excusable, when, through his own misconduct, he has rendered himself unable to discharge his debts. And we even become deservedly responsible for a thing in itself impossible, if we have undertaken to do it, when we knew, or might easily have known, that it surpassed our strength; in case any body happens, by this means to be injured.

III. 5. The natural qualities of body or mind cannot of themselves be imputed, either as good or evil. But a person is deserving of praise, when by his application and care these qualities are perfected, or these defects are mended; and, on the contrary, one is justly accountable for the imperfections

and

and infirmities that arise from bad conduct or neglect.

6. The effects of external causes and events, of what kind soever, cannot be attributed to a person, either as good or evil, but insomuch as he could and ought to procure, hinder, or direct them, and as he has been either careful or negligent in this respect. Thus we charge a good or bad harvest to a husbandman's account, according as he has tilled well or ill the ground, whose culture was committed to his care.

IV. 7. As for things done through error or ignorance, we may affirm in general, that a person is not answerable for what he has done through invincible ignorance, especially as it is involuntary in its origin and cause. If a prince travels through his own dominions disguised and *incognito*, his subjects are not to blame for not paying him the respect and honour due to him. But we should reasonably impute an unjust sentence to a judge, who neglecting to instruct himself either in fact or the law, should happen to want the knowledge necessary to decide with equity. But the possibility of getting instruction, and the care we ought to take for this purpose, are not strictly considered in the common run of life; we only look upon what is possible or impossible in a moral sense, and with a due regard to the actual state of humanity.

Ignorance or error, in point of laws and duties, generally passes for voluntary, and does not obstruct the imputation of actions or omissions from thence arising. This is a consequence of the principles* already established. But there may happen some particular cases, wherein the nature of the thing, which of itself is difficult to investigate, joined to the character and state of the person, whose faculties being naturally limited, have likewise been un-

* See part i, chap. i. sect. 12.

cultivated for want of education and assistance, renders the error insurmountable, and consequently worthy of excuse. It concerns the prudence of the legislator to weigh these circumstances, and to modify the imputation on this footing.

V. 8. Though temperament, habits, and passions, have of themselves a great force to determine some actions; yet this force is not such as absolutely hinders the use of reason and liberty, at least in respect to the execution of the bad designs they inspire. This is what all legislators suppose; and a very good reason they have to suppose it *. Natural dispositions, habits, and passions do not determine men invincibly to violate the laws of nature. These disorders of the soul are not incurable; with some pains and assiduity one may contrive to remove them, according to Cicero's observation, who alleges to this purpose the example of Socrates ‡.

But if instead of endeavouring to correct these vicious dispositions, we strengthen them by habit, this does not render us inexcusable. The power of habit is, indeed, very great; it even seems to impel us by a kind of necessity. And yet experience shews it is not impossible to master it, when we are seriously resolved to make the attempt. And were it even true that inveterate habits had a greater command over us than reason; yet as it was in our power not to contract them, they do not at all diminish the immorality of bad actions, and consequently they cannot hinder them from being imputed. On the contrary, as a virtuous habit renders actions more commendable; so the habit of vice cannot but augment its blame and demerit. In short, if inclinations, passions, or habits, could frustrate the effect of laws, it would be needless to trouble our heads about any

* See part i. chap. ii. sect. 16.

‡ Tuscul. quæst. lib. 4. cap. 37.

any direction of human actions; for the principal object of laws in general is to correct bad inclinations, to prevent vicious habits, to hinder their effects, and to eradicate the passions; or at least to contain them within their proper limits.

VI. 9. The different cases hitherto exposed, contain nothing very difficult or puzzling. There are some others a little more embarrassing, which require particular discussion.

The first question is, what we are to think of forced actions; whether they are of an imputable nature, and ought actually to be imputed?

I answer, 1. That a physical violence, and such as absolutely cannot be resisted, produces an involuntary action, which so far from meriting to be actually imputed, is not even of an imputable nature*. In this case, the author of the violence is the true and only cause of the action, and as such is the only person answerable for it, whilst the immediate agent being merely passive, the fact can be no more attributed to him than to the sword, to the stick, or to any other weapon with which the blow or wound was given.

2. But if the constraint arises from the apprehension or fear of some great evil, with which we are menaced by a person more powerful than ourselves, and who is able instantly to inflict it; it must be allowed, that the action done in consequence of this fear, does not cease to be voluntary, and therefore, generally speaking, it is of an imputable nature‡.

In order to know afterwards whether it ought actually to be imputed, it is necessary to inquire, whether the person on whom the constraint is laid, is under a rigorous obligation of doing or abstaining from a thing at the hazard of suffering the evil with which he is menaced. If so, and he determines

* See sect. 1.

‡ See part i. chap. ii. §. 12.

mines contrary to his duty, the conſtraint is not a ſufficient reaſon to ſcreen him abſolutely from imputation. For generally ſpeaking, it cannot be queſtioned but a lawful ſuperior can lay us under an indiſpenſable obligation of obeying his orders, at the hazard of bodily pain, and even at the riſk of our lives.

VII. Purſuant to theſe principles, we muſt diſtinguiſh between the different actions, and thoſe that are morally neceſſary. An action indifferent of its nature, extorted by main force, cannot be imputed to the perſon conſtrained; becauſe not being under any obligation in this reſpect, the author of the violence has no right to require any thing of him. And as the law of nature expreſsly forbids all manner of violence, it cannot authorize it at the ſame time, by laying the perſon that ſuffers the violence, under a neceſſity of executing a thing to which he has given only a forced conſent. Thus every forced promiſe or convention is null of itſelf, and has nothing in it obligatory as a promiſe or convention; on the contrary it may and ought to be imputed as a crime to the author of the violence. But were we to ſuppoſe that the perſon who uſes the conſtraint, exerciſes in this reſpect his own right, and purſues the execution thereof; the action though forced, is ſtill valid, and attended with all its moral effects. Thus a debtor, who void of any principle of honeſty, ſatisfies his creditor only through imminent fear of impriſonment, or of execution on his goods, cannot complain againſt this payment, as made by conſtraint and violence. For being under an obligation of paying his juſt debts, he ought to have done it willingly and of his own accord, inſtead of being obliged to it by force.

As for good actions, to which a perſon is determined by force, and, as it were, through fear of blows or puniſhment, they paſs for nothing, and merit

merit neither praiſe nor recompence. The reaſon hereof is obvious. The obedience required by the law ought to be ſincere; and we ſhould diſcharge our duties through a conſcientious principle, voluntarily, and with our own conſent and free will.

Finally, with regard to actions manifeſtly bad or criminal, to which a perſon is forced through fear of ſome great evil, and eſpecially death; we may lay down as a general rule, that the unhappy circumſtances under which a perſon labours, may indeed diminiſh the crime of a man unequal to this trial, who commits a bad action in ſpite of himſelf, and againſt his own inward conviction; yet the action remains intrinſically vicious, and worthy of cenſure; wherefore it may be, and actually is imputed, unleſs the exception of neceſſity can be alleged in the perſon's favour.

VIII. This laſt rule is a conſequence of the principles hitherto eſtabliſhed. A man who determines through fear of ſome great evil, but without ſuffering any phyſical violence, to do a thing viſibly criminal, concurs in ſome manner to the action, and acts voluntarily, though with regret. It does not abſolutely ſurpaſs the fortitude of the human mind to reſolve to ſuffer, nay to die, rather than be wanting in our duty. We ſee a great many people who have a courage of this kind for very frivolous ſubjects, which make a lively impreſſion on them; and though the thing be really difficult, yet it is not impoſſible. The legiſlator may therefore impoſe a rigorous obligation of obeying, and have juſt reaſons for ſo doing. The intereſt of ſociety frequently requires examples of undaunted conſtancy. It was never a queſtion among civilized nations, and thoſe that had imbibed any principles of morality, whether, for example, it was lawful to betray one's country for the preſervation of life? and it is well known that the oppoſite maxim was a received principle among

among the Greeks and Romans. Several heathen moralists have strongly inculcated this doctrine, namely, that the dread of pains and torments ought not to prevail upon any man to make him do things contrary to religion or justice. *If you are summoned as a witness*, says a Latin poet, *in a dubious and equivocal affair, tell the truth, and do not be afraid; tell it, were even Phalaris to menace you with his bull unless you bore false witness. Fix it as a maxim in your mind, that it is the greatest of evils to prefer life to honour; and never attempt to preserve it at the expence of the only thing that can render it desirable.*

———Ambiguæ si quando citabere testis
Incertæque rei; Phalaris licet imperet, ut sis
Falsus, et admoto dictet perjuria tauro,
Summum crede nefas animam præferre pudori,
Et propter vitam vivendi perdere causas.

JUVEN. sat. 8. ver. 80.

And if a witness in a doubtful cause,
Where a brib'd judge means to elude the laws;
Though Phalaris's brazen bull were there,
And he would dictate what he'd have you swear,
Be not so profligate, but rather chuse
To guard your honour, and your life to lose,
Rather than let your virtue be betray'd:
Virtue! the noblest cause for which you're made.

STEPNEY.

Such is the rule. It may happen nevertheless, as we have already hinted, that the necessity a person is under, may furnish a favourable exception, so as to hinder the action from being imputed. To explain this, we should be obliged to enter into some particulars that belong to another place. It is sufficient here to observe, that the circumstances a person is under, give us frequent room to form a reasonable presumption, that the legislator himself excuses him from

from ſuffering the evil with which he is menaced, and therefore allows him to deviate from the deciſion of the law; and this may be always preſumed, when the ſide a perſon takes, in order to extricate himſelf from his perplexity, includes a leſſer evil than that with which he is menaced.

IX. But Puffendorf's principles concerning this queſtion ſeem to be neither juſt in themſelves, nor well connected. He lays down as a rule, that conſtraint, as well as phyſical and actual violence, excludes all imputation, and that an action extorted through fear, ought no more to be imputed to the immediate agent, than to the ſword which a perſon uſes in giving a wound. To which he adds that with regard to ſome very infamous actions, it is a mark of a generous mind to chuſe rather to die than to ſerve as an inſtrument to ſuch flagitious deeds, and the caſes like theſe ought to be excepted*. But it has been juſtly obſerved, that this author gives too great an extent to the effect of conſtraint; and that the example of the axe or ſword, which are mere paſſive inſtruments, proves nothing at all. Beſides, if the general principle is ſolid, we don't ſee why he ſhould have excepted particular caſes; or at leaſt he ought to have given us ſome rule to diſtinguiſh thoſe exceptions with certainty.

X. 10. But if the perſon who does a bad action through fear, is generally anſwerable for it, the author of the conſtraint is not leſs ſo; and we may juſtly render him accountable for the ſhare he has had therein.

This gives us an opportunity to add a few reflections on thoſe caſes in which ſeveral perſons concur to the ſame action; and to eſtabliſh ſome principles whereby we may determine in what manner the action

* See the Duties of Man and a Citizen, book i. chap. i. §. 24. and the Law of Nature and Nations, book i. chap. v. ſect. 9. with Barbeyrac's notes.

action of one perſon is imputable to another. This ſubject being of great uſe and importance, deſerves to be treated with exactneſs.

1. Every man, ſtrictly ſpeaking, is anſwerable only for his own actions, that is for what he himſelf has done or omitted: for with regard to another perſon's actions, they cannot be imputed to us, but inaſmuch as we have concurred to them, and as we could and ought to have procured, hindered, or at leaſt directed them after a certain manner. The thing ſpeaks for itſelf. For to impute another man's actions to a perſon, is declaring that the latter is the efficient, though not the only cauſe thereof; and conſequently that this action depended in ſome meaſure on his will, either in its principle, or execution.

2. This being premiſed, we may affirm that every man is under a general obligation of doing all he can to induce every other perſon to diſcharge his duty, and to prevent him from committing a bad action, and conſequently not to contribute thereto himſelf, either directly or indirectly, with a premeditated purpoſe and will.

3. By a much ſtronger reaſon we are anſwerable for the actions of thoſe over whom we have a particular inſpection, and whoſe direction is committed to our care; wherefore the good or evil done by thoſe perſons, is not only imputable to themſelves, but likewiſe to thoſe to whoſe direction they are ſubject; according as the latter have taken or neglected the care that was morally neceſſary, ſuch as the nature and extent of their commiſſion and power required. It is on this footing we impute, for example, to the father of a family, the good or bad conduct of his children.

4. Let us obſerve likewiſe, that in order to be reaſonably eſteemed to have concurred to another man's action, it is not at all neceſſary for us to be ſure of procuring or hindering it, by doing or omitting particular things; it is ſufficient, in this reſpect, that we have ſome probability, or veriſimilitude.

And

And as, on the one ſide, this default of certainty does not excuſe neglect; on the other, if we have done all that we ought, the want of ſucceſs cannot be imputed to us; the blame in that caſe falls intirely upon the immediate author of the action.

5. In fine, it is proper alſo to remark, that in the queſtion now before us, we are not inquiring into the degree of virtue or malice which is found in the action itſelf, and rendering it better or worſe, augments its praiſe or cenſure, its recompenſe or puniſhment. All that we want, is to make a proper eſtimate of the degree of influence a perſon has had over another man's action, in order to know, whether he can be conſidered as the moral cauſe thereof, and whether this cauſe is more or leſs efficacious. To diſtinguiſh this properly, is a matter of ſome importance.

XI. In order to meaſure, as it were, this degree of influence, which decides the manner wherein we can impute to any one, another man's action, there are ſeveral circumſtances and diſtinctions to obſerve, without which we ſhould form a wrong judgment of things. For example, it is certain that a ſimple approbation, generally ſpeaking, has much leſs efficacy to induce a perſon to act, than a ſtrong perſuaſion, or a particular inſtigation. And yet the high opinion we conceive of a perſon, and the credit from thence ariſing, may occaſion a ſimple approbation to have ſometimes as great, and perhaps a greater influence over a man's action, than the moſt preſſing perſuaſion, or the ſtrongeſt inſtigation from another quarter.

We may range under three different claſſes, the moral cauſes that influence another man's action. Sometimes it is a principal cauſe, inſomuch that the perſon who executes is only a ſubaltern agent; ſometimes the immediate agent, on the contrary, is the principal cauſe, while the other is only the ſubaltern; and

and at other times they are both collateral causes, which have an equal influence over the action.

XII. A person ought to be esteemed the principal cause, who by doing or omitting some things, influences, in such a manner another man's action or omission, that, were it not for him, this action or omission would not have happened, though the immediate agent has knowingly contributed to it. An officer, by express orders of his general or prince, performs an action evidently bad: in this case the prince or general is the principal cause, and the officer only the subaltern. David was the principle cause of the death of Urias, though Joab contributed thereto, being sufficiently apprized of the king's intention. In like manner Jezabel was the principal cause of the death of Naboth*.

I mentioned that the immediate agent must have contributed knowingly to the action. For suppose he could not know whether the action be good or bad, he can then be considered only as a simple instrument, but the person who gave the orders, being in that case the only and absolute cause of the action, is the only one answerable for it. Such in general is the case of subjects, who serve by order of their sovereign in an unjust war.

But the reason why a superior is deemed the principal cause of what is done by those that depend on him, is not properly their dependance; it is the order he gives them, without which it is supposed they would not of themselves have attempted the action. From whence it follows, that every other person, who has the same influence over the actions of his equals, or even of his superiors, may for the same reason be considered as the principal cause. This is what we may very well apply to the counsellors of princes, or to ecclesiastics that have an ascendancy over their minds, and who make a wrong use of it sometimes, in order to persuade them to things which they would never

* See 2 Sam. chap. ii. and 1 Kings, chap. xxi.

never have determined to do of themſelves. In this caſe, praiſe or blame falls principally on the author of the ſuggeſtion or counſel*.

XIII. A collateral cauſe is he who in doing or omitting certain things, concurs ſufficiently, and as much as in him lies, to another man's action; inſomuch that he is ſuppoſed to co-operate with him; though one cannot abſolutely preſume, that without his concurrence the action would not have been committed. Such are thoſe who furniſh ſuccours to the immediate agent; or thoſe who ſhelter and protect him; for example, he who while another breaks open the door, watches all the avenues of the houſe, in order to favour the robbery, &c. A conſpiracy among ſeveral people, renders them generally all guilty alike. They are all ſuppoſed equal and collateral cauſes, as being aſſociated for the ſame fact, and united in intereſt and will. And though each of them has not an equal part in the execution, yet their actions may be very well charged to one another's account.

XIV. Finally, a ſubaltern cauſe is he who has but a ſmall influence or ſhare in another man's action,

* We ſhall tranſcribe here, with pleaſure, the judicious reflections of M. Bernard (Nouvelles de la Republique des Lettres, Auguſt 1702. p. 291.) In England it is very common to charge the faults of the prince to the miniſters, and I own, that very often the charge is juſt. But the crimes of the miniſters do not always excuſe the faults of the ſovereign; for after all, they have reaſon and underſtanding as well as other people, and are maſters to do as they pleaſe. If they let themſelves be too much governed by thoſe that have the freeſt acceſs to them, it is their fault. They ought on ſeveral occaſions to ſee with their own eyes, and not to be led by the noſe by a wicked and avaricious courtier. But if they are incapable to manage matters themſelves, and to diſtinguiſh good from evil, they ought to reſign the care of government to others that are capable: For I do not know, why we may not apply to princes who govern ill, the ſaying of Charles Borromeus, in reſpect to biſhops who do not feed properly their flocks; "If they are "incapable of ſuch an employment, why ſo much ambition? If "they are capable, why ſo much neglect?".

tion, and is only a ſlight occaſion thereof by facilitating its execution; inſomuch that the agent, already abſolutely determined to act, and having all the neceſſary means for ſo doing, is only encouraged to execute his reſolution; as when a perſon tells him the manner of going about it, the favourable moment, the means of eſcaping, &c. or when he commends his deſign, and animates him to purſue it.

May not we rank in the ſame claſs the action of a judge, who, inſtead of oppoſing an opinion ſupported by a generality of votes, but by himſelf adjudged erroneous, ſhould acquieſce therein, either through fear or complaiſance? Bad example muſt be alſo ranked among the ſubaltern cauſes. For generally ſpeaking, examples of this nature make impreſſion only on thoſe who are otherwiſe inclined to evil, or ſubject to be eaſily led aſtray; inſomuch that thoſe who ſet ſuch examples, contribute but very weakly to the evil committed by imitation. And yet there are ſome examples ſo very efficacious, by reaſon of the character of the perſons that ſet them, and the diſpoſition of thoſe who follow them, that if the former had refrained from evil, the latter would never have thought of committing it. Such are the bad examples of ſuperiors, or of men who by their knowledge and reputation have a great aſcendency over others; theſe are particularly culpable of all the evil which enſues from the imitation of their actions. We may reaſon in the ſame manner with reſpect to ſeveral other caſes. According as circumſtances vary, the ſame things have more or leſs influence on other men's actions, and conſequently thoſe who by ſo doing concur to theſe actions, ought to be conſidered ſometimes as principal, ſometimes as collateral, and ſometimes as ſubaltern cauſes.

XV. The application of theſe diſtinctions and principles is obvious. Suppoſing every thing elſe equal, collateral cauſes ought to be judged alike: But

But principal causes merit without doubt more praise or blame, and a higher degree of recompense or punishment than subaltern causes. I said, *supposing every thing else equal;* for it may happen through a diversity of circumstances, which augment or diminish the merit or demerit of an action, that the subaltern cause acts with a greater degree of malice than the principal one, and the imputation is thereby aggravated in respect to the subaltern. Let us suppose, for example, that a person in cool blood assassinates a man, at the instigation of one who was animated thereto by some atrocious injury he had received from his enemy. Though the instigator is the principal author of the murder, yet his action, done in a transport of choler, will be esteemed less heinous than that of the murderer, who, calm and serene himself, was the base instrument of the other's passion.

We shall close this chapter with a few remarks: And 1. Though the distinction of three classes of moral causes, in respect to another man's action, be in itself very well founded, we must own, nevertheless, that the application thereof to particular cases is sometimes difficult. 2. In dubious cases, we should not easily charge, as a principal cause, any other person but the immediate author of the action; we ought to consider those who have concurred thereto, rather as subaltern, or at the most as collateral causes. 3. In fine, it is proper to observe, that Puffendorf, whose principles we have followed, settles very justly the distinction of moral causes; but not having exactly defined these different causes, in the particular examples he alleges, he refers sometimes to one class what properly belonged to another. This has not escaped Mons. Barbeyrac, whose judicious remarks have been here of particular use to us*.

CHAP.

* See Barbeyrac's notes on the Duties of Man and a Citizen, book 1. chap. i. sect. 27.

CHAP. XII.

Of the authority and sanction of natural laws: and 1. Of the good or evil that naturally and generally follows from virtue or vice.*

I. WE understand here, by the authority of natural laws, the force they receive from the approbation of reason, and especially from their being acknowledged to have God for their author: This is what lays us under a strict obligation of conforming our conduct to them, because of the sovereign right which God has over his creatures. What has been already explained, concerning the origin and nature, reality and certainty of those laws, is sufficient, methinks, to establish also their authority. Yet we have still some small matter to say in relation to this subject. The force of laws, properly so called, depends principally on their sanction †. This is what gives a stamp, as it were, to their authority. It is therefore a very necessary and important point, to inquire whether there be really any such thing as a sanction of natural laws, that is, whether they are accompanied with comminations and promises, punishments and rewards.

II. The first reflection that presents itself to our minds, is, that the rules of conduct, distinguished by the name of natural laws, are proportioned in such a manner to our nature, to the original dispositions and natural desires of our soul, to our constitution, to our wants and actual situation in life, that it evidently appears they are made for us. For in general, and every thing well considered, the observance

* See Puffendorf, Law of Nature and Nations, book ii. chap. iii. sect. 21.

† See part i. chap. x. sect. 11.

ſervance of thoſe laws is the only means of procuring a real and ſolid happineſs to individuals, as well as to the public; whereas the infraction thereof precipitates men into diſorders prejudicial alike to individuals, as to the whole ſpecies. This is, as it were, the firſt ſanction of natural laws.

III. In order to prove our point, and to eſtabliſh rightly the caſe of the queſtion, we muſt obſerve, 1. That when the obſervance of natural laws is ſaid to be capable alone of forming the happineſs of man and ſociety, we do not mean that this happineſs can be ever perfect, or ſuperior to all expectation; humanity having no pretence to any thing of this kind; and if virtue itſelf cannot produce this effect, it is not at all probable that vice has any advantage over her in this reſpect.

2. As we are inquiring which is the proper rule that man ought to go by, our queſtion is properly reduced to this point, whether in general, and every thing conſidered, the obſervance of natural laws is not the propereſt and ſureſt means to conduct man to his end, and to procure him the pureſt, the completeſt, and the moſt durable happineſs that can poſſibly be enjoyed in this world; and not only with regard to ſome perſons, but to all mankind; not only in particular caſes, but likewiſe through the whole courſe of life.

On this footing, it will not be a difficult taſk to prove, as well by reaſon as by experience, that the proper ordinary effect of virtue is really ſuch as has been mentioned, and that vice, or the irregularity of paſſions, produces a quite oppoſite effect.

IV. We have already ſhewn, in diſcourſing of the nature and ſtate of humanity, that in what manner and light ſoever we conſider the ſyſtem of humanity, man can neither anſwer his end, nor perfect his talents and faculties, nor acquire any ſolid happineſs, or reconcile it with that of his fellow-creatures, but by

by the help of reason; that it ought to be therefore his first care to improve his reason, to consult it, and follow the counsels thereof; that it informs him, there are some things which are fit, and others unfit for him; that the former have not all an equal fitness, nor in the same manner: that he ought therefore to make a proper distinction between good and evil, in order to regulate his conduct: that true happiness cannot consist in things incompatible with his nature and state: and, in fine, that since the future ought to be equally the object of his views as the present and past, it is not sufficient in order to attain certain happiness, to consider merely the present good or evil of each action; but we should likewise recollect what is past, and extend our views to futurity, in order to combine the whole, and see what ought to be the result thereof in the intire duration of our being. These are so many evident and demonstrable truths. Now the laws of nature are no more than consequences of these primitive truths; whence it appears that they have necessarily and of themselves, a great influence on our happiness. And how is it possible to call this in question, after having seen in the course of this work, that the sole method to discover the principles of those laws, is to set out with the study of the nature and state of man, and to inquire afterwards into what is essentially agreeable to his perfection and happiness.

V. But that which appears so clear and so well established by reason, is rendered incontestible by experience. In fact, we generally observe that virtue, that is, the observance of the laws of nature, is of itself a source of internal satisfaction, and that it is infinitely advantageous in its effects, whether in particular to individuals, or to human society in general, whereas vice is attended with quite different consequences.

Whatever is contrary to the light of reason and conscience, cannot but be accompanied with a secret disap-

diſapprobation of mind, and afford us vexation and ſhame. The heart is afflicted with the idea of the crime, and the remembrance thereof is always bitter and ſorrowful. On the contrary, every conformity to right reaſon is a ſtate of order and perfection, which the mind approves; and we are framed in ſuch a manner, that a good action becomes the ſeed, as it were, of a ſecret joy; and we always recollect it with pleaſure. And indeed, what can be ſweeter or more comfortable, than to be able to bear an inward teſtimony to ourſelves, that we are what we ought to be, and that we perform what is reaſonably our duty, what fits us beſt, and is moſt conformable to our natural deſtination? Whatever is natural, is agreeable; and whatever is according to order, is a ſubject of ſatisfaction and content.

VI. Beſides this internal principle of joy, which attends the practice of natural laws, we find it produces externally all ſorts of good effects. It tends to preſerve our health, and to prolong our days; it exerciſes and perfects the faculties of the mind; it renders us fit for labour, and for all the functions of domeſtic and civil life; it ſecures to us the right uſe and poſſeſſion of all our goods and property; it prevents a great number of evils, and ſoftens thoſe it cannot prevent; it procures us the confidence, eſteem, and affection of other men; from whence reſult the greateſt comforts of ſocial life, and the moſt effectual helps for the ſucceſs of our undertakings.

Obſerve on what the public ſecurity, the tranquillity of families, the proſperity of ſtates, and the abſolute welfare of every individual are founded. Is it not on the grand principles of religion, temperance, modeſty, beneficence, juſtice, and ſincerity? Whence ariſe, on the contrary, the greateſt part of the diſorders and evils that trouble ſociety, and break in upon the happineſs of man? Whence, but from th neglect of thoſe very principles? Beſides the inquie-

tude and infamy that generally accompany irregularity and debauch, vice is likewise attended with a multitude of external evils, such as the infeebling of the body and mind, distempers and untoward accidents, poverty, very often and misery, violent and dangerous parties, domestic jars, enmities, continual fears, dishonour, punishments, contempt, hatred, and a thousand crosses and difficulties in every thing we undertake. One of the ancients has very elegantly said *, *that malice drinks one half of her own poison.*

VII. But if such are the natural consequences of virtue and vice in respect to the generality of mankind; these effects are still greater among those who by their condition and rank have a particular influence on the state of society, and determine the fate of other men. What calamities might not the subjects apprehend, if their sovereigns were to imagine themselves superior to rule, and independent of all law; if directing every thing to themselves, they were to listen only to their own whims and caprice, and to abandon themselves to injustice, ambition, avarice and cruelty? What good on the contrary, must not arise from the government of a wise and virtuous prince; who considering himself under a particular obligation of never deviating from the rules of piety, justice, moderation, and beneficence, exercises his power with no other view but to maintain order within, and security without, and places his glory in ruling his subjects uprightly, that is, in making them wise and happy? We need only have recourse to history, and consult experience, to be convinced that these are real truths, which no reasonable person can contest.

VIII. This is a truth so generally acknowledged, that all the institutions which men form among themselves

* Seneca. ep. 82. Quemadmodum Attalus noster dicere solebat, via ipsa maximam partem veneni sui bibit.

themſelves for their common good and advantage, are founded on the obſervance of the laws of nature; and that even the precautions taken to ſecure the effect of theſe inſtitutions, would be vain and uſeleſs, were it not for the authority of thoſe very laws. This is what is manifeſtly ſuppoſed by all human laws in general; by the eſtabliſhments of the education of youth; by the political regulations which tend to promote the arts and commerce; and by public as well as private treaties. For of what uſe would all thoſe things be, or what benefit could accrue from thence, were we not previouſly to eſtabliſh them on juſtice, probity, ſincerity, and the ſacred inviolability of an oath, as on their real foundation and baſis?

IX. But in order to be more ſenſibly ſatisfied of this truth, let any one try that pleaſes, to form a ſyſtem of morality on principles directly oppoſite to thoſe we have now eſtabliſhed. Let us ſuppoſe that ignorance and prejudice take place of knowledge and reaſon; that caprice and paſſion are ſubſtituted inſtead of prudence and virtue: let us baniſh juſtice and benevolence from ſociety, and from the commerce of mankind, to make room for unjuſt ſelf-love, which calculating every thing for itſelf, takes no notice of other people's intereſt, or of the public advantage. Let us extend and apply theſe principles to the particular conditions of human life, and we ſhall ſee what muſt be the reſult of a ſyſtem of this kind, were it ever to be received and paſs for a rule. Can we imagine it would be able to produce the happineſs of ſociety, the good of families, the advantage of nations and the welfare of mankind? No one has ever yet attempted to maintain ſuch a paradox; ſo evident and glaring is the abſurdity thereof.

X. I am not ignorant, that injuſtice and paſſion are capable in particular caſes of procuring ſome plea-

ſure or advantage. But not to mention that virtue produces much oftner and with greater certainty the ſame effects; reaſon and experience inform us, that the good procured by injuſtice is not ſo real, ſo durable, nor ſo pure, as that which is the fruit of virtue. This is becauſe the former being unconformable to the ſtate of a rational and ſocial being, is defective in its principle, and has only a deceitful appearance*. It is a flower which having no root, withers and falls almoſt as ſoon as it bloſſoms.

With regard to ſuch evils and misfortunes as are annexed to humanity, and to which it may be ſaid, that virtuous people are expoſed as well as others; certain it is, that virtue has here alſo a great many advantages. In the firſt place, it is very proper of itſelf to prevent or remove ſeveral of thoſe evils; and thus we obſerve that wiſe and ſober people actually eſcape a great many precipices and ſnares into which the vicious and inconſiderate are hurried. 2. In caſes wherein wiſdom and prudence cannot prevent thoſe evils, yet it gives the ſoul a ſufficient vigour to ſupport them, and counterbalances them with ſweets and conſolations which contribute to abate in great meaſure their impreſſion. Virtue is attended with an inſeparable contentment, of which nothing can bereave us; and our eſſential happineſs is very little impaired by the tranſitory, and, in ſome meaſure, external accidents that ſometimes diſturb us.

Surpriſed I am (ſays Iſocrates) † *that any one ſhould imagine, that thoſe who adhere conſtantly to piety and juſtice,*

* See part i. chap. vi. ſect. 3.

† Θαυμάζω δ' εἴ τις οἴεται τοὺς τὴν εὐσέβειαν καὶ τὴν δικαιοσύνην ἀσκοῦντας, καὶ καρτερεῖν καὶ μένειν ἐν τούτοις ἐθέλοντας. ἔλαττον ἕξειν τῶν πονηρῶν· ἀλλ' οὐχ ἡγουμένους καὶ παρὰ θεοῖς καὶ παρὰ ἀνθρώποις πλέον οἴσεσθαι, τῶν ἄλλων, ἐγὼ μὲν γὰρ οἴομαι τούτους μόνους, ὧν δεῖ πλεονεκτεῖν. τοὺς δ' ἄλλους οὐδὲ γινώσκειν οὐδὲν ὧν βελτίον ἐστὶν. ὁρῶ γὰρ τοὺς μὲν τὴν ἀδικίαν προτιμῶντας, καὶ τὸ λαβεῖν τι τῶν ἀλλοτρίων μέγιστον ἀγαθὸν νομίζοντας, ὅμοια πάσχοντας τοῖς δελεαζομένοις τῶν

justice, must expect to be more unhappy than the unrighteous, and have not a right to promise themselves greater advantages from the gods and men. For my part I am of opinion, that the virtuous alone abundantly enjoy whatever is worthy of our pursuit; and the wicked, on the contrary, are intirely ignorant of their real interests. He that prefers injustice to justice, and makes his sovereign good consist in depriving another man of his property, is like, methinks, to those brute creatures that are caught by the bait; the unjust acquisition flatters his senses at first, but he soon finds himself involved in very great evils. Those on the contrary who take up with justice and piety, are not only safe for the present, but have likewise reason to conceive good hopes for the remainder of their lives. I own, indeed, that this does not always happen; yet it is generally confirmed by experience. Now in things whose success cannot be infallibly foreseen, it is the business of a prudent man to embrace that side which most generally turns out to his advantage. But nothing is more unreasonable than the opinion of those, who believing that justice has something in it more beautiful and more agreeable to the gods than injustice, imagine nevertheless that those who embrace the former are more unhappy than such as abandon themselves to the latter.

XI. Thus

τῶν ζώων, καὶ καταρχὰς μὲν ἀπολαύοντας ὧν ἂν λάβωσιν, ὀλίγῳ δ' ὕστερον ἐν τοῖς μεγίστοις κακοῖς ὄντας τοὺς δὲ μετ' εὐσεβείας καὶ δικαιοσύνης ζῶντας. ἔν τε τοῖς παρέσι χρόνοις ἀσφαλῶς διάγοντας, καὶ περὶ τοῦ σύμπαντος αἰῶνος ἀδήους τὰς ἐλπίδας ἔχοντας· καὶ ταυτ' εἰ μὴ κατὰ πάντων οὕτως εἴθισται συμβαίνειν, ἀλλὰ τὸ γ' ὡς ἐπὶ τὸ πολὺ τοῦτον γίγνεσθαι τὸν τρόπον. χρὴ δὲ τοὺς εὖ φρονοῦντας, ἐπειδὴ τὸ μέλλον ἀεὶ συνοίσειν ὁ καθορῶμεν, τὸ πολλάκις ὠφελοῦν τοῦτο φαίνεσθαι προαιρουμένους· πάντων δ' ἀλογώτατον πεπόνθασιν, ὅσοι καλλίον μὲν ἐπίπλευμα νομίζουσιν εἶναι. καὶ θεοφιλέστερον τὴν δικαιοσύνην τῆς ἀδικίας· χείρον δ' οἴονται βιώσεσθαι τοὺς ταύτῃ χρωμένους, τῶν τὴν πονηρίαν προηρημένων. *Isocrat. Orat. de Permutatione.*

XI. Thus every thing duly considered, the advantage is without comparison on the side of virtue. It manifestly appears, that the scheme of the divine wisdom was to establish a natural connection between physical and moral evil, as between the effect and the cause; and on the contrary, to intail physical good, or the happiness of man, on moral good, or the practice of virtue: insomuch, that generally speaking, and pursuant to the original institution of things, the observance of natural laws is as proper and necessary to advance both the public and particular happiness, as temperance and good regimen is naturally conducive to the preservation of health. And as these natural rewards and punishments of virtue and vice, are an effect of the divine institution; they may be really considered, as a kind of sanction of the laws of nature, which add a considerable authority to the maxims of right reason.

XII. And yet we must acknowledge, that this first sanction does not as yet seem sufficient to give all the authority and weight of real laws, to the counsels of reason. For if we consider the thing strictly, we shall find, that by the constitution of human things, and by our natural dependance upon one another, the general rule above mentioned is not so fixt and invariable, but it admits of divers exceptions, by which the force and effect thereof must certainly be weakened.

1. Experience, in general, shews us, that the degree of happiness or misery which every one enjoys in this world, is not always exactly proportioned and measured to the degree of virtue or vice of each particular person. Thus health, the goods of fortune, education, situation of life, and other external advantages, generally depend on a variety of conjunctures, which render their distribution very unequal; and these advantages are frequently lost by accidents, to which all men are equally subject. True it is, that

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that the difference of rank and riches does not absolutely determine the happineſs or miſery of life: yet agree we muſt, that extreme poverty, the privation of all neceſſary means of inſtruction, exceſſive labour, afflictions of the mind, and pains of the body, are real evils, which a variety of caſualties may bring as well upon virtuous as other men.

2. Beſides this unequal diſtribution of natural goods and evils, honeſt men are no more ſheltered than others, from divers evils ariſing from malice, injuſtice, violence, and ambition. Such are the perſecutions of tyrants, the horrors of war, and ſo many other public or private calamities to which the good and the bad are indiſcriminately ſubject. It even frequently happens, that the authors of all thoſe miſeries are thoſe who feel leaſt their effects, either becauſe of their extraordinary ſucceſs and good fortune, or becauſe their inſenſibility is arrived to that pitch, as to let them enjoy, almoſt without trouble and remorſe, the fruit of their iniquities.

3. Again. It is not unuſual to ſee innocence expoſed to calumny; and virtue itſelf become the object of perſecution. Now in thoſe particular caſes, in which the honeſt man falls, as it were, a victim to his own virtue, what force can the laws of nature be ſaid to have, and how can their authority be ſupported? Is the internal ſatisfaction ariſing from the teſtimony of a good conſcience, capable alone to determine man to ſacrifice his property, his repoſe, his honour, and even his life? And yet thoſe delicate conjunctures frequently happen; and the reſolution then taken, may have very important and extenſive conſequences in relation to the happineſs and miſery of ſociety.

XIII. Such is indeed the actual ſtate of things. On the one ſide we ſee, that in general the obſervance of natural laws is alone capable of eſtabliſhing ſome order in ſociety, and of conſtituting the happineſs of

of man; but on the other it appears, that virtue and vice are not always sufficiently characterized by their effects, and by their common and natural consequences, to make this order on all occasions prevail.

Hence arises a considerable difficulty against the moral system by us established. All laws, some will say, ought to have a sufficient sanction to determine a reasonable creature to obey, by the prospect of its own good and interest, which is always the *primum mobile* of its actions. Now though the moral system you have spoke of, gives in general a great advantage to its followers, over those who neglect it; yet this advantage is neither so great, nor so sure, as to be capable to indemnify us sufficiently in each particular case for the sacrifices we are obliged to make in the discharge of our duty. This system is not therefore as yet supported with all the authority and force necessary for the end that God proposes; and the character of law, especially of a law proceeding from an all-wise being, requires still a more distinct, surer, and more extensive sanction.

That legislators and politicians have been sensible of this deficiency, is manifest, by their endeavouring to supply it in the best manner they are able. They have published a civil law, which tends to strengthen the law of nature; they have denounced punishments against vice, promised rewards to virtue, and erected tribunals. This is undoubtedly a new support of justice, and the best human method that could be contrived to prevent the forementioned inconveniencies. And yet this method does not provide against every disorder, but leaves still a great vacuum in the moral system.

For 1. There are several evils, as well natural as arising from human injustice, from which all the powers of man cannot preserve even the most virtuous. 2. Human laws are not always drawn up in conformity to justice and equity. 3. Let them be supposed ever so just, they cannot extend to every case.

caſe. 4. The execution of thoſe laws is ſometimes committed to weak, ignorant, or corrupt men. 5. How great ſoever the integrity of a magiſtrate may be, ſtill there are many things that eſcape his vigilance: he cannot ſee and redreſs every grievance. 6. It is not an unexampled caſe, that virtue inſtead of finding a protector in its judge, meets with an implacable enemy. What reſource ſhall be left to innocence in that caſe? To whom ſhall ſhe fly for ſuccour, if the very perſon that ought to undertake her protection and defence, is armed againſt her?

XIV. Thus the difficulty ſtill ſubſiſts; a difficulty of very great conſequence, becauſe on the one ſide it makes againſt the plan of a divine Providence, and on the other it may contribute to invalidate what we have ſaid with reſpect to the empire of virtue, and its neceſſary connection with the felicity of man.

So weighty an objection that has been ſtarted in all ages, deſerves we ſhould careſully endeavour to remove it. But the greater and more real it is, the more probably we may preſume it has a proper ſolution. For how is it to be imagined, that the Divine Wiſdom could have left ſuch an imperfection, ſuch an enigma in the moral order, after having regulated every thing ſo well in the phyſical world?

Let us therefore ſee whether ſome new reflections on the nature and deſtination of man, will not direct us to a different place from the preſent life, for the ſolution we are here inquiring. What has been ſaid concerning the natural conſequences of virtue and vice on this earth, already ſhews us a demi-ſanction of the laws of nature: let us try whether we cannot find an intire and proper one, whoſe ſpecies, degree, time, and manner, depend on the good will of the legiſlator, and are ſufficient to make all the compenſations required by ſtrict juſtice, and to place in this, as in every other reſpect, the ſyſtem of the divine laws much above thoſe of human inſtitution.

CHAP.

CHAP. XIII.

Proofs of the immortality of the soul. That there is a sanction, properly so called, in respect to natural law.

I. THE difficulty we have been speaking of, and which we attempt here to illustrate, supposes, as every one may see, that the human system is absolutely limited to the present life; that there is no such thing as a future state, and consequently that there is nothing to expect from the Divine Wisdom in favour of the laws of nature, beyond what is manifested in this life.

Were it possible, on the contrary, to prove that the present state of man is only the commencement of a more extensive system; and moreover, that the supreme Being has really been pleased to invest the rules of conduct prescribed to us by reason, with all the authority of laws, by strengthening them with a sanction properly so called; we might in fine conclude, that there is nothing wanting to complete the moral system.

II. The learned are divided in their opinions with respect to these important questions. Some there are who maintain, that reason alone affords clear and demonstrative proofs, not only of the rewards and punishments of a future life; but likewise of a state of immortality. Others on the contrary pretend, that by consulting reason alone, we meet with nothing but obscurity and uncertainty, and that so far from finding any demonstration this way, we have not even a probability of a future life.

It is carrying the thing too far, perhaps, on both sides, to reason after this manner. Since the question is concerning a point which depends intirely on the will of the Deity, the best way undoubtedly to know this will, would be an express declaration on his side.

But

But confining ourſelves within the circle of natural knowledge, let us try whether independently of this firſt method, reaſon alone can afford us any ſure light in relation to this ſubject, or furniſh us with conjectures and preſumptions ſufficiently ſtrong, to infer from thence with any certainty the will of God. With this view let us inveſtigate a little cloſer the nature and preſent ſtate of man, let us conſult the ideas which right reaſon gives us of the perfection of the ſupreme Being, and of the plan he has formed with reſpect to mankind; in order to know, in fine, the neceſſary conſequences of the natural laws he has been pleaſed to preſcribe.

III. With regard to the nature of man, we are firſt of all to inquire whether death be really the laſt term of our exiſtence, and the diſſolution of the body be neceſſarily followed with the annihilation of the ſoul; or whether the ſoul is immortal, that is, whether it ſubſiſts after the death of the body?

Now the immortality of the ſoul is ſo far from being in itſelf impoſſible, that reaſon ſupplies us with the ſtrongeſt conjectures, that this is in reality the ſtate for which it was deſigned.

The obſervations of the ableſt philoſophers diſtinguiſh abſolutely the ſoul from the body, as a being in its nature eſſentially different. 1. In fact, we do not find that the faculties of the mind, the underſtanding, the will, the liberty, with all the operations they produce, have any relation to thoſe of extenſion, figure and motion, which are the properties of matter. 2. The idea we have of an extended ſubſtance, as purely paſſive, ſeems to be abſolutely incompatible with that proper and internal activity which diſtinguiſhes a thinking being. The body is not put into motion of itſelf, but the mind finds inwardly the principle of its own movements; it acts, it thinks, it wills, it moves the body; it turns its operations

rations as it pleases; it stops, proceeds, or returns the way it went. 3. We observe likewise, that our thinking part is a simple, single, and invisible being; because it collects all our ideas and sensations, as it were, into one point, by understanding, feeling, and comparing them, &c. which cannot be done by a being composed of various parts.

IV. The soul seems therefore to be of a particular nature, to have nothing in common with gross and material beings, but to be a pure spirit, that participates in some measure of the nature of the supreme Being. This has been very elegantly expressed by Cicero: *We cannot find*, says he,* *on earth the least trace of the origin of the soul. For there is nothing mixt or compound in the mind; nothing that seems to proceed from the earth, water, air, or fire. These elements have nothing productive of memory, understanding, reflection; nothing that is able to recall the past, to foresee the future, and to embrace the present. We shall never find the source from whence man has derived those divine qualities, but by tracing them up to God. It follows therefore, that the soul is endowed with a singular nature, which has nothing in it common with those known and familiar elements. Hence, let the nature of a being that has sensation, understanding, will, and principle of life, be what it will, this being is surely heavenly, divine, and consequently immortal.*

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* Animorum nulla in terris origo inveniri potest: nihil enim in animis mixtum atque concretum, aut quod ex terra natum atque fictum esse videatur: nihil aut humidum quidem aut flabile aut igneum. His enim in naturis nihil inest, quod vim memoriæ, mentis, cogitationis habeat; quod et præterita teneat, et futura provideat, et complecti possit præsentia; quæ sola divina sunt; nec invinietur unquam, unde ad hominem venire possit nisi a Deo. Singularis est igitur quædam natura atque vis animi, sejuncta ab his usitatis notisque naturis. Ita quicquid est illud, quod sentit, quod sapit, quod vivit, quod viget, cœleste et divinum ob eamque rem æternum fit necesse est. Cic. Tuscul. disput. lib. 1. cap. 27.

This conclusion is very just. For if the soul be essentially distinct from the body, the destruction of the one is not necessarily followed with the annihilation of the other; and thus far nothing hinders the soul from subsisting, notwithstanding the destruction of its ruinous habitation.

V. Should it be said, that we are not sufficiently acquainted with the intrinsic nature of substances, to determine that God could not communicate thought to some portion of matter; I should answer, that we cannot however judge of things but according to their appearance and our ideas; otherwise, whatever is not founded on a strict demonstration, must be uncertain, and this would terminate in a kind of pyrrhonism. All that reason requires is, that we distinguish properly between what is dubious, probable, or certain; and since all we know in relation to matter, does not seem to have any affinity with the faculties of the soul; and as we even find in one and the other, qualities that seem incompatible; it is not prescribing limits to the Divine Power, but rather following the notions that reason has furnished us, to affirm it is highly probable, that the thinking part of man is essentially distinct from the body.

VI. But let the nature of the soul be what it will, and be it even, though contrary to all appearance, supposed corporeal; still it would no way follow, that the death of the body must necessarily bring on the annihilation of the soul. For we do not find an instance of any annihilation properly so called. The body itself how inferior soever to the mind, is not annihilated by death. It receives, indeed, a great alteration; but its substance remains always essentially the same, and admits only a change of modification or form. Why therefore should the soul be annihilated? It will undergo, if you please, a great mutation; it will be detached

detached from the bonds that unite it to the body, and will be incapable of operating in conjunction with it: But is this an argument that it cannot exist separately, or that it loses its essential quality, which is that of understanding? This does not at all appear; for one does not follow from the other.

Were it therefore impossible for us to determine the intrinsic nature of the soul, yet it would be carrying the thing too far, and concluding beyond what we are authorised by fact to maintain, that death is necessarily attended with a total destruction of the soul. The question is therefore reducible to this point: Is God willing to annihilate, or to preserve the soul? But if what we know in respect to the nature of the soul, does not incline us to think it is destined to perish by death; we shall see likewise, that the consideration of its excellency is a very strong presumption in favour of its immortality.

VII. And indeed it is not at all probable, that an intelligent being, capable of knowing such a multitude of truths, of making so many discoveries, of reasoning upon an infinite number of things, of discerning their proportions, fitness, and beauties; of contemplating the works of the Creator, of tracing them up to him, of observing his designs, and penetrating into their causes; of raising himself above all sensible things to the knowledge of spiritual and divine subjects; that has a power to act with liberty and discernment, and to array himself with the most beautiful virtues; it is not, I say, at all probable, that a being adorned with qualities of so excellent a nature, and so superior to those of brute animals, should have been created only for the short space of this life. These considerations made a lively impression on the antient philosophers. *When I consider*, says Cicero*, *the surprising activity of the mind,*

* Quid multa? Sic mihi persuasi, sic sentio, cum tanta celeritas animorum sit, tanta memoria præteritorum futurorumque prudentia, tot

mind, so great a memory of what is past, and such an insight into futurity; when I behold such a number of arts and sciences, and such a multitude of discoveries from thence arising; I believe, and am firmly persuaded, that a nature which contains so many things within itself, cannot be mortal.

VIII. Again: Such is the nature of the human mind, that it is always capable of improvement, and of perfecting its faculties. Though our knowledge is actually confined within certain limits, yet we see no bounds to that which we are capable of acquiring, to the inventions we are able to make, to the progress of our judgment, prudence, and virtue. Man is in this respect always susceptible of some new degree of perfection and maturity. Death overtakes him before he has finished, as it were, his progress, and when he was capable of proceeding a great deal farther. *How can it enter*, says a celebrated English writer*, *into the thoughts of man, that the soul, which is capable of such immense perfections, and of receiving new improvements to all eternity, shall fall away into nothing almost as soon as it is created? Are such abilities made for no purpose? A brute arrives at a point of perfection that he can never pass: In a few years he has all the endowments he is capable of; and were he to live ten thousand more, would be the same thing he is at present. Were a human soul thus at a stand in her accomplishments, were her faculties to be full blown, and incapable of further enlargements, I could imagine it might fall away insensibly, and drop at once into a state of annihilation. But can we believe a thinking being, that is in a perpetual progress of improvements, and travelling on from perfection to perfection, after having just looked abroad into the works*

tot artes, tantæ scientiæ, tot inventa, non posse eam naturam, quæ res eas contineat, esse mortalem. Cic. de Senec. cap. 2.

* Spectator, vol. ii. No. 111.

works of its Creator, and made a few discoveries of his infinite goodness, wisdom, and power, must perish at her first setting out, and in the very beginning of her enquiries?

IX. True it is, that most men debase themselves in some measure to an animal life, and have very little concern about the improvement of their faculties. But if those people voluntarily degrade themselves, this ought to be no prejudice to such as chuse to support the dignity of their nature; neither does it invalidate what we have been saying in regard to the excellency of the soul. For to judge rightly of things, they ought to be considered in themselves, and in their most perfect state.

X. It is undoubtedly in consequence of the natural sense of the dignity of our being, and of the grandeur of the end we are designed for, that we naturally extend our views to futurity; that we concern ourselves about what is to happen after our death: that we seek to perpetuate our name and memory, and are not insensible to the judgment of posterity. These sentiments are far from being the illusion of self-love or prejudice. The desire and hope of immortality is an impression we received from nature. And this desire is so very reasonable in itself, so useful, and so closely connected with the system of humanity, that we may at least infer from thence a very probable induction in favour of a future state. How great soever the vivacity of this desire may be in itself, still it increases in proportion as we take more care to cultivate our reason, and as we advance in the knowledge of truth and the practice of virtue. This sentiment becomes the surest principle of noble, generous, and public-spirited actions; and we may affirm, that were it not for this principle, all human views would be low, mean, and sordid.

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All this ſeems to point out to us clearly, that by the inſtitution of the Creator, there is a kind of natural proportion and relation between the ſoul and immortality. For it is not by deceit and illuſion that the Supreme Wiſdom conducts us to his propoſed end: a principle ſo reaſonable and neceſſary; a principle that cannot but be productive of good effects, that raiſes man above himſelf, and renders him not only capable of the ſublimeſt undertakings, but ſuperior to the moſt delicate temptations, and ſuch as are the moſt dangerous to virtue; ſuch a principle, I ſay, cannot be chimerical*.

Thus every thing concurs to perſuade us that the ſoul muſt ſubſiſt after death. The knowledge we have of the nature of the mind; its excellence and faculties ever ſuſceptible of a higher degree of perfection; the diſpoſition which prompts us to raiſe ourſelves above the preſent life, and to deſire immortality; are all ſo many natural inclinations, and form the ſtrongeſt preſumption, that ſuch indeed is the intention of the Creator.

XI. The clearing up of this firſt point is of great importance in regard to our principal queſtion, and ſolves already, in part, the difficulty we are examining. For when once the ſoul is ſuppoſed to ſubſiſt after the diſſolution of the body, nothing can hinder us from ſaying, that whatever is wanting in the preſent ſtate to complete the ſanction of natural

* Cicero gives an admirable picture of the influence which the deſire and hope of immortality has had in all ages, to excite men to great and noble actions. "Nemo unquam, (ſays "he) magna ſpe immortalitatis ſe pro patria offerret ad mor- "tem. Licuit eſſe otioſo Themiſtocli; licuit Epaminondæ; "licuit, ne et vetera et externa quæram, mihi; ſed neſcio "quo modo inhæret in mentibus quaſi ſæculorum quoddam "augurium futurorum; idque in maximis ingeniis altiſſimiſ- "que animis exiſtit maxime, et apparet ſacillime. Quo- "quidem dempto, quis tam eſſet amens, qui ſemper in la- "boribus et periculis viveret?" Tuſcul. Quæſt. lib. 1. cap. 15.

law, will be executed hereafter, if so it be agreeable to the Divine Wisdom.

We came now from considering man on the physical side, which opens us already a passage towards finding the object of our present pursuit. Let us see now whether by viewing man on the moral side, that is, as a being capable of rule, who acts with knowledge and choice, and whether raising ourselves afterwards to God, we cannot discover new reasons and still stronger presumptions of a future life, of a state of rewards and punishments.

Here we cannot avoid repeating part of those things which have been already mentioned in this work, because we are upon the point of considering their intire result; the truth we intend here to establish being, as it were, the conclusion of the whole system. It is thus a painter, after having worked singly upon each part of his piece, thinks it necessary to re-touch the whole, in order to produce what is called the *total effect and harmony*.

XII. Man, we have seen, is a rational and free agent, who distinguishes justice and honesty, who finds within himself the principles of conscience, who is sensible of his dependance on the Creator, and born to fulfil certain duties. His greatest ornament is reason and virtue; and his chief task in life is to advance in that path, by embracing all the occasions that offer, to improve, to reflect, and to do good. The more he practises and confirms himself in such laudable occupations, the more he accomplishes the views of the Creator, and proves himself worthy of the existence he has received. He is sensible he can be reasonably called to an account for his conduct, and he approves or condemns himself according to his different manner of acting.

From all these circumstances it evidently appears, that man is not confined, like other animals, to a mere physical œconomy, but that he is included in a moral

a moral one, which raiſes him much higher, and is attended with greater conſequences. For what appearance or probability is there, that a ſoul which advances daily in wiſdom and virtue, ſhould tend to annihilation, and that God ſhould think proper to extinguiſh this light in its greateſt luſtre? Is it not more reaſonable to think, that the good or bad uſe of our faculties will be attended with future conſequences; that we ſhall be accountable to our Creator, and finally receive the juſt retribution we have merited? Since therefore this judgment of God does not diſplay itſelf ſufficiently in this world, it is natural to preſume, that the plan of the Divine Wiſdom, with regard to us, embraces a duration of a much greater extent.

XIII. Let us aſcend from man to God, and we ſhall be ſtill further convinced, that ſuch, in reality, is the plan he formed.

If God is willing (a point we have already proved) that man ſhould obſerve the rules of right reaſon, in proportion to his faculties and the circumſtances he is under; this muſt be a ſerious and poſitive will. It is the will of the Creator, of the Governor of the world, of the ſovereign Lord of all things. It is therefore a real command, which lays us under an obligation of obeying. It is moreover the will of a Being ſupremely powerful, wiſe and good, who propoſing always, both with reſpect to himſelf and to his creatures, the moſt excellent ends, cannot fail to eſtabliſh the means, which in the order of reaſon, and purſuant to the nature and ſtate of things, are neceſſary for the execution of his deſign. No one can reaſonably conteſt theſe principles; but let us ſee what conſequences may be drawn from thence.

1. If it actually became the Divine Wiſdom to give laws to man, this ſame wiſdom requires theſe laws ſhould be accompanied with neceſſary motives to determine rational and free agents to conform thereto

in all cases. Otherwise we should be obliged to say, either that God does not really and seriously desire the observance of the laws he has enacted, or that he wants power or wisdom to procure it.

2. If through an effect of his goodness, he has not thought proper to let men live at random, or to abandon them to the capriciousness of their passions; if he has given them a light to direct them; this same goodness must, undoubtedly, induce him to annex a perfect and durable happiness to the good use that every man makes of this light.

3. Reason informs us afterwards, that an all-powerful, all-wise, and all-bountiful Being is infinitely fond of order; that these same perfections make him desire that this order should reign among his intelligent and free creatures, and that it was for this very reason he subjected them to laws. The same reasons that induced him to establish a moral order, engage him likewise to procure their observance. It must be therefore his satisfaction and glory, to render all men sensible of the difference he makes between those who disturb, and those who conform to order. He cannot be indifferent in this respect: on the contrary, he is determined, by the love he has for himself and his perfections, to invest his commands with all the efficacy necessary to render his authority respected: This imports an establishment of future rewards and punishments; either to keep man within rule, as much as possible, in the present state, by the potent motives of hope and fear; or to give afterwards an execution worthy of his justice and wisdom to his plan, reducing every thing to the primitive order he has established.

4. The same principle carries us yet further. For if God be infinitely fond of the order he has established in the moral world, he cannot but approve of those, who with a sincere and constant attachment to this order, endeavour to please him by concurring to the accomplishment of his views; and he cannot but disapprove of such as observe

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an opposite conduct*: for the former are, as it were, his friends, and the latter declare themselves his enemies. But the approbation of the Deity imports his protection, benevolence, and love; whereas his disapprobation cannot but be attended with quite contrary effects. If so, how can any one imagine, that God's friends and enemies will be confounded, and no difference made between them? Is it not much more consonant to reason to think, that the Divine Justice will manifest at length, some way or other, the extreme difference he places between virtue and vice, by rendering finally and perfectly happy those, who by a submission to his will are become the objects of his benevolence; and, on the contrary, by making the wicked feel his just severity and resentment?

XIV. This is what our clearest notions of the perfections of the supreme Being induce us to judge concerning his views, and the plan he has formed. Were not virtue to meet surely and inevitably with a final recompense, and vice with a final punishment, and this in a general and complete manner, exactly proportioned to the degree of merit or demerit of each person; the plan of natural laws would never answer our expectation from a supreme Legislator, whose prescience, wisdom, power, and goodness, are without bounds. This would be leaving the laws divested of their principal force, and reducing them to the quality of simple counsels; it would be subverting, in fine, the fundamental part of the system of intelligent creatures, namely, that of being induced to make a reasonable use of their faculties, with a view and expectation of happiness. In short, the moral system would fall into a state of imperfection, which could be reconciled neither with the nature of man, nor with the state of society, nor with the moral perfections of the Deity. It is otherwise, when

* See part ii. chap. x. §. 7.

when we acknowledge a future life. The moral syſtem is thereby ſupported, connected and finiſhed, ſo as to leave nothing wanting to render it complete: It is then a plan really worthy of God, and uſeful to man. The ſupreme Being does all he ought to do with free and rational creatures to induce them to behave as they ſhould; the laws of nature are thus eſtabliſhed on the moſt ſolid foundations; and nothing is wanting to bind men by ſuch motives as are properſt to make an impreſſion.

Hence if this plan be without compariſon the moſt beautiful and the beſt; if it be likewiſe the moſt worthy of God, and the moſt connected with what we know of the nature, wants, and ſtate of man; how can any one doubt of its being that which the Divine Wiſdom has actually choſen?

XV. I acknowledge, indeed, that could we find in the preſent life a ſufficient ſanction of the laws of nature, in the meaſure and plenitude above mentioned, we ſhould have no right to preſs this argument; for nothing could oblige us to ſearch into futurity for an intire unravelling of the divine plan. But we have ſeen in the preceding chapter, that though by the nature of things, and even by the various eſtabliſhments of man, virtue has already its reward, and, vice its puniſhment; yet this excellent and juſt order is accompliſhed only in part, and that we find a great number of exceptions to this rule in hiſtory, and the experience of human life. Hence ariſes a very puzzling objection againſt the authority of natural laws. But as ſoon as mention is made of another life, the difficulty diſappears; every thing is cleared up and ſet to right; the ſyſtem appears connected, finiſhed, and ſupported; the Divine Wiſdom is juſtified: we find all the neceſſary ſupplements and compenſations to redreſs the preſent irregularities; virtue acquires a firm and unſhaken prop, by furniſhing the virtuous man with a motive capable to ſupport him in the moſt dangerous difficulties, and

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to render him triumphant over the moſt delicate temptations.

Were this only a ſimple conjecture, it might be conſidered rather as a convenient than ſolid ſuppoſition. But we have ſeen that it is founded alſo on the nature and excellence of the ſoul; on the inſtinct that inclines us to raiſe ourſelves above the preſent life; and on the nature of man conſidered on the moral ſide, as a creature accountable for his actions, and obliged to conform to a certain rule. When beſides all this we behold that the ſame opinion ſerves to ſupport, and perfectly crowns the whole ſyſtem of natural law, it muſt be allowed to be no leſs probable than it is beautiful and engaging.

XVI. Hence this ſame opinion has been received more or leſs at all times, and by all nations, according as reaſon has been more or leſs cultivated, or as people have inquired cloſer into the origin of things. It would be an eaſy matter to allege divers hiſtorical proofs, and to produce alſo ſeveral beautiful paſſages from the ancient philoſophers, in order to ſhew that the reaſons which ſtrike us, made the like impreſſion on the wiſeſt of the Pagans. But we ſhall be ſatisfied with obſerving, that theſe teſtimonies, which have been collected by other writers, are not indifferent on this ſubject; becauſe this ſhews, either the veſtiges of a primitive tradition, or the voice of reaſon and nature, or both; which adds a conſiderable weight to our argument.

CHAP. XIV.

That the proofs we have alleged have ſuch a probability and fitneſs, as renders them ſufficient to fix our belief, and to determine our conduct.

I. WE have ſeen how far our reaſon is capable of conducting us with regard to the important

portant question of the immortality of the soul, and a future state of rewards and punishments. Each of the proofs we have alleged, has without doubt its particular force; but joining to the assistance of one another, and acquiring a greater strength by their union, they are certainly capable of making an impression on every attentive and unprejudiced mind, and ought to appear sufficient to establish the authority and sanction of natural law in as full an extent as we desire.

II. If any one should say that all our reasonings on this subject are only probability and conjecture, and properly reducible to a plausible reason or fitness, which leaves the thing still at a great distance from demonstration; I shall agree, if he pleases, that we have not here a complete evidence; yet the probability, methinks, is so very strong, and the fitness so great and so well established, that this is sufficient to make it prevail over the contrary opinion, and consequently to determine us.

For we should be strangely embarrassed, if in every question that arises, we should refuse to be determined by any thing but a demonstrative argument. Most commonly we are obliged to be satisfied with an assemblage of probabilities, which, in a conjunct consideration, very seldom deceive us, and ought to supply the place of evidence in subjects unsusceptible of demonstration. It is thus that in natural philosophy, in physic, criticism, history, politics, commerce, and generally in all the affairs of life, a prudent man is determined by a concurrence of reasons, which, every thing considered, he judges superior to the opposite arguments.

III. In order to render the force of this kind of proof more obvious, it will not be amiss to explain here at first what we mean by a *plausible reason* or *fitness*; to inquire afterwards into the general principle on which this sort of reasoning is founded; and

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to ſee in particular what conſtitutes its force when applied to the law of nature. This will be the right way to know the juſt value of our arguments, and what weight they ought to have in our determinations.

A plauſible reaſon or fitneſs is that which is drawn from the neceſſity of admitting a point as certain, for the perfection of a ſyſtem in other reſpects ſolid, uſeful, and well connected, but which would be defective without this point; when there is no reaſon to ſuppoſe that it has any eſſential defect*. For example: upon beholding a great and magnificent palace, we remark an admirable ſymmetry and proportion; where all the rules of art, which form the ſolidity, convenience, and beauty of a building, are ſtrictly obſerved. In ſhort, all that we ſee of the building denotes an able architect. May it not therefore be reaſonably ſuppoſed, that the foundation, which we do not ſee, is equally ſolid, and proportioned to the great maſs it bears? Can it be imagined that the architect's ability and knowledge ſhould have forſaken him in ſo important a point? In order to form ſuch a ſuppoſition, we ſhould have certain proofs of this deficiency, or have ſeen that in fact the foundation is imperfect; otherwiſe we could not preſume ſo improbable a thing. Who is it that on a mere metaphyſical poſſibility of the architect's having neglected to lay the foundation, would venture to wager that the thing is really ſo?

IV. Such is the nature of fitneſs. The general foundation of this manner of reaſoning is, that we muſt not conſider only what is poſſible, but what is probable; and that a truth of itſelf very little known, acquires a probability by its natural connection with other truths more obvious. Thus natural philoſophers do not queſtion but they have diſcovered the truth, when an hypotheſis happily explains all the pheno-

* See chap. viii, ſect. 2.

phenomena; and an event very little known in history, appears no longer doubtful, when we see it serves for a key and basis to many other indubitable events. It is on this principle in great measure that moral certainty is founded*, which is so much used in most sciences, as well as in the conduct of life, and in things of the greatest importance to individuals, families, and to the whole society.

V. But if this manner of judging and reasoning takes place so frequently in human affairs, and is in general founded on so solid a principle; it is still much surer when we are to reason on the works of God, to discover his plan, and to judge of his views and designs. For the whole universe, with the several systems that compose it, and particularly the system of man and society, are the works of a supreme understanding. Nothing has been done by chance; nothing depends on a blind, capricious, or impotent cause; every thing has been calculated and measured with a profound wisdom. Here therefore, more than any where else, we have a right to judge, that so powerful and so wise an author, has omitted nothing necessary for the perfection of his plan; and that consistent with himself he has fitted it with all the essential parts, for the design he proposed. If we ought to presume reasonably such a care in an able architect, who is nothing more than a man subject to error; how much more ought we to presume it in a being of infinite wisdom?

VI. What we have been now saying, shews that this fitness is not always of the same weight, but may be more or less strong in proportion to the greater or lesser necessity on which it is established. And

* See M. Boullier's Philosophical Essay on the souls of brutes, &c. second edition; to which has been joined a treatise of the true principles that serve as a foundation to moral certainty. Amst. 1737.

And to lay down rules on this ſubject, we may ſay in general, 1. That the more we know the views and deſign of the author; 2. The more we are aſſured of his wiſdom and power; 3. The more this power and wiſdom are perfect; 4. The more conſiderable are the inconveniencies that reſult from the oppoſite ſyſtem; the more they border upon the abſurd; and the more preſſing we find the conſequences drawn from this ſort of conſiderations. For then we have nothing to ſet in oppoſition to them by way of counterbalance; and conſequently it is on that ſide we are determined by right reaſon.

VII. Theſe principles are of themſelves applicable to our ſubject, and this in ſo juſt and complete a manner that the reaſon drawn from probability or fitneſs cannot be carried any farther. After what has been ſaid in the preceding chapters, it would be entering into uſeleſs repetitions to attempt to prove here all the particulars: the thing ſufficiently proves itſelf. Let us be ſatisfied with obſerving, that the fitneſs in favour of the ſanction of natural laws, is ſo much the ſtronger and more preſſing, as the contrary opinion throws into the ſyſtem of humanity an obſcurity and confuſion, which borders very much upon the abſurd, if it does not come quite up to it. The plan of the Divine Wiſdom becomes in reſpect to us an inſoluble enigma; we are no longer able to account for any thing; and we cannot tell why ſo neceſſary a thing ſhould be wanting in a plan ſo beautiful in other reſpects, ſo uſeful, and ſo perfectly connected.

VIII. Let us draw a compariſon between the two ſyſtems, to ſee which is moſt conformable to order, moſt ſuitable to the nature and ſtate of man, and, in ſhort, moſt reaſonable and worthy of God.

Suppoſe, on one ſide, that the Creator propoſed the perfection and felicity of his creatures, and in particular the good of man and ſociety. That for this purpoſe, having inveſted man with underſtanding

ing and liberty, and rendered him capable of knowing his end, of discovering and following the road that can alone conduct him to it, he lays him under a strict obligation of walking constantly in this road, and of ever following the light of reason, which ought always to direct his steps. That in order to guide him the better, he has given him all the principles necessary to serve him as a rule. That this direction, and these principles, coming from a powerful, wise, and good superior, have all the characteristics of a real law. That this law carries already along with it, even in this life, its reward and punishment; but that this first satisfaction being insufficient, God, in order to give to a plan so worthy of his wisdom and goodness its full perfection, and to furnish mankind in all possible cases with necessary motives and helps, has moreover established a proper sanction in respect to natural law, which will be manifested in a future life; and that attentive to the conduct of man, he proposes to make him give an account of his actions, to recompense virtue, and to punish vice, by a retribution exactly proportioned to the merit and demerit of each person.

Let us set now in opposition to this first system the other, which supposes that every thing is limited, in respect to man, to the present life, and that he has nothing to hope or fear beyond this term: that God after having created man and instituted society, concerns himself no more about them: that after giving us a power of discerning good and evil by the help of reason, he takes no manner of notice of the use we make thereof, but leaves us in such a manner to ourselves, that we are absolutely at liberty to do as we please: that we shall have no account to give to our Creator, and that notwithstanding the unequal and irregular distribution of the goods and evils of this life, notwithstanding the disorders caused by the malice or injustice of mankind, we have no redress or compensation ever to expect from God.

IX. Can any one ſay that this laſt ſyſtem is comparable to the firſt? Does it ſet the divine perfections in ſo great a light? Is it ſo worthy of the divine wiſdom, bounty, and juſtice? Is it ſo proper to ſtem the torrent of vice and to ſupport virtue, in delicate and dangerous conjunctures? Does it render the ſtructure of ſociety as ſolid, and inveſt the laws of nature with ſuch an authority as the glory of the ſupreme Legiſlator and the good of humanity requires? Were we to chuſe between two ſocieties, one of which admitted the former ſyſtem, while the other acknowledges only the latter; is there a prudent man but would highly prefer to live in the firſt of thoſe ſocieties?

There is, certainly, no compariſon between thoſe two ſyſtems, in reſpect to beauty and fitneſs: the firſt is a work of the moſt perfect reaſon; the ſecond is defective, and provides no manner of remedy againſt a great many diſorders. Now even this alone points out ſufficiently on which ſide the truth lies; becauſe the buſineſs is to judge and reaſon of the deſigns and works of the Deity, who does every thing with infinite wiſdom.

X. Let no one ſay, that limited as we are, it is temerity to decide after this manner; and that we have too imperfect ideas of the divine nature and perfections, to be able to judge of his plan and deſigns with any certainty. This reflection, which is in ſome meaſure true, and in ſome caſes juſt, proves too much, if applied to our ſubject, and conſequently has no weight. Let us but reflect a little, and we ſhall find that this thought leads us inſenſibly to a kind of pyrroniſm, which would be the ſubverſion of all order and ſocial œconomy. For in fine there is no medium; we muſt chuſe one of the two ſyſtems above explained. To reject the firſt, is admitting the ſecond with all its inconveniencies. This remark is of ſome importance, and alone is almoſt ſufficient

to ſhew us the force of fitneſs in this caſe; becauſe not to acknowledge the ſolidity of this reaſon, is to lay one's ſelf under a neceſſity of receiving a defective ſyſtem; a ſyſtem loaded with inconveniencies, and whoſe conſequences are very far from being reaſonable.

XI. Such are the nature and force of the fitneſs, on which the proofs of the ſanction of natural laws are eſtabliſhed. All that remains now, is to ſee what impreſſion theſe proofs united, ought to make on our minds, and what influence they ſhould have over our conduct. This is the capital point in which the whole ought to terminate.

1. In the firſt place I obſerve, that though all that can be ſaid in favour of the ſanction of natural laws were ſtill to leave the queſtion undecided; yet it would be reaſonable even in this very uncertainty to act, as if it had been determined in the affirmative. For it is evidently the ſafeſt ſide, namely, that in which there is leſs at all events to loſe, and more to gain. Let us ſtate the thing as dubious. If there be a future ſtate, it is not only an error not to believe it, but likewiſe a dangerous irregularity to act as if there were no ſuch thing: an error of this kind is attended with pernicious conſequences; whereas if there is no ſuch thing, the miſtake in believing it, produces in general none but good effects; it is not ſubject to any inconveniencies hereafter, nor does it, generally ſpeaking, expoſe us to any great difficulties for the time preſent. Be it therefore as it may, and let the caſe be ever ſo unfavourable to natural laws, a prudent man will never heſitate which ſide he is to embrace, whether the obſervance, or the violation of thoſe laws: virtue will certainly have the preference of vice.

2. But if this ſide of the queſtion is the moſt prudent and eligible, even under a ſuppoſition of doubt and uncertainty, how much more will it be ſo, if we acknowledge, as we cannot avoid, that this opinion

nion is at least more probable than the other? A first degree of verisimilitude, or a simple though slight probability, becomes a reasonable motive of determination, in respect to every man that calculates and reflects. And if it be prudent to conduct ourselves by this principle in the ordinary affairs of life, does prudence permit us to deviate from this very road in the most important affairs, such as essentially interest our felicity?

3. But, in fine, if proceeding still further, and reducing the thing to its true point, it is agreed that we have actually, if not a strict demonstration of a future life, at least a probability founded on many reasonable presumptions, and so great a fitness as borders very near upon certainty; it is still more evident, that in the present state of things, we ought to act on this footing, and are not reasonably allowed to form any other rule of conduct*.

XII. Nothing, indeed, is more worthy of a rational being, than to seek for evidence on every subject, and to be determined only by clear and certain principles. But since all subjects are not susceptible thereof, and yet we are obliged to determine; what would become of us, if we were always to wait for a perfect demonstration? In failure of the highest degree of certainty, we must take up with the next to it; and a great probability becomes a sufficient reason of acting, when there is none of equal weight to oppose it. If this side of the question be not itself evidently certain, it is at least an evident and certain rule, that in the present state of things it ought to have the preference.

This is a necessary consequence of our nature and condition. As we have only a limited knowledge, and yet are under a necessity of determining and acting; were it requisite for this purpose to have a perfect certainty,

* See part i. chap. vi. § 6.

certainty, and were we to refuſe to accept of probability as a principle of determination; we ſhould be either obliged to determine in favour of the leaſt probable ſide, and contrary to veriſimilitude (which no body, methinks, will attempt to maintain) or we ſhould be forced to ſpend our days in dubiouſneſs and uncertainty, to fluctuate continually in a ſtate of irreſolution, and to remain ever in ſuſpenſe, without acting, without reſolving upon any thing, or without having any fixt rule of conduct; which would be a total ſubverſion of the ſyſtem of humanity.

XIII. But if it be reaſonable in general to admit of fitneſs and probability as the rule of conduct, for want of evidence; this rule becomes ſtill more neceſſary and juſt, in particular caſes, in which, as hath been already obſerved, a perſon runs no riſk in following it. When there is nothing to loſe, if we are miſtaken; and a great deal to win, if we are not; what can we deſire more for a rational motive of acting? Eſpecially when the oppoſite ſide expoſes us to a very great danger, in caſe of error; and affords us no manner of advantage, ſuppoſing we are in the right. Under ſuch circumſtances there is no room for heſitating; reaſon obliges us to embrace the ſafeſt ſide; and this obligation is ſo much the ſtronger, as it ariſes from a concurrence of motives of the greateſt weight and ſolidity.

In ſhort, if it be reaſonable to embrace this ſide, even in caſe of an entire uncertainty, it is ſtill more ſo when there is ſome probability in its favour; it becomes neceſſary if theſe probabilities are cogent and numerous; and, in fine, the neceſſity ſtill increaſes, if, at all events, this is the ſafeſt and moſt advantageous party. What can any one deſire more, in order to produce a real obligation *, according to

* See part i. chap. vi. §. 9, and 13.

to the principles we have eſtabliſhed in regard to the internal obligation impoſed by reaſon.

XIV. Again. This internal and primitive obligation is confirmed by the Divine Will itſelf, and conſequently rendered as ſtrong as poſſible. In fact, this manner of judging and acting being, as we have ſeen, the reſult of our conſtitution, ſuch as the Creator has formed it; this alone is a certain proof, that it is the will of God we ſhould be directed by thoſe principles, and conſider it as a point of duty. For whatever, as we have already obſerved *, is inherent in the nature of man, whatever is a conſequence of his original conſtitution and ſtate, acquaints us clearly and diſtinctly with the will of the Creator, with the uſe he expects we ſhould make of our faculties, and the obligations to which he has thought proper to ſubject us. This is a point that merits great attention. For if we may affirm, without fear of miſtake, that the Deity is actually willing that man ſhould conduct himſelf in this life on the foundation of the belief of a future ſtate, and as having every thing to hope or to fear on his ſide, according as he has acted juſtly or unjuſtly; does there not ariſe from thence a more than probable proof of the reality of this ſtate, and of the certainty of rewards and puniſhments? Otherwiſe we ſhould be obliged to ſay, that God himſelf deceives us, becauſe this error was neceſſary for the execution of his deſigns, as a principle eſſential to the plan he has formed in reſpect to humanity. But to ſpeak after this manner of the moſt perfect Being, of a Being, whoſe power, wiſdom, and goodneſs, are infinite, would be uſing a language equally abſurd and indecent. For this very reaſon, that as the above mentioned article of

 belief

* See part ii. chap. iv. ſect. 5.

belief is neceſſary to mankind, and enters into the views of the Creator, it cannot be falſe. Whatever the Deity ſets before us as a duty, or as a reaſonable principle of conduct, muſt be certainly true.

XV. Thus every thing concurs to eſtabliſh the authority of natural laws. 1. The approbation they receive from reaſon. 2. The expreſs command of God. 3. The real advantages which their obſervance procures us in this world; and in fine, the great hopes and juſt fears we ought to have in reſpect to futurity, according as we have obſerved or deſpiſed thoſe laws. Thus it is that God binds us to the practice of virtue by ſuch ſtrong and ſo numerous connections; that every man who conſults and liſtens to reaſon, finds himſelf under an indiſpenſible obligation of rendering them the unvariable rule of his conduct.

XVI. Some perhaps will object, that we have been too diffuſive in reſpect to the ſanction of natural laws. True it is, that moſt of thoſe who have written concerning the laws of nature, are more concise on this article, and Puffendorf himſelf does not ſay much about it*. This author, without abſolutely excluding the conſideration of a future life from this ſcience, ſeems nevertheleſs to confine the law of nature within the bounds of the preſent life, as tending only to render us ſociable †. And yet he acknowledges that man is naturally deſirous of immor-

* The reader may ſee in a ſmall treatiſe, intitled, Judgment of an Anonymous, &c. and inſerted in the 5th edition of the Duties of Man and a Citizen, the remarks that Mr. Leibnitz, author of that treatiſe, makes againſt Puffendroſ upon this ſcore. Barbeyrac, who has joined his own remarks to Mr. Leibnitz's work, juſtifies Puffendorf pretty well. And yet an attentive obſerver will find there ſtill ſomething wanting to the entire juſtification of this author's ſyſtem.

† See Puffendorf's preface on the Duties of Man and a Citizen, ſect. 6, 7.

immortality, and that this has induced heathens to believe the ſoul immortal; that this belief is likewiſe authoriſed by an ancient tradition concerning the Goddeſs of revenge; to which he adds, that in fact it is very probable God will puniſh the violation of the laws of nature; but that there is ſtill a great obſcurity in this reſpect, and nothing but revelation can put the thing out of doubt *.

But were it even true, that reaſon affords us nothing but probabilities in regard to this queſtion, yet we muſt not exclude from the law of nature all conſiderations of a future ſtate; eſpecially if theſe probabilities are ſo very great, as to border upon certainty. The above article enters neceſſarily into the ſyſtem of this ſcience, and forms a part thereof ſo much the more eſſential, that were it not for this, the authority of natural law would be weakened, as we have already demonſtrated; and it would be difficult (to ſay nothing more) to eſtabliſh on any ſolid grounds ſeveral important duties, which oblige us to ſacrifice our greateſt advantages to the good of ſociety, or to the ſupport of equity and juſtice. Neceſſary therefore it was, to examine with ſome care, how far our natural light may lead us in reſpect to this queſtion, and to ſhew the force of the proofs that our reaſon affords us, and the influence thoſe proofs ought to have over our conduct.

True it is, as we have already obſerved, that the beſt way to know the will of God in this reſpect, would be an expreſs declaration on his part. But if reaſoning as mere philoſophers, we have not been able to make uſe of ſo deciſive a proof, nothing can hinder us, as chriſtian philoſophers, to avail ourſelves of the advantage we have from revelation, in order to ſtrengthen our conjectures. Nothing, indeed can be a better argument that we have reaſoned and conjectured right, than the poſitive declaration of the

* See the Law of Nature and Nations, book ii. chap. iii. ſect. 21.

the Deity on this important point. For ſince it appears in fact that God is willing to recompenſe virtue, and to puniſh vice in another life, it is no longer poſſible to doubt of what we have advanced, namely, that this is extremely conformable to his wiſdom, goodneſs and juſtice. The proofs we have drawn from the nature of man, from God's deſigns in his favour, from the wiſdom and equity with which he governs the world, and from the preſent ſtate of things, are not a work of the imagination, or an illuſion of ſelf-love; no, they are reflections dictated by right reaſon: and when revelation comes up to their aſſiſtance, it ſets then in full evidence what already had been rendered probable by the ſole light of nature.

But the reflection we have here made, regards not only the ſanction of natural laws, it may be equally extended to the other parts of this work. It is to us a great pleaſure to ſee that the principles we have laid down, are exactly thoſe that the Chriſtian religion adopts for its baſis, and on which the whole ſtructure of religion and morality is raiſed. If on one ſide this remark ſerves to confirm us in theſe principles, by aſſuring us that we have hit upon the true ſyſtem of nature; on the other, it ought to diſpoſe us to have an infinite eſteem for a revelation which perfectly confirms the law of nature, and converts moral philoſophy into a religious and popular doctrine; a doctrine founded on facts, and in which the authority and promiſes of the Deity manifeſtly intervene in the fitteſt manner to make an impreſſion upon man. This happy agreement between natural and revealed light, is equally honourable to both.

FINIS.

THE PRINCIPLES OF POLITIC LAW:

BEING

A SEQUEL

TO THE

PRINCIPLES OF NATURAL LAW.

By J. J. BURLAMAQUI,

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THE PRINCIPLES OF POLITIC LAW:

Being a SEQUEL to the PRINCIPLES of the LAW of NATURE.

PART I.

Which treats of the original and nature of civil ſociety, of ſovereignty in general, of its peculiar character, limitations, and eſſential parts.

CHAP. I.

Containing ſome general and preliminary reflections, which ſerve as an introduction to this and the following parts.

I. WHATEVER has been hitherto explained concerning the rights and duties of man, relates to the natural and primitive ſociety, eſtabliſhed by God himſelf, independent of human inſtitution: We muſt now treat of civil ſociety, or the body politic, which is deſervedly eſteemed the completeſt of ſocieties, and to which the name of *State* has been given by way of preference.

II. For this purpose we shall repeat here the substance of some principles established in the preceding volume, and we shall give a further explication of others relative to this subject.

1. Human society is originally in itself a state of equality and independence.

2. The institution of sovereignty destroys this independence.

3. This institution does not subvert natural society.

4. On the contrary, it contributes to strengthen and cement it.

III. To form therefore a just idea of civil society, we must call it natural society itself, modified in such a manner, that there is a sovereign presiding over it, on whose will whatever relates to the welfare of the society ultimately depends, to the end, that, by this means, mankind may attain, with greater certainty, that happiness to which they all do naturally aspire.

IV. The institution of civil societies produces some new relations amongst mankind; I mean such as subsist between those different bodies or communities, which are called states or nations, from whence the law of nations and policy are derived.

V. In fact, as soon as states are formed, they acquire, in some measure, personal properties; and consequently we may attribute the same rights and obligations to them, as are attributed to individuals, considered as members of human society. And indeed it is evident, that if reason imposes certain duties on individuals towards each other, it prescribes likewise those very same rules of conduct to nations, (which are composed only of men) in affairs relating to the intercourse which they may have with each other.

VI. We may therefore apply to kingdoms and nations

tions the ſeveral maxims of natural law hitherto explained; and the ſame law, which is called natural, when ſpeaking of individuals, is diſtinguiſhed by the name of law of nations, when applied to men, conſidered as members forming thoſe different bodies, known by the name of ſtates or nations.

VII. In order to enter into ſome particulars concerning this ſubject, we muſt obſerve, that the natural ſtate of nations, with reſpect to each other, is that of ſociety and peace. This ſociety is likewiſe a ſtate of equality and independence, which eſtabliſhes between them an equality of right, by which they are obliged to have an equal regard for each other. The general principle therefore of the law of nations, is nothing more than the general law of ſociability, which obliges nations to the ſame duties as are preſcribed to individuals.

VIII. Thus the law of natural equality, that which prohibits our injuring any perſon, and commands the reparation of damage done, the law likewiſe of beneficence, of fidelity to our engagements, &c. are ſo many laws in regard to nations, which impoſe both on the people and on their ſovereigns the ſame duties as they are productive of in regard to individuals.

IX. It is a point of ſome importance to attend to the nature and original of the law of nations, ſuch as has been here explained; for it follows from thence, that the maxims of the law of nations are of equal authority with the laws of nature itſelf, of which they conſtitute a part, and that they are equally ſacred and venerable, ſince both have God alike for their author.

X. There cannot even be any other law of nations really obligatory, and of itſelf inveſted with the force of a law. For ſince all nations are in reſpect

to each other in a ſtate of perfect equality, it is beyond contradiction, that if there be any common law betwixt them, it muſt neceſſarily have God, their common ſovereign, for its author.

XI. As to what concerns the tacit conſent or cuſtoms of nations, on which ſome doctors eſtabliſh a law of nations, they cannot of themſelves produce a real obligation. For from this only, that ſeveral nations have behaved towards each other during a certain time after a certain manner, with regard to a particular affair, it does not follow that they have laid themſelves under a neceſſity of acting conſtantly ſo for the future, and much leſs that every other nation is obliged to conform to this cuſtom.

XII. All that can be ſaid is, that when once a particular uſage or cuſtom is introduced between nations that have a frequent intercourſe with each other, theſe nations are, and may reaſonably be, ſuppoſed to ſubmit to this uſage, unleſs they have, in expreſs terms, declared that they will not conform at preſent; and this is all the effect that can be attributed to the received uſages between nations.

XIII. This being premiſed, we may diſtinguiſh two ſorts of laws of nations, one of neceſſity, which is obligatory of itſelf, and no way differs from the law of nature; the other arbitrary and free, which is founded only on a kind of tacit convention; a convention that derives all its force from the law of nature, which commands us to be faithful to our engagements.

XIV. What we have been ſaying concerning the law of nations, furniſhes princes, by whom they are governed, with ſeveral important reflections; among others, that ſince the law of nations is, in reality, nothing elſe but the law of nature itſelf, there is but one

one and the ſame rule of juſtice for all mankind, inſomuch that thoſe princes who violate them are as guilty of as great a crime as private people, eſpecially as their bad actions are generally attended with more unhappy conſequences than thoſe of private people.

XV. Another conſequence that may be drawn from the principles we have eſtabliſhed relating to the law of nature and nations, is to form a juſt idea of that art ſo neceſſary to the directors of nations, which is called *Policy*: By policy therefore is meant that art or ability by which a ſovereign provides for the preſervation, ſecurity, proſperity, and glory of the nation he governs, without doing any hurt to other people, but rather conſulting their advantage as much as poſſible.

XVI. In ſhort, that which is called prudence, in reſpect to private people, is diſtinguiſhed by the name of policy when applied to ſovereigns; and as that bad ability, by which a perſon ſeeks his own advantage to the prejudice of others, and which is called artifice or cunning, is deſerving of cenſures in individuals, it is equally ſo in thoſe princes, whoſe policy aims at procuring the advantage of their own nation, to the prejudice of what they owe to other people, in virtue of the laws of humanity and juſtice.

XVII. From what has been ſaid of the nature of civil ſociety in general, it is eaſy to comprehend that among all human inſtitutions, there is none more conſiderable than this; and that as it embraces whatever is intereſting to the happineſs of human ſociety, it is a very extenſive ſubject, and conſequently that it is important alike both to princes and people to have proper inſtructions upon this head.

XVIII. That we may reduce the ſeveral articles relative to this ſubject into ſome order, we ſhall divide our work into four parts.

The

The first will treat of the original and nature of civil societies, of the manner in which states are formed, of sovereignty in general, of its proper characters, its limitations and essential parts.

In the second we shall explain the different forms of government, the various ways of acquiring or losing sovereignty, and the reciprocal duties of sovereigns and subjects.

The third will contain a more particular inquiry into the essential parts of sovereignty which are relative to the internal administration of the state, such as the legislative power, the supreme power in respect to religion, the right of inflicting punishments, and that which the sovereign has over the estates and effects contained in his dominions, &c.

In the fourth, in fine, we shall explain the rights of sovereigns with regard to foreigners, where we shall treat of the right of war, and of whatever is relative thereto, of alliances and other public treaties, and likewise of the rights of ambassadors.

CHAP. II.

Of the original of civil societies in fact.

I. CIVIL society is nothing more than the union of a multitude of people, who agree to live in subjection to a sovereign, in order to find, thro' his protection and care, the happiness to which they naturally aspire.

II. Whenever the question concerning the original of civil society is started, it may be considered two different ways; for either I am asked my opinion concerning the first original of governments in reality and fact; or else in regard to the right of conveniency in this respect, that is, what are the reasons which should induce mankind to renounce their natural liberty,

berty, and to prefer a civil ſtate to that of nature? Let us ſee firſt what can be ſaid in regard to the fact.

III. As the eſtabliſhment of ſociety and civil government is almoſt coeval with the world, and there are but very few records extant of thoſe firſt ages; nothing can be advanced with certainty concerning the firſt original of civil ſocieties. All that political writers ſay upon this ſubject, is reduced to conjectures that have more or leſs probability.

IV. Some attribute the original of civil ſocieties to paternal authority. Theſe obſerve that all the ancient traditions inform us, that the firſt men lived a long time; by this longevity, joined to the multiplicity of wives, which was then permitted, a great number of families ſaw themſelves united under the authority of one grand-father; and as it is difficult that a ſociety, any thing numerous, can maintain itſelf without a ſupreme authority, it is natural to imagine that their children, accuſtomed from their infancy to reſpect and obey their fathers, voluntarily reſigned the ſupreme authority into their hands, as ſoon as they arrived to a full maturity of reaſon.

V. Others ſuppoſe that the fear and diffidence which mankind had of one another, was their inducement to unite together more particularly under a chief, in order to ſhelter themſelves from thoſe miſchiefs which they apprehended. From the iniquity of the firſt men, ſay they, proceeded war, as alſo the neceſſity to which they were reduced of ſubmitting to maſters, by whom their rights and privileges might be determined.

VI. Some there are, in fine, who pretend that the firſt beginnings of civil ſocieties are to be attributed to ambition ſupported by force or abilities. The moſt dexterous, the ſtrongeſt and the moſt ambitious reduced at firſt the ſimpleſt and weakeſt into ſubjection; and

these infant states were afterwards insensibly strengthened by conquests, and by the concurrences of such as became voluntary members of those primitive societies.

VII. Such are the principal conjectures of political writers in regard to the original of societies; to which let us add a few reflections.

The first is, that in the institution of societies, mankind in all probability thought rather of redressing the evils which they had experienced, than of procuring the several advantages resulting from laws, from commerce, from the arts and sciences, and from all those other things in which the beauty of history consists.

2. The natural disposition of mankind, and their general manner of acting, do not by any means permit us to refer the institution of all governments to a general and uniform principle. More natural it is to think that different circumstances gave rise to different states.

3. We behold without doubt the first image of governments in democratic society, or in families; but there is all the probability in the world, that it was ambition supported by force or abilities which first subjected the several fathers of families under the dominion of a chief. This appears very agreeable to the natural disposition of mankind, and seems further supported by the manner in which the scripture speaks of Nimrod*, the first king mentioned in history.

4. When such a body politic was once framed, several others joined themselves to it afterwards, through different motives; and other fathers of families being afraid of insults or oppression from those growing states, determined to form themselves into like societies, and to chuse to themselves a chief.

5. Be this as it will, we must not imagine that those first states were such as exist in our days. Human

* See Genesis, c. x. v. 8. and seq.

man institutions are always weak and imperfect in their beginnings, there is nothing but time and experience that can gradually bring them to perfection.

The first states were in all probability very small; kings in those days were only a kind of chieftains, or particular magistrates, appointed for deciding disputes, or for the command of armies. Hence we find by the most antient histories that there were sometimes several kings in one and the same nation.

VIII. But to conclude, whatever can be said in regard to the original of the first governments, is reducible, according to what we have already observed, to meer conjectures that have only more or less probability. Besides, this is a question rather curious than useful or necessary; the point of importance, and that which is particularly interesting to mankind, is to know whether the establishment of a government and of a supreme authority, was really necessary, and whether mankind derive from thence any considerable advantages: This is what we call the right of conveniency, and what we are going now to examine.

CHAP. III.

Of the right of convenience with regard to the institution of civil society, and the necessity of a supreme authority; of civil liberty, that it is far preferable to natural liberty, and that the civil state is of all human states the most perfect, the most reasonable, and consequently the natural state of man.

I. WE are here to inquire, whether the establishment of a civil society, and of a supreme authority, was absolutely necessary to mankind, or whether they could not live happy without it?

it? and whether ſovereignty, whoſe original is owing perhaps to uſurpation, ambition, and violence, does not include an attempt againſt the natural equality and independency of man? Theſe are without doubt queſtions of importance, and which merit to be examined with the utmoſt attention.

II. I grant at firſt ſetting out, that the primitive and original ſociety, which nature has eſtabliſhed amongſt mankind, is a ſtate of equality and independence; it is likewiſe true that the law of nature is that to which all men are obliged to conform their actions, and in fine it is certain, that this law is in itſelf moſt perfect, and the beſt adapted for the preſervation and happineſs of mankind.

III. It muſt likewiſe be granted, that if mankind, during the time they lived in natural ſociety, had exactly conformed to nature's laws, nothing would have been wanting to complete their happineſs, nor would there have been any occaſion to eſtabliſh a ſupreme authority upon earth. They would have lived in a mutual intercourſe of love and beneficence, in a ſimplicity without ſtate or pomp, in an equality without jealouſy, ſtrangers to all ſuperiority but that of virtue, and to every other ambition, than that of being diſintereſted and generous.

IV. But mankind were not long directed by ſo perfect a rule; the vivacity of their paſſions ſoon weakened the force of nature's law, which ceaſed now to be a bridle ſufficient for a man, ſo that he could no longer be left to himſelf thus weakened and blinded by his paſſions. Let us explain this a little more particularly.

V. Laws are incapable of contributing to the happineſs of ſociety, unleſs they are ſufficiently known. The laws of nature cannot be known to man but inaſmuch as he makes a right uſe of his reaſon; but as the

the greateſt part of mankind, abandoned to themſelves, liſten rather to the prejudices of paſſion than to reaſon and truth, it thence follows, that in the ſtate of natural ſociety, the laws of nature were known but very imperfectly, and conſequently that in this ſtate of things man could not live happily.

VI. Beſides, the ſtate of nature wanted another thing neceſſary for the happineſs and tranquillity of ſociety, I mean a common judge acknowledged as ſuch, whoſe buſineſs it would be to decide the differences that might every day ariſe betwixt individuals.

VII. In this ſtate as every one would be ſupreme arbiter of his own actions, and would have a right of being judge himſelf, both of the laws of nature and of the manner in which he ought to apply them, this independence and exceſſive liberty could not but be productive of diſorder and confuſion, eſpecially in caſes where there happened to be any claſhing of intereſts or paſſions.

VIII. In fine, as in the ſtate of nature no one had a power of enforcing the execution of the laws, nor an authority to puniſh the violation of them, this was a third inconveniency of the ſtate of primitive ſociety, by which the virtue of natural laws was almoſt intirely deſtroyed. For as men are framed, the laws derive their greateſt force from the coercive power, which by exemplary puniſhments, intimidates the wicked, and balances the ſuperior force of pleaſure and paſſion.

IX. Such were the inconveniencies that attended the ſtate of nature. By the exceſſive liberty and independence which mankind enjoyed, they were hurried into perpetual troubles; for which reaſon they were under an abſolute neceſſity of quitting this ſtate of independence, and of ſeeking a remedy againſt the evils of which it was productive, and this remedy

medy they found in the eſtabliſhment of civil ſociety and a ſovereign authority.

X. But this could not be effected without doing two things equally neceſſary; the firſt was to unite together by means of a more particular ſociety; the ſecond to form this ſociety under the dependence of a perſon who was to be inveſted with an uncontroulable power, to the end that he might maintain order and peace.

XI. By this means they remedied the inconveniencies above-mentioned. The ſovereign, by publiſhing his laws, acquaints private people with the rules which they ought to follow. Each man is no longer independent judge in his own cauſe, our whims and paſſions are checked, and we are obliged to contain ourſelves within the limits of that regard and reſpect which we owe to each other.

XII. This might be ſufficient to prove the neceſſity of a government, and of a ſupreme authority in ſociety, and to eſtabliſh the right of convenience in this reſpect. But as it is a queſtion of the utmoſt importance, as mankind have a particular intereſt in being well acquainted with their ſtate, as they have a natural paſſion for independence, and as they generally frame falſe notions of liberty; it will not be improper to carry our reflections on this ſubject ſomewhat further.

XIII. Let us therefore ſee what is natural, and what is civil, liberty: let us afterwards endeavour to ſhew, that civil liberty is far preferable to that of nature, and conſequently that the civil ſtate which it produces, is of all human ſtates the moſt perfect, and, to ſpeak with exactneſs, the true natural ſtate of man.

XIV. The

XIV. The reflections we have to make upon this ſubject are of the laſt importance, affording uſeful leſſons both to princes who govern, and to the people who are governed. The greateſt part of mankind are ſtrangers to the advantage of civil ſociety, or at leaſt they live in ſuch a manner, as to give no attention to the beauty or excellence of this ſalutary inſtitution. On the other hand, princes often loſe ſight of the end for which they were appointed, and inſtead of thinking that the ſupreme authority was eſtabliſhed for no other purpoſe than for the maintenance and ſecurity of the liberty of mankind, that is, to make them enjoy a ſolid happineſs, they frequently direct it to quite contrary ends, and to their own private advantage. Nothing therefore is more neceſſary than to remove the prejudices both of ſovereigns and ſubjects in this reſpect.

XV. Natural liberty is the right which nature gives to all mankind, of diſpoſing of their perſons and property, after the manner they judge moſt convenient to their happineſs, on condition of their acting within the limits of the law of nature, and that they do not any way abuſe it to the prejudice of other men. To this right of liberty there is a reciprocal obligation correſponding, by which the law of nature binds all mankind to reſpect the liberty of other men, and not to diſturb them in the uſe they make of it, as long as they do not abuſe it.

XVI. The laws of nature are therefore the rule and meaſure of liberty; and in the primitive and natural ſtate, mankind have no liberty but what the laws of nature give them; for which reaſon it is proper to obſerve here, that the ſtate of natural liberty is not that of an intire independence. In this ſtate men are indeed independent with regard to one another, but they are all in a ſtate of dependence on God and his laws. Independence, generally ſpeaking,

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is a ſtate unſuitable to man, becauſe by his very nature he holds of a ſuperior.

XVII. Liberty and independence of any ſuperior, are two very diſtinct things, which muſt not be confounded. The firſt belongs eſſentially to man, the other cannot ſuit him. And ſo far is it from being true, that human liberty is of itſelf inconſiſtent with dependence on a ſovereign and ſubmiſſion to his laws, that on the contrary it is this power of the ſovereign, and the protection which men derive from thence, that forms the greateſt ſecurity of their liberty.

XVIII. This will be ſtill better underſtood by recollecting what we have already ſettled, when ſpeaking of natural liberty. We have ſhewn that the reſtrictions which the law of nature makes to the liberty of man, far from diminiſhing or ſubverting it, on the contrary conſtitutes its perfection and ſecurity. The end of natural laws is not ſo much to reſtrain the liberty of man, as to make him act agreeably to his real intereſts; and moreover as theſe very laws are a check to human liberty, in whatever may be of pernicious conſequence to others, it ſecures, by this means, to all mankind, the higheſt, and the moſt advantageous degree of liberty they can reaſonably deſire.

XIX. We may therefore conclude, that in the ſtate of nature, man could not enjoy all the advantages of liberty, but inaſmuch as this liberty was made ſubject to reaſon, and the laws of nature were the rule and meaſure of the exerciſe of it. But if it be true in fact, that the ſtate of nature was attended with all the inconveniencies already mentioned, inconveniencies which almoſt effaced the impreſſion and force of natural laws, it muſt be granted, that natural liberty muſt have greatly ſuffered thereby, and that by not being reſtrained within the limits of the

law

law of nature, it could not but degenerate into licentiousness, and reduce mankind to the most frightful, the most melancholy of situations.

XX. As they were perpetually divided by contentions, the strongest oppressed the weakest; they possessed nothing with tranquillity; they enjoyed no repose: and what we ought particularly to observe, is, that all these evils were owing chiefly to that very independence which mankind were possessed of in regard to each other, which deprived them of all security of the exercise of their liberty; insomuch that by being too free, they enjoyed no freedom at all, for freedom there can be none, when it is not subject to the direction of laws.

XXI. If it be therefore true, that the civil state gives a new force to the laws of nature, if it be true, that the establishment of a sovereign in society secures, in a more effectual manner, the observance of those laws, we must conclude, that the liberty, which man enjoys in this state, is far more perfect, more secure, and better adapted to procure his happiness, than that which he was possessed of in the state of nature.

XXII. True it is that the institution of government and sovereignty is a considerable limitation to natural liberty, for man must renounce that arbitrary disposal which he had of his own person and actions, in a word, his independence. But what better use could mankind make of their liberty, than to renounce every dangerous tendency it had in regard to themselves, and to preserve no more of it than was necessary to procure their own real and solid happiness.

XXIII. Civil liberty is therefore, in the main, nothing more than natural liberty, divested of that part of it which formed the independence of individuals;

duals, by the authority which they have conferred on their ſovereign.

XXIV. This liberty is ſtill attended with two conſiderable advantages, which natural liberty had not. The firſt is, the right of inſiſting that their ſovereign ſhall make a good uſe of his authority, agreeably to the purpoſes for which he was intruſted with it. The ſecond is the ſecurity which prudence requires that the people ſhould reſerve to themſelves for the execution of the former right, a ſecurity abſolutely neceſſary, and without which the people can never enjoy any ſolid liberty.

XXV. Let us therefore conclude, that to give an adequate definition of civil liberty, we muſt ſay, that it is natural liberty itſelf, diveſted of that part, which conſtituted the independence of individuals, by the authority which it confers on ſovereigns, attended with a right of inſiſting on his making a good uſe of his authority, and with a moral ſecurity that this right will have its effect.

XXVI. Since civil liberty therefore is far preferable to that of nature, we have a right to conclude, that the civil ſtate, which procures this liberty to mankind, is of all human ſtates the moſt perfect, the moſt reaſonable, and of courſe the true natural ſtate of man.

XXVII. In effect, ſince man by his nature, is a free and intelligent being, capable of diſcovering his ſtate by himſelf, as well as his ultimate end, and of taking the neceſſary meaſures to attain it, it is properly in this point of view that we muſt take his natural ſtate; that is, the natural ſtate of man muſt be that which is moſt agreeable to his nature, to his conſtitution, to reaſon, to the good uſe of his faculties, and to his laſt end; all which circumſtances, perfectly agree with the civil ſtate. In ſhort, as the

institution of a government and supreme authority brings men back to the observance of the laws of nature, and consequently to the road of happiness, it makes them return to their natural state, from whence they had strayed by the bad use which they had made of their liberty.

XXVIII. The reflections we have here made on the advantages which men derive from government, deserve very great attention.

1. They are extremely proper for removing the false notions which men generally have upon this subject; as if the civil state could not be established but in prejudice to their natural liberty, and as if government had been invented only to satisfy the most considerable and leading men amongst them, contrary to the interest of the rest of the community.

2. They inspire mankind with a love and respect for so salutary an institution, disposing them thus to submit voluntarily to whatever the civil society requires of them, from a conviction that the advantages from thence derived are very considerable.

3. They may likewise contribute greatly to the increase of the love of one's country, the first seeds of which nature herself has implanted, as it were, in the hearts of all mankind, in order to promote, as it most effectually does, the happiness of society. *Sextus Empiricus* relates, "that it was a custom among "the ancient *Persians*, upon the death of a king, to "pass five days in a state of anarchy, as an induce-"ment to be more faithful to his successor, from "the experience they themselves had had of the in-"conveniencies of anarchy, of the many murders, "robberies, and every other mischief, with which it "is attended*."

XXIX. If these reflections are proper for removing the prejudices of private people, they likewise contain most excellent instructions even for sove-

* Adverf. Mathemat. lib. 2. §. 33. Vid. Heredot. lib. 1. cap. 96, & seq.

reigns. For is there any thing better adapted for making princes ſenſible of the full extent of their duty, than to reflect ſeriouſly on the ends which the people propoſed to themſelves when they intruſted them with their liberty, that is, with whatever is moſt valuable to them; and on the engagements into which they entered, by charging themſelves with ſo ſacred a depoſite? If mankind renounced their independence and natural liberty, by giving maſters to themſelves, it was in order to be ſheltered from the evils with which they were inflicted, and in hopes, that under the protection and care of their ſovereign, they would meet with ſolid happineſs. Thus we have ſeen, that by civil liberty mankind acquired a right of inſiſting upon their ſovereign's uſing his authority agreeably to the views with which he was intruſted with it, that is, to render their ſubjects wiſe and virtuous, and to promote, by this means, their real felicity. In a word, whatever has been ſaid concerning the advantages of the civil ſtate preferably to that of nature, ſuppoſes that this ſtate is ſuch as it may and ought to be; and that both ſubjects and ſovereign diſcharge their reciprocal duties towards each other.

CHAP. IV.

Of the eſſential conſtitution of ſtates, and of the manner in which they are formed.

I. AFTER treating of the original of civil ſocieties, the natural order of our ſubject leads us to examine into the eſſential conſtitution of ſtates, that is, into the manner in which they are formed, and the conſtruction of thoſe ſurpriſing edifices.

II. From what has been ſaid in the preceding chapter it follows, that the only effectual method which man-

mankind could employ in order to ſhelter themſelves from the evils with which they were afflicted in the ſtate of nature, and to procure to themſelves all the advantages that were wanting to their ſecurity and happineſs, muſt be drawn from man himſelf, and from the aſſiſtance of ſociety.

III. For this purpoſe, it was neceſſary that a multitude of people ſhould unite in ſo particular a manner, that their preſervation muſt depend on each other, to the end that they ſhould be under a neceſſity of a mutual aſſiſtance, and by this junction of ſtrength and intereſts, they might be able to repel, with eaſe, the inſults againſt which each individual could not be guarded, to contain thoſe within duty who ſhould attempt to deviate from it, and to promote, more effectually, their common advantage Let us explain more particularly how this could be effected.

IV. Two things were neceſſary for this purpoſe.

1. It was neceſſary to unite for ever the wills of all the members of the ſociety, in ſuch a manner that from that time forward they ſhould never deſire but one and the ſame thing in whatever relates to the end and purpoſe of ſociety. It was neceſſary afterwards to eſtabliſh a ſupreme power ſupported by the ſtrength of the whole body, by which means they might intimidate thoſe who ſhould be inclinable to diſturb the peace, and to inflict a preſent and ſenſible evil on ſuch as ſhould attempt to act contrary to the common utility.

V. It is from this union of wills and of ſtrength, that the body politic or ſtate reſults, and without it we could never conceive a civil ſociety. For let the number of confederates be ever ſo great, if each man was to follow his own private judgment in things relating to the public good, they would only embarraſs one another, and the diverſity of inclinations

and judgments, arising from the levity and natural inconstancy of man, would soon demolish all concord, and mankind would thus relapse into the inconveniencies of the state of nature. Besides a society of that kind could never act a long time in concert, and for the same end, nor maintain itself in that harmony which constitutes its whole strength, without a superior power who is to serve as a check to the inconstancy and malice of man, and to oblige each individual to direct all his actions to the public utility.

VI. All this is performed by means of covenants; for this union of wills in one and the same person could never be so effected as to actually destroy the natural diversity of inclinations and sentiments; but it is done by an engagement which every man enters into, of submitting his private will to that of a single person, or of an assembly; insomuch that every resolution of this person or assembly; concerning things relative to the public security or advantage, must be considered as the positive will of all in general, and of each in particular.

VII. With regard to the union of strength, which produces the sovereign power, it is not formed by each man's communicating physically his strength to a single person, so as to remain utterly weak and impotent; but by a covenant or engagement, whereby all in general, and each in particular, oblige themselves to make no use of their strength, but in such a manner as shall be prescribed to them by the person on whom they have, with one common accord, conferred the supreme authority.

VIII. By this union of the body politic, under one and the same chief, each individual acquires, in some measure, as much strength as the whole society united. Suppose, for instance, there are a million of men in the commonwealth, each man is able to resist this million, by means of their subjection to the sovereign power, who keeps them all in awe, and hinders them

from

from hurting one another. This multiplication of ſtrength in the body politic reſembles that of each member in the human body; take them aſunder, and their vigour is no more, but by their mutual union the ſtrength of each increaſes, and they form, all together, a robuſt and animated body.

IX. The ſtate may be defined, a ſociety by which a multitude of people unite together, under the dependence of a ſovereign, in order to find, thro' his protection and care, the happineſs to which they naturally aſpire. The definition which *Tully* gives amounts pretty nearly to the ſame. *Multitudo juris conſenſu, & utilitatis communione ſociata.* A multitude of people united together by a communion of intereſt, and by common laws, to which they ſubmit with one accord.

X. The ſtate is therefore conſidered as a body, or as a moral perſon, of which the ſovereign is the chief or head, and the ſubjects are the members; in conſequence of which we attribute to this perſon certain actions peculiar to him, certain rights, privileges, and poſſeſſions, diſtinct from thoſe of each citizen, and to which neither each citizen, nor many, nor even all together can pretend, but only the ſovereign.

XI. It is moreover this union of ſeveral perſons in one body, produced by the concurrence of the wills and the ſtrength of every individual in one and the ſame perſon, that diſtinguiſhes the ſtate from a multitude. For a multitude is only an aſſemblage of ſeveral perſons, each of whom has his own private will with the liberty of judging according to his own notions of whatever is propoſed to him, and of determining as he pleaſes; for which reaſon they cannot be ſaid to have only one will. Whereas the ſtate is a body, or a ſociety, animated by one only ſoul, which directs all its motions, and makes all its members act after a conſtant and uniform manner, with a view to one and the ſame end, namely, the public utility.

XII. But

XII. But it will be here objected, that if the union of the will and of the ſtrength of each member of the ſociety, in the perſon of the ſovereign, deſtroys neither the will, nor the natural force of each individual, if they always continue in poſſeſſion of it, and if they are able, in fact, to employ it againſt the ſovereign himſelf, what does the force of the ſtate conſiſt in, and what is it that conſtitutes the ſecurity of this ſociety? I anſwer, that two things contribute chiefly to maintain the ſtate, and the ſovereign, who is the ſoul of it.

The firſt is, the engagement itſelf, by which individuals have ſubjected themſelves to the command of a ſovereign, an engagement which derives a conſiderable force both from divine authority, and from the religion of an oath. But as to vicious and ill-diſpoſed minds, on whom theſe motives make no impreſſion, the ſtrength of the government conſiſts chiefly in the fear of thoſe puniſhments which the ſovereign may inflict upon them, by virtue of the power with which he is inveſted.

XIII. Now ſince the means, by which the ſovereign is enabled to compel rebellious and refractory ſpirits to their duty, conſiſts in this, that the reſt of the ſubjects join their ſtrength with him for this end, (for, were it not for this, he would have no more power than the loweſt of his ſubjects) it follows from thence, that it is the ready ſubmiſſion of good ſubjects that furniſhes the ſovereign with the means of repreſſing the inſolent, and of maintaining his authority.

XIV. But provided a ſovereign ſhews never ſo ſmall an attachment to his duty, he will always find it eaſy to fix the better part of his ſubjects in his intereſt, and of courſe to have the greateſt part of the ſtrength of the ſtate in his hands, and to maintain the authority of the government. Experience has always ſhewn that princes need only to have a common

mon ſhare of virtue to be adored by their ſubjects. We may therefore affirm, that the ſovereign is capable of deriving from himſelf the means neceſſary for the ſupport of his authority, and that a prudent exerciſe of the ſovereignty purſuant to the end for which it was deſigned, conſtitutes at the ſame time the happineſs of the people, and by a neceſſary conſequence the greateſt ſecurity of the government in the perſon of the ſovereign.

XV. By following the principles here eſtabliſhed concerning the manner in which ſtates are formed, &c. if we ſuppoſe that a multitude of people, who had lived hitherto independent of each other, wanted to eſtabliſh a civil ſociety, there is a neceſſity for different covenants, and for a general decree.

1. The firſt covenant is that by which each individual engages with all the reſt to join for ever in one body, and to regulate, with one common conſent, whatever regards their preſervation and their common ſecurity. Thoſe who do not enter into this firſt engagement, remain excluded from the new ſociety.

2. There muſt afterwards be a decree made for ſettling the form of government; otherwiſe they could never take any fixt meaſures for promoting, effectually and in concert, the public ſecurity and welfare.

3. In fine, when once the form of government is ſettled, there muſt be another covenant, whereby after having pitched upon one or more perſons to be inveſted with the power of governing, thoſe on whom this ſupreme authority is conferred, engage to conſult moſt carefully the common ſecurity and advantage, and the others promiſe fidelity and allegiance to the ſovereign. This laſt covenant includes a ſubmiſſion of the ſtrength and will of each individual to the will of the head of the ſociety, as far as the public good requires; and thus it is that a regular ſtate and perfect government is formed.

XVI.

XVI. What we have hitherto delivered may be further illustrated by the account we have in history concerning the foundation of the *Roman* state. At first we behold a multitude of people, who flock together with a view of settling on the banks of the *Tiber*; afterwards they consult about what form of government they shall establish, and the party for monarchy prevailing, they confer the supreme authority on *Romulus**.

XVII. And tho' we are strangers to the original of most states, yet we must not imagine that what has been here said, concerning the manner in which civil societies are formed, is an arbitrary fiction. For since it is certain, that all civil societies had a beginning, it is impossible to conceive, how the members of which they are composed, could unite to live together dependent on a supreme authority, without supposing the covenants above-mentioned.

XVIII. And yet all political writers do not explain the generation of states after our manner. Some there are † who pretend, that states are formed merely by the covenants of the subject with one another, by which each man enters into an engagement with all the rest not to resist the will of the sovereign, upon condition that the rest on their side submit to the same engagement; but they pretend that there is no original compact between the sovereign and the subjects.

XIX. The reason why these writers give this explication of the matter, is obvious. Their design is to give an arbitrary and unlimited authority to sovereigns, and to deprive the subjects of every means of withdrawing their allegiance upon any pretext what-

* See Dionysius Halicarn. lib. 2. in the beginning.
† A. Hobbes, de Cive, cap. v. §. 7.

whatever, notwithſtanding any uſe the ſovereign may make of his authority. For this purpoſe it was abſolutely neceſſary to free kings from all reſtraint of compact or covenant between them and their ſubjects, which, without doubt, is the chief ornament of limiting their power.

XX. But notwithſtanding it is of the utmoſt importance to mankind, to ſupport the authority of kings, and to defend it againſt the attempts of reſtleſs or mutinous ſpirits, yet we muſt not deny evident truths, or refuſe to acknowledge a covenant, in which there is manifeſtly a mutual promiſe, of performing things to which they were not before obliged.

XXI. When I ſubmit voluntarily to a prince, I promiſe him allegiance; on condition that he will protect me; the prince on his ſide promiſes me his protection, on condition that I will obey him. Before this promiſe, I was not obliged to obey him, nor was he obliged to protect me, at leaſt by any *perfect* obligation; it is therefore evident, that there muſt be a mutual engagement.

XXII. But there is ſtill ſomething more; for ſo far is the ſyſtem we are here refuting, from ſtrengthening the ſupreme authority, and from ſcreening it from the capricious invaſions of the ſubject, that, on the contrary, nothing is of a more dangerous conſequence to ſovereigns, than to fix their right on ſuch a foundation. For if the obligation of the ſubjects towards their princes is founded merely on the mutual covenant between the ſubjects by which each man engages for the ſake of the reſt to obey the ſovereign, on condition that the reſt do the ſame for his ſake; it is evident, that at this rate every ſubject makes the force of his engagement depend on the execution of that of every other fellow-ſubject; and conſequently if any one refuſes to obey the ſovereign, all the reſt ſtand releaſed from their allegiance. Thus by endeavouring to puſh the rights of ſovereigns beyond their juſt limits, inſtead of ſtrengthening, they rather inadvertently weaken them.

CHAP.

CHAP V.

Of the ſovereign, ſovereignty, and the ſubjects.

I. THE ſovereign in a ſtate, is that perſon who has a right of commanding finally.

II. As to the ſovereignty we muſt define it, the right of commanding finally in civil ſociety, which right the members of this ſociety have conferred on one and the ſame perſon, to preſerve order and ſecurity in the commonwealth, and, in general, to procure, under his protection and thro' his care, real felicity, and eſpecially the ſure exerciſe of their liberty.

III. I ſay, in the firſt place, that ſovereignty is the right of commanding finally in ſociety, to ſhew that the nature of ſovereignty conſiſts chiefly in two things.

The firſt is, the right of commanding the members of the ſociety, that is, of directing their actions with authority, or with a power of compelling.

The ſecond is, that this right ought to be that of commanding finally in ſuch a manner, that every private perſon be obliged to ſubmit to it, without a power left to any man of reſiſting it. Otherwiſe if this authority was not ſuperior to every other upon earth, it could eſtabliſh no order or ſecurity in the commonwealth, though theſe are the ends for which it was eſtabliſhed.

IV. In the ſecond place, I ſay, that it is a right conferred upon a perſon, and not upon a man, to give to underſtand that this perſon may be, not only a ſingle man, but likewiſe, and intirely as well, a multitude of men, united in council, and forming only one will, by means of a plurality of ſuffrages, as we ſhall more particularly explain hereafter.

V. Third-

V. Thirdly, I ſay, to one and the ſame perſon, to ſhew that ſovereignty can admit of no ſhare or participation, that there is no ſovereign at all when there are many, becauſe there is no one who commands finally, and none of them being obliged to give way to the other, their competition muſt neceſſarily throw every thing into diſorder and confuſion.

VI. I add, in fine, to procure real felicity, &c. in order to point out the end of ſovereignty, that is, the happineſs of the people. When ſovereigns once loſe ſight of this end, when they pervert it to their private intereſts, or caprices, ſovereignty then degenerates into tyranny, and ceaſes to be a legitimate authority. Such is the idea we ought to form of a ſovereign and of ſovereignty.

VII. All the other members of the ſtate, are called ſubjects, that is, they are under an obligation of obeying the ſovereign.

VIII. Now a perſon becomes a member or ſubject of a ſtate two ways, either by an expreſs, or by a tacit, covenant.

IX. If, by an expreſs covenant, the thing admits of no difficulty. But with regard to a tacit covenant, we muſt obſerve that the firſt founders of ſtates, and all thoſe who afterwards became members thereof, are ſuppoſed to have ſtipulated, that their children and deſcendants ſhould, at their coming into the world, have the right of enjoying thoſe advantages which are common to all the members of the ſtate, provided nevertheleſs that theſe deſcendants, when they attain to the uſe of reaſon, be on their ſide willing to ſubmit to the government, and to acknowledge the authority of the ſovereign.

X. I ſaid,

X. I ſaid, provided the deſcendants acknowledged the authority of the ſovereign; for the ſtipulation of the parents cannot, of itſelf, have the force of ſubjecting the children againſt their will to an authority, to which they would not of themſelves chuſe to ſubmit: Hence the authority of the ſovereign over the children of the members of the ſtate, and the right on the other hand which theſe children have to the protection of the ſovereign, and to the advantages of the government, are founded on mutual conſent.

XI. Now if the children of members of the ſtate, upon attaining to the years of diſcretion, are willing to live in the place of their parentage, or in their native country, they are by this very act ſuppoſed to ſubmit themſelves to the power that governs the ſtate, and conſequently they ought to enjoy, as members of the ſtate, the advantages naturally ariſing from it. This is the reaſon likewiſe, that when once the ſovereign is acknowledged, he has no occaſion to tender the oath of allegiance to the children, who are afterwards born in his dominions.

XII. Beſides, it is a maxim which has been always conſidered as a general law of governments, that whoſoever merely enters upon the territories of a ſtate, and by a much ſtronger reaſon, thoſe who are deſirous of enjoying the advantages which are to be found there, are ſuppoſed to renounce their natural liberty, and to ſubmit to the eſtabliſhed laws and government, as far at leaſt as the public and private ſafety requires. And if they refuſe to do this, they may be conſidered as enemies; ſo far at leaſt as that the government has a right to expel them the country; and this is likewiſe a tacit covenant, by which they make a temporary ſubmiſſion to the government.

XIII. Subjects are ſometimes called *cives*, or members of the civil ſtate: ſome indeed make no diſtinction

tion between those two terms, but I think it is better to distinguish them. The appellation of *civis* ought to be understood only of those who share in all the advantages and privileges of the association, and who are properly members of the state, either by birth, or in some other manner. All the rest are rather inmates, strangers, or temporary inhabitants, than members. As to women and servants, the title of member is applicable to them only inasmuch as they enjoy certain rights, in virtue of their dependence on their domestical governor, who is properly a member of the state; and all this depends in general on the laws and particular customs of each government.

XIV. To proceed: members, besides the general relation of being united in the same civil society, have likewise many other particular relations, which are all reducible to two principal ones.

The first is, when private people compose particular bodies or corporations.

The second is, when sovereigns intrust particular persons with some part of the government.

XV. Those particular bodies are called, *Companies*, *Chambers*, *Colleges*, *Societies*, *Communities*. But it is to be observed, that all these particular societies are finally subordinate to the sovereign.

XVI. Besides, we may consider some as more antient than the establishment of civil states, and others as formed since.

XVII. The latter are likewise either public, such as are established by the authority of the sovereign, and then they generally enjoy some particular privileges, agreeably to their patents; or private, such as are formed by private people.

XVIII. In

XVIII. In fine, these private bodies are either lawful or unlawful. The former are those, which having nothing in their nature, contrary to good order, good manners, or to the authority of the sovereign, are supposed to be approved of by the state, though they have not received any formal sanction. With respect to unlawful bodies, we mean not only those whose members unite for the open commission of any crime, such as gangs of robbers, thieves, pirates, banditti, but likewise all other kinds of confederacy, which the subjects enter into, without the consent of the sovereign, and are contrary to the end of civil society. These engagements are called cabals, factions, conspiracies.

XIX. Those members whom the sovereign intrusts with some part of the government, which they exercise in his name and by his authority, have in consequence thereof particular relations to the rest of the members, and are under stronger engagements to the sovereign; these are called ministers, public officers, or magistrates.

XX. Such are the regents of a kingdom, during a minority, the governors of provinces and towns, the commanders of armies, the directors of the treasury, the presidents of courts of justice, ambassadors, or envoys to foreign powers, &c. As all these persons are intrusted with a part of the government, they represent the sovereign, and it is they that have properly the name of public ministers.

XXI. Others there are, who assist merely in the execution of public business, such as counsellors, who only give their opinion, secretaries, receivers of the public revenue, soldiers, subaltern officers, &c.

CHAP.

CHAP. VI.

Of the immediate ſource, and foundation of ſovereignty.

I. THO' what has been ſaid in the fourth chapter concerning the ſtructure of ſtates, is ſufficient to ſhew the original and ſource of ſovereignty, as well as its real foundation; yet as this is one of thoſe queſtions on which political writers are greatly divided, it will not be amiſs to examine it ſomewhat more particularly, and what remains ſtill to be ſaid upon this ſubject, will help to give us a more complete idea of the nature and end of ſovereignty.

II. When we enquire here into the ſource of ſovereignty, our intent is to know the neareſt and immediate ſource of it; now it is certain, that the ſupreme authority, as well as the title on which this power is eſtabliſhed, and which conſtitutes its right, is derived immediately from the very covenants which conſtitute civil ſociety, and give birth to government.

III. And in fact, upon conſidering the primitive ſtate of man, it appears moſt certain, that the appellations of ſovereigns and ſubjects, maſters and ſlaves, are unknown to nature. Nature has made us all of the ſame ſpecies, all equal, all free and independent of each other; and was willing that thoſe, on whom ſhe has beſtowed the ſame faculties, ſhould have all the ſame rights. It is therefore beyond all doubt that in this primitive ſtate of nature, no man has of himſelf an original right of commanding others, or any title to ſovereignty.

IV. There is none but God alone that has of himſelf, and in conſequence of his nature and perfections,

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a natural, eſſential, and inherent right of giving laws to mankind, and of exerciſing an abſolute ſovereignty over them. The caſe is otherwiſe between man and man, they are of their own nature as independent of one another, as they are dependent of God. This liberty and independence is therefore a right naturally belonging to man, of which it would be unjuſt to deprive him againſt his will.

V. But if this be the caſe, and there is yet a ſupreme authority ſubſiſting amongſt mankind, whence can this authority ariſe, unleſs it be from the compacts or covenants, which men have made amongſt themſelves upon this ſubject? for we have a right of transferring our property to another by a covenant, ſo, by a voluntary ſubmiſſion, a perſon may convey to another, who accepts of the renunciation, the natural right he had of diſpoſing intirely of his liberty and natural ſtrength.

VI. It muſt therefore be agreed, that ſovereignty reſides originally in the people, and in each individual with regard to himſelf; and that it is the transferring and uniting the ſeveral rights of individuals in the perſon of the ſovereign, that conſtitutes him ſuch, and really produces ſovereignty. It is beyond all diſpute, for example, that when the *Romans* choſe *Romulus* and *Numa* for their kings, they muſt have conferred upon them, by this very act, the ſovereignty, which thoſe princes were not poſſeſſed of before, and to which they had certainly no other right but what was derived from the election of the people.

VII. Nevertheleſs, tho' it be evident to the laſt degree, that the immediate original of ſovereignty is owing to human covenants, yet nothing can hinder us from ſaying, with good grounds, that it is of divine as well as human right.

VIII. In fact, right reaſon having made it plainly appear, after the multiplication of mankind, that the eſta-

eſtabliſhment of civil ſocieties and of a ſupreme authority, was abſolutely neceſſary for the order, tranquillity, and preſervation of the ſpecies, it is as convincing a proof that this eſtabliſhment was agreeable to the deſigns of Providence, as if God himſelf had declared it to mankind by a poſitive revelation. And ſince God is eſſentially fond of order, he is doubtleſs willing that there ſhould be a ſupreme authority upon earth, which alone is capable of procuring and ſupporting it amongſt mankind, by enforcing the obſervance of the laws of nature.

IX. There is a beautiful paſſage of *Cicero's* to this purpoſe*. *Nothing is more agreeable to the ſupreme Deity, that governs this univerſe, than civil ſocieties lawfully eſtabliſhed.*

X. When therefore we give to ſovereigns the title of God's vicegerents upon earth, this does not imply that they derive their authority immediately from God, but it ſignifies only, that by means of the power lodged in their hands, and with which the people have inveſted them, they maintain, agreeably to the views of the Deity, both order and peace, and thus procure the happineſs of mankind.

XI. But if theſe magnificent titles add a conſiderable luſtre to ſovereignty, and render it more reſpectable, they afford likewiſe, at the ſame time, an excellent leſſon to princes. For they cannot deſerve the title of God's vicegerents upon earth, but inaſmuch as they make uſe of their authority, purſuant to the views and purpoſes for which they were intruſted with it, and agreeably to the intention of the Deity, that is for the happineſs of the people, by uſing all their endeavours to inſpire them with virtuous principles.

* Nihil eſt illi principi Deo, qui omnem hunc mundum regit, quod quidem in terris fiat acceptius, quam conſilia cœtuſque hominum jure ſociati, quæ civitates appellantur, Somn. Scip. c. 3.

XII. This, without doubt, is ſufficient to make us look upon the original of government as ſacred, and to induce ſubjects to ſhew ſubmiſſion and reſpect to the perſon of the ſovereign. But there are political writers who carry the thing further, and maintain that it is God who confers immediately the ſupreme power on princes, without any intervention or concurrence of man.

XIII. For this purpoſe, they make a diſtinction betwixt the cauſe of the ſtate, and the cauſe of the ſovereignty. They confeſs indeed that ſtates are formed by covenants, but they inſiſt that God himſelf is the immediate cauſe of the ſovereignty. According to their notions, the people, who chuſe to themſelves a king, do not, by this act, confer the ſupreme authority upon him, they only point out the perſon whom heaven is to inſtruſt with it. The conſent of the people to the dominions of one or more perſons, may be conſidered indeed as a channel, through which the ſupreme authority flows, but is not its real ſource.

XIV. The principal argument which theſe writers adopt, in order to eſtabliſh their opinion, is, that as neither each individual amongſt a great number of free and independent people, nor the whole collective multitude, are in any wiſe poſſeſſed of the ſupreme authority, they cannot confer it on the prince. But this argument proves nothing: it is true that neither each member of the ſociety, nor the whole multitude collected, are formally inveſted with the ſupreme authority, ſuch as we behold it in the ſovereign, but it is ſufficient that they poſſeſs it virtually, that is, that they have within themſelves all that is neceſſary to enable them, by the concurrence of their free will and conſent, to produce it in the ſovereign.

XV. Since every individual has a natural right of diſpoſing of his perſon and actions according as he thinks proper, why ſhould he not have a power of tranſferring to another that right which he has of directing

recting himself? Now is it not manifest, that if all the members of a society agree to transfer this right to one of their fellow-members, this cession will be the nearest and immediate cause of sovereignty? It is therefore evident, that there are, in each individual, the seeds, as it were, of the supreme power. The case is here very near the same as in that of several voices, collected together, which by their union, produce a harmony, that was not to be found separately in each.

XVI. But it will be here objected, that the scripture itself says, that every man ought to be subject to the supreme powers, because they are established by God *. I answer, with Grotius, that men have established civil societies, not in consequence of a divine ordinance, but in their voluntary motion, induced to it by the experience they had had of the incapacity which separate families were under, of defending themselves against the insults and attacks of human violence. From thence (he adds) arises the civil power which St. *Peter*, for this reason, calls *a human* power †, though in other parts of scripture it bears the name of a divine institution ‡, because God has approved of it as an establishment useful to mankind §.

XVII. All the other arguments, in favour of the opinion we have been here refuting, do not even deserve our notice. In general it may be observed, that never were more wretched reasons produced upon this subject, as the reader may be easily convinced by reading Puffendorf on the Law of Nature and Nations, who, in the chapter corresponding to this, gives these arguments at length, and completely refutes them ||.

XVIII. Let us therefore conclude, that the opinion of those, who pretend that God is the immediate

* Rom. xiii.

† Ep. i. c. 2. v. 13. ‡ Rom. xiii. 1.

§ Grotius of the Right of War and Peace, book i. c. 4. §. 7. 12 No. 3. See above, No. 7, and following.

|| See the Law of Nature and Nations, book vii. c. 3.

cause of sovereignty, has no other foundation than that of adulation and flattery, by which, in order to render the authority of sovereigns more absolute, they have attempted to render it independent of all human compact, and dependent only on God. But were we even to grant that princes hold their authority immediately of God, yet the consequences, which some political writers want to infer, could not be drawn from this principle.

XIX. For since it is most certain that God could never intrust princes with this supreme authority, but for the good of society in general, as well as of individuals, the exercise of this power must necessarily be limited, by the very intention which the Deity had in conferring it on the sovereign, insomuch that the people would still have the same right of refusing to obey a prince, who, instead of concurring with the views of the Deity, would, on the contrary, endeavour to cross and defeat them, by rendering his people miserable, as we shall prove more particularly hereafter.

CHAP. VII.

Of the essential characters of sovereignty, its modifications, extent, and limits.

I. *Of the characters of sovereignty.*

I. SOVEREIGNTY we have defined, to be a right of commanding finally in civil society which the members of this society have conferred upon some person, with a view of maintaining order and security in the commonwealth. This definition shews us the principal characters of the power that governs the state, and this is what it will be proper to explain here in a more particular manner.

II. The

II. The first character, and that from which all the others flow, is its being a supreme and independent power, that is, a power that judges finally of whatever is susceptible of human direction, and relates to the welfare and advantage of society; insomuch that this power acknowledges no superior upon earth.

III. It must be observed however, that when we say the civil power is, of its nature, supreme and independent, we do not mean thereby, that it does not depend, in regard to its original, on the human will*: all that we would have understood is, that when once this power is established, it acknowledges no other upon earth, superior or equal to it, and consequently that whatever it ordains in the plenitude of its power, cannot be reversed by any other human will, as superior to it.

IV. That in every government there should be such a supreme power, is a point absolutely necessary; the very nature of the thing requires it, otherwise it is impossible for it to subsist. For since powers cannot be multiplied to infinity, we must necessarily stop at some degree of authority superior to all other, and let the form of government be what it will, monarchial, aristocratical, democratical, or mixt, we must always submit to a supreme decision, since it implies a contradiction to say, that there is any person above him, who holds the highest rank in the same order of beings.

V. A second character, which is a consequence of the first, is that the sovereign as such, is not accountable to any person upon earth for his conduct, nor liable to any punishment from man; for both suppose a superior.

VI. There are two ways of being accountable. One as to a superior, who has a right of reversing what

* See above, c. 4, &c. where we have proved the contrary.

what has been done, if he does not find it to his liking, and even of inflicting some punishment, and this is inconsistent with the idea of a sovereign.

The other as to an equal, whose approbation we are desirous of having; and in this sense a sovereign may be accountable, without any absurdity. And even those who have a sensibility of honour, endeavour by this means to acquire the approbation and esteem of mankind, by letting all the world see, that they act with prudence and integrity: but this does not imply any dependence.

VII. I said that the sovereign as such was neither accountable nor punishable; that is, as long as he continues really a sovereign, and has not forfeited his right. For it is past all doubt, that if the sovereign, utterly forgetful of the end for which he was intrusted with the sovereignty, applied it to a quite contrary purpose, and is thus become an enemy to the state; the sovereignty returns *(ipso facto)* to the nation, who in that case, can act towards the person, who was their sovereign, in the manner they think most agreeable to their security and interests. For whatever notion we may entertain of sovereignty, no man, in his senses, will pretend to say, that it is a right and undoubted title to follow the impulse of our irregular passions with impunity, and thus to become an enemy to society.

VIII. A third character essential to sovereignty, considered in itself, is, that the sovereign as such, be above all human or civil law. I say all human law; for there is no doubt but the sovereign himself is subject to the divine laws, whether natural, or positive.

Regum timendorum in proprios greges,
Reges in ipsos imperium est Jovis.

HOR. l. 3. Od. 1.

IX. But with regard to laws merely human, as their whole force and obligation ultimately depends on the will of the sovereign, they cannot, with any pro-

propriety of ſpeech, be ſaid to be obligatory in reſpect to him: for obligation neceſſarily ſuppoſeth two perſons, a ſuperior, and an inferior.

X. And yet natural equity requires ſometimes that the prince ſhould conform to his own laws, to the end that his ſubjects may be more effectually induced to obſerve them. This is extremely well expreſſed in theſe verſes of *Claudian* *.

In commune jubes ſi quid, cenſeſve tenendum,
Primus juſſa jubi? tunc obſervantior æqui
Fit populus, nec ferre negat, cum viderit ipſum
Auctorem parere ſibi, componitur orbis
Regis ad exemplum, nec ſic inflectere ſenſus
Humanos edicta valent, ut vita regentis.

XI. To proceed: we ſuppoſe the ſovereignty ſuch as it really is in itſelf, and that the eſtabliſhment of civil laws ultimately depends on the ſole will of the perſon who enjoys the honours and title of ſovereign, inſomuch that his authority, in this reſpect, cannot be limited. otherwiſe this ſuperiority of the prince above the laws is not applicable to him in the full extent in which we have given it him.

XII. This ſovereignty, ſuch as we have now repreſented it, reſided originally in the people. But when once the people have transferred their right to a ſovereign, they cannot without contradiction, be ſuppoſed to continue ſtill maſters of it.

XIII. Hence the diſtinction which ſome political writers make between *real ſovereignty*, which always reſides in the people, and *actual ſovereignty*, which belongs to the king, is equally abſurd and dangerous. For it is ridiculous to pretend, that after the people have conferred the ſupreme authority on the king, they

* De IV. Conſul. Honor. v. 296 & ſeq.

they ſhould ſtill continue in poſſeſſion of that very authority ſuperior to the king himſelf.

XIV. We muſt therefore obſerve here a juſt medium, and eſtabliſh principles that neither favour tyranny, nor the ſpirit of mutiny and rebellion.

1. It is certain, that as ſoon as a people ſubmit to a king, really ſuch, they have no longer the ſupreme power.

2. But it does not follow, from the people's having conferred the ſupreme power in ſuch a manner, that they have reſerved to themſelves in no caſe the right of reſuming it.

3. This reſervation is ſometimes explicit; but there is always a tacit one, the effect of which diſcloſes itſelf, when the perſon, intruſted with the ſupreme authority, perverts it to a uſe directly and intirely contrary to the end for which it was conferred upon him, as will better appear hereafter.

XV. But though it be abſolutely neceſſary, that there ſhould be a ſupreme and independent authority in the ſtate, there is nevertheleſs ſome difference, eſpecially in monarchies and ariſtocracies, with regard to the manner in which thoſe who are intruſted with this power exerciſe it. In ſome ſtates the prince governs as he thinks proper; in others, he is obliged to follow ſome fixt and conſtant rules, from which he is not allowed to deviate; this is what I call the modifications of ſovereignty, and from thence ariſes the diſtinction of abſolute and limited ſovereignty.

2. *Of abſolute ſovereignty.*

XVI. Abſolute ſovereignty is therefore nothing elſe but the right of governing the ſtate as a prince thinks proper, according as the preſent ſituation of affairs ſeems to require, and without being obliged to conſult any perſon whatever, or to follow any fixt or determinate and perpetual rules.

XVII. Up-

XVII. Upon this head we have ſeveral important reflections to make.

1. The word *abſolute power* is generally very odious to republicans; and I muſt confeſs, that when it is miſunderſtood, it is apt to make the moſt dangerous impreſſions on the minds of princes, eſpecially in the mouths of flatterers.

2. In order to form a juſt idea of it, we muſt trace it to its principle. In the ſtate of nature, every man has an abſolute right to diſpoſe of his perſon and actions, after what manner he thinks moſt conducive to his happineſs, and without being obliged to conſult any body, provided however that he does nothing contrary to the laws of nature: conſequently when a multitude of men unite together, in order to form a ſtate, this body hath the ſame liberty in regard to matters in which the public good is concerned.

3. When therefore the whole body of the people confer the ſovereignty upon a prince, with this extent and abſolute power, which originally reſided in themſelves, and without adding any particular limitation to it, we call that ſovereignty abſolute.

4. This being ſo, we muſt not confound an abſolute power with an arbitrary, deſpotic, and unlimited authority. For from what we have now ſaid concerning the original and nature of abſolute ſovereignty, it manifeſtly follows, that it is limited from its very nature, by the intention of thoſe who conferred it on the ſovereign, and by the very laws of God. This is what we muſt explain more at large.

XVIII. The end which mankind propoſed to themſelves in renouncing their natural independence, and eſtabliſhing government and ſovereignty, was doubtleſs to redreſs the evils which they laboured under, and to ſecure their happineſs. If ſo, how is it poſſible, to conceive, that thoſe, who with this view, granted an abſolute power to the ſovereign, ſhould have intended to give him an arbitrary and unlimited power, ſo as to intitle him to gratify his caprice and paſſions, to the prejudice of the life, property, and

liberty

liberty of the ſubjects? On the contrary, we have ſhewn above, that the civil ſtate muſt neceſſarily impower the ſubjects to inſiſt upon the ſovereign's uſing his authority for their advantage, and according to the purpoſes for which he was intruſted with it.

XIX. It muſt therefore be acknowledged, that it never was the intention of the people to confer abſolute ſovereignty upon a prince, but with this expreſs condition, that the public good ſhould be the ſupreme law to direct him; conſequently as long as the prince acts with this view, he is authoriſed by the people; but on the contrary, if he makes uſe of his power merely to ruin and deſtroy his ſubjects, he acts intirely of his own head, and not in virtue of the power with which he was intruſted by the people.

XX. Still further, the very nature of the thing does not allow abſolute power to be extended beyond the bounds of public utility; for abſolute ſovereignty cannot confer a right upon the ſovereign, which the people had not originally in themſelves. Now before the eſtabliſhment of civil ſociety, ſurely no man had a power of injuring either himſelf or others; conſequently abſolute power cannot give the ſovereign a right to hurt and abuſe his ſubjects.

XXI. In the ſtate of nature every man was abſolute maſter of his own perſon and actions, provided he confined himſelf within the limits of the law of nature. Abſolute power is formed only by the union of all the rights of individuals in the perſon of the ſovereign; of courſe the abſolute power of the ſovereign is confined within the ſame bounds, as thoſe by which the abſolute power of individuals was originally limited.

XXII. But I go ſtill further, and affirm that, ſuppoſing even a nation had been really willing to grant their ſovereign an arbitrary and unlimited power, this conceſſion would of itſelf be void and of no effect.

XXIII. No

XXIII. No man can diveſt himſelf ſo far of his liberty as to ſubmit to an arbitrary power, who is to treat him abſolutely according to his fancy. This would be renouncing his own life, which he is not maſter of; it would be renouncing his duty, which is never permitted: and if thus it be with regard to an individual who ſhould make himſelf a ſlave, much leſs hath an intire nation that power, which is not to be found in any of its members.

XXIV. By this it appears moſt evident, that all ſovereignty, how abſolute ſoever we ſuppoſe it, hath its limits; and that it can never imply an arbitrary power in the prince of doing whatever he pleaſes without any other rule or reaſon than his own deſpotic will.

XXV. For how indeed ſhould we attribute any ſuch power to the creature, when it is not to be found in the ſupreme Being himſelf? His abſolute dominion is not founded on a blind will; his ſovereign will is always determined by the immutable rules of wiſdom, juſtice, and beneficence.

XXVI. In ſhort, the right of commanding, or ſovereignty, ought always to be eſtabliſhed, ultimately on a power of doing good, otherwiſe it cannot be productive of a real obligation; for reaſon cannot approve or ſubmit to it, and this is what diſtinguiſhes empire and ſovereignty from violence and tyranny. Such are the ideas we ought to form of abſolute ſovereignty.

3. *Of limited ſovereignty.*

XXVII. But notwithſtanding abſolute power, conſidered in itſelf, and ſuch as we have now repreſented it, implies nothing odious or unlawful, and in that ſenſe, people may confer it upon the ſovereign; yet we muſt allow, that the experience of all ages has informed mankind, that this is not the form of government

ment which ſuits them beſt, nor the fitteſt for procuring them a ſtate of tranquillity and happineſs.

XXVIII. Whatever diſtance there may be between the ſubjects and the ſovereign, in whatſoever degree of elevation the latter may be placed above the reſt, ſtill he is man like themſelves; their ſouls are all caſt, as it were, in the ſame mould, they are all ſubject to the ſame prejudices, ſuſceptible all of the ſame paſſions.

XXIX. Again: the very ſtation, which ſovereigns occupy, expoſes them to temptations, unknown to private people. The generality of princes have neither virtue nor courage ſufficient to moderate their paſſions, when they find they may do whatever they pleaſe. The people have therefore great reaſon to fear, that an unlimited authority will turn out to their prejudice, and that if they do not reſerve ſome ſecurity to themſelves, againſt the ſovereign's abuſing it, he will actually abuſe it.

XXX. It is theſe reflections, juſtified by experience, that have induced moſt, and thoſe the wiſeſt, nations, to ſet bounds to the power of their ſovereigns, and to preſcribe the manner in which they are to govern; and this has produced what is called limited ſovereignty.

XXXI. But though this limitation of the ſupreme power is advantageous to the people, yet it does no wrong to the princes themſelves; nay it may rather be ſaid, that it turns out to their advantage, and forms the greateſt ſecurity to their authority.

XXXII. It does no wrong to princes; for if they could not be ſatisfied with a limited authority, their buſineſs was to refuſe the crown; and when once they have accepted of it upon theſe conditions, they are no longer at liberty to endeavour afterwards to break thro' them, or to ſtrive to render themſelves abſolute.

XXXIII. It

XXXIII. It is rather advantageous to princes, because those who are invested with absolute power, and are desirous of discharging their duty, are obliged to a far greater vigilance and circumspection, and exposed to more fatigue, than those who have their task, as it were, marked out to them, and are not allowed to deviate from certain rules.

XXXIV. In fine, this limitation of sovereignty forms the greatest security to the authority of princes; for as they are less exposed hereby to temptation, they avoid that popular fury, which is sometimes discharged on those, who, having been invested with absolute authority, abuse it to excess. Absolute power easily degenerates into despotism, and despotism paves the way for the greatest and most fatal revolutions that can befall to sovereigns. This is what the experience of all ages has verified: it is therefore a happy incapacity in kings not to be able to act contrary to the laws of their country.

XXXV. Let us therefore conclude, that it intirely depends upon a free people, to invest the sovereigns, whom they place over their heads, with an authority either absolute or limited by certain laws, provided these laws contain nothing contrary to justice, nor to the end of government. These regulations, by which the supreme authority is kept within bounds, are called, *The fundamental laws of the state.*

4. *Of fundamental laws.*

XXXVI. The fundamental laws of a state, taken in their full extent, are not only the decrees by which the entire body of the nation determine the form of government, and the manner of succeeding to the crown; but are likewise the covenants betwixt the people and the person on whom they confer the sovereignty, which regulate the manner of governing, and by which the supreme authority is limited.

XXXVII. These

XXXVII. These regulations are called fundamental laws, because they are the basis, as it were, and foundation of the state, on which the structure of the government is raised, and because the people look upon them as their principal strength and support.

XXXVIII. The name of laws however has been given to these regulations in an improper and figurative manner; for, properly speaking, they are real covenants. But as these covenants are obligatory between the contracting parties, they have the force of laws themselves. Let us explain it more at large.

XXXIX. 1. I observe in the first place, that there is a kind of fundamental law of right and of necessity, essential to all governments, even in those states where the most absolute sovereignty prevails. This law is that of the public good, from which the sovereign can never depart, without being wanting in his duty; but this alone is not sufficient to limit the sovereignty.

XL. Hence those promises either tacit or express, by which princes bind themselves even by oath, when they come to the crown, of governing according to the laws of justice and equity, of consulting the public good, of oppressing nobody, of protecting the virtuous, and of punishing evil doers, and the like, do not imply any limitation to their authority, nor any diminution of their absolute power. It is sufficient that the choice of the means for procuring the advantage of the state, and the method of putting them in practice, be left to the judgment and disposal of the sovereign; otherwise the distinction of absolute and limited power would be utterly abolished.

XLI. 2. But with regard to fundamental laws, properly so called, they are only more particular precautions taken by the people, to oblige sovereigns more strongly to employ their authority, agreeably to the general rule of the public good. This

may

may be done ſeveral ways; but ſtill theſe limitations of the ſovereignty have more or leſs force, according as the nation has taken more or leſs precautions, that they ſhall have their due effect.

XLII. Hence 1. A nation may require of a ſovereign, that he will engage, by a particular promiſe, not to make any new laws, not to levy new impoſts, to tax only ſome particular things, to give places and employments only to a certain ſet of people, and not to take any foreign troops into his pay, &c. Then indeed the ſupreme authority is limited in theſe different reſpects, inſomuch that whatever the king attempts afterwards contrary to the formal engagement he entered into ſhall be void and of no effect. But if there ſhould happen to be an extraordinary caſe, in which the ſovereign thought it conducive to the public good, to deviate from the fundamental laws, he is not allowed to do it of his own head, in contempt of his ſolemn engagement, but in that caſe he ought to conſult the people themſelves, or their repreſentatives. Otherwiſe under pretence of ſome neceſſity or utility, the ſovereign might eaſily break his word, and fruſtrate the effect of the precautions taken by the nation to limit his power. And yet Puffendorf thinks otherwiſe *. But for a ſtill greater ſecurity of the performance of the engagements into which the ſovereign entered, and which limit his power, it is proper to require explicitly of him, that he ſhall convene a general aſſembly of the people, or of their repreſentatives, or of the nobility of the country, when any matters happen to fall under debate, which it was thought improper to leave to his deciſion. Or elſe the nation may previouſly eſtabliſh a council, a ſenate, or parliament, without whoſe conſent the prince ſhall be rendered incapable of acting in regard to things which the nation did not think fit to ſubmit to his will.

XLIII. 2. Hiſ-

* See the Law of Nature and Nations, book vii. c. 6. §. 10.

XLIII. 2. Hiſtory informs us, that ſome nations have carried their precautions ſtill further, by inſerting, in plain terms, in their fundamental laws, a condition or clauſe, by which the king was declared to have forfeited his crown, if he broke through theſe laws. Puffendorf gives an example of this, taken from the oath of allegiance, which the people of *Aragon* formerly made to their kings. *We, who have as much power as you, make you our king, upon condition you maintain inviolably our rights and liberties, and not otherwiſe.*

XLIV. It is by ſuch precautions as theſe, that a nation really limits the authority ſhe confers on the ſovereign, and ſecures her liberty. For as we have already obſerved, civil liberty ought to be accompanied not only with a right of inſiſting on the ſovereign's making a due uſe of his authority, but moreover with a moral certainty that this right ſhall have its effect. And the only way to render the people thus certain, is to uſe proper precautions againſt the abuſe of the ſovereign power in ſuch a manner as theſe precautions ſhall not be eaſily eluded.

XLV. Beſides we muſt obſerve here, that theſe limitations of the ſovereign power do not render it defective, nor make any diminution in the ſupreme authority; for a prince, or a ſenate, who has been inveſted with the ſupreme power upon this footing, may exerciſe every act of it as well as in an abſolute monarchy. All the difference is, that in the latter the prince alone determines ultimately according to his private judgment; but in a limited monarchy, there is a certain aſſembly, who, in conjunction with the king take cognizance of particular affairs, and whoſe conſent is a neceſſary condition, without which the king can determine nothing. But the wiſdom and virtue of good princes, are always ſtrengthened by the concurring aſſiſtance of thoſe who have a ſhare in the authority. They always do what they incline to, when they incline to nothing but what is juſt and good;

good; and they ought to esteem themselves happy in having it put out of their power to do otherwise.

XLVI. 3. In a word, as the fundamental laws, which limit the sovereign authority, are nothing else but the means which the people use to assure themselves that the prince will not recede from the general law of the public good in the most important circumstances, it cannot be said that they render the sovereignty imperfect or defective. For if we suppose a prince invested with absolute authority, but at the same time blessed with so much wisdom and virtue, that he will never, even in the most trifling case, deviate from the laws which the public good requires, and that all his determinations shall be subjected to this superior rule, can we, for that reason, say, that his power is in the least weakened or diminished? No to be sure; so that the precautions, which the people take against the weakness or the wickedness inseparable from human nature, in limiting the power of their sovereigns to hinder them from abusing it, do not in the least weaken or diminish the sovereignty, but on the contrary, render it perfect, by reducing the sovereign to a necessity of doing good, and consequently putting him, as it were, out of a capacity of misbehaving.

XLVII. Neither are we to believe that there are two distinct wills in a state, whose sovereignty is limited in the manner we have explained; for the state wills or determines nothing but by the will of the king. Only it is to be observed, that when a certain condition stipulated happens to be broken, the king cannot decree at all, or at least must do so in vain in certain points; but he is not, for this reason, less the sovereign than he was before. Because a prince cannot do every thing according to his humour, it does not follow from this, that he is not the sovereign. Sovereign power and absolute power ought not to be confounded; and from what has been said, it is evident, that the one may subsist without the other.

XLVIII. 4. Laſtly, there is ſtill another manner of limiting the power of thoſe to whom the ſovereignty is committed, which is not to truſt all the different rights included in the ſovereignty to one ſingle perſon, but to lodge them in ſeparate hands, or in different bodies, that they may modify or reſtrain the ſovereignty.

XLIX. For example, if we ſuppoſe that the body of the nation reſerves to itſelf the legiſlative power, and that of creating the principal magiſtrates; that it gives the king the military and executive powers, &c. and that it truſts to a ſenate compoſed of the principal men, the judiciary power, that of laying taxes, &c. it is eaſily conceived, that this may be executed in different manners, in the choice of which prudence muſt determine us.

L. If the government is eſtabliſhed on this footing, then by the original compact of aſſociation there is a kind ſo ſharing the rights of the ſovereignty, by a reciprocal contract or ſtipulation between the different bodies of the ſtate. This ſharing produces a balance of power, which places the different bodies of the ſtate in ſuch a mutual dependence, as retains every one, who has a ſhare in the ſovereign authority, within the bounds which the law preſcribes to them; by which means liberty is ſecured; for example, the regal authority is balanced by the power of the people, and a third order ſerves as a counterbalance to the two firſt, to keep them always in an æquilibrium, and hinder the one from riſing above the other. But what has been ſaid is ſufficient, concerning the diſtinction between abſolute and limited ſovereignty.

Of patrimonial, and uſufructuary kingdoms.

LI. In order to finiſh this chapter let us obſerve, that there is ſtill another accidental difference in the manner of poſſeſſing the ſovereignty, eſpecially with reſpect to kings. Some are maſters of their crown in the

the way of patrimony, which they are permitted to ſhare, transfer, or alienate to whom they have a mind; in a word, of which they can diſpoſe as they think proper: others hold the ſovereignty in the way of *uſe* only, not of property, and this either for themſelves only, or with the power of tranſmitting it to their deſcendants according to the laws eſtabliſhed for the ſucceſſion. It is upon this foundation that the doctors diſtinguiſh kingdoms into patrimonial, and uſufructuary or not patrimonial.

LII. We ſhall here add, that thoſe kings poſſeſs the crown in full propriety, who have acquired the ſovereignty by right of conqueſt; or thoſe to whom a people have delivered themſelves up without reſerve in order to avoid a greater evil; but that, on the contrary, thoſe kings, who have been eſtabliſhed by a free conſent of the people, poſſeſs the crown in the way of *uſe* only. This is the manner in which Grotius explains this diſtinction, in which he has been followed by Puffendorf, and moſt of the other commentators or writers*.

LIII. On this we may make the following remarks.

1. Nothing in reality hinders the ſovereign power, as well as every other right, from being alienated or transferred. In this there is nothing contrary to the nature of the thing; and if the agreement between the prince and the people bears that the prince ſhall have full right to diſpoſe of the crown as he ſhall think proper, this will be what we call a patrimonial kingdom.

2. But examples of ſuch agreements are very rare; and we hardly find any other except that of the Egyptians with their king, mentioned in *Geneſis* †.

3. The ſovereign power, however abſolute, is not of itſelf, inveſted with the right of property, nor con-

 ſequently

* See Grotius on the Right of War and Peace, lib. i chap. 3. §. 11 and 12 &c. Puffendorf, on the Law of Nature and Nations, lib. vii. ch. 6. §. 14, 15.

† Chap. 47. v. 18. &c.

ſequently with the power of alienation. Theſe two ideas are intirely diſtinct, and have no neceſſary connection with each other.

4. It is true, ſome allege a great many examples of alienations made in all ages by ſovereigns; but either theſe alienations had no effect, or they were made by an expreſs or tacit conſent of the people, or laſtly, they were founded on no other titles but force.

5. Let us therefore take it for an inconteſtable principle, that, in dubious caſes, every kingdom ought to be judged not patrimonial, ſo long as it cannot be proved in any manner, that a people ſubmitted themſelves on that footing to a ſovereign.

CHAP. VIII.

Of the parts of the ſovereignty, or of the different eſſential rights which it includes.

I. IN order to finiſh this firſt part, nothing remains but to treat of the parts of ſovereignty in general. We may conſider ſovereignty as an aſſemblage of various rights and different powers, which though diſtinct, are nevertheleſs conferred for the ſame end, that is to ſay, for the good of the ſociety, and which are all eſſentially neceſſary for this ſame end; theſe different rights and powers are called the eſſential parts of the ſovereignty.

II. To know that theſe are the parts of ſovereignty, we need only attend to its nature and end.

The end of ſovereignty is the preſervation, the tranquillity, and the happineſs of the ſtate, as well within itſelf, as with reſpect to its intereſts abroad; ſo that ſovereignty, muſt include every thing that is eſſentially neceſſary to it for procuring this double end.

III. 1. As

III. 1. As this is the case, the first part of sovereignty, and that which is, as it were, the foundation of all the rest, is the legislative power, by virtue of which the sovereign finally establishes general and perpetual rules, which are called *laws*. By this means every one knows what he ought to do, or not to do, for the preservation of peace and good order, what share he retains of his natural liberty, and how he ought to use his rights so as not to disturb the public repose.

It is by means of the laws that we reduce to a noble unity that prodigious diversity of sentiments and inclinations observable among men, and that we establish between them that concert and harmony which are essentially necessary to society, and which direct all the actions of the members that compose it to the common good and advantage; but it must be supposed that the laws of the sovereign ought to contain nothing opposite to the divine laws, whether natural or revealed.

IV. 2. To the legislative we must join the coercive power, that is to say, the right of establishing punishments against those who molest the society by their enormities; and the power of actually inflicting them. Without this the establishment of civil society and of laws would be absolutely useless, and we could not propose to live in peace and safety. But that the dread of punishments may make a sufficient impression on the minds of the people, the right of punishing must extend to the power of inflicting the greatest of natural evils, I mean death; otherwise the dread of punishment would not be always capable of counter-balancing the force of pleasure and passion. In a word, the people must have more interest to observe, than to violate the law, thus the right of the sword is certainly the greatest power which one man can exercise over another.

V. 3. After this, it is necessary for the preservation of peace in a state, that the sovereign should have a right

right to take cognizance of the different quarrels between the ſubjects, and to decide them finally, as alſo to examine the accuſations laid againſt any perſon, in order to abſolve or puniſh him by his ſentence, conformably to the laws: this is what we call *juriſdiction*, or the *judiciary power*. To this we muſt alſo refer the right of pardoning criminals when any reaſon of public uſe requires it.

VI. 4. Beſides as the ways of thinking, or opinions embraced by the ſubjects, may have a very great influence on the good or ill of the commonwealth, it is neceſſary that the ſovereignty ſhould include a right of examining the doctrines taught in the ſtate, ſo that nothing may be advanced publicly but what is conformable to truth, and conducive to the advantage and tranquillity of this ſociety: hence it is that it belongs to the ſovereign to eſtabliſh public doctors, academies, and ſchools; and that the ſovereign power, in matters of religion, belongs to him of right, at leaſt as much as the nature of the thing will permit. After having ſecured the public repoſe at home, it is neceſſary to guard it from abroad, and to procure to it, from foreign ſtates, all the aids and advantages which are neceſſary to it, whether in time of peace or war.

VII. 5. In conſequence of this, the ſovereign ought to be inveſted with the power of aſſembling and arming his ſubjects, or of raiſing other troops in as great a number as is neceſſary for the ſafety and defence of the ſtate, and of making peace afterwards when he ſhall think proper.

VIII. 6. Hence alſo ariſes the right of contracting public engagements, of making treaties and alliances with foreign ſtates, and of obliging all the ſubjects to obſerve them.

IX. 7. But as the public affairs, both at home and abroad, cannot be managed and carried on by a ſingle per-

perſon, and as the ſovereign cannot of himſelf diſcharge all theſe duties, he muſt neceſſarily have a right to create miniſters and ſubordinate magiſtrates, whoſe buſineſs it is to take care of the public good, and tranſact the affairs of the ſtate in his name, and under his authority. The ſovereign, who has intruſted them with theſe employments, may and ought to compel them to diſcharge them, and make them give an exact account of their adminiſtration.

X. 8. Laſtly, the affairs of the ſtate neceſſarily demand both in times of peace and war, conſiderable expences, which the ſovereign himſelf neither can, nor ought to furniſh. He muſt therefore have a right of reſerving to himſelf a part of the wealth of the ſubjects, or of the revenues of the country, or of obliging the ſubjects to contribute either by their money, or by their labour and perſonal ſervice, as much as the public neceſſities demand, and this is called the *Right of ſubſidies or taxes.*

To this part of the ſovereignty we may refer the right of coining money, the right of hunting, that of fiſhing, &c. Theſe are the principal parts eſſential to ſovereignty.

The End of the First Part.

THE PRINCIPLES OF POLITIC LAW.

PART II.

In which are explained the different forms of government, the way of acquiring or losing sovereignty, and the reciprocal duties of sovereigns and subjects.

CHAP. I.

Of the various forms of government.

I. ALL nations have been sensible, that it was essential to their happiness and safety, to establish a government. They have all agreed in this point, that a sovereign power was necessary, to whose will every thing should be finally submitted.

II. But, the more the establishment of a sovereign is necessary, the more the choice of him also is important. For this reason, in such a choice, nations are extremely divided, and have intrusted the sovereign power in different hands according as they thought it most conducive to their safety and happiness; neither have they even done this without combinations and modifications, which may vary very greatly. This is the origin of the different forms of government.

III. There are therefore various forms of government, according to the different subjects in whom the

the ſovereignty reſides immediately, and according as it belongs either to a ſingle perſon, or to a ſingle aſſembly, more or leſs compounded; and this is what forms the conſtitution of the ſtate.

IV. All theſe different forms of government may be reduced to two general claſſes, namely, to the ſimple forms, or to thoſe which are compounded or mixed, and which are produced by the mixture or aſſemblage of the ſimple forms.

V. There are three ſimple forms of government; Democracy, Ariſtocracy, and Monarchy.

VI. Some nations, more diffident than others. have placed the ſovereign power in the multitude itſelf. that is to ſay, in all the heads of families aſſembled and met in council, and ſuch governments are called popular or Democratic.

VII. Other nations of a bolder turn, paſſing to the oppoſite extremity, have eſtabliſhed Monarchy, or the government of one ſingle man. Thus Monarchy is a ſtate, in which the ſovereign power, and all the rights eſſential to it, reſides preciſely in a ſingle man, who is called *King*, *Monarch*, or *Emperor*.

VIII. Others have kept a due medium between theſe two extremes, and lodged the whole ſovereign authority in a council compoſed of ſome ſelect members, and this is the government of the Nobles, or the Ariſtocratic government.

IX. Laſtly, other nations have been perſuaded, that it was neceſſary, by a mixture of the ſimple forms, to eſtabliſh a mixed or compound goverment, and by making a diviſion of the ſovereignty, to intruſt the different parts of it to different hands; to temper, for example, Monarchy with Ariſtocracy; and at the ſame time to give the people ſome ſhare in the ſovereignty; and this may be executed different ways.

X. In

X. In order to have a more particular knowledge of the nature of these different forms of government, we must observe, that as in Democracies the sovereign is a moral person, composed and formed by the reunion of all the heads of families into a single will, so there are three things absolutely necessary for the constitution of a Democracy.

1. That there be a certain place, and certain regulated times for deliberating in common on the public affairs; without this the members of the sovereign council might assemble at different times, or in different places, whence factions would arise, which would break the unity essential to the state.

2. It must be established for a rule, that the plurality of suffrages shall pass for the will of the whole; otherwise no affair can be determined, it being impossible that a great number of people should be always of the same opinion. We must therefore esteem it the essential quality of a moral body, that the sentiment of the greatest number of those who compose it pass for the will of the whole.

3. Lastly, it is essential to the establishment of a Democracy, that magistrates should be appointed to call the assembly of the people in extraordinary cases to dispatch ordinary affairs in their name, and to see that the decrees of the sovereign assembly be executed; for since the sovereign council cannot always sit, it is evident that it cannot take care of every thing of itself.

XI. As for Aristocracies, since the sovereignty resides in a council or senate, composed of the principal men of the nation, it is absolutely necessary that the same conditions which are essential to the constitution of a Democracy, and which we have now mentioned, should also concur to establish an Aristocracy.

XII. Besides, an Aristocracy may be of two kinds, either by birth and hereditary, or elective. The Aristocracy by birth, or hereditary, is that which is confined to a certain number of families, to which birth alone gives right, and which passes from parents to their children, without any choice, and to the exclusi-

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on of all others. On the contrary, the elective Ariſtocracy is that in which a perſon arrives at the government by election only, and without receiving any right from birth.

XIII. In a word, it may be equally obſerved of Ariſtocracies and Democracies, that in a popular ſtate, or in a government of the nobles, every citizen, or every member of the ſupreme council, has not the ſupreme power, nor even a part of it; but this power reſides either in the general aſſembly of the people convened according to the laws, or in the council of the nobles; for it is one thing to have a ſhare in the ſovereignty, and another to have the right of ſuffrage in an aſſembly inveſted with the ſovereign power.

XIV. As for Monarchy, it is eſtabliſhed when the whole body of the people confer the ſovereign power on a ſingle man, which is done by an agreement betwixt the king and his ſubjects, as we have before explained.

XV. There is therefore this eſſential difference betwixt Monarchy and the two other forms of government, that, in Democracies and Ariſtocracies, the actual exerciſe of the ſovereign authority, the decrees and deliberations depend on the concurrence of certain circumſtances, times and places; whereas in a Monarchy, at leaſt when it is ſimple and abſolute, the Monarch can give his orders at all times and in all places: *Rome is wherever the Emperor is.*

XVI. Another remark, which very naturally occurs on this occaſion, is, that in a Monarchy, when the king orders any thing contrary to juſtice and equity, he is certainly to blame, becauſe in him the civil and phyſical wills are the ſame thing. But when the aſſembly of the people or a ſenate form any unjuſt reſolution, only thoſe citizens or ſenators, whoſe opinions carried the point, render themſelves truly culpable, and not thoſe who were of the oppoſite opinion. Let this ſuffice for the ſimple forms of government.

XVII. As

XVII. As for mixed or compound governments, they are eſtabliſhed, as we have obſerved, by the concurrence of the three ſimple forms, or only of two; when, for example, the king, the nobles, and the people, or only the two laſt, ſhare the different parts of the ſovereignty between them, ſo that the one adminiſters ſome parts of it, and the others the reſt. This combination may be made in various manners, as we ſee in moſt republics.

XVIII. It is true, to conſider ſovereignty in itſelf, and in the height of plenitude and perfection, all the rights, which it includes, ought to belong to one ſingle perſon, or to one body without diviſion or ſharing; ſo that there be but one ſupreme will to govern the ſtate. There cannot, properly ſpeaking, be ſeveral ſovereigns in a ſtate, ſo as to act as they pleaſe, independently of, and even in a manner oppoſite to each other. This is morally impoſſible, and would tend manifeſtly to the ruin and deſtruction of the ſociety.

XIX. But this unity of the ſupreme power does not hinder the whole body of the nation, in whom this power originally reſides, from regulating the government by the fundamental law, in ſuch a manner as to commit the exerciſe of the different parts of the ſovereign power to different perſons or different bodies, who may act independently of each other, in the extent of the rights committed to them, but always in a manner ſubordinate to the laws from which they hold theſe rights.

XX. And provided the fundamental laws, which eſtabliſh this ſpecies of diviſion of the ſovereignty, regulate the reſpective limits of the power of thoſe to whom they commit them, ſo that we may eaſily ſee the extent of the juriſdiction of each of theſe collateral powers; this diviſion produces neither a plurality of ſovereigns, nor an oppoſition between them, nor any irregularity in the government.

XXI. In

XXI. In a word, there is never here, properly ſpeaking, but one ſovereign, who has the plenitude of ſovereignty in himſelf. There is but one ſupreme will. This ſovereign is the body of the people, formed by the union of all the orders of the ſtate; and this ſupreme will is the very law, by which the whole body of the nation makes its will known.

XXII. Thoſe, who thus ſhare the ſovereignty among them, are properly no more than the executors of the law, ſince it is from the law itſelf that they hold their power. And as theſe fundamental laws are real covenants, or what the civilians call *pacta conventa* between the different orders of the republic*, by which they mutually ſtipulate, that each ſhall have ſuch or ſuch a part of the ſovereignty, and that this ſhall eſtabliſh the form of government, it is evident that, by this means, each of the contracting parties acquires a primitive right not only of exerciſing the power granted to it, but alſo of retaining that right.

XXIII. Such party cannot even be diveſted of its right in ſpite of itſelf, and by the ſingle will of others, ſo long at leaſt as it uſes its right in a manner conformable to the laws; and not manifeſtly or totally oppoſite to the public good.

XXIV. In a word, the conſtitution of theſe governments can be changed only in the ſame manner, and by the ſame methods, by which it is eſtabliſhed, that is to ſay, by the unanimous concurrence of all the contracting parties who have fixed the form of government by the primitive contract of aſſociation.

XXV. This œconomy of the government, this conſtitution of the ſtate, by no means deſtroys the unity proper for a moral body compoſed of ſeveral perſons, or of ſeveral bodies, really diſtinct and ſeparate in themſelves, but joined together in a reciprocal engagement by a fundamental law, which makes but one of them.

XXVI. From

* See part i. chap. 7. No. 35, &c.

XXVI. From what has been ſaid on the nature of mixed or compound governments it follows, that in all ſuch, the ſovereignty is always limited; for as the different branches are not intruſted to a ſingle perſon, but lodged in different hands, the power of thoſe, who have a ſhare in the government, is, by this very means, reſtrained; and the power of the one keeps the other in awe, which produces ſuch a balance of power and authority as ſecures the public good, and the liberty of individuals.

XXVII. But with reſpect to ſimple governments; in theſe the ſovereignty may be either abſolute or limited. Thoſe who are poſſeſſed of the ſovereignty exerciſe it ſometimes in an abſolute, and ſometimes in a limited manner, by fundamental laws, which fix bounds to the ſovereign, with reſpect to the manner in which he ought to govern.

XXVIII. On this occaſion it is expedient to obſerve, that all the accidental circumſtances, which can modify ſimple Monarchies or Ariſtocracies, and which, in ſome meaſure, limit ſovereignty, do not, for that reaſon, change the form of government, which ſtill continues the ſame. One government may partake ſomewhat of another, when the manner, in which the ſovereign governs, ſeems to be borrowed from the form of the latter, but it does not, for that reaſon, change its nature.

XXIX. For example, in a Democratic ſtate, the people may intruſt the care of ſeveral affairs either to a principal member, or to a ſenate. In an Ariſtocratical ſtate, there may be a principal magiſtrate inveſted with a particular authority, or an aſſembly of the people to be conſulted on ſome occaſions. Or laſtly, in a Monarchic ſtate, important affairs may be laid before a ſenate, &c. But all theſe accidental circumſtances do by no means change the form of government; there is not a diviſion of the ſovereignty on this account; and the ſtate ſtill continues purely either Democratic, Ariſtocratic, or Monarchic.

XXX. In

XXX. In a word, there is a great difference between exercising a proper power, and acting by a foreign and precarious power, which may every minute be taken away by him who gave it. Thus what constitutes the essential characteristic of mixed or compound commonwealths, and distinguishes them from simple governments, is, that the different orders of the state, who have a share in the sovereignty, possess the rights which they exercise by an equal title, that is to say, by virtue of the fundamental law; and not by the title of simple commission, as if the one was only the minister or executor of the will of the other. We must therefore carefully distinguish between the form of government, and the manner of governing.

XXXI. These are the principal observations which occur with respect to the various forms of government. Puffendorf explains himself in a somewhat different manner, and calls those governments irregular, which we have called mixed and regular, the simple governments *.

XXXII. But this regularity is only a regularity in idea; the true rule of practice ought to be that which is most conformable to the end of civil societies, supposing men to be such as they ordinarily are, and taking the common state of the world into the account, according to the experience of all places and all ages. Now on this footing, the states, in which the whole depends on a single will, are so far from being happy, that it is certain their subjects have the most frequent reasons for lamenting the loss of their natural independency.

XXXIII. Besides it is with the body politic, as with the human body; there is a difference between a sound and a cathectic state.

XXXIV. These disorders arise either from the abuse of the sovereign power, or from the bad constitution of

* See Law of Nature and Nations, book vii. chap. 5.

of the ſtate, and the cauſes of them are to be ſought for either in the failings of thoſe who govern, or in the defects of the government itſelf.

XXXV. In Monarchies the faults of the perſon are, when the King has not the qualities neceſſary for reigning, when he has little or no attachment to the public good, and when he delivers his ſubjects up as a prey, either to the avarice or ambition of his miniſters, &c.

XXXVI. As for Ariſtocracies, the faults of the perſons are when, by intrigue and other ſiniſter methods, they bring into the council, either wicked men, or ſuch as are incapable of buſineſs, while men of merit are excluded; when factions and cabals are formed; and when the nobles treat the populace as ſlaves, &c.

XXXVII. In fine, we ſometimes ſee alſo in Democracies, that their aſſemblies are diſturbed with broils, and merit is oppreſſed by envy, &c.

XXXVIII. As for the defects of the government, there may be various kinds of them. For example, if the laws of the ſtate are not conformable to the natural genius of the people, as if they tended to engage in a war a people, that is not naturally warlike, but proper for the arts of peace; if theſe laws are not agreeable to the ſituation and qualities of the country: it is bad conduct, for inſtance, not to promote commerce and manufactures, in a country which is well ſituated for that purpoſe, and produces commodities with which a trade can be carried on. If the conſtitution of the ſtate renders the diſpatch of affairs very ſlow or difficult, as in *Poland*, where the oppoſition of one member of the aſſembly diſſolves the diet.

XXXIX. We generally give particular names to theſe defects in government. Thus the corruption of Monarchy is called Tyranny, Oligarchy is the abuſe of Ariſtocracy; and the abuſe of Democracy

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is called Ochlocracy. But it often happens that these words, in their appellation, denote less a defect or disorder in the state, than some particular passion or disgust in those who use them.

XL. To finish this chapter, nothing remains, but to say something of those compound forms of government which are formed by the union of several particular states. These may be defined an assemblage of perfect states strictly united by some particular bond, so that they seem to make but one single body with respect to the affairs which interest them in common, though each of them also preserves the sovereignty full and entire, independently of the others.

XLI. This assemblage of states is formed either by the union of two or more distinct states, under one and the same king; as for instance, *England*, *Scotland*, and *Ireland*, before the union lately made between *England* and *Scotland*; or when several independent states agree among themselves to form but one single body: such are the united provinces of the *Netherlands*, and the *Swiss* cantons.

XLII. The first kind of union may happen, either on account of a marriage, or by virtue of a succession, or when a people chooses for a king, a prince who was already sovereign of another kingdom; so that these different states come to be united under a prince who governs each of them in particular by their respective fundamental laws.

XLIII. As for the compound governments, which are formed by the perpetual confederacy of several states, it is to be observed, that this confederacy is the only means by which several small states, too weak to maintain themselves separately against their enemies, can preserve their liberties.

XLIV. These confederate states engage to each other only to exercise, with common consent, certain

tain parts of the ſovereignty, eſpecially thoſe which relate to their mutual defence againſt foreign enemies. But each of the confederate parties retains an entire liberty of exerciſing as it thinks proper, thoſe parts of the ſovereignty which are not mentioned in the act of confederacy, as parts that ought to be exerciſed in common.

XLV. Laſtly, it is abſolutely neceſſary, in confederate ſtates, to aſcertain ſome time and place for aſſembling when occaſion requires, and to inveſt ſome member with a power of calling the aſſembly for extraordinary affairs, and ſuch as will not admit of delay. Or, by going another way to work, they may eſtabliſh an aſſembly which always ſits, compoſed of the deputies of each ſtate, for diſpatching common affairs according to the orders of their ſuperiors.

CHAP. II.

An eſſay on this queſtion, Which is the beſt form of government.

I. IT is certainly one of the fineſt queſtions in politics, and that which has moſt divided the men of genius, to determine, *Which is the beſt form of government.*

II. Every form of government has its advantages and inconveniencies, which are inſeparable from it. It would be in vain to ſeek for a government perfect in every reſpect, and however perfect it might appear in ſpeculation, yet it is certain, that in practice, and under the adminiſtration of men, it will always be accompanied with ſome defects ſo long as men govern men.

III. But if we cannot arrive at the height of perfection in this point, it is nevertheleſs certain, that there is a greater and a leſs, or different degrees between which prudence muſt determine. That government ought to be accounted the moſt perfect, which beſt

beſt anſwers its end, and is accompanied with the feweſt inconveniencies. Be this as it will, the examination of this queſtion furniſhes very uſeful inſtructions both to ſubjects and ſovereigns.

IV. It is long ſince diſputes have been made on this ſubject; and there is nothing more intereſting upon the topic, than what we read in the father of hiſtory, *Herodotus*, who relates what paſſed in the council of the ſeven chiefs of *Perſia*, when the government was to be re-eſtabliſhed after the death of *Cambyſes*, and the puniſhment of the *Magus*, who had uſurped the throne under a pretext of being *Smerdis* the ſon of *Cyrus*.

V. *Otanes* was of opinion, that *Perſia* ſhould be made a republic, and ſpoke nearly in the following ſtrain. " I am not of opinion that we ſhould lodge " the government in the hands of a ſingle perſon. Ye " know to what exceſs *Cambyſes* went, and to what " degree of inſolence we have ſeen the *Magus* arrive: " how can the ſtate be well governed in a monarchy, " where a ſingle perſon is permitted to do every " thing according to his pleaſure? An authority, " without a check, corrupts the moſt virtuous man, " and deprives him of his beſt qualities. Envy and " inſolence ariſe from preſent riches and proſperity; " and all other vices flow from theſe two, when a " man is poſſeſſed of every thing. Kings hate virtu- " ous men who oppoſe their unjuſt deſigns, but ca- " reſs the wicked who favour them. A ſingle man " cannot ſee every thing with his own eyes; he of- " ten lends a favourable ear to bad reports and falſe " accuſations; he ſubverts the laws and cuſtoms of " the country; he attacks the honour of women, and " puts the innocent to death by his caprice and his " power. When the people have the government in " their hands, the equality among the members pre- " vents all theſe evils. The magiſtrates are, in this " caſe, choſen by lot; they render an account of " their adminiſtration, and they form all their reſo-

" lutions in common with the people. I am there-
" fore of opinion, that we ought to reject Monarchy
" and introduce a popular government, because we
" rather find these advantages in many, than in a sin-
" gle person." This was the opinion of *Otanes*.

VI. But *Megabyses* spoke in favour of Aristocracy. " I approve (said he) of the opinion of *Otanes* with " respect to exterminating Monarchy, but I believe " he is wrong in endeavouring to persuade us to trust " the government to the discretion of the people, for " it is certain, that nothing can be imagined more " foolish and insolent than the populace. Why should " we reject the power of a single man, to deliver up " ourselves to the tyranny of a blind and disorderly " multitude? If a king sets about any enterprize, he is " at least capable of listening to others; but the peo- " ple is a blind monster, equally destitute of reason " and capacity, they are unacquainted both with de- " cency, virtue, and their own interests. They do " every thing with precipitation, without judgment, " and without order, and resemble a rapid torrent, " which can have no bounds set to it. If therefore ye " wish the ruin of the Persians, establish a popular " government among them. As for myself, I am of " opinion, that we should make choice of some virtu- " ous men, and lodge the government and the power " in their hands." Such was the sentiment of *Megabyses*.

VII. After him, *Darius* spoke in the following terms. " I am of opinion, that there is a great deal " of justice in the speech which *Megabyses* has made " against a popular state; but I also think, that he is " not intirely in the right, when he prefers the go- " vernment of a small number to Monarchy. It is " certain, that nothing can be imagined better, or " more perfect, than the government of a virtuous " man. Besides, when a single man is the master, it " is more difficult for enemies to discover secret coun- " sels and enterprizes. When the government is in " the hands of many, it is impossible but enmity and

hatred

" hatred muſt ariſe among them; for as every one " wants that his opinion ſhould be followed, they " gradually become enemies. Emulation and jealou- " ſy divide them, and then their hatreds run to ex- " ceſs. Hence ariſe ſeditions; from ſeditions, mur- " ders; and from murders and blood, we ſee a mo- " narch become inſenſibly neceſſary. Thus the go- " vernment always falls into the hands of a ſingle " perſon. In a popular ſtate, there muſt neceſſarily " be a great deal of malice and corruption. It is " true, equality generates no hatred, but it foments " friendſhip among the wicked, who ſupport each " other, till ſome man, who has rendered himſelf " agreeable to the people, and acquired an authority " over the multitude, diſcovers their frauds, and ex- " poſes their perfidy. Then ſuch a man ſhews him- " ſelf truly a monarch; and hence we may know " that Monarchy is the moſt natural government, ſince " the ſeditions of Ariſtocracy, and the corruption of " Democracy, have an equal tendency to make us " have recourſe to the unity of a ſupreme power."

The opinion of *Darius* was approved, and the government of *Perſia* continued monarchic. We thought this paſſage of hiſtory ſufficiently intereſting to be related on this occaſion.

VIII. To determine ſurely, with reſpect to this queſtion, we muſt trace matters from their principles. Liberty, under which we muſt comprehend all the moſt precious goods, has two enemies to be afraid of in civil ſociety. The firſt is licentiouſneſs, diſorder and confuſion; and the ſecond is the oppreſſion ariſing from tyranny.

IX. The firſt of theſe evils ariſes from liberty itſelf, when it is not kept in due order.

The ſecond, from the remedy which mankind have contrived againſt this firſt evil, that is, from ſovereignty.

X. The height of happineſs and human prudence is

to

to know how to guard against these two enemies: the only method of doing so is to have a well concerted sovereignty, a government formed with such precautions, as, by banishing licentiousness, not to introduce tyranny.

XI. It is therefore in this happy temperament that we can find the general idea of a good government. It is evident, that the government which avoids the extremes, is so well adapted for the preserving of good order, and for providing against the wants of the people both at home and abroad, that it leaves, at the same time, sufficient sureties to the public, that this end shall never be varied from.

XII. But among all governments, which approaches most to this perfection? Before we answer this question, it is proper to observe, that it is very different from this, Which is the most lawful government?

XIII. As for this last question, it is certain, that governments of every kind, which are founded on the free acquiescence of the people, whether express or justified by a long and peaceable possession, are all equally lawful, so long at least as, by the intention of the sovereign, they tend to promote the happiness of the people: thus no other cause can degrade a government, but an open and actual violence; either in its establishment, or in its exercise; I mean usurpation, or tyranny.

XIV. To return to the principal question, I affirm, that the best government is neither absolute Monarchy, nor that which is entirely popular: the first is too strong, encroaches too much on liberty, and inclines too much to tyranny; the second is too weak, delivers the people too much to themselves, and tends to confusion and licentiousness.

XV. It were to be wished, for the glory of sovereigns and for the happiness of the people, that we could contest the fact with respect to absolute governments.

ments. I venture to affirm, that nothing can be compared to an absolute government, in the hands of a wise and virtuous prince. Order, diligence, secrecy, quickness in execution, the greatest enterprizes, and the most happy executions, are the certain effects of it. Dignities, honours, rewards and punishments, are all dispensed under it with justice and discernment. So beautiful a reign is the golden age.

XVI. But to reign in this manner, a superior genius, a perfect virtue, great experience, and an uninterrupted application, are necessary. Man, in so high an elevation, is rarely capable of so many things. The multitude of objects distracts him, pride seduces him, pleasure tempts him, and flattery, which is the bane of the great, does him more injury than all the rest. It is difficult to resist so many snares; and what generally happens is, that a prince, master of all, easily becomes a prey to his passions, and consequently renders his subjects miserable.

XVII. Hence proceeds the disgust of people to absolute governments, and this disgust sometimes rises to aversion and hatred. This has also given occasion to politicians to make two important reflections.

The first is, that, in an absolute government, it is rare to see the people interest themselves in its preservation. Wearied with the burdens they bear, they long for a revolution, which cannot render their situation worse.

The second is, that it is the interest of princes to engage the people in the maintenance of their government, and for that purpose to give them a share in it, by privileges which secure their liberty. Nothing is more proper to promote the safety of princes at home, their power abroad, and their glory in all respects.

XVIII. It has been said of the Roman people, that, so long as they fought for their own interests, they were invincible; but, as soon as they became slaves

to

to absolute masters, they grew cowardly and dastardly, and asked for no more than bread and public diversions, *Panem & Circenses.*

XIX. On the contrary, in states where the people have some share in the government, all the individuals interest themselves in the public good, because each according to his quality or merit, partakes of the good success, or feels the loss. This is what renders men dexterous and generous, what inspires them with an ardent love of their country, and with an invincible courage, which is proof against the greatest misfortunes.

XX. When *Hannibal* had gained four victories over the Romans, and killed more than two hundred thousand of them, when, much about the same time, the two brave *Scipios* had been cut in pieces in *Spain*, besides several considerable losses at sea, and in *Sicily*, who could have thought that *Rome* could have resisted her enemies? However the virtue of her citizens, the love they bore their country, and the interest they had in the government, augmented the strength of that republic in the midst of her calamities, and at last she surmounted every thing. Among the Lacedæmonians and Athenians we find several examples which prove this truth.

XXI. All these advantages are not found in absolute governments. We may justly affirm, that it is an essential fault in them not to interest the people in their preservation, that they are too violent, tend too much to oppression, and not enough to the good of the subjects.

XXII. Such are absolute governments: the popular are no better, and we may say they have nothing good but liberty, and that they leave the people to choose a better.

XXIII. Absolute governments have at least two advantages: the first is, that now and then they have happy

happy intervals when they are in the hands of good princes: the ſecond is, that they have more force, activity, and quickneſs of execution.

XXIV. But a popular government has none of theſe advantages; formed by the multitude, it aſſumes all the characters of it. The multitude is a mixture of all kinds of people, a few men of parts, ſome who have good ſenſe and honeſt intentions; but a far greater number who cannot be depended upon, who have nothing to loſe, and who conſequently cannot be ſafely truſted. Beſides, a multitude always produces ſlowneſs and diſorder. Secrecy and foreſight are advantages unknown to it.

XXV. Liberty is not wanting in popular ſtates; they have rather too much of it, ſince it degenerates into licentiouſneſs. Hence it is that they are weak and ſtaggering. Commotions at home, or attacks from abroad, often throw them into conſternation: it is their ordinary fate to be the prey of the ambition of ſome citizens or ſome ſtrangers, and thus to paſs from the greateſt liberty to the greateſt ſlavery.

XXVI. This is proved by the experience of a hundred different nations. Even at preſent, *Poland* is a ſtriking example of the defects of popular government from the anarchy and diſorder which reigns there. It is the ſport of its own inhabitants and of foreigners, and often the field of blood; becauſe, under the appearance of a Monarchy, it is in reality too popular a government.

XXVII. We need only read the hiſtories of *Florence* and *Genoa*, to ſee a lively picture of the miſfortunes which republics ſuffer from the multitude when it wants to govern. The antient republics, eſpecially *Athens*, the moſt conſiderable of thoſe in *Greece*, place this truth in a ſtill clearer light.

XXVIII. In a word, *Rome* periſhed in the hands of the people; and royalty gave birth to it. The Patricians,

Patricians, who compoſed the ſenate, by freeing it from royalty, had rendered it miſtreſs of *Italy*. The people, by means of the Tribunes, gradually uſurped the authority of the ſenate. From that time diſcipline was relaxed, and gave place to licentiouſneſs. At laſt the republic was, by the hands of the people, reduced to the greateſt ſlavery.

XXIX. It is not therefore to be doubted, after ſo many proofs, but popular governments are the weakeſt and worſt of all others. Certainly if we conſider the education of the vulgar, their application to labour, their ignorance and brutality, we muſt readily perceive that they are made to be governed, and not at all to govern others; and that good order, and their own advantage, forbid them to interfere with that charge.

XXX. If therefore neither the government of the multitude, nor the abſolute government of a ſingle perſon, are proper to procure the happineſs of a people, it follows, that the beſt governments are thoſe which are ſo tempered, that, by equally avoiding tyranny and licentiouſneſs, they ſecure the happineſs of the ſubjects.

XXXI. There are, in general, two ways of finding this temperament.

The firſt conſiſts in lodging the ſovereignty in a council ſo compoſed, both as to the number and choice of perſons, as that there may be a moral certainty that they ſhall have no other intereſts than thoſe of the community, and that they ſhall always give a faithful account of their conduct to it. This is what we ſee happily practiſed in moſt republics.

XXXII. The ſecond is by fundamental laws, to limit the ſovereignty of the prince in monarchic ſtates, or to give the perſon, who enjoys the honours and title of the ſovereignty, only a part of the ſovereign authority, and to lodge the other in different hands, for

for example, in a council or parliament. This is what produces limited monarchies*.

XXXIII. As for Monarchies, it is proper, for example, that the military power, the legiſlative power, and that of raiſing taxes, ſhould be lodged in different hands, to the end that they may not be eaſily abuſed. It is eaſy to conceive, that theſe modifications can be made in different manners. The general rule, which prudence directs to follow, is to limit the power of the prince, ſo that nothing may be dreaded from it; but at the ſame time not to go to exceſs, for fear of weakening and enervating the government altogether.

XXXIV. By following this juſt medium the people will enjoy the moſt perfect liberty, ſince they have all the moral ſureties that the prince will not abuſe his power. The prince on the other hand, being, as it were, under a neceſſity of doing his duty, conſiderably ſtrengthens his authority, and enjoys the greateſt happineſs and the moſt ſolid glory: for as the felicity of the people is the end of government, it is alſo the ſureſt foundation of the throne. See what has been already ſaid on this ſubject.

XXXV. This ſpecies of Monarchy, limited by a mixed government, unites the principal advantages of abſolute Monarchy, and of the Ariſtocratic and popular governments; and at the ſame time avoids the dangers and inconveniencies which are peculiar to each. This then is the happy temperament which we ſeek for.

XXXVI. This is alſo what has been proved by the experience of all ages. Such was the government of *Sparta*; *Lycurgus*, knowing that the three ſorts of ſimple governments had each very great inconveniencies; that Royalty eaſily degenerated into arbitrary power and tyranny; that Ariſtocracy degenerated into an unjuſt government of ſome particulars, and Democracy

* See part i. chap. 7. §. 26. &c.

cracy into a wild dominion without rule, thought it expedient to combine those three governments in that of *Sparta*, and mix them, as it were, into one, so that they might serve as a remedy and counterpoise to each other. This wise legislator was not deceived, and no republic has longer preserved its laws, customs, and liberty, than that of *Sparta*.

XXXVII. It may be said, that the government of the Romans under the republic, united in some measure, as that of *Sparta*, the three kinds of authority. The consuls held the place of kings; the senate formed the public council, and the people had also some share in the administration of affairs.

XXXVIII. If more modern examples are wanted, is not *England* at present a proof of the goodness of mixed governments and temperate monarchies? Is there a nation, every thing considered, which enjoys more prosperity at home, or more renown abroad?

XXXIX. The northern nations, who took possession of the Roman empire, had carried into the countries, where they established themselves, that species of government which was then called *Gothic*. They had kings, lords, and commons; and experience proves, that the states, who have retained that form of government, have prospered much better than those who have reduced all to the absolute government of a single man.

XL. As for Aristocratic governments, we must first distinguish Aristocracy by birth, from that which is elective. Aristocracy, by birth, has several advantages, but it has also very great inconveniencies. It inspires the nobility, who govern, with pride, and it entertains, between the grandees and the people, a separation, a contempt, and a jealousy, which produces great evils.

XLI. But elective Aristocracy has all the advantages of the former, without its defects. As there is

is no privilege of exclusion, and as the door of employments is open to all the citizens, we find neither pride nor separation among them. On the contrary, there is a general emulation among all the members, which turns every thing to the public good, and contributes infinitely to the preservation of liberty.

XLII. Thus if we suppose that, in an elective Aristocracy, the sovereignty is in the hands of a council so numerous, as to include in its bosom the most important interests of the state, and never to have any opposite to them: If besides, this council is so small, as to maintain order, concord and secrecy; if it is chosen from among the wisest, and most virtuous of the citizens; and lastly if the authority of this council is limited and kept within rule; it cannot be doubted but such a government is very proper of itself to promote the happiness of a nation.

XLIII. What is most delicate in these governments, is to temper them in such a manner, as that, at the same time, that the people are assured of their liberty, by giving them some share in the government, not to push these assurances too far, and to make the government approach too much to Democracy; for the reflections we have made before sufficiently evince the inconveniencies which would result from this.

XLIV. Let us therefore conclude, from this examination of the different forms of government, that the best are either a limited Monarchy, or an Aristocracy tempered with Democracy, by some privileges in favour of the body of the people

XLV. It is true, in reality, there are always some deductions to be made from the advantages which we have ascribed to these governments; but this is the fault of men, and not of the establishments. The constitution is the most perfect that can be imagined, and if men spoil it by their vices and follies, this is the nature of all human affairs; and since a choice must be made, the best is always that which is attended with the fewest inconveniencies.

XLVI. In a word, if it ſhould ſtill be aſked, which government is beſt? I would anſwer, that all good governments are not equally proper for all nations, and that, in this point, we muſt have a regard to the humour and character of the people, and to the extent of the ſtates.

XLVII. Great ſtates can hardly admit of republican governments; hence a monarchy, wiſely limited, ſuits them better. But as to ſtates, of an ordinary extent, the moſt advantageous government for them, is an elective ariſtocracy, tempered with ſome reſerves in favour of the body of the people.

CHAP. III.

Of the different ways of acquiring ſovereignty.

I. THE only lawful foundation of all acquiſition of ſovereignty, is the conſent, or the will of the people*. But as this conſent may be given different ways, according to the different circumſtances which accompany it; hence it is that we diſtinguiſh the different ways of acquiring ſovereignty.

II. Sometimes a people are conſtrained, by force of arms, to ſubmit to the dominion of a conqueror; ſometimes alſo, the people, of their own accord, give the ſovereign authority to ſome perſon, with a full and entire liberty. Sovereignty may therefore be acquired either in a forced manner and by violence, or in a free and voluntary manner.

III. Theſe different acquiſitions of ſovereignty may agree in ſome meaſure to all ſorts of governments; but as they diſcloſe themſelves moſt viſibly in monarchies, ſo it ſhall be principally with reſpect to theſe, that we ſhall examine this point.

1. *Of Conqueſt.*

IV. Sovereignty is ſometimes acquired by force, or rather it is ſeized by conqueſt or by uſurpation.

V. Con-

* On this ſubject, ſee part i. chap. 6.

V. Conquest is the acquisition of sovereignty, by the superiority of a foreign prince's arms, which at last reduces the vanquished to submit to his government. Usurpation is properly made by a person naturally submitted to him from whom he wrests the sovereignty; but custom often confounds these two terms.

VI. There are several remarks to be made on conquest, considered as a means of acquiring the sovereignty.

1. Conquest, considered in itself, is rather the occasion of acquiring the sovereignty, than the immediate cause of this acquisition. The immediate cause of the acquisition of sovereignty, is the consent of the people, either tacit or expressed. Without this consent the state of war always subsists between two enemies, and the one is not obliged to obey the other. All that can be said is, that the consent of the vanquished is extorted by the superiority of the conqueror.

VII. 2. All lawful conquest supposes, that the conqueror has had just reason to wage war against the vanquished. Without this, conquest is by no means, of itself, a just title; for a man cannot acquire a sovereignty over a nation, by bare seizure, as over a thing which belongs to no body. Thus when *Alexander* waged war against distant people, who had never heard of his name, certainly such a conquest was no more a lawful title to the sovereignty, than robbery is a lawful means of becoming rich. The quality and number of the persons do not change the nature of the action, the injury is the same, and the crime equal.

VIII. But if the war is just, the conquest is also the same: for first it is a natural consequence of the victory; and the vanquished, who deliver themselves to the conqueror, only purchase their lives by the loss of their liberties. Besides, they having through their own fault, engaged in an unjust war, rather than grant the just satisfaction they owed, they are deemed to have tacitly consented beforehand to the conditions which the conqueror should impose on them, provided they were neither unjust, nor inhuman. IX. 3. What

IX. 3. What muſt we think of unjuſt conqueſts, and of ſubmiſſion extorted by unjuſt violence? Can it give a lawful right? I anſwer, we muſt diſtinguiſh whether an uſurper has changed a republic into a monarchy, or diſpoſſeſſed the lawful monarch. In the laſt caſe, he is indiſpenſably obliged to reſtore the crown to him from whom he has taken it, or to his heirs, till it can be reaſonably preſumed that they have renounced their pretenſions; and this is always preſumed, when a conſiderable time is elapſed without their being willing or able to make any effort to recover the crown.

X. The law of nations therefore admits of a kind of preſcription with reſpect to the ſovereignty. This is requiſite for the intereſt and tranquillity of ſocieties; a long and peaceable poſſeſſion of the ſovereignty, muſt eſtabliſh the legality of it, otherwiſe there would never be an end of the diſputes about kingdoms and their limits, which would be a ſource of perpetual quarrels, and there would at preſent hardly be a ſovereign lawfully poſſeſſed of the authority.

XI. It is, indeed, the duty of the people, in the beginning, to reſiſt the uſurper with all their power, and to continue faithful to their ſovereign; but if, in ſpite of all their efforts, their ſovereign is baffled, and can no longer aſſert his right, they are obliged to no more, and they may lawfully take care of their own preſervation.

XII. The people cannot do without a government, and as they are not obliged to expoſe themſelves to perpetual wars, in defence of the rights of their firſt ſovereign, they may, by their conſent, render the right of the uſurper lawful; and in this caſe the ſovereign, who is ſtripped, ought to reſt contented with the loſs of his dominions, and look upon it as a misfortune.

XIII. As for the firſt caſe, when the uſurper has changed a republic into a monarchy; if he governs with moderation and equity, it is ſufficient that he has reigned peaceably for ſome time, to afford reaſon

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to believe, that the people consent to his dominion, and to efface what was faulty in the manner of his acquiring it. This may be very well applied to the reign of *Augustus*. But if, on the contrary, the prince, who has made himself master of a republic, exercises his power tyrannically, and oppresses his subjects, they are not then obliged to obey him. In these circumstances the longest possession imports no more than a long continuation of injustice.

2. Of the election of sovereigns.

XIV. But the most lawful way of acquiring sovereignty, is certainly that founded on the free consent of the people. This is done either by the way of election, or by the right of succession; for which reason kingdoms are distinguished into elective and hereditary.

XV. Election is that act, by which the people design or nominate a certain person, whom they judge capable of succeeding the deceased king, to govern the state; and so soon as this person has accepted the offer of the people, he is invested with the sovereignty.

XVI. We may distinguish two sorts of elections, the one entirely free, and the other limited in certain respects; the first when the people can choose whom they think proper, and the second when they are obliged for example to choose a person of a certain nation, a certain family, a certain religion, &c. Among the antient Persians, no man could be king unless he had been instructed by the Magi*.

XVII. The time, between the death of the king and the election of his successor, is called an *Interregnum*.

XVIII. During the *Interregnum* the state is, as it were, an imperfect body without a head, but yet the civil society is not dissolved. The sovereignty then returns to the people, who, till they choose a new king to exercise it as he thinks proper, have it even in their power to change the form of the government.

* See Cicer. de divinat. lib. i. cap. 4.

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X. The law of nations therefore admits of a kind of preſcription with reſpect to the ſovereignty. This is requiſite for the intereſt and tranquillity of ſocieties; a long and peaceable poſſeſſion of the ſovereignty, muſt eſtabliſh the legality of it, otherwiſe there would never be an end of the diſputes about kingdoms and their limits, which would be a ſource of perpetual quarrels, and there would at preſent hardly be a ſovereign lawfully poſſeſſed of the authority.

XI. It is, indeed, the duty of the people, in the beginning, to reſiſt the uſurper with all their power, and to continue faithful to their ſovereign; but if, in ſpite of all their efforts, their ſovereign is baffled, and can no longer aſſert his right, they are obliged to no more, and they may lawfully take care of their own preſervation.

XII. The people cannot do without a government, and as they are not obliged to expoſe themſelves to perpetual wars, in defence of the rights of their firſt ſovereign, they may, by their conſent, render the right of the uſurper lawful; and in this caſe the ſovereign, who is ſtripped, ought to reſt contented with the loſs of his dominions, and look upon it as a misfortune.

XIII. As for the firſt caſe, when the uſurper has changed a republic into a monarchy; if he governs with moderation and equity, it is ſufficient that he has reigned peaceably for ſome time, to afford reaſon

to

to believe, that the people consent to his dominion, and to efface what was faulty in the manner of his acquiring it. This may be very well applied to the reign of *Augustus*. But if, on the contrary, the prince, who has made himself master of a republic, exercises his power tyrannically, and oppresses his subjects, they are not then obliged to obey him. In these circumstances the longest possession imports no more than a long continuation of injustice.

2. *Of the election of sovereigns.*

XIV. But the most lawful way of acquiring sovereignty, is certainly that founded on the free consent of the people. This is done either by the way of election, or by the right of succession; for which reason kingdoms are distinguished into elective and hereditary.

XV. Election is that act, by which the people design or nominate a certain person, whom they judge capable of succeeding the deceased king, to govern the state; and so soon as this person has accepted the offer of the people, he is invested with the sovereignty.

XVI. We may distinguish two sorts of elections, the one entirely free, and the other limited in certain respects; the first when the people can choose whom they think proper, and the second when they are obliged for example to choose a person of a certain nation, a certain family, a certain religion, &c. Among the antient Persians, no man could be king unless he had been instructed by the Magi*.

XVII. The time, between the death of the king and the election of his successor, is called an *Interregnum*.

XVIII. During the *Interregnum* the state is, as it were, an imperfect body without a head, but yet the civil society is not dissolved. The sovereignty then returns to the people, who, till they choose a new king to exercise it as he thinks proper, have it even in their power to change the form of the government.

* See Cicer. de divinat. lib. i. cap. 4.

XIX. But it is a wise precaution, to prevent the troubles of an *Interregnum*, to nominate before-hand those, who, during that time, are to hold the reins of government. Thus in *Poland* it is the archbishop of *Gnesna*, with the deputies of great and little *Poland*, who are established for that purpose.

XX. The persons, invested with this employment, are called *Regents of the kingdom*; and the Romans called them *Interreges*. They are temporary, and, as it were, provisional magistrates, who, in the name, and by the authority of the people, exercise, till the election, the acts of the sovereignty, so that they are obliged to give an account of their administration. This may suffice for the way of election.

3. *Of the succession to the crown.*

XXI. The other manner of acquiring the sovereignty, is the right of succession, by which princes, who have once acquired the crown, transmit it to their successors.

XXII. It may seem at first that elective kingdoms have the advantage over those which are hereditary, because, in the former, the subjects may always choose a prince of merit and capable of governing. However experience shews, that, taking all things into the account, the way of succession is more for the good of the state.

XXIII. For, 1. By this means we avoid the great inconveniencies, both at home and abroad, which arise from frequent elections. 2. There is less contention and uncertainty, with respect to those who ought to succeed. 3. A prince, whose crown is hereditary, all other circumstances being equal, will take more care of his kingdom, and spare his subjects more, in hopes to leave the crown to his children, than if he only possessed it for himself. 4. A kingdom, where the succession is regulated, has much more stability and force. It can form greater projects, and pursue the

the execution of them more vigorously than if it was elective. 5. In a word, the person of the prince appears more venerable to the people by the splendor of his birth, and they have reason to hope that he will have the qualities proper for the throne, by the impressions of the noble blood from whence he descends, and by the education he is to receive.

XXIV. The order of the succession to the crown is regulated either by the will of the last king, or by that of the people.

XXV. In kingdoms, truly patrimonial, every king has a right to regulate the succession, and to dispose of the kingdom as he has a mind; provided the choice he makes of his successor, and the manner in which he settles the state, are not manifestly and remarkably opposite to the public good, which, even in patrimonial kingdoms, is always the sovereign law.

XXVI. But if such a king, prevented perhaps by death, has not named his successor, then it seems natural to follow, with respect to the crown, the laws or customs established in the country, concerning private inheritances, so far at least as the safety and preservation of the state will permit*. But it is certain that, in these cases, the most approved and powerful candidate will always carry it.

XXVII. In kingdoms, which are not patrimonial, the people regulate the order of the succession: and though, to speak in general, they may establish the succession as they please, yet prudence requires that, in this respect, they follow the method most advantageous to the state, most proper to maintain order and peace, and most expedient to promote the public safety.

XXVIII. The most usual methods are, a succession, simply hereditary, which follows nearly the rules of common inheritances; and the lineal succession which receives more particular limitations.

 XXIX. The

* See the Law of Nature and Nations, book vii. chap. 7. §. 11.

XXIX. The good of the ſtate therefore requires that a ſucceſſion, ſimply hereditary, ſhould vary in ſeveral things from private inheritances.

1. The kingdom ought to remain indiviſible and not be ſhared among ſeveral heirs, in the ſame degree; for firſt, this would weaken the ſtate conſiderably, and render it leſs proper to reſiſt the attacks it may be expoſed to. Beſides, the ſubjects having different maſters, would no longer be ſo cloſely united among themſelves: and laſtly, this might lay a foundation for inteſtine wars, as experience has too often proved.

XXX. 2. The crown ought to remain in the poſterity of the firſt poſſeſſor, and not to paſs to his relations in a collateral line, and much leſs to thoſe who have only connections of affinity with him. This is, no doubt, the intention of a people who have rendered the crown hereditary in the family of a prince. Thus, unleſs it is otherwiſe determined, in default of the deſcendants of the firſt poſſeſſor, the right of diſpoſing of the kingdom returns to the nation.

XXXI. 3. Thoſe only ought to be admitted to the ſucceſſion, who are born of a marriage conformable to the laws of the nation. For this there are ſeveral reaſons. 1. This was, no doubt, the intention of the people, when they gave the crown to the deſcendants of the king. 2. The people have not the ſame reſpect for the king's natural or baſe ſons, as for his lawful children. 3. The father of natural children is not known for certain, there being no ſure method of aſcertaining the father of a child born out of wedlock; and yet it is of the laſt importance that there ſhould be no doubt about the birth of thoſe who are to reign, in order to avoid the diſputes which might ariſe thereon, and embroil the kingdom. Hence it is, that, in ſeveral countries, the queen is brought to bed in public, or in the preſence of ſeveral perſons.

XXXII. 4. Adopted children, not being of the royal blood, are alſo excluded from the crown, which ought to return to the diſpoſal of the people, as ſoon as the royal line fails.

XXXIII.

XXXIII. 5. Among those who are in the same degree, whether really or by representation, the males are to be preferred to the females, because they are presumed more proper for the command of armies, and for exercising the other functions of government.

XXXIV. 6. Among several males, or several females in the same degree, the eldest ought to succeed. It is birth which gives this right; for the crown being at the same time indivisible and hereditary, the eldest, in consequence of his birth, has a right of preference, which the younger cannot take from him. But it is just that the eldest should give his brothers a sufficiency to support themselves decently, and in a manner suitable to their rank. What is allotted them for this purpose is called by the name of *Appenage*.

XXXV. 7. Lastly, we must observe, that the crown does not pass to the successor in consequence of the pleasure of the deceased king, but by the will of the people, who have settled it in the royal family. Hence it follows, that the inheritance of the particular estate of the king, and that of the crown, are of a quite different nature, and have no connection with each other; so that, strictly speaking, the successor may accept of the crown, and refuse the inheritance of the particular estate; and, in this case, he is not obliged to pay the debts due upon this particular estate.

XXXVI. But it is certain, that honour and equity hardly permit a prince, who ascends the throne, to use this rigorous right, and that, if he has the glory of his royal house at heart, he will, by good œconomy and frugality, find wherewithal to pay the debts of his predecessor. But this ought not to be done at the expence of the public treasure. These are the rules of succession simply hereditary.

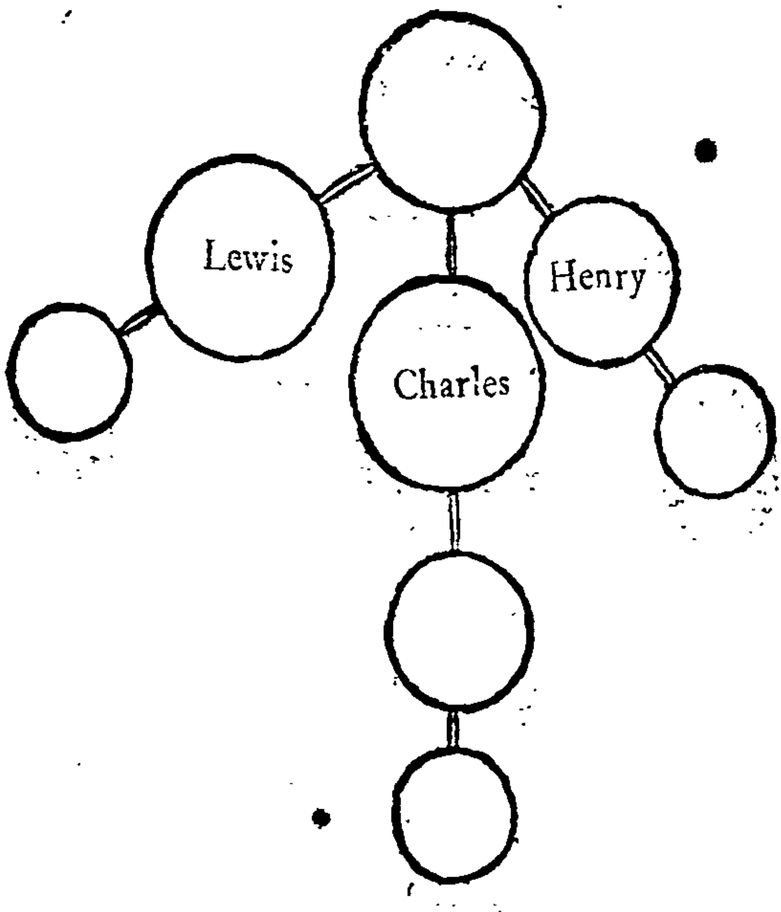
XXXVII. But, since in this hereditary succession, where the next to the deceased king is called to the crown, very terrible disputes may happen concerning the

the degree of proximity, when those who remain, are a little distant from the common stem; several nations have established the lineal succession from branch to branch, the rules of which are these following.

1. All those descended from the royal founder are accounted so many lines or branches, each of which has a right to the crown according to the degree of its proximity.

2. Among those of this line, who are in the same degree, first sex, and then age, gives the preference.

3. We must not pass from one line to another, so long as there remains one of the preceding, even though there should be another line of relations nearer to the deceased king. For example:



A king leaves three sons, *Lewis*, *Charles*, and *Henry*. The son of *Lewis*, who succeeds him, dies without children; *Charles* leaves a grandson; *Henry* is

is still living, and is the uncle of the deceased king; the grand-child of *Charles* is only his cousin-german: and yet this grand-child will have the crown as being transmitted to him by his grand-father, whose line has excluded *Henry* and his descendants, till it is quite extinct.

4. Every one has therefore a right to succeed in his rank, and transmits this right to his descendants, with the same order of succession, though he has never reigned himself; that is to say, the right of the dead passes to the living, and that of the living to the dead.

5. If the last king has died without issue, we make choice of the nearest line to his, and so on.

XXXVIII. There are two principal kinds of lineal succession, namely, *Cognatic* and *Agnatic*. These names come from the Latin words *Cognati* and *Agnati*, the first of which, in the Roman law, signifies the relations on the mother's side, and the last those on the father's side.

XXXIX. The *Cognatic* lineal succession is that which does not exclude women from the succession, but only calls them after the males in the same line; so that, when only women remain, there is no transition made to another line, but the succession runs back to the female again, in case the males, who were superior or equal to them in other respects, shall happen to fail with all their descendants. This succession is also called *Castilian*. Hence it follows, that the daughter of the son of the last king, is preferred to the son of the daughter of the same prince, and the daughter of one of his brothers to the son of one of his sisters.

XL. The *Agnatic* lineal succession is that in which only the male issue of males succeeds, so that women, and all those descending from them, are perpetually excluded. It is also called the *French* succession. This exclusion of women and their descendants is principally established to hinder the crown from coming to a foreign race, by the marriages of princesses of the blood royal.

XLI. These

XLI. These are the principal kinds of succession in use, and may be tempered in different manners by the people; but prudence directs us to prefer those which are subject to the least difficulty; and in this respect the lineal succession has the advantage over that which is simply hereditary.

XLII. Several questions, equally curious and important, may be started with regard to the succession of kingdoms. On this subject the reader may consult Grotius*. We shall only here examine who has a right to decide the disputes which may arise between two or more pretenders to a crown.

1. If the kingdom is patrimonial, and some disputes arise after the death of the king, between the pretenders, the best method is to refer the cause to arbitrators who are of the royal family. The good and peace of the kingdom require this conduct.

2. But in kingdoms established by the voluntary act of the people, if the dispute arises even when the king is alive, he is not for that reason a competent judge of it; for then the people must have given him the power of regulating the succession according to his own pleasure, which is not to be supposed. It therefore belongs to the people to decide the dispute, either by themselves or by their representatives.

3. The same holds true, if the dispute does not arise till after the death of the king: in this case it is either necessary to determine which of the pretenders is nearest to the deceased king; and this is a point of fact which the people only ought to determine, because they are principally interested in it.

4. Or the dispute is to know, what degree, or what line, ought to have the preference according to the order of the succession which the people have established; and then it is a point of right. Now who can better determine this point than the people themselves, who have established the order of succession? otherwise there would be no method of determining the dispute but by force of arms, which would be entirely contrary to the good of the society. XLIII.

* The Right of War and Peace, book ii. chap. 7. §. 25. &c.

XLIII. But to avoid every perplexity of this kind, it would be proper that the people ſhould, by a fundamental law, formally reſerve to themſelves the right of judging in ſimilar caſes. What has been ſaid is ſufficient on the different ways of acquiring ſovereignty.

CHAP. IV.

Of the different ways of loſing ſovereignty.

I. LET us now enquire how ſovereignty can be loſt; and in this there is no great difficulty, after the principles we have eſtabliſhed on the ways of acquiring it.

II. Sovereignty may be loſt by abdication; that is, by an act by which the reigning prince renounces the ſovereignty, ſo far as it regards himſelf. Of this the hiſtory even of late ages furniſhes us with ſeveral remarkable examples.

III. As ſovereignty derives its origin from a covenant founded on a free conſent between the king and his ſubjects; if, for ſome plauſible reaſons, the king thinks proper to renounce the ſovereignty, the people have not properly a right to conſtrain him to keep it.

IV. But ſuch an abdication muſt not be made at an unſeaſonable juncture: as for inſtance, when the kingdom is like to ſink into a minority, eſpecially if it is threatened with a war; or when the prince, by his bad conduct, has thrown the ſtate into a dangerous ſituation, in which he cannot abandon it without betraying or deſtroying it.

V. But we may ſafely ſay, that a prince very rarely finds himſelf in ſuch circumſtances, as can engage him voluntarily to renounce the crown. In whatever ſituation he is, he may get rid of the drudgery of government, and ſtill retain the ſuperiority of command. A king ought to die upon the throne, and it is always a weakneſs unworthy of him, to ſtrip himſelf voluntarily of his authority. Beſides experience has frequently

quently shewn, that abdication has been attended with a melancholy and miserable end.

VI. It is therefore certain, that a prince may, for himself, renounce the crown, or the right of succession. But there is a great difficulty in determining whether he can do it for his children.

VII. To judge rightly of this point, which has so much divided politicians, we must establish the following principles.

1. Every acquisition of a right over another, and consequently of sovereignty, supposes the consent of him over whom this right is to be acquired, and the acceptance of him who is to acquire it. So long as this acceptance is not given, the intention of the former does not produce, in favour of the other, an absolute and irrecoverable right: it is only a simple designation, which he is at liberty to accept of or not.

VIII. 2. Let us apply these principles. The princes of the blood royal, who have accepted the will of the people, by which the crown has been conferred on them, have certainly, by that means, acquired an absolute and irrecoverable right, of which they cannot be stripped without their own consent.

IX. 3. As for those who are not yet born, as they have not accepted of the designation of the people, so they have not yet any right. Hence it follows, that, with regard to them, this designation is only an imperfect act, a kind of expectancy, the completion of which intirely depends on the will of the people.

X. 4. But it may be said, the ancestors of those, who are not yet born, have consented and stipulated for them, and consequently received the engagement of the people in their behalf. But this is rather an argument in favour of renunciation, which it effectually establishes: for as the right of those, who are not yet born, has no other foundation but the concurrence of the will of the people and of their ancestors,

ceſtors, it is evident that this right may be taken from them without injuſtice, by thoſe very perſons, from the ſingle will of whom they hold it.

XI. 5. The ſingle will of a prince, without the conſent of the nation, cannot effectually exclude his children from the crown to which the people have called them. In like manner, the ſingle will of the people, without the conſent of the prince, cannot deprive his children of an expectancy which their father has ſtipulated with the people in their favour. But if theſe two wills unite, they may, without doubt, change what they have eſtabliſhed.

XII. 6. It is true this renunciation ought not to be made without a cauſe, and through a motive of inconſtancy and levity. In theſe circumſtances, reaſon cannot authorize them, and the good of the ſtate does not permit, that, without a neceſſity, an alteration ſhould be made in the order of the ſucceſſion.

XIII. 7. If, on the contrary, the nation is in ſuch circumſtances, that the renunciation of a prince or a princeſs, is abſolutely neceſſary to its tranquillity and happineſs, then the ſupreme law of the public good, which has eſtabliſhed the order of the ſucceſſion, requires it ſhould be ſet aſide.

XIV. 8. Let us add, that it is for the common good of nations, that ſuch renunciations ſhould be valid, and that the parties intereſted ſhould not attempt to diſannul them. For there are times and conjunctures in which they are neceſſary for the good of the ſtate; and if thoſe, who are concerned in the affair, imagine that the renunciation will afterwards be deſpiſed, it is not likely that they will be ſatisfied with it. It is evident that bloody and cruel wars muſt always ariſe from this ſource. Grotius decides this queſtion nearly in the ſame manner. The reader may ſee what he ſays of it*.

XV. 9. As war or conqueſt is a means of acquiring ſovereignty, as we have ſeen in the preceding chapter,

* Book ii. chap. 7. §. 26. and book ii. chap. 4. §. 10.

chapter, so it is evident that it is also a means of losing it. But what we have already said is, at present, sufficient on this subject.

XVI. With regard to tyranny and the deposing of sovereigns, both which are also ways of losing the sovereignty, as these two things have a relation to the duties of subjects towards their sovereigns, we shall treat of them, after we have, in the next chapter, considered these duties.

CHAP V.

Of the duties of subjects in general.

I. According to the plan we have laid down, we must here treat of the duties of subjects. Puffendorf has given us a clear and distinct idea of them, in the last chapter of his Duties of a Man and a Citizen. We shall follow him step by step.

II. The duties of subjects are either general or particular; and both flow from their state and condition.

III. All subjects have this in common, that they live under the same sovereign and the same government, and that they are members of the same state. From these relations the general duties arise.

IV. But as they have different employments, enjoy different posts in the state, and follow different professions; hence also arise their particular duties.

V. It is also to be observed, that the duties of subjects, suppose and include those of man, considered simply as such, and as a member of human society in general.

VI. The general duties of subjects have, for their object, either the governors of the state, or the whole body of the people, viz. their country, or the individuals among their fellow-subjects.

VII. As for sovereigns and governors of the state, every subject owes them that respect, fidelity, and obedience,

obedience, which their character demands. Hence it follows, that we ought to be contented with the present government, and to form no cabals nor seditions, but to be attached to the interest of our prince, more than to that of any other person, to honour him, to think favourably of him, and to speak with respect of him and his actions. We ought even to have a veneration for the memory of good princes, &c.

VIII. With respect to the whole body of the state, a good subject makes it his rule to prefer the public good to every thing else, bravely to sacrifice his fortune, and all his private interests, and even his life, for the preservation and the good of the state; and to employ all his talents and his industry to advance the honour, and to procure the advantage of his native country.

IX. Lastly, the duty of a subject to his fellow-subjects consists in living with them, as much as he possibly can, in peace and strict union, in being mild, complaisant, affable, and obliging to each of them, in creating no trouble by a rude or litigious humour, and in bearing no envy or prejudice against the happiness of others, &c.

X. As for the particular duties of subjects, they are connected with the particular employments which they follow in society. We shall here lay down some general rules on this matter.

1. A subject ought not to aspire after any public employment, nor even to accept of it when he is sensible that he is not duly qualified for it. 2. He ought not to accept of more employments than he can discharge. 3. He must not use bad means to obtain offices. 4. It is even sometimes a kind of justice not to seek after certain employments, which are not necessary to us, and which may be as well filled by others, for whom they are perhaps more proper. 5. He ought to discharge the several functions of the employments he has obtained, with all the application, exactness, and fidelity he is capable of.

XI. No-

XI. Nothing is more easy than to apply these general maxims to the particular employments of society, and to draw consequences proper to each of them; as for instance, with respect to ministers and counsellors of state, ministers of religion, public professors, magistrates and officers of justice, officers in the army and soldiers, receivers of taxes, ambassadors, &c.

XII. The particular duties of subjects cease with the public charges from whence they arise. But as for the general duties, they subsist as long as a man is a subject of the state, and till he has lost that quality. Now a man ceases to be a subject, principally three ways. 1. When he goes to settle elsewhere. 2. When he is banished from a country for some crime, and deprived of the rights of a subject. 3. And lastly, when he is reduced to a necessity of submitting to the dominion of a conqueror.

XIII. It is a right natural to all free people, that every one should have the liberty of removing out of the commonwealth, if he thinks proper. In a word, when a man becomes a member of a state, he does not for that reason entirely renounce the care of himself and his own affairs. On the contrary, he seeks a powerful protection, under the shelter of which he may procure to himself both the necessaries and conveniencies of life. Thus the subjects of a state cannot be denied the liberty of settling elsewhere, in order to procure the advantages which they do not find in their native country.

XIV. On this occasion there are however certain maxims of duty and decency, which cannot be dispensed with.

1. In general, a man ought not to quit his native country without the permission of his sovereign: But his sovereign ought not to refuse it him without very important reasons.

2. It would be contrary to the duty of a good subject to abandon his native country at an unseasonable

able juncture, and when the state has a particular interest that he should stay at home *.

3. If the laws of the country have determined any thing in this point, we must be determined by them; for we have consented to those laws in becoming members of the state.

XV. The Romans forced no person to continue under their government, and *Cicero* † highly commends this maxim, calling it "the surest foundation of liberty, "which consists in being able to preserve or renounce "our right as we think proper."

XVI. Some make a question, whether subjects can go out of the state in great companies? In this point Grotius and Puffendorf are of opposite sentiments ‡. As for my own part, I am of opinion that it can hardly happen, that subjects should go out of the state in large companies, except in one or other of these two cases; either when the government is tyrannical, or when a multitude of people cannot subsist in the country; as when manufacturers, for example, or other tradesmen, cannot find the means of making or distributing their commodities. In these circumstances, the subjects may retire if they will, and they are authorized so to do by virtue of a tacit exception. If the government is tyrannical, it is the duty of the sovereign to change his conduct, for no subject is obliged to live under tyranny. If misery forces them to remove, this is also a reasonable exception against the most express engagements, unless the sovereign furnishes them with the means of subsistence. But, except

* See Grotius of the Right of War and Peace, book ii. chap 4. sect. 24.

† O excellent and divine laws, enacted by our ancestors in the beginning of the Roman empire——Let no man change his city against his will, nor let him be compelled to stay in it. These are the surest foundations of our liberty, and every one should have it in his power either to preserve or relinquish his right, Orat. pro L. Corn. Balb. cap. 13. adde Leg. 12. sect. 9. Digest. de cap. diminut. & postlim. lib. xlix, tit. 15.

‡ See Grotius, ubi supra, and Puffendorf of the Law of Nature and Nations, lib. viii. cap. 11. sect. 4.

cept in these cases, if the subjects were to remove in great companies, without a cause, and by a kind of general desertion, the sovereign may certainly oppose their remove, if he finds that the state suffers great prejudice by it.

XVII. A man ceases to be a subject of the state when he is for ever banished, in punishment for some crime: for the moment that the state will not acknowledge a man for one of its members, but drives him from its territories, he is released from his engagements as a subject. The Civilians call this punishment a civil death. But it is evident that the state, or sovereign, cannot expel a subject from their territories when they please, unless he has deserved it by the commission of some crime.

XVIII. Lastly, a man may cease to be a subject by the superior force of an enemy, by which he is reduced to a necessity of submitting to his dominion: and this necessity is founded on the right which every man has to take care of his own preservation.

CHAP. VI.

Of the inviolable rights of sovereignty, of the deposing of sovereigns, of the abuse of sovereignty, and of tyranny.

I. WHAT we have said in the preceding chapter, of the duties of subjects to their sovereigns, admits of no difficulty. We are agreed in general upon the rule, that the sovereign is a sacred and inviolable person. But the question is, whether this prerogative of the sovereign be such, that it is never lawful for the people to rise against him, to dispossess him, or to change the form of government?

II. To answer this question, I observe at first, that the nature and end of government lay an indispensable obligation on all subjects not to resist their sovereign, but to respect and obey him, so long as he uses his power with justice and moderation, and does not pass the bounds of his authority.

III. It

III. It is this obligation to obedience in the ſubjects, which conſtitutes the whole force of civil ſociety and government, and conſequently the whole happineſs of the ſtate. Whoever therefore riſes againſt the ſovereign, or makes an attack upon his perſon or authority, renders himſelf manifeſtly guilty of the greateſt crime which a man can commit, ſince, by ſo doing, he endeavours to ſubvert the firſt foundations of the public happineſs, in which that of every individual is included.

IV. But if this maxim is true with reſpect to individuals, may we alſo apply it to the whole body of the nation, of whom the ſovereign originally holds his authority? If the people think fit to reſume, or to change the form of government, why ſhould they not be at liberty to do it? Cannot he, who makes a king, depoſe him?

V. Let us try to clear up this difficulty. I therefore affirm, that the people themſelves, that is, the whole body of the nation, have not a right to depoſe the ſovereign, or to change the form of government, without any other reaſon than their own pleaſure, and purely through inconſtancy or levity.

VI. In general, the ſame reaſons which eſtabliſh the neceſſity of government and ſovereign authority in ſociety, alſo prove that the government ought to be ſtable, and that the people ſhould not have the power of depoſing their ſovereigns, whenever, thro' caprice or levity, they are inclined ſo to do, and when they have no good reaſon to change the form of government.

VII. In fact, it would be aboliſhing government, to make it depend on the caprice or inconſtancy of the people. It would be impoſſible for the ſtate to be ever ſettled amidſt theſe continual revolutions, which would expoſe it ſo often to deſtruction, for we muſt either grant that the people cannot diſpoſſeſs their ſo-

vereigns, and change the form of government; or we muſt give them, in this reſpect, a liberty without bounds.

VIII. It is certainly an inconteſtable maxim, that an opinion which ſaps the foundations of all authority, which deſtroys all power, and conſequently all ſociety, cannot be admitted as a principle of reaſoning, or of conduct in politics.

IX. The law of conveniency is in this caſe of the utmoſt force. What ſhould we ſay of a minor, who, without any other reaſon than his caprice, ſhould withdraw from his guardian, or change him at his pleaſure? In this caſe it is all the ſame. It is with reaſon that politicians compare the people to minors; neither one nor other of them are capable of governing themſelves. They muſt have maſters, and this neceſſity forbids them, without a reaſon, to withdraw from their authority, or to alter the form of government.

X. It is not only the law of conveniency, which does not permit the people, without a reaſon, to riſe againſt their ſovereign or the government; but the law of juſtice alſo forbids the ſame thing.

XI. Government and ſovereignty are eſtabliſhed by reciprocal agreement betwixt thoſe who govern, and thoſe who are governed; and the natural law of juſtice requires that perſons ſhould be faithful to their engagements. It is therefore the duty of the people to keep their word which they have given their ſovereign, and religiouſly to obſerve their contract, ſo long as the ſovereign performs his engagements.

XII. Otherwiſe the people would do a manifeſt injuſtice to the ſovereign, in depriving him of a right which he has lawfully acquired, which he has not abuſed to their prejudice, and for the loſs of which they cannot indemnify him.

XIII. But what muſt we think of a ſovereign, who, in not uſing his authority well, injures his ſubjects, neglects

neglects the interests of the state, subverts the fundamental laws, drains the people by excessive taxes, which he squanders away in foolish and useless expences, &c. Ought the person of such a king to be sacred to the subjects? Ought they patiently to suffer all his injustices? Or, can they withdraw from his authority?

XIV. To answer this question, which is one of the most delicate in politics, I observe, that disaffected, mutinous, or seditious subjects, often make things, highly innocent, pass for acts of injustice in the sovereign. The people often murmur at the most necessary taxes; others seek to destroy the government, because they have not a share in the administration. In a word, the complaints of subjects oftener denote the bad humour and seditious spirit of those who make them, than real disorders in the government, or injustice in those who govern.

XV. It were indeed to be wished, for the glory of sovereigns, that the complaints of subjects never had juster foundations. But history and experience teach us that they are too often very well founded. In these circumstances, what is then the duty of subjects? Ought they patiently to suffer? Or, may they resist their sovereign?

XVI. We must distinguish between the extreme abuse of sovereignty, which degenerates manifestly and openly into tyranny, and tends to the entire ruin of the subjects; and a moderate abuse of it, which may be attributed to human weakness, rather than to a determined intention of ruining the liberty and happiness of the people.

XVII. In the first case, I think the people have always a right to resist their sovereign, and even to resume the sovereignty which they have given him, and which he has abused to excess. But if the abuse is only moderate, it is the duty of the people to suffer something, rather than to rise in arms against their sovereign.

XVIII. This diſtinction is founded on the nature of man, and the nature and end of government. The people muſt patiently bear the ſlight injuſtices of their ſovereign, or the moderate abuſe of his power, becauſe this is no more than a juſt tribute due to humanity. It is on this condition that they have inveſted him with the ſupreme authority. Kings are men as well as others, that is to ſay, liable to be miſtaken, and, in ſome inſtances, to fail in point of their duty. Of this the people cannot be ignorant, and it is on this footing that they have treated with their ſovereign.

XIX. If, for the ſmalleſt faults, the people had a right to reſiſt their ſovereign or depoſe him, no ſovereign could retain his authority, and the ſociety would, by this means, be continually torn to pieces; which would run directly counter both to the end and eſtabliſhment of government, and of ſovereignty.

XX. It is therefore juſt, to overlook the pardonable faults of ſovereigns, and to have a regard to the laborious and exalted office, with which they are inveſted for our preſervation. Tacitus beautifully ſays: "We "muſt endure the luxury and avarice of ſovereigns, "as we endure the barrenneſs of a ſoil, ſtorms, and "other inconveniencies of nature. There will be "vices as long as there are men; but theſe are not "continual, and are recompenſed by the intermix-"ture of better qualities *."

XXI. But if the ſovereign puſhes things to the laſt extremity, ſo that his tyranny becomes inſupportable, and it appears evident that he has formed a deſign to deſtroy the liberty of his ſubjects, then they have a right to riſe againſt him, and even to deprive him of the ſovereignty.

XXII. This

* Quomodo ſterilitatem, aut nimios imbres, et cætera naturæ mala, ita luxum vel avaritiam dominantium tolerate. Vitia erunt, donec homines; ſed neque hæc continua, et meliorum interventu penſantur. Hiſt. lib. iv. cap. 74. N. 4.

XXII. This I prove, 1. By the nature of tyranny, which of itself degrades the sovereign of his dignity. Sovereignty always supposes a beneficent power; we must indeed make some allowance for the weakness inseparable from humanity; but beyond that, and when the people are reduced to the last extremity, there is no difference between tyranny and robbery. The one gives no more right than the other, and we may always lawfully oppose force to violence.

XXIII. 2. Men have established civil society and government for their own good, to extricate themselves from troubles, and to deliver themselves from the evils of a state of nature. But it is highly evident, that if the people were obliged to suffer every thing from their sovereigns, and never to resist their violences, they would be reduced to a much more deplorable state, than that from which they wanted to rescue themselves, by the establishment of sovereignty. It can never surely be presumed, that this was the intention of men.

XXIV. 3. Even a people, who have submitted themselves to an absolute government, have not thereby lost the right of asserting their liberty, and taking care of their preservation, when they find themselves reduced to extreme misery. Absolute sovereignty, in itself, is no more than the absolute power of doing good; now the absolute power of procuring the good of a person, and the absolute power of destroying him at pleasure, have no connection with each other. Let us therefore conclude, that never any people had an intention to submit themselves to a sovereign in such a manner, as never to have it in their power to resist him, not even for their own preservation.

XXV. "Suppose, says Grotius *, one had asked "those who first formed the civil laws, whether they "intended to impose on all the subjects, the fatal ne-"cessity of dying rather than takeing up arms to de-"fend themselves against the unjust violence of their "sove-

* Book i. chap. 4. §. 7. N. 2.

" sovereign, I know not whether they would have
" answered in the affirmative. It is rather reasona-
" ble to believe that they would have declared, that
" the people ought not to endure all manner of inju-
" ries, except perhaps when matters are so situated,
" that resistance would infallibly produce very great
" troubles in the state, or tend to the ruin of many
" innocent people."

XXVI. We have already proved *, that no person can renounce his liberty to such a degree as that here mentioned. This would be selling his own life, that of his children, his religion, in a word, every advantage he enjoys, which it is not certainly in any man's power to do. This may be illustrated by the comparison of a patient and his physician.

XXVII. If therefore the subjects have always a right to resist the manifest tyranny even of an absolute prince, they must, for a stronger reason, have the same power with respect to a prince who has only a restrained and limited sovereignty, if he wants to invade the rights and properties of his people †.

XXVIII. We must indeed patiently suffer the caprice and austerity of our masters, as well as the bad humour of our fathers and mothers; but, as *Seneca* says, " Though a person ought to obey a father in all
" things, yet he is not obliged to obey him when his
" commands are of such a nature, that he ceases
" thereby to be a father."

XXIX. But it is here to be observed, that when we say the people have a right to resist a tyrant, or even to depose him, we ought not, by the word people, to understand the vile populace or dregs of a country, nor the cabal of a small number of seditious persons, but the greatest and most judicious part of the subjects of all orders in the kingdom. The tyranny,

* Part i. chap. 7. N. 22. &c.
† Grotius on the Right of War and Peace, lib. i. cap. 4. §. 8.

ny, as we have alſo obſerved, muſt be notorious and accompanied with the higheſt evidence.

XXX. We may likewiſe affirm, that, ſtrictly ſpeaking, the ſubjects are not obliged to wait till the prince has entirely finiſhed the chains which he is preparing for them, and till he has put it out of their power to reſiſt him. It is high time to think of their preſervation, and to take proper meaſures againſt their ſovereign, when they find that all his actions manifeſtly tend to oppreſs them, and that he is marching boldly on to the ruin of the ſtate.

XXXI. Theſe are truths of the laſt importance. It is highly proper they ſhould be known, not only for the ſafety and happineſs of nations, but alſo for the advantage of good and wiſe kings.

XXXII. They, who are well acquainted with the frailty of human nature, are always diffident of themſelves; and wiſhing only to diſcharge their duty, they are contented to have bounds ſet to their authority, and by that means to be hindered from doing what they ought not to do. Taught by reaſon and experience, that the people love peace and good government, they will never be afraid of a general inſurrection, ſo long as they take care to govern with moderation, and hinder their officers from committing injuſtice.

XXXIII. However the abettors of deſpotic power and paſſive obedience ſtart ſeveral difficulties on this ſubject.

Firſt Objection. A revolt againſt the ſupreme power includes a contradiction; for if this power is ſupreme, there is none ſuperior to it. By whom then ſhall it be judged? If the ſovereignty always inheres in the people, they have not transferred their right; and if they have transferred it, they are no longer maſters of it.

Anſwer.

Anſwer. This difficulty ſuppoſes the point in queſtion, namely, that the people have diveſted themſelves ſo far of their liberty, that they have given full power to the ſovereign to treat them as he pleaſes, without having in any caſe reſerved to themſelves the power of reſiſting him. This is what no people ever did, nor ever could do. There is therefore no contradiction here. A power given for a certain end, is limited by that very end. The ſupreme power acknowledges none above itſelf, ſo long as the ſovereign has not forfeited his dignity. But if he has degenerated into a tyrant, he can no longer claim a right which he has loſt by his own fault.

XXXIV. Second Objection. But who ſhall judge, whether the prince performs his duty, or whether he governs tyrannically? Can the people be judge in their own cauſe?

Anſwer. It certainly belongs to thoſe who have given any perſon a power, which he had not of himſelf, to judge whether he uſes it agreeably to the end for which it was given him.

XXXV. Third Objection. We cannot, without imprudence, grant this right of judging to the people. Political affairs are not adapted to the capacity of the vulgar, but are ſometimes of ſo delicate a nature, that even perſons of the beſt ſenſe cannot form a right judgment of them.

Anſwer. In dubious caſes, the preſumption ought always to be in favour of the ſovereign, and obedience is the duty of ſubjects. They ought even to bear a moderate abuſe of ſovereignty. But in caſes of a manifeſt and open tyranny, every one is in a condition to judge whether he is exceſſively injured or not.

XXXVI. Fourth Objection. But is it not expoſing the ſtate to perpetual revolutions, to anarchy, and to certain ruin, to make the ſupreme authority depend on the opinion of the people, and to grant them the liberty of riſing on ſome occaſions againſt their ſovereign.

Anſwer.

Anſwer. This objection would be of ſome force, if we pretended that the people had a right to riſe againſt their ſovereign, or to change the form of government, through levity or caprice, or even for a moderate abuſe of ſovereignty. But no inconveniency will enſue, while the people only uſe this right with all the precautions, and in the circumſtances which we have ſuppoſed. Beſides, experience teaches us that it is very difficult to prevail on a people to change a government to which they have been accuſtomed. People are apt to overlook not only ſlight, but even very great faults in thoſe who govern them.

XXXVII. Our hypotheſis does not tend more than any other, to excite diſturbances in a ſtate; for a people, ill treated by a tyrannic government, will rebel as frequently as thoſe who live under eſtabliſhed laws, which they will not ſuffer to be violated. Let the abettors of deſpotic power cry up their prince as much as they pleaſe, let them ſay the moſt magnificent things of his ſacred perſon, yet the people, reduced to the laſt miſery, will trample theſe ſpecious reaſons under foot, as ſoon as they can do it with any appearance of ſucceſs.

XXXVIII. In fine, though the people might abuſe the liberty which we grant them, yet leſs inconveniency would ariſe from this, than from allowing all to the ſovereign, ſo as to let a whole nation periſh, rather than grant it the power of checking the iniquity of its governors.

CHAP. VIII.

Of the duty of ſovereigns.

I. THERE is a ſort of commerce, or reciprocal return of the duties of the ſubjects to the ſovereign, and of his to them. After therefore having treated of the former, it remains that we take a view of the latter.

II. From

II. From what we have hitherto explained of the nature of sovereignty, of its end, extent and boundaries, the duty of sovereigns may easily be gathered. But as this is an affair of the last importance, it is necessary to say something more particular on it, and to collect the principal heads of it as it were into one view.

III. The higher a sovereign is raised above the level of other men, the more important are his duties: if he can do a great deal of good, he can also do a great deal of mischief. It is on the good or evil conduct of princes that the happiness or misery of a whole nation or people depends. How happy is the situation, which, on all instances, furnishes occasions of doing good to so many thousands! But at the same time, how dangerous is the post which exposes every moment to the injuring of millions? Besides, the good which princes do, sometimes extends to the most remote ages; as the evils they commit are multiplied from generation to generation to latest posterity. This sufficiently discovers the importance of their duties.

IV. In order to have a proper knowledge of the duty of sovereigns, we need only attentively consider the nature and end of civil societies, and the exercise of the different parts of sovereignty.

V. 1. The first general duty of princes, and which is before all things necessary, is carefully to inform themselves of every thing that falls under the complete discharge of their trust: for a person cannot well acquit himself in that which he has not first rightly learnt.

VI. It is a great mistake to imagine that the knowledge of government is an easy affair; on the contrary, nothing is more difficult if princes would discharge their duty. Whatever talents or genius they may have received from nature, this is an employment that requires the whole man. The general rules of governing well are few in number; but the difficulty

difficulty is to make a juſt application of them to times and circumſtances; and this demands the greateſt efforts of diligence and human prudence.

VII. 2. When a prince is once convinced of the obligation he is under to inform himſelf exactly of all that is neceſſary for the diſcharge of his truſt, and of the difficulty of getting this information, he will begin with removing all obſtacles which might oppoſe it. And firſt it is abſolutely neceſſary, that princes ſhould retrench their pleaſures, and uſeleſs diverſions, ſo far as theſe may be an obſtacle to the knowledge and practice of their duty. Then they ought to endeavour to have wiſe, prudent and experienced perſons about them; and, on the contrary, to remove flatterers, buffoons, and others, whoſe whole merit conſiſts in things that are frivolous and abſolutely unworthy of the attention of a ſovereign. Princes ought not to chooſe for favourites thoſe who are moſt proper to divert them, but thoſe who are moſt capable of governing the ſtate.

VIII. Above all things, they cannot guard too much againſt flattery. No human condition has ſo great an occaſion for true and faithful advice as that of kings. And yet princes, ſpoiled by flattery, take every thing, that is free and ingenuous, to be harſh and auſtere. They are become ſo delicate, that every thing, which is not flattery, offends them: But nothing ought they to be ſo greatly afraid of as this very flattery, ſince there are no miſeries into which they may not be hurried by its poiſonous inſinuations. On the contrary, the prince is happy when but only one man is born in his reign, who is ſo generous as to ſpeak the truth freely to him; ſuch a man is the treaſure of the ſtate. Wiſe rulers, who have their true intereſts at heart, ought continually to imagine that flatterers only regard themſelves and not their maſters; whereas a ſincere counſellor, as it were, forgets himſelf, and thinks only on the advantage of his prince.

IX. 3. Princes ought to uſe all poſſible application to underſtand the conſtitution of the ſtate, and the natu-

natural temper of their ſubjects. They ought not in this reſpect to be contented with a general and ſuperficial knowledge. They ſhould enter into particulars, and carefully examine what the conſtitution of the ſtate is, what its eſtabliſhment and power, whether it is old or new, ſucceſſive or elective, acquired by legal methods or by arms, what its extent is, what its forces are, who are its allies, and what conveniencies it is provided with. For according to all theſe circumſtances the ſceptre muſt be ſwayed, and the reins of government drawn in or ſlackened.

X. 4. After this ſovereigns ought to endeavour to excel in ſuch virtues as are moſt neceſſary to ſupport the weight of ſo important a charge, and to regulate their outward behaviour in a manner worthy of their rank and dignity.

XI. We have already ſhewn that virtue in general conſiſts in that ſtrength of mind, which enables us not only to conſult right reaſon on all occaſions, but alſo to follow her counſels with eaſe, and effectually reſiſt every thing which may incline us to the contrary. This ſingle idea of virtue is ſufficient to ſhew how neceſſary it is to all men. But among all men, none have more duties to fulfil, none are more expoſed to great temptations, than ſovereigns; and none of courſe have a greater neceſſity for the aſſiſtance of virtue. Beſides, virtue in princes has this advantage, that it is the ſureſt means of rendering their ſubjects good and virtuous. For this purpoſe they need only ſhew themſelves ſuch. The example of the prince has more force than the law. It is, as it were, a living law, which has more credit and authority than precept. But to come to particulars.

XII. The virtues moſt neceſſary to ſovereigns are, 1. *Piety*, which is certainly the foundation of all other virtues; but it muſt be a ſolid and rational piety free from ſuperſtition and bigotry. In the high ſituation of ſovereigns, the only motive which can moſt

moſt ſurely induce them to the diſcharge of their duty, is the fear of God. Without that they will ſoon run into every vice which their paſſions dictate; and the people will become the innocent victims of their pride, ambition, avarice and cruelty. On the contrary, we may expect every thing that is good from a prince, who fears and reſpects God, as a ſupreme Being on whom he depends, and to whom he muſt one day give an account of his adminiſtration. Nothing can be ſo powerful a motive as this to engage princes to perform their duty, nothing can ſo well cure them of that dangerous miſtake, that being above other men, they may act as abſolute lords, and as if they were not to render an account of their conduct, and be judged in their turn, after having judged others.

III. 2. The love of *Equity* and *Juſtice*. The chief deſign a prince was made for, is to take care that every one ſhould have his right. This ought to engage him to ſtudy not only the ſcience of thoſe great civilians who aſcend to the firſt juſtice, which regulates human ſociety, and which determines the principles of government and politics; but alſo that part of the law, which deſcends to the affairs of particular perſons. This branch is generally left for the gentlemen of the long robe, and not admitted into the education of princes, though they are every day to paſs judgment upon the fortunes, liberties, lives, honour and reputation of their ſubjects. Princes are continually talked to of valour and liberality, but if juſtice does not regulate theſe two qualities, they degenerate into the moſt odious vices: Without juſtice, valour does nothing but deſtroy; and liberality is only a fooliſh profuſeneſs. Juſtice keeps all in order, and contains within bounds him who diſtributes it, as well as thoſe to whom it is diſtributed.

XIV. 3. *Valour*. But it muſt be ſet in motion by juſtice, and conducted by prudence. A prince ſhould expoſe himſelf to the greateſt dangers as often as it is neceſſary. He diſhonours himſelf more by being afraid

of danger in time of war, than by never going to war. The courage of him who commands others, ought not to be dubious; but neither ought he to expose himself to danger without necessity. Valour can no longer be a virtue than as it is guided by prudence, otherwise it is a stupid contempt of life, a brutal ardour. Inconsiderate valour is always insecure. He, who is not master of himself in dangers, is rather fierce than brave; if he does not fly, he is at least confounded. He loses that presence of mind which would be necessary for him to give proper orders, to take advantage of opportunities, and to rout the enemy. The true way of finding glory, is calmly to wait for the favourable occasion. Virtue is the more revered, as she shews herself plain, modest, and averse to pride and ostentation. In proportion as the necessity of exposing yourself to danger augments, your foresight and courage ought also to increase.

XV. 4. Another virtue, very necessary in princes, is to be extremely reserved in discovering their thoughts and designs. This virtue is evidently necessary to those who are concerned in government: It includes a wise diffidence, and an innocent dissimulation.

XVI. 5. A prince must, above all things, accustom himself to moderate his desires. For as he has the power of gratifying them, if he once gives way to them, he will run to the greatest excess, and by destroying his subjects, he will at last destroy himself. In order to form himself to this moderation, nothing is more proper and useful than to accustom himself to patience. This is the most necessary of all virtues for those who are to command. A man must be patient to become master of himself and others. Impatience, which seems to be a vigorous exertion of the soul, is only a weakness and inability of suffering pain. He who cannot wait and suffer, is like a person that cannot keep a secret. Both want resolution to contain themselves. The more power an impatient man has, the more fatal his impatience will be to him. He will

will not wait; he will give himself no time to judge; he forces every thing to please himself; he tears off the boughs, to gather the fruit before it is ripe; he breaks down the gates, rather then stay till they are opened to him.

XVII. 6. *Goodness* and *Clemency* are also virtues very necessary to a prince: His office is to do good, and it is for this end the power is lodged in his hand. It is also principally by this that he ought to distinguish himself.

XVIII. 7. *Liberality*, well understood and well applied, is so much the more essential to a prince, as avarice is a disgrace to a person to whom it costs almost nothing to be liberal. To take it exactly, a king, as a king, has nothing properly his own; for he owes his very self to others. But on the other hand, no person ought to be more careful in regulating the exercise of this noble virtue. This requires a great deal of circumspection, and supposes, in the prince, a just discernment and a good taste to know how to bestow and dispense favours on proper persons. He ought, above all things, to use this virtue for rewarding merit and virtue.

XIX. But liberality has its bounds, even in the most opulent princes. The state may be compared to a family. The want of foresight, profusion of treasure, and the voluptuous inclinations of princes, who are the masters of it, do more mischief than the most skilful ministers can repair.

XX. To reimburse his treasures, squandered away without necessity, and often in criminal excesses, he must have recourse to expedients which are fatal to the subjects and the state. He loses the hearts of the people, and causes murmurs and discontents which are always dangerous, and of which an enemy may take advantage. These are inconveniences that even common sense might point out, if the strong propensity to pleasure, and the intoxication of power, did not often extinguish the light of reason in princes. To what cruelty and injustice did not the foolish profusions of *Nero* carry him? A prudent œconomy, on the

the contrary, ſupplies the deficiencies of the revenue, maintains families and ſtates, and preſerves them in a flouriſhing condition. By œconomy princes not only have money in time of need, but they alſo poſſeſs the hearts of their ſubjects, who freely open their purſes upon any unforeſeen emergency, when they ſee that the prince has been ſparing in his expences; the contrary happens when he has ſquandered away his treaſures.

XXI. This is a general idea of the virtues moſt neceſſary to a ſovereign, beſides thoſe which are common to him with private people, and of which ſome are included even in thoſe we have been mentioning. *Cicero* follows almoſt the ſame ideas in the enumeration he makes of the royal virtues *.

XXII. It is by the aſſiſtance of theſe virtues, of which we here have given an idea, that ſovereigns are enabled to apply themſelves with ſucceſs to the functions of government, and to fulfil the different duties of it. Let us ſay ſomething more particular on the actual exerciſe of theſe duties.

XXIII. There is a general rule which includes all the duties of a ſovereign, and by which he may eaſily judge how to proceed under every circumſtance. *Let the ſafety of the people be the ſupreme law.* This maxim ought to be the principle and end of all his actions. The ſovereign authority has been conferred upon him with this view; and the fulfilling of it is the foundation of his right and power. The prince is properly the ſervant of the public. He ought, as it were, to forget himſelf, in order to think only on the advantage and good of thoſe whom he governs. He ought not to look upon any thing as advantageous to himſelf, which is not ſo to the ſtate. This was the idea of the heathen philoſophers. They defined a good prince, one who endeavours to render his ſubjects happy; and a tyrant, on the contrary, one who aims only at his own private advantage.

XXIV. The

* Fortem, juſtum, ſeverum, gravem, magnanimum, largum, benignum, liberalem dici, hæ ſunt regiæ laudes. Orat. pro lege Deiotaro, cap. 9.

XXIV. The very intereſt of the ſovereign demands, that he ſhould direct all his actions to the public good. By ſuch a conduct he wins the hearts of his ſubjects, and lays the foundation of ſolid happineſs and true glory.

XXV. Where the government is moſt deſpotic, there ſovereigns are leaſt powerful. They ruin every thing, and are the ſole poſſeſſors of the whole country; but then the ſtate languiſhes, becauſe it is exhauſted of men and money; and this firſt loſs is the greateſt and moſt irreparable. His ſubjects ſeem to adore him, and to tremble at his very looks: But ſee what will be the conſequence upon the leaſt revolution; then we find that this monſtrous power, puſhed to exceſs, cannot long endure, becauſe it has no reſource in the hearts of the people. On the firſt blow the idol tumbles down and is trampled under foot. The king, who, in his proſperity, found not a man who durſt tell him the truth, ſhall not find one, in his adverſity, that will vouchſafe either to excuſe him, or defend him againſt his enemies. It is therefore equally eſſential to the happineſs of the people and of ſovereigns, that the latter ſhould follow no other rule in the manner of governing, than that of the public good.

XXVI. It is not difficult, from this general rule, to deduce thoſe of a more particular nature. The functions of the government relate either to the intereſts of the ſtate at home, or to its foreign concerns.

XXVII. As for the intereſts of the ſtate at home, the firſt care of the ſovereign ought to be, 1. To form his ſubjects to good manners. For this purpoſe the duty of ſupreme rulers is not only to preſcribe good laws, by which every one may know how he ought to behave in order to promote the public good; but eſpecially to eſtabliſh the moſt perfect manner of public inſtruction, and of the education of youth. This is the only method of making the ſubjects conform to the laws both by reaſon and cuſtom, rather than through fear of puniſhment.

XXVIII. The first care of a prince therefore ought to be to erect public schools for the education of children, and for forming them betimes to wisdom and virtue. Children are the hope and strength of a nation. It is too late to correct them when they are spoiled. It is infinitely better to prevent the evil, than to be obliged to punish it. The king, who is the father of all his people, is more particularly the father of all the youth, who are, as it were, the flower of the whole nation. And as it is in the flower, that fruits are prepared, so it is one of the principal duties of the sovereign to take care of the education of youth, and the instruction of his subjects, to plant the principles of virtue early in their minds, and to maintain and confirm them in that happy disposition. It is not laws and ordinances, but good morals, that properly regulate the state.

Quid leges sine moribus
Vanæ proficiunt.*

Those who have had a bad education make no scruple to violate the nicest exactness of political constitutions; whereas they, who have been properly trained up, chearfully, and, as it were, spontaneously conform to all good establishments. In fine, nothing is more conducive to so good an end in states, than to inspire the people by times with the principles of the Christian religion, purged from all human invention. For this religion includes the most perfect scheme of morality, the maxims of which are extremely well adapted for promoting the happiness of society.

XXIX. 2. The sovereign ought to establish good laws for the settling of such affairs, as the subjects have most frequently to transact with each other. These laws ought to be just, equitable, clear, without ambiguity and contradiction, useful, accommodated to the condition and the genius of the people, at least as far as the good of the state will permit, that, by their means, differences may be easily determined: but they are not to be multiplied without necessity.

XXX. I said,

* Horat. lib. iii. Od. 24. v. 35, 36.

XXX. I ſaid, that laws ought to be *accommodated to the condition and genius of the people;* and for this reaſon I have before obſerved, that the ſovereign ought to be thoroughly in ſtructedin this point; otherwiſe one of theſe two inconveniencies muſt neceſſarily happen, either the laws are not obſerved, and then it becomes neceſſary to puniſh an infinite number of people, without the ſtate reaping any advantage from it; or the authority of the laws are deſpiſed, and then the ſtate is on the brink of deſtruction.

XXXI. I mentioned alſo, that *laws ought not to be multiplied without neceſſity;* for this would only tend to lay ſnares for the ſubjects, and expoſe them to the inevitable puniſhments, without any advantage to ſociety. In fine, it is of great importance to regulate what relates to the adminiſtration and ordinary forms of juſtice, ſo that every ſubject may have it in his power to recover his right, without loſing much time, or being at a great expence.

XXXII. 3. It would be of no uſe to make good laws, if people were ſuffered to violate them with impunity. Sovereigns ought therefore to ſee them properly executed, and to puniſh the delinquents without exception of perſons, according to the quality and degree of the offence. It is even ſometimes proper to puniſh ſeverely at firſt. There are circumſtances in which it is clemency to make ſuch early examples, as may ſtop the courſe of iniquity. But what is chiefly neceſſary, and what juſtice and the public good abſolutely require, is that the ſeverity of the laws be exerciſed not only upon the ſubjects of moderate fortune and condition, but alſo upon the wealthy and powerful. It would be unjuſt that reputation, nobility, and riches, ſhould authorize any one to inſult thoſe who are deſtitute of theſe advantages. The populace are often reduced by oppreſſion to deſpair, and at laſt riſe up with a fury which throws the ſtate into convulſions.

XXXIII. 4. Since men firſt incorporated themſelves in civil ſocieties to ſcreen themſelves from the injuries

and malice of others, and to procure all the sweets and pleasures which can render life commodious and happy, the sovereign is obliged to hinder the subjects from wronging each other, to maintain order and peace in the community by a strict execution of the laws, to the end that his subjects may obtain the advantages which men can reasonably purchase to themselves by joining in society. When the subjects are not kept within rule, their perpetual living together, and the communication they have with each other, easily furnish them with opportunities of injuring each other. But nothing is more contrary to the nature and end of civil government, than to permit subjects to do themselves justice, and, by their own private force, to revenge the injuries they think they have suffered. We shall here add a beautiful passage from Mr. *De La Bruiere* upon this subject *. "What "would it avail me or any of my fellow subjects, "that my sovereign was successful and crowned with "glory, that my country was powerful and the ter- "ror of neighbouring nations, if I was forced to "lead a melancholy and miserable life under the "burthen of oppression and indigence? If, while I "was secured from the incursions of a foreign ene- "my, I found myself exposed at home to the sword "of an assassin, and was less in danger of being rob- "bed or massacred in the darkest nights and in a "thick forest, than in the public streets? If safety, "cleanliness, and good order, had not rendered "living in towns so pleasant, and had not only fur- "nished them with the necessaries, but moreover "with all the sweets and conveniencies of life? If, "being weak and defenceless, I were encroached up- "on in the country, by every neighbouring great "man? If so good a provision had not been made to "protect me against his injustice? If I had not at "hand so many and such excellent masters, to edu- "cate my children in those arts and sciences which "will one day make their fortune? If the conveni- "ency

* Characters and Manners of the present Age, chap. 10, of the Sovereign.

" ency of commerce had not made good ſubſtantial
" ſtuffs for my clothing, and wholeſome food for my
" nouriſhment, both plentiful and cheap? If, to con-
" clude, the care of my ſovereign had not given me
" reaſon to be as well contented with my fortune,
" as his princely virtues muſt needs make him with
" his."

XXXIV. 5. Since a prince can neither ſee nor do every thing himſelf, he muſt have the aſſiſtance of miniſters: But theſe, as they derive their whole authority from their maſter, all the good or the evil they do is finally imputed to him. It is therefore the duty of ſovereigns to chooſe perſons of integrity and ability for the employments with which they entruſt them. They ought often to examine their conduct, and to puniſh or recompenſe them, according as they deſerve. In fine, they ought never to refuſe to lend a patient ear to the humble remonſtrances and complaints of their ſubjects, when they are oppreſſed and trampled on by miniſters and ſubordinate magiſtrates.

XXXV. 6. With regard to ſubſidies and taxes, ſince the ſubjects are not obliged to pay them, but as they are neceſſary to defray the expences of the ſtate, in war or peace: the ſovereign ought to exact no more than the public neceſſities or the ſignal advantage of the ſtate ſhall require, he ought alſo to ſee that the ſubjects be incommoded as little as poſſible by the taxes laid upon them. There ſhould be a juſt proportion in the tax of every individual, and there muſt be no exception or immunity which may turn to the diſadvantage of others. The money collected ought to be laid out on the occaſions of the ſtate, and not waſted in luxury, debauchery, fooliſh largeſſes, or vain magnificence. Laſtly, the expences ought to be proportioned to the revenues.

XXXVI. 7. It is the duty of a ſovereign to draw no farther ſupplies from his ſubjects than he really ſtands in need of: The wealth of the ſubjects forms the ſtrength of the ſtate, and the advantage of families and individuals. A prince therefore ought to neglect nothing that can contribute to the preſervation and increaſe of the riches of his people. For

this

this purpose he ought to see that they draw all the profit they can from their lands and waters, and keep themselves always employed in some industrious exercise or other. He ought to further and promote the mechanic arts, and give all possible encouragement to commerce. It is likewise his duty to bring his subjects to a frugal method of living by good sumptuary laws, which may forbid superfluous expences, and especially those by which the wealth of the natives is translated to foreigners.

XXXVII. 8. Lastly, it is equally the interest and duty of a supreme governor, to guard against factions and cabals, from whence seditions and civil wars easily arise. But above all, he ought to take care, that none of his subjects place a greater dependence, under any pretext, even that of religion, on any other power, either within or without the realm, than on his lawful sovereign. This in general is the law of the public good in regard to the domestic interests, or internal tranquillity of the state.

XXXVIII. As to foreign concerns, the principal duties of the king are,

1. To live in peace with his neighbours as much as he possibly can.

2. Dexterously to manage the alliances and treaties he makes with other powers.

3. To adhere faithfully to the treaties he has made.

4. Not to suffer the courage of his subjects to be enervated, but on the contrary to maintain and augment it by a good discipline.

5. In due and seasonable time to make the preparations necessary to put himself in a posture of defence.

6. Not to undertake any unjust or rash war.

7. Lastly, even in times of peace to be very attentive to the designs and motions of his neighbours.

XXXIX. We shall say no more of the duties of sovereigns. It is sufficient at present to have pointed out the general principles, and collected the principal heads: what we have to say hereafter concerning the different parts of sovereignty, will give the reader a more distinct idea of the particular duties attending it.

The End of the Second Part.

THE PRINCIPLES OF POLITIC LAW.

PART III.

A more particular examination of the essential parts of sovereignty, or of the different rights of the sovereign, with respect to the internal administration of the state; such as the legislative power, the supreme power in matters of religion, the right of inflicting punishments, and that which the sovereign has over the Bona Reipublicæ, *or the goods contained in the commonwealth.*

CHAP. I.

Of the legislative power, and the civil laws which arise from it.

I. WE have hitherto explained what relates to the nature of civil society in general, of government, and of sovereignty, which is the soul of it. Nothing remains to compleat the plan we laid down, but more particularly to examine the different parts of sovereignty, as well those which directly regard the internal administration of the state, as those which relate to its interests abroad, or to its concerns with foreign powers, which will afford us an opportunity of explaining the principal questions relating to these subjects; and to this purpose we design this and the subsequent part.

II. Among the essential parts of sovereignty we have given the first rank to the *legislative power*, that is to say, the power which the sovereign has of giving laws to his subjects, and of directing their actions, or of prescribing the manner in which they ought to regulate their conduct; and it is from this power that the civil laws are derived. As this right of the sovereign is, as it were, the essence of sovereignty,

order

order requires that we ſhould begin with the explication of whatever relates to it.

III. We ſhall not here repeat what we have elſewhere ſaid of the nature of laws in general: But, ſuppoſing the principles we have eſtabliſhed on that head, we ſhall only examine the nature and extent of the legiſlative power in ſociety, and that of the civil laws and decrees of the ſovereign which are from thence derived.

IV. *Civil Laws* then are all thoſe, which the ſovereign impoſes on his ſubjects. The aſſemblage or body of theſe laws is what we call the *Civil Law*. In fine, civil juriſprudence is that ability, by which the civil laws are not only eſtabliſhed, but are explained in caſe of any obſcurity, and are properly applied to the actions of men.

V. The eſtabliſhment of civil ſociety ought to be fixed and perpetual, ſo as to make a ſure and undoubted proviſion for the happineſs and tranquillity of man. For this purpoſe it was neceſſary to eſtabliſh a conſtant order, and this could only be done by fixed and determinate laws.

VI. We have already obſerved that it was neceſſary to take proper meaſures to render the laws of nature as effectual as they ought to be, in order to promote the happineſs of man; and this is done by means of the civil laws.

For, 1. They ſerve to make the laws of nature better known.

2. They give them a new degree of force and render the obſervance of them more ſecure, by means of their ſanction, and of the puniſhments which the ſovereign inflicts on thoſe who deſpiſe and violate them.

3. There are ſeveral things which the law of nature preſcribes only in a general and indeterminate manner; ſo that the time, the manner, and the application to perſons, are left to the prudence and diſcretion of every individual. It was however neceſſary for the order and tranquillity of the ſtate, that all this matter ſhould be regulated; which is done by the civil laws.

4. They

4. They alſo ſerve to explain any obſcurity that may ariſe in the maxims of the law of nature.

5. They modify, in various ways, the uſe of thoſe rights which every man naturally poſſeſſes.

6. Laſtly, they determine the forms that are to be obſerved, and the precautions which ought to be taken, to render the different engagements that men enter into with each other effectual and inviolable; and they aſcertain the manner in which a man is to proſecute his rights in the civil courts.

VII. In order therefore to form a juſt idea of the civil laws, we muſt ſay, that as civil ſociety is no other than natural ſociety itſelf, modified by the eſtabliſhment of a ſovereign whoſe buſineſs it is to maintain peace and order; in like manner the civil laws are thoſe of nature, perfected and modified in a manner ſuitable to the ſtate and advantages of ſociety.

VIII. As this is the caſe, we may very properly diſtinguiſh two ſorts of civil laws. Some are ſuch with reſpect to their authority only, and others with regard to their original. To the firſt claſs, we refer all natural laws which ſerve as rules in civil courts, and which are alſo confirmed by a new ſanction of the ſovereign. Such are all thoſe laws which determine the crimes that are to be puniſhed by the civil juſtice; and what are the obligations upon which an action may commence in the civil court, &c.

As for the civil law, ſo called, becauſe of their original, theſe are arbitrary decrees, which, for their foundation, have only the will of the ſovereign, and ſuppoſe certain human eſtabliſhments; or which regulate things relating to the particular advantage of the ſtate, though indifferent in themſelves and undetermined by the law of nature. Such are the laws which preſcribe the neceſſary forms in contracts and teſtaments, the manner of proceeding in courts of juſtice, &c. But it muſt be obſerved that all theſe regulations ought to tend to the good of the ſtate as well as of individuals, ſo that they are properly appendages to the law of nature.

IX. It

IX. It is of great importance carefully to diſtinguiſh in the civil laws, what is natural and neceſſary in them, from what is only arbitrary. Thoſe laws of nature, the obſervance of which is eſſentially conducive to the peace and tranquillity of mankind, ought certainly to have the force of a law in all ſtates; neither is it in the power of the prince to abrogate them. As for the others, which do not ſo eſſentially intereſt the happineſs of ſociety, it is not always expedient to give them the force of a law; becauſe the controverſies about the violation of them would often be very perplexed and intricate, and would likewiſe lay a foundation for an infinite number of litigious ſuits. Beſides, it was proper to give the good and virtuous an opportunity of diſtinguiſhing themſelves by the practice of thoſe duties, the violation of which incurs no human penalties.

X. What we have ſaid of the nature of civil laws ſufficiently ſhews, that though the legiſlative is a *ſupreme*, yet it is not an *arbitrary* power; but on the contrary it is limited in ſeveral reſpects.

1. And as the ſovereign holds the legiſlative power originally of the will of each member of the ſociety, it is evident that no man can confer on another a right which he has not himſelf; and that conſequently the legiſlative power cannot be extended beyond this limit. The ſovereign therefore can neither command nor forbid any other actions than ſuch as are either voluntary or poſſible.

2. Beſides, the natural laws diſpoſe of human actions antecedently to the civil laws, and men cannot recede from the authority of the former. Therefore theſe private laws limit the power of the ſovereign, and he can determine nothing ſo as to bind the ſubject contrary to what they either expreſsly command or forbid.

XI. But we muſt be careful not to confound two things entirely diſtinct, I mean the *State of Nature* and the *Laws of Nature*. The primitive and natural ſtate of man may admit of different changes and various mo-

modifications, which are left to the disposal of man, and have nothing contrary to his obligations and his duties. In this respect, the civil laws may produce some changes in the natural state, and consequently make some regulations unknown to the law of nature, without containing any thing contrary to that law, which supposes the state of liberty in all its extent, but nevertheless permits men to limit and restrain that state, in the manner which appears most to their advantage.

XII. We are however far from being of the opinion of those writers *, who pretend that it is impossible the civil laws should be repugnant to that of nature, *because*, say they, *there is nothing either just or unjust antecedently to the establishment of those laws.* What we have just now advanced, and the principles we have established in the whole course of this work, sufficiently evince the absurdity of this opinion,

XIII. It is as ridiculous to assert, that before the establishment of civil laws and society, there was no rule of justice to which mankind were subject, as to pretend that truth and rectitude depend on the will of men, and not on the nature of things. It would have even been impossible for men to found societies, of any durability, if, antecedently to these societies, there had been neither justice or injustice, and if they had not, on the contrary, been persuaded that it was just to keep their word, and unjust to break it.

XIV. Such in general is the extent of the legislative power, and the nature of the civil laws, by which that power exerts itself. Hence it follows, that the whole force of civil laws consists in two things, namely, in their *Justice* and in their *Authority*.

XV. The authority of the laws consists in the force given them by the person, who, being invested with the legislative power, has a right to enact these laws; and in the Divine Will which commands us to obey him. As for the justice of the civil laws, it depends on their relation to the good order of society, of which they

* Hobbes.

they are the rules, and on their agreement with the particular advantage of eſtabliſhing them, according as times and places require.

XVI. And ſince the ſovereignty, or right of commanding, is naturally founded on a *beneficent Power*, it neceſſarily follows that the *Authority* and *Juſtice* of laws are two characteriſtics eſſential to their nature, in default of which they can produce no true obligation. The power of the ſovereign conſtitutes the authority of his laws, and his beneficence permits him to make none but ſuch as are conformable to equity.

XVII. However certain and inconteſtable theſe general principles are, yet we ought to take care not to abuſe them in the application. It is certainly eſſential to every law that it ſhould be equitable and juſt; but we muſt not from thence conclude, that private ſubjects have a right to refuſe obedience to the commands of the ſovereign, under a pretence that they do not think them altogether juſt. For beſides that ſome allowance is to be made for human infirmity, the oppoſing the legiſlative power which conſtitutes the whole ſafety of the public, muſt evidently tend to the ſubverſion of ſociety; and ſubjects are obliged to ſuffer the inconveniences which may ariſe from ſome unjuſt laws, rather than expoſe the ſtate to ruin by their diſobedience.

XVIII. But if the abuſe of the legiſlative power proceeds to exceſs, and to the ſubverſion of the fundamental principles of the laws of nature, and of the duties which it enjoins, it is certain that in theſe circumſtances, the ſubjects are, by the laws of God, not only authorized, but even obliged to refuſe obedience to all laws of this kind.

XIX. But this is not ſufficient. That the laws may be able to impoſe a real obligation, and be reckoned juſt and equitable, it is neceſſary the ſubjects ſhould have a perfect knowledge of them: now they can-

cannot of themſelves know the civil laws, at leaſt thoſe of an arbitrary nature; theſe are, in ſome meaſure, facts of which the people may be ignorant. The ſovereign ought therefore to declare his will, and to adminiſter laws and juſtice, not by arbitrary and haſty decrees, but by mature regulations, duly made known to the public.

XX. Theſe principles furniſh us with a reflection of great importance to ſovereigns. Since the firſt quality of laws is, that they be known, ſovereigns ought to publiſh them in the cleareſt manner. In particular, it is abſolutely neceſſary that the laws be written in the language of the country; it would be even proper that public profeſſors ſhould not uſe a foreign language in their lectures on juriſprudence. For what can be more repugnant to the principle which directs, that the laws ſhould be perfectly known, than to uſe foreign laws, written in a dead language, which the generality of the people do not underſtand, and to render the knowledge of thoſe laws attainable only in that language. I cannot help ſaying, that this is a remains of barbarouſneſs equally contrary to the glory of ſovereigns, and the advantage of ſubjects.

XXI. If we therefore ſuppoſe the civil laws, accompanied with the conditions here mentioned, they have certainly the force of obliging the ſubjects to obſerve them. Every individual is obliged to ſubmit to their regulations, ſo long as they include nothing contrary to the divine laws, whether natural or revealed; and this is not only from a dread of the puniſhments annexed to the violation of them, but alſo from a principle of conſcience, and in conſequence of a maxim of natural law, which commands us to obey our lawful ſovereigns in every thing we can do without committing a crime.

XXII. In order rightly to comprehend this effect of the civil laws, it is to be obſerved, that the obligation, which they impoſe, extends not only to external

actions, but alſo to the inward ſentiments of the mind. The ſovereign by preſcribing laws to his ſubjects, propoſes to render them truly wiſe and virtuous. If he commands a good action, he wants it to be done from principle; and when he forbids a crime, he not only forbids the external action, but alſo forbids the harbouring the thought, or forming the deſign of it.

XXIII. In fact, man being naturally an intelligent and free agent, he is induced to action only in conſequence of his judgment, by a determination of his will, and by an internal principle. As this is the caſe, the moſt effectual means, which the ſovereign can employ to procure the public happineſs and tranquillity, is to work upon the mind, and on the principle of human actions, by diſpoſing the hearts of his ſubjects to wiſdom and virtue.

XXIV. It is alſo for this end that public eſtabliſhments are formed for the education of youth. All public ſchools and profeſſors are appointed for this purpoſe. The end of all theſe inſtitutions is to inform and inſtruct mankind, and to make them early acquainted with the rules of a happy and virtuous life. Thus the ſovereign, by means of inſtruction, has an effectual method of inſtilling juſt ideas and notions into the minds of his ſubjects, and by this means his authority has a very great influence upon the internal actions, the thoughts and inclinations of thoſe who are ſubject to the direction of his laws, as far at leaſt as the nature of the thing will permit.

XXV. We ſhall cloſe this chapter with the diſcuſſion of a queſtion, which naturally preſents itſelf in this place.

Some aſk, whether a ſubject can innocently execute the unjuſt commands of a ſovereign, or if he ought not rather to refuſe abſolutely to obey him, even at the hazard of his life? Puffendorf ſeems to anſwer this queſtion with a kind of heſitation, but at length he declares for the opinion of Hobbes in the following manner. "We muſt diſtinguiſh," he ſays, "whether

"the

" the ſovereign commands us in our own name to do " an unjuſt action, which may be accounted our own; " or, whether he orders us to perform it, in his " name, as inſtruments in the execution of it, and as " an action which he accounts his own. In the laſt " caſe, he pretends that he may without ſcruple ex- " ecute the action ordered by the ſovereign, who is " then to be conſidered as the only author of it, and " to whom the guilt ought to be ſolely imputed. Thus, " for example, ſoldiers ought always to execute the " orders of their prince, becauſe they do not act in " their own name, but as inſtruments and in the name " of their maſter. But on the contrary, it is never " lawful to do in our own name, an action that our " conſcience tells us is unjuſt or criminal. Thus for " example, a judge, whatever orders he may have " from the prince, ought never to condemn an inno- " cent perſon, nor a witneſs depoſe againſt the truth."

XXVI. But, in my opinion, this diſtinction does not remove the difficulty; for in whatever manner we pretend that a ſubject acts in theſe caſes, whether in his own name, or that of his prince, his will always concurs in ſome manner or other to the unjuſt and criminal action which he executes by order of the ſovereign. We muſt therefore impute either both actions partly to him, or elſe never any of them at all.

XXVII. The ſureſt way then, is to diſtinguiſh here between a caſe where the prince commands a thing evidently unjuſt, and that where the conſcience is doubtful. As for the firſt, we muſt generally, and without any reſtriction, maintain, that the greateſt menaces ought never to induce us, even by the order and in the name of the ſovereign, to do a thing which appears to us evidently unjuſt and criminal; and tho' we may be very excuſeable before the human tribunal for having been conquered by ſuch a ſevere trial, yet we ſhall not be ſo before the tribunal of God.

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XXVIII. Thus a parliament, for instance, commanded by the prince to register an edict, which is manifestly unjust, ought certainly to refuse to do it. The same I say of a minister of state, whom a prince would oblige to dispatch or put in execution some order full of iniquity or tyranny; of an ambassador whose master gives him instructions, attended with a manifest injustice; or of an officer, whom the king should command to kill a man whose innocence is as clear as the day. In these cases we must shew a noble courage, and with all our might resist injustice, even at the pearl of every thing that can happen to us. *It is better to obey God than men.* For in promising a faithful obedience to the sovereign we could never do it but on condition, that he should not order any thing that is manifestly contrary to the laws of God, whether natural or revealed. To this purpose there is a beautiful passage in a tragedy wrote by *Sophocles.* "I did not believe (says *Antigone* to *Creon* "king of *Thebes)* that the edicts of a mortal man, as "you are, could be of such force, as to supersede "the laws of the gods themselves, laws not written "indeed, but certain and immutable; for they are "not of yesterday or to-day, but established perpe-"tually and for ever, and no one knows when they "began. I ought not therefore, for fear of any man, "to expose myself, by violating them, to the punish-"ment of the gods*.

XXIX. But in cases where the conscience is doubtful, the best resolution a man can come to, is certainly to obey. The duty of obedience being of a clear and evident obligation, ought to supersede all doubt. Otherwise, if the obligation of the subjects, to comply with the commands of their sovereign, permitted them to refuse obedience till they are convinced of the justice of these commands; this would manifestly reduce the authority of the prince to nothing, and subvert all order and government. It would be necessary that soldiers, executioners, and other inferior officers

* Sophocl. Antigon. v. 463, &c.

officers of court, ſhould underſtand politics and the civil law, otherwiſe they might excuſe themſelves from their duty of obedience, under a pretence that they are not ſufficiently convinced of the juſtice of the orders given them; which would evidently render the prince incapable of exerciſing the functions of government. It is therefore the duty of the ſubjects to obey in theſe circumſtances; and if the action is unjuſt in itſelf, it cannot be imputed to them, but the whole blame falls on the ſovereign.

XXX. Let us here collect in a few words, the principal views which the ſovereign ought to have in the enacting of laws.

1. He ſhould pay a perfect regard to theſe primitive rules of juſtice which God himſelf has eſtabliſhed, and take care that his laws be perfectly conformable to them.

2. The laws muſt be of ſuch a nature that they may be eaſily followed and obſerved. Laws, too difficult to be put in execution, are only apt to ſhake the authority of the magiſtrates, or to lay a foundation for inſurrections capable of ſubverting the ſtate.

3. No laws ought to be made relating to uſeleſs or unneceſſary things.

4. The laws ought to be ſuch that the ſubjects may be inclined to obſerve them rather of their own accord than from neceſſity. For this reaſon, the ſovereign ſhould only make ſuch laws as are evidently uſeful, or at leaſt he ſhould explain and make known to the ſubjects, the reaſons and motives that have induced him to enact them.

5. He ought not to be eaſily induced to change the eſtabliſhed laws without a great neceſſity. Frequent changes in the laws certainly leſſens their authority and that of the ſovereign.

6. The ſovereign ought not to grant diſpenſations lightly and without good reaſons; otherwiſe he weakens the laws, and lays a foundation for jealouſies which are always prejudicial to the ſtate and to individuals.

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7. Laws ſhould be ſo contrived as to be mutually aſſiſting to each other, that is to ſay, ſome ſhould prepare for the obſervance of others, and render the execution of them more eaſy. Thus, for example, the wiſe ſumptuary laws, which fix bounds to the expences of the ſubject, contribute greatly to the execution of thoſe laws, which order taxes and public contributions.

8. A prince who wants to make new laws, ought to be particularly attentive to times and circumſtances. On this principally depends the ſucceſs of a new law, and the manner in which it is received.

9. In fine, the moſt effectual ſtep a prince can take to enforce his laws, is to conform to them himſelf, and to ſhew the firſt example, as we have before obſerved.

CHAP. II.

Of the right of judging of the doctrines taught in the ſtate: Of the care which the ſovereign ought to take to form the manners of his ſubjects.

I. IN the enumeration before made in the eſſential parts of ſovereignty, we have comprehended the right of judging of the doctrines taught in the ſtate, and particularly of every thing relating to religion. This is one of the moſt conſiderable rights belonging to the ſovereign, which it is of great importance to preſerve and uſe according to the rules of juſtice and prudence. Let us endeavour to ſhew the neceſſity of it, to eſtabliſh the foundations of it, and to point out its extent and boundaries.

II. The firſt duty of the ſovereign ought to be to take all poſſible means to form the hearts and minds of his people. In vain would it be for him to eſtabliſh the beſt laws, and to preſcribe rules of conduct to every thing that any way relates to the good of ſociety, if he did not moreover take proper meaſures to convince

convince his people of the juſtice and neceſſity of theſe rules, and of the advantages which naturally ariſe from the ſtrict obſervance of them.

III. And indeed, ſince the principle of all human actions is the will, and the acts of the will depend on the ideas we form of good and evil, as well as of the rewards and puniſhments which muſt follow the commiſſion of a thing, ſo that every one is determined by his own judgment of the matter: it is evident that the ſovereign ought principally to take care that his ſubjects be properly inſtructed from their infancy, in all thoſe principles which can form them to an honeſt and ſober life, and in ſuch doctrines as are agreeable to the end and advantage of ſociety. This is the moſt effectual means of inducing men to a ready and ſure obedience, and of forming their manners inſenſibly. Without this the laws would not have a ſufficient force to reſtrain the ſubjects within the bounds of their duty. As long as men do not obey the laws from principle, their obedience is precarious, and uncertain; and they will always be ready to withdraw from their duty when they think they can do it with impunity.

IV. If therefore people's manner of thinking, or the ideas and opinions commonly received, and to which they are accuſtomed, have ſo much influence on their conduct, and ſo ſtrongly contribute either to the good or evil of the ſtate; and if it is the duty of the ſovereign to attend to this article, and to beſtow all his care upon it; he ought to neglect nothing that can contribute to the education of youth, the advancement of the ſciences, and the progreſs of truth. If this be the caſe, we muſt needs grant him a right of judging of the doctrines publicly taught, and of proſcribing all thoſe which of themſelves may be oppoſite to the public good and tranquillity.

V. It belongs therefore to the ſovereign alone to eſtabliſh academies and public ſchools of all kinds, and

to authorise the respective professors. It is his business to take care that nothing be taught in them, under any pretext, contrary to the fundamental maxims of natural law, to the principles of religion or good politics; in a word, nothing capable of producing impressions prejudicial to the happiness of the state.

VI. But sovereigns ought to be particularly delicate as to the manner of using this right, and not to push it beyond its true bounds, but to use it only according to the rules of justice and prudence, otherwise great abuses may arise from hence; either because a thing is preposterously considered as detrimental to the state, which in the main, no way prejudices but rather may be advantageous to society; or because under this pretext, princes, whether of themselves, or at the instigations of wicked persons, erect inquisitions with respect to the most indifferent and innocent, nay even the truest opinions, especially in matters of religion.

VII. Supreme rulers cannot therefore be too much on their guard, against suffering themselves to be imposed on by wicked and envious men, who under a pretext of public good and tranquillity, seek only their own private interests, and who use their utmost efforts to render certain opinions suspected, only with a view to ruin honester men than themselves.

VIII. The advancement of the sciences, and the progress of truth, require that a reasonable liberty should be granted to all those who busy themselves in such laudable pursuits, and that we should not condemn a man as criminal, purely because in certain things he has ideas different from those commonly received. Besides, a different manner of thinking on the same subjects, and a diversity of ideas and opinions are so far from obstructing, that they rather facilitate the progress of truth; provided however that sovereigns take proper measures to oblige men of letters to keep within the bounds of moderation, and that

just

just respect which mankind owe to one another; and that for this effect they exert their authority in checking those who grow too warm in their disputes and break through all rules of decency, so as to injure, calumniate, and render suspected every one that is not in their way of thinking. We must lay down as an indubitable maxim, that truth is of itself very advantageous to men and to society, that no true opinion is contrary to peace, and that all those which, of their nature, are contrary to peace, must certainly be false; otherwise we must assert, that peace and concord are repugnant to the laws of nature.

CHAP. III.

Of the power of the sovereign in matters of religion.

I. THE power of the sovereign in matters of religion is of the last importance. Every one knows the disputes which have long subsisted on this topic between the empire and the priesthood, and how fatal the consequences of it have been to states. Hence it is equally necessary, both to sovereigns and subjects, to form just ideas on this article.

II. My opinion is, that the supreme authority, in matters of religion, ought necessarily to belong to the sovereign; and the following are my reasons for this assertion.

III. I observe, 1. That if the interest of society requires that laws should be established in relation to human affairs, that is, to things which properly and directly interest only our temporal happiness; this same interest cannot permit, that we should altogether neglect our spiritual concerns, or those which regard religion, and leave them without any regulation. This has been acknowledged in all ages, and among all nations; and this is the origin of the *civil Law* properly so called, and of the *sacred* or *ecclesiastic Law*.

Law. All civilized nations have eſtabliſhed theſe two ſorts of law.

IV. But if matters of religion have, in ſeveral reſpects, need of human regulation, the right of finally determining them can belong only to the ſovereign.

First Proof. This is inconteſtably proved by the very nature of ſovereignty, which is no more than the right of determining finally in ſociety, and which conſequently ſuffers nothing, not only above it, but even that is not ſubject to it, and embraces, in the extent of its juriſdiction, every thing that can intereſt the happineſs of the ſtate both *ſacred* and *profane*.

V. The nature of ſovereignty cannot permit any thing, that is ſuſceptible of human direction, to be withdrawn from its authority; for what is withdrawn from the authority of the ſovereign, muſt either be left independent, or ſubjected to the authority of ſome other perſon different from the ſovereign himſelf.

VI. Were no rules eſtabliſhed in matters of religion, this would be throwing them into a confuſion and diſorder, quite oppoſite to the good of the ſociety; incompatible with the nature of religion, and directly contrary to the views of the Deity, who is the author of it. But if we ſubmit theſe matters to ſome authority independent of that of the ſovereign, we fall into a new inconveniency, ſince by this means, we eſtabliſh in the ſame ſociety two ſovereign powers independent of each other, which is not only incompatible with the nature of ſovereignty, but a contradiction in itſelf.

VII. In fact, if there were ſeveral ſovereigns in the ſame ſociety, they might alſo give contrary orders. But who does not perceive that oppoſite orders, with reſpect to the ſame affair, are manifeſtly repugnant to the nature of things, that they cannot have their effect, nor produce a real obligation. How would it be poſſible, for inſtance, that a man, who re-

receives different orders at the ſame time from two ſuperiors, as to repair to the camp, and to go to church, ſhould be obliged to obey both? If it be ſaid that he is not obliged to obey both, there muſt therefore be ſome ſubordination of the one to the other, the inferior will yield to the ſuperior, and it will not be true that they are both ſovereign and independent. We may here very properly apply the words of *Jeſus Chriſt*. *No man can ſerve two maſters; and a kingdom divided againſt itſelf cannot ſtand.*

VIII. *Second Proof.* I draw my ſecond proof from the end of civil ſociety and of ſovereignty. The end of ſovereignty is certainly the happineſs of the people, and the preſervation of the ſtate. Now as religion may ſeveral ways either injure or benefit the ſtate, it follows, that the ſovereign has a right over religion, at leaſt as far as it can depend on human direction. He, who has a right to the *end*, has undoubtedly, a right alſo to the *means* which leads to it.

IX. Now that religion may ſeveral ways injure or benefit the ſtate, we have already proved in the firſt volume of this work.

1. All men have conſtantly acknowledged, that the Deity makes his favours to a ſtate depend principally on the care which the ſovereign takes to induce his ſubjects to honour and ſerve him.

2. Religion can of itſelf contribute greatly to render men more obedient to the laws, more attached to their country, and more honeſt to one another.

3. The doctrines and ceremonies of religion have a conſiderable influence on the morals of people, and on the public happineſs. The ideas which men have imbibed of the Deity, have induced them to the moſt monſtrous forms of worſhip, and even prompted them to ſacrifice human victims. They have even from theſe falſe ideas, drawn arguments in juſtification of vice, cruelty and licentiouſneſs, as we may ſee by reading the antient poets. Since religion therefore has ſo much influence over the happineſs or miſery of ſociety,

ciety, who can doubt but it is subject to the direction of the sovereign.

X. *Third Proof.* What we have been saying evinces that it is incumbent on the sovereign, and one of his most essential duties, to make religion, which includes the most valuable interests of mankind, the principal object of his care and application. He ought to promote the eternal, as well as the present and temporal happiness of his subjects: This is therefore a point properly subject to his jurisdiction.

XI. *Fourth Proof.* In fine, we can in general acknowledge only two sovereigns, God and the prince. The sovereignty of God is a transcendent, universal, and absolute supremacy, to which even princes themselves are subject; the sovereignty of the prince holds the second rank, and is subordinate to that of God, but in such a manner, that the prince has a right to regulate every thing, which interests the happiness of society, and by its nature is susceptible of human direction.

XII. After having thus established the right of the sovereign in matters of religion, let us examine into the extent and bounds of this right; whereby it will appear, that these bounds are not different from those which the sovereignty admits of in all other matters. We have already observed, that the power of the sovereign extended to every thing susceptible of human direction and command. Hence it follows, that the first boundary we ought to fix to the authority of the sovereign, but which indeed is so obvious as scarce needs mentioning, is that he can order nothing impossible in its nature, either in religion or any thing else; as for example, to fly into the air, to believe contradictions, &c.

XIII. The second boundary, but which does not more particularly interest religion than every thing else, is deduced from the laws of God: for it is evident that all human authority, being subordinate to that

that of God; whatever God has determined by some law, whether *natural* or *positive*, cannot be changed by the sovereign. This is the foundation of that maxim, *It is better to obey God than men.*

XIV. It is in consequence of these principles, that no human authority can, for example, forbid the preaching of the gospel, or the use of the sacraments, nor establish a new article of faith, nor introduce a new worship: for God having given us a rule of religion, and forbidden us to alter this rule, it is not in the power of any man to do it; and it would be absurd to imagine that any man can either believe or practise any thing as conducive to his salvation, in opposition to that which God has declared.

XV. It is also on the footing of the limitations we have here established, that the sovereign cannot lawfully assume to himself an empire over consciences, as if it was in his power to impose the necessity of believing such or such an article in matters of religion. Nature itself and the divine laws are equally contrary to this pretension. It is therefore no less foolish than impious to endeavour to restrain consciences, and as it were, to extort religion by force of arms. The natural punishment of those who are in an error is to be taught*. As for the rest we must leave the care of the success to God.

XVI. The authority of the sovereign, in matters of religion, cannot therefore extend beyond the bounds we have assigned to it; but these are the only bounds, neither do I imagine it possible to think of any others. But what is principally to be observed, is, that these bounds of the sovereign power, in matters of religion, are, in no respect, different from those he ought to acknowledge in every other matter; that on the contrary they are precisely the same; that they agree indifferently with all the parts of the sovereignty, and that they are not less applicable to common things than to those of religion. For example,

* Erranti pœna est doceri.

ample, it would be no more lawful for a father to neglect the nourishment and education of his children, though the prince ordered him to neglect it, than it would be for pastors or Christians to abandon the service of God, though they were commanded so to do by some impious sovereign. The reason of this is because the law of God equally forbids both, and the exception drawn from this law is invincible, and superior to all human authority.

XVII. However, though the power of the sovereign, in matters of religion, cannot change what God has determined, we may nevertheless say that these very things are, in some measure submitted to the authority of the sovereign. Thus, for example, the sovereign has certainly a right to remove the external obstacles which may prevent the observance of the laws of God, and to make such an observance easy. This is even one of his first duties. Hence also arises his right of regulating every thing relating to the functions of the clergy and the circumstances of external worship, that the whole may be performed with more order, as far, at least, as the law of God has left these things to the direction of men. In a word, it is certain, that the sovereign may also give an additional degree of force, and obligation to the divine laws by temporal rewards and punishments. We must therefore acknowledge the right of the sovereign in regard to religion, and that this right cannot belong to any one else on earth.

XVIII. However, the defenders of the rights of the priesthood start many difficulties on this subject, which we must answer. If God, say they, delegates to men the authority he has over his church, it is rather to his pastors and ministers of the gospel, than to sovereigns and magistrates. The magistrate does not belong to the essence of the church. God, on the contrary, has established pastors over his church, and regulated all the functions of their ministry; and in their office they are so far from being the vicegerents of sovereigns, that they are not even obliged to obey them in all things. What is still more, they

they exercise their functions on the sovereign, as well as on private persons; and the whole Scripture and church history attribute a right of government to them.

Answer. When they say that the magistrate does not belong to the essence of the church, they would explain themselves more properly, if they said that the church may subsist though there were no magistrates. This is true, but we cannot from hence conclude that the magistrate has no authority over the church, for, by the same reasoning, we might prove that merchants, physicians, and every person else do not depend on the sovereign; because it is not essential to merchants, physicians and men in general, to have magistrates, and they can subsist without them. However, reason and Scripture subject them to the *superior powers*.

XIX. 2. What they add is very true, that God has established pastors, and regulated their functions, and that in this quality they are not the vicegerents of human powers; but it is easy to convince them by examples, that, from this, they can draw no consequence to the prejudice of the sovereign authority. The function of a physician comes from God as the Author of nature; and that of a pastor comes also from the Deity as the Author of religion. This however does not hinder the physician from having a dependance on the sovereign. The same may be said of agriculture, commerce, and all the arts. Besides, the judges hold their charges and places from the sovereign, yet they do not receive all the rules they are to follow from him. It is God himself who orders them to take no bribe, and to do nothing through hatred or favour, &c. Nothing more is requisite to shew how unjust a consequence it is to pretend, that, because a thing is established by God, it should be, for that reason, independent of the sovereign.

XX. 3. But, say they, pastors are not always obliged to obey the sovereign. We agree with them in this point; but we have observed that this can only take place in things directly opposite to the laws of God; and we have shewn that this right appertains indifferently to every person in common affairs as well

well as in religion, and consequently this takes away nothing from the authority of the sovereign.

XXI. 4. Neither can we deny that the pastoral functions are exercised on kings, not only as members of the church, but also in particular as kings. But this proves nothing; for what function is there that does not regard the sovereign? In particular, does the physician less exercise his profession on the prince, than on other people? Does he not equally prescribe for him a regimen and the medicines necessary for health? Does not the office of a counsellor regard also the sovereign, and even in his quality of sovereign? And yet who ever thought of exempting these persons from a subjection to the supreme authority?

XXII. 5. But lastly, say they, is it not certain, that Scripture and ancient history every where ascribe the government of the church to pastors? This is also true, but we need only examine what the nature of that government is which is proper to the ministers of religion, to be convinced that it does not at all oppose or diminish the authority of the sovereign or the pre-eminence of his government.

XXIII. There is a government of *simple direction*, and a government of *authority*. The first consists in giving counsel, or teaching the rules which ought to be followed. But it supposes no authority in him who governs, neither does it in any thing restrain the liberty of those who are governed, except in as much as the laws they are taught imply an obligation of themselves. Such is the government of physicians with respect to health, of lawyers with respect to civil affairs. and of counsellors of state with respect to politics, The opinions of all these persons are not obligatory in indifferent things; and in necessary things they are not obligatory of themselves, but only so far as they teach the laws established by nature, or by the sovereign, and this is the species of government which belongs to pastors.

XXIV. But there is also a government of *jurisdiction and authority*, which contains in itself the right of making regulations, and really obliges those who

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are subject to it. This government, which arises from a sovereign authority, obliges by the eminence of the authority itself, which gives a right and power to compel. But it is to be remarked, that true authority is inseparable from the right of constraining and obliging. These are the natural effects of it by which alone we may know it. It is this last species of government which we ascribe to the sovereign; and of which we say that it does not belong to pastors *.

XXV. We therefore say, that the government, which belongs to pastors, is a government of counsel, instruction and persuasion, and whose entire force and authority consists in the word of God, which they ought to teach the people; and by no means in a personal authority. Their power is to declare the orders of God, and their commission goes no farther.

XXVI. If at present we compare these different species of government, we shall easily perceive that they are not opposite to each other, even in matters of religion. The government of simple direction which we give to pastors, has nothing that can clash with the sovereign authority; on the contrary, it may find an advantage in its aid and assistance. Thus there is no contradiction in saying, that the sovereign governs the pastors, and that he is also governed by them, provided we attend to the different kinds of government. These are the general principles of this important doctrine, and it is easy to apply them to particular cases.

CHAP. IV.

Of the power of the sovereign over the lives and fortunes of his subjects in criminal cases.

I. THE principal end of civil government and society, is to secure all the natural advantages

* See the Gospel according to St. Luke, chap. xii. v. 14. First Epistle to the Corinthians, chap. x. v. 4. Ephes. chap. vi. v. 17. Philip. iii. v. 20.

tages of man, and especially his life. However this end necessarily requires that the sovereign should have some right over the lives of his subjects either in an *indirect manner*, for the defence of the state, or in a *direct manner* for the punishment of crimes.

II. The power of the sovereign over the lives of the subjects, with respect to the defence of the state, regards the right of war, of which we shall treat hereafter. We intend to speak here only of the power of inflicting punishments.

III. The first question which presents itself, is to know what is the origin and foundation of this part of the sovereign power; a question which cannot be answered without some difficulty. Punishment, it is said, is an evil which a person suffers in a compulsive way: A man cannot punish himself; and consequently it seems that individuals could not transfer to the sovereign a right which they had not over themselves.

IV. Some civilians pretend, that when a sovereign inflicts punishments on his subjects, he does it by virtue of their own consent; because, by submitting to his authority, they have promised to acquiesce in every thing he should do with respect to them; and in particular a subject, who voluntarily determines to commit a crime, consents thereby to suffer the punishment established against such a crime, which punishment is perfectly known to him.

V. But it seems difficult to determine the right of the sovereign on a presumption of this nature, especially with respect to capital punishments; neither is it necessary to have recourse to this pretended consent of criminals, in order to establish the right of the sovereign. It is better to say that the right of the sovereign to punish malefactors, derives its origin from that which every individual originally had in the society of nature, to punish the crimes committed against himself, or against the members of the society, yielded and transferred to the sovereign.

VI. In

VI. In a word, the right of executing the natural laws, and of punifhing them who violate them, belongs originally to human fociety, and to each individual with refpect to all the reft; otherwife the laws which nature and reafon impofe on man, would be entirely ufelefs in a ftate of nature, if nobody had the power of putting them in execution or of punifhing the violation of them.

VII. Whoever violates the laws of nature, teftifies thereby, that he tramples on the maxims of reafon and equity, which God has prefcribed for the common fafety; and thus he becomes an enemy of mankind. Since therefore every man has an inconteftable right to take care of his own prefervation and that of fociety, he may, without doubt inflict on fuch a man punifhments capable of producing repentance in him, and of hindering him from committing the like faults for the future, or even of deterring others by his example. In a word, the fame laws of nature which forbid vice, alfo give a right of purfuing the perpetrator of it, and of punifhing him in a juft proportion.

VIII. It is true, in a ftate of nature, thefe kinds of chaftifement are not inflicted by authority, and it might happen that the criminal could fhelter himfelf from the punifhments he has to dread from other men, or even repel their attacks. But the right of punifhment is not for that either lefs real or lefs well founded. The difficulty of putting it in execution does not deftroy it: This was one of the inconveniencies of the primitive ftate, which men have efficaciouffly remedied by the eftablifhment of fovereignty.

IX. By following thefe principles, it is eafy to comprehend that the right of a fovereign, to punifh crimes, is no other than that natural right which human fociety and every individual had originally to execute the law of nature, and to take care of their own fafety, yielded and transferred to the fovereign, who, by means of the authority with which he is invefted, ex-

exercises it in a sure manner, from which it is very difficult for wicked men to screen themselves. Besides, whether we call this natural right of punishing crimes the *right of revenge*, or whether we refer it to a kind of *right of war*, is a matter of indifference, neither does it change its nature on that account.

X. These are the true foundations of the right of the sovereign with respect to punishments. This being granted, I define punishment an evil, with which the sovereign threatens those who are disposed to violate his laws, and which he actually inflicts, and in a just proportion, when they violate them, independently of the reparation of the damage, with a view to some future good, and finally for the safety and tranquillity of the society.

XI. I say, 1. That punishment is an evil, and this evil may be of a different nature, according as it affects the life of a person, his body, his reputation, or his estate. Besides it is indifferent whether this evil consists in some hard and toilsome labour, or in suffering something painful.

XII. I add, in the second place, that it is the sovereign who awards punishments; not that every punishment in general supposes sovereignty, but because we here speak of the right of punishing in civil society, and as being a branch of the sovereign power. It is therefore the sovereign alone who can award punishments in civil society, and individuals cannot do themselves justice, without encroaching on the rights of the sovereign.

XIII. I afterwards say, 3. *With which the sovereign threatens, &c.* to denote the first intention of the sovereign. He threatens first, and then punishes, if the threatening is not sufficient to prevent the crime. Hence it also appears that punishment always supposes guilt, and consequently we ought not to reckon among punishments properly so called, all the evils to which men are exposed, without their having antecedently committed some crime.

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XIV. I add, 4. That punishment is inflicted *independently of the reparation of the damage*, to shew that these are two things very distinct, and we ought not to confound them. Every crime is accompanied with two obligations; the first is, to repair the injury which a man has done; and the second is to suffer the punishment; and the delinquent ought to satisfy both. It is also to be observed on this occasion, that the right of punishment in civil society is transferred entirely to the magistrate, who may consequently by his own authority, if he pleases, pardon a criminal; but this is not the case with respect to the right of requiring satisfaction or reparation of damages. The magistrate cannot acquit the offender in this point, and the injured person always retains his own right; so that he is wronged, if he is hindered from the satisfaction which is due to him.

XV. Lastly, 5. By saying *that punishment is inflicted with a view to some good*. By this we point out the end which the sovereign ought to propose to himself in inflicting punishments, and this we shall now explain more particularly.

XVI. The sovereign, as such, has not only a right, but is also obliged to punish crimes, the use of punishments is so far from being contrary to equity, that it is absolutely requisite for the public tranquillity. The sovereign power would be useless, if it was not invested with a right, and armed with a force sufficient to deter the wicked by the dread of some evil, and to make them actually suffer that evil, when they disturb the society by their enormities. It is even necessary that this power should extend so far as to make them suffer the greatest of natural evils which is *death*; in order effectually to repress the most daring audaciousness, and, as it were, to balance the different degrees of human wickedness by a counterpoise sufficiently powerful.

XVII. Such is the right of the sovereign. But if the sovereign had a right to punish, the criminal must be under some obligation in this respect; for we can-

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not possibly conceive a right without some obligation corresponding to it. But wherein does this obligation of the criminal consist? Is he obliged wantonly to betray himself, and voluntarily expose himself to punishment? I answer, that this is not necessary for the end proposed in the establishment of punishments, and we cannot reasonably require that a man should thus betray himself; but this does not hinder him from lying under some reciprocal obligation.

XVIII. 1. It is certain, that when there is a simple pecuniary punishment, to which a man is lawfully condemned, he ought to pay it without being forced by the magistrate; not only prudence requires it, but also the rules of justice, which demand that we should repair damages, and obey lawful judges.

XIX. 2. There is some difficulty in what relates to afflictive, and especially to capital punishments. The natural instinct which renders us fond of life, and the aversion we have to infamy, do not permit us to lay a criminal under an obligation of accusing himself voluntarily, and presenting himself to punishment: and indeed neither the public good nor the rights of the person who is interested with the supreme authority demand it.

XX. 3. In consequence of this same principle, a criminal may innocently seek his own safety in flight, and is not obliged to remain in prison if he perceives the doors open, or if he can easily force them. But it is not lawful for him to procure his liberty by the commission of some new crime, as by cutting the throats of the jailers, or by killing those sent to apprehend him.

XXI. 4. But, in fine, if we suppose that the criminal is known, that he is taken, that he cannot make his escape from prison, and that, after a mature examination or trial, he is convicted of the crime,

crime, and consequently condemned to condign punishment; he is in this case certainly obliged to undergo the punishment, to acknowledge the lawfulness of his sentence, that there is no injury done him, and that he cannot reasonably complain of any one except himself: Much less can he withdraw from punishment by the ways of violence, and oppose the magistrate in the exercise of his right. In this properly consists the obligation of the criminal with respect to punishment. Let us now enquire more particularly what end the sovereign ought to propose to himself in inflicting them.

XXII. In general, it is certain that the sovereign ought never to inflict punishments but with a view to some public advantage. To make a man suffer purely because he has done a thing, and to attend only to what has passed, is a piece of cruelty condemned by reason; for after all it is impossible that the evil done should be undone. In short, the right of punishing is a part of sovereignty: now sovereignty is founded ultimately on a beneficent power: it follows therefore that even when the sovereign makes use of his power of the sword, he ought always to aim at some advantage, or some future good, agreeably to what is required of him by the very nature and foundation of his authority.

XXIII. The principal and last end of punishment is therefore the safety and tranquillity of society; but as there may be different means of arriving at this end, according to different circumstances, the sovereign also, in inflicting punishments, proposes different and particular views, which are always subordinate to the principal end we have mentioned, and are all finally reducible to it. What we have said very well agrees with the observation of Grotius *. "In punishments," says he, "we must have the good of "the criminal in view, or the advantage of him whose "interest it was that the crime should not have been "committed, or the good of all indifferently."

* Lib. ii. cap. 20. §. 6. N. 2.

XXIV. Thus the ſovereign ſometimes propoſes to correct the criminal, and make him loſe the propenſity of falling into the ſame crime, in curing the evil by its contrary, and taking away the ſweets of the crime, which are allurements to it, by the bitterneſs of the puniſhment. This puniſhment, if the criminal is reformed by it, tends to the public good. But if he ſhould perſevere in his crime, the ſovereign muſt have recourſe to more violent remedies, and even to death.

XXV. Sometimes the ſovereign propoſes to deprive criminals of the means of committing freſh crimes, as for example, by taking from them the arm which they might uſe, by ſhutting them up in a priſon, by baniſhing them, or even by putting them to death. At the ſame time he takes care of the public ſafety, not only with reſpect to the criminals themſelves, but alſo with regard to thoſe inclined to commit the ſame crime, in deterring them by theſe examples. For this reaſon, nothing is more agreeable to the end of puniſhments, than to inflict them publicly, and with ſuch a ſolemnity as is moſt proper to make an impreſſion on the minds of the vulgar.

XXVI. All theſe particular ends of puniſhment ought to be conſtantly ſubordinate and referred to the principal and laſt end, which is the ſafety of the public, and the ſovereign ought to uſe them as means of obtaining the principal end; ſo that he ſhould not have recourſe to the moſt rigorous puniſhments, till theſe of greater lenity are inſufficient to procure the public tranquillity.

XXVII. But here a queſtion ariſes, whether all actions, contrary to the laws, can be lawfully puniſhed? I anſwer, that the very end of puniſhment, and the conſtitution of human nature, evince there may be actions, in themſelves evil, which however it is to no purpoſe for human juſtice to puniſh.

XXVIII. And, 1. Acts purely internal, or ſimple thoughts which do not diſcover themſelves by any external acts prejudicial to ſociety; for example, the agreeable idea of a bad action, the deſire of committing it, the deſign of it without proceeding to the execu-

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tion, &c. all these are not subject to the severity of human punishment, even though it should accidentally happen that they are afterwards discovered.

XXIX. On this subject we must however make the following few remarks. The first is, that if these kinds of vicious actions are not subject to human punishment, it is because the weakness of man does not permit, even for the good of society, that he should be treated with the utmost rigour. We ought to have a just regard for humanity, in things, which, though bad in themselves, yet do not greatly affect the public order and tranquillity. The second remark is, that though acts purely internal, are not subject to civil punishment, we must not for this reason conclude, that these acts are not under the direction of the civil laws. We have before established the contrary*. In a word, it is evident that the laws of nature expressly condemn such actions, and that they are punished by God.

XXX. 2. It would be too rigorous to punish every peccadillo; since human frailty, notwithstanding the greatest caution and attention to our duty, cannot avoid a multitude of slips and infirmities. This is a consequence of the toleration due to humanity.

XXXI. 3. In a word, we must necessarily leave unpunished, those common vices which are the consequences of a general corruption; as for instance, ambition, avarice, inhumanity, ingratitude, hypocrisy, envy, pride, wrath, &c. for if a sovereign wanted to punish these, and similar vices, with rigour, he would be reduced to a necessity of reigning in a desert. It is sufficient to punish these vices when they prompt men to enormous and open excesses.

XXXII. It is not even always necessary to punish crimes which are in themselves punishable, for there are cases in which the sovereign may pardon; and of this we must judge by the very ends of punishment.

XXXIII. The public good is the ultimate end of all punishments. If therefore there are circumstances, in which, by pardoning, as much or more advantage is procured than in punishing, then there is no obligation to

* Chap. i. §. 22, &c.

to punish, and the sovereign even ought to shew clemency. Thus if the crime is concealed, or is only known to a few, it is not always necessary, nay, it would sometimes be dangerous, to make it public by punishment; for many abstain from evil, rather from their ignorance of vice, than from a knowledge and love of virtue. *Cicero* observes, with regard to *Solon*'s having no law against parricide, that this silence of the legislator has been looked upon as a great mark of prudence; forasmuch as he made no prohibition of a thing of which there had been yet no example, lest by speaking of it, he should seem to give the people a notion of committing it, rather than deter them from it.

We may also consider the personal services which the criminal, or some of his family have done to the state, and whether he can still be of great advantage to it, so that the impression made by the sight of his punishment is not likely to produce so much good as he himself is capable of doing. Thus at sea, when the pilot has committed a crime, and when there is none on board capable of navigating the ship, it would be destroying all those in the vessel to punish him. This example may also be applied to the general of an army.

In a word, the public advantage, which is the measure of punishments, sometimes requires that the sovereign should pardon because of the great number of criminals. The prudence of the government requires that the justice established for the preservation of society, should not be exercised in such a manner as to destroy the state.

XXXIV. All crimes are not equal, and it is but justice that there should be a due proportion between the crime and the punishment. We may judge of the greatness of a crime in general by its object, by the intention and malice of the criminal, and by the prejudice arising to society from it; and to this last consequence, the two others must be finally referred.

XXXV. According as the object is more or less noble, that is, as the persons offended are more or less considerable, the action is more or less criminal. In the first class, we must place those crimes which interest human society in general, then those which

which disturb the order of civil society, and lastly those which relate to individuals; and these last are more or less atrocious, according as the good of which they deprive us is more or less valuable. Thus he, who kills his father, commits a more atrocious murder than if he had killed a stranger. He, who injures a magistrate, is more criminal than if he had injured his equal. A robber, who kills travellers, is more guilty than he who only strips them of what they have.

XXXVI. The greater or smaller degree of malice, also contributes very much to the enormity of the crime, and is to be deduced from several circumstances.

1. From the particular character of the criminal, which, besides the general reasons, ought to retain him in his duty; "The higher a man's birth is, says "*Juvenal*, or the more exalted he is in dignity, the "more enormous is the crime he commits*. This "takes place especially with respect to princes, and "so much the more, because the consequences of "their bad actions are very fatal to the state, from "the great number of persons who endeavour to "imitate them." This is the judicious remark made by *Cicero*†. The same observation may also be applied to magistrates and clergymen.

3. We must also consider the circumstances of time and place, in which the crime has been committed, the manner of committing it, the instruments used for that purpose, &c.

4. Lastly,

* Omne animi vitium tanto conspectius in se
Crimen habet, quanto major qui peccat habetur.
Juv. Sat. viii. v. 140, 141.

† De Leg. lib. iii. cap. 14. Nec enim tantum mali est peccare principes, quanquam est magnum hoc per seipsum malum; quantum illud, quod permulti imitatores principum existunt: quo perniciosius de republica merentur vitiosi principes, quod non solum vitia concipiunt ipsi, sed ea infundunt in civitatem. Neque solum obsunt, quod ipsi corrumpuntur, sed etiam quod corrumpunt; plusque exemplo, quam peccato, nocent.

4. Laſtly, we are to conſider whether the criminal has made a cuſtom of committing ſuch a crime, or, if he is but rarely guilty of it; whether he has committed it of his own accord, or has been ſeduced by others, &c.

XXXVII. We may eaſily perceive that the different concurrence of theſe circumſtances more or leſs intereſts the happineſs and tranquillity of ſociety, and conſequently either augments or diminiſhes the enormity of the crime.

XXXVIII. There are therefore crimes more or leſs great than others, and conſequently they do not all deſerve to be puniſhed with equal ſeverity; but the kind and preciſe degree of puniſhment depends on the prudence of the ſovereign. The following are the principal rules which he ought to follow.

1. The degree of puniſhment ought always to be proportioned to the end propoſed, that is, to repreſs the inſolence and malignity of the wicked, and to procure the internal tranquillity and ſafety of the ſtate. It is upon this principle that we muſt augment or diminiſh the rigour of the puniſhment. The puniſhment is too rigorous, if we can, by milder means, obtain the ends propoſed in puniſhing; and, on the contrary, it is too moderate when it has not ſharpneſs enough to produce theſe effects, and when the criminals themſelves deſpiſe it.

2. According to this principle every crime in particular may be puniſhed in proportion as the public good requires, without conſidering whether there is an equal or ſmaller puniſhment eſtabliſhed for another crime, which in itſelf appears leſſer or greater: thus robbery, for inſtance, is in itſelf much leſs criminal than murder; and yet robbers may, without injuſtice, be puniſhed with death in certain caſes, as well as murderers.

3. The equality which the ſovereign ought always to obſerve in the exerciſe of juſtice, conſiſts in puniſhing thoſe alike who have treſpaſſed alike, and in not pardoning a perſon, without very good reaſons, who has

has committed a crime for which others have been punished.

4. It must be also observed, that we cannot multiply the kinds and degrees of punishment *in infinitum*; and as there is no greater punishment than death, it is necessary that certain crimes, though unequal in themselves, should be equally subject to capital punishments. All that can be said, is, that death may be more or less terrible, according as we employ a mild and short method, or slow and cruel torments, to deprive a person of life.

5. We ought, as much as possible, to incline to the merciful side, when there are not strong reasons for the contrary. This is the second part of clemency. The first consists in a total exemption from punishment, when the good of the state permits it. This is also one of the rules of the Roman law*.

6. On the contrary, it is sometimes necessary and convenient to heighten the punishment, and to set such an example as will intimidate the wicked, when the evil can be prevented only by violent remedies†.

7. The same punishment does not make the same impression on all kinds of people, and consequently has not the same force to deter them from vice. We ought therefore to consider, both in the general penal sanction and in the application of it, the person of the criminal, and in that, all those qualities of age, sex, state, riches, strength, and the like, which may either increase or diminish the sense of punishment. A particular fine, for instance, will distress a poor man, while it is nothing to a rich: The same mark of ignominy will be very mortifying to a person of honour and quality, which would pass for a trifle with a vulgar fellow. Men have more strength to support punishments than women, and full grown people more than those of tender years, &c. Let us also observe, that it equally belongs to the justice and prudence of the government, always

* In pœnalibus causis, benignius interpretandum est. lib. cv. §. 2. eff. de Reg. Jur. vid. sup. §. 33.

† Nonnunquam evenit, ut aliquorum maleficiorum supplicia exacerbantur, quoties nimirum, multis personis grassantibus, exemplo opus, sit, lib. xvi. §. 10. ff. de pœnis.

always to follow the order of judgments and of the judiciary procedure in the infliction of punishments. This is necessary, not only that we may not commit injustice in an affair of such importance, but also that the sovereign may be secured against all suspicion of injustice and partiality. However, there are sometimes extraordinary and pressing circumstances where the good of the state and the public safety do not permit us exactly to observe all the formalities of the criminal procedure; and provided, in these circumstances, the crime is duly proved, the sovereign may judge summarily, and without delay punish a criminal whose punishment cannot be deferred without imminent danger to the state. Lastly, it is also a rule of prudence, that if we cannot punish a criminal without exposing the state to great danger, the sovereign ought not only to grant a pardon, but also to do it in such a manner as that it may appear rather to be the effect of *clemency* than of *necessity*.

XXXIX. What we have said relates to punishments inflicted for crimes of which a person is the sole and proper author. With respect to crimes committed by several, the following observations may serve as principles.

1. It is certain that those, who are really accomplices of the crime of any person, ought to be punished in proportion to the share they have in it, and according as they ought to be considered as principal causes, or subordinate and collateral instruments. In these cases such persons suffer rather for their own crime than for that of another.

2. As for crimes committed by a body or community, those only are really criminal who have given their actual consent to them; but they, who have been of a contrary opinion, are absolutely innocent. Thus *Alexander*, having given orders to sell all the Thebans after the taking of their city, excepted those, who, in the public deliberation, had opposed the breaking of the alliance with the Macedonians.

3. Hence it is, that, with respect to crimes committed by a multitude, reasons of state and humanity direct, that we should principally punish those who are

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the ring-leaders, and pardon the reſt. The ſeverity of the ſovereign to ſome will repreſs the audacioufneſs of the moſt reſolute, and his clemency to others will gain him the heart of the multitude*.

4. If the ring-leaders have ſheltered themſelves by flight, or otherwiſe, or if they have all an equal ſhare in the crime, we muſt have recourſe to a decimation, or ſome other means to puniſh ſome of them. By this means the terror reaches all, while but few fall under the puniſhment.

XL. Beſides, it is a certain and inviolable rule, that no perſon can be lawfully puniſhed for the crime of another, in which he has had no ſhare. All merit and demerit is intirely perſonal and incommunicable; and we have no right to puniſh any but thoſe who deſerve it.

XLI. It ſometimes happens, however, that innocent perſons ſuffer on account of the crimes of others; but we muſt make two remarks on this ſubject.

1. Not every thing that occaſions uneaſineſs, pain, or loſs to a perſon, is properly a puniſhment; for example, when ſubjects ſuffer ſome grievances from the miſcarriages and crimes of their prince, it is not in reſpect to them a puniſhment, but a misfortune.

The ſecond remark is, that theſe kinds of evils, or indirect puniſhments, if we may call them ſo, are inſeparable from the conſtitution of human affairs, and the neceſſary conſequences of it.

XLII. Thus if we confiſcate the effects of a man, his children ſuffer indeed for it; but it is not properly a puniſhment to them, ſince theſe effects ought to belong to them only on ſuppoſition their father had kept them till his death. In a word, we muſt either almoſt entirely aboliſh the uſe of puniſhments, or at leaſt acknowledge, that theſe inconveniencies, inſeparable from the conſtitution of human affairs, and from the particular relations which men have to each other, have nothing in themſelves unjuſt.

XLIII. Laſtly, it is to be obſerved, that there are crimes ſo enormous, and which ſo eſſentially affect ſociety, that the public good authoriſes the ſovereign to take

* *Quintil.* Declam. cap. vii. p. m. 237.

take the ſtrongeſt precautions againſt them, and even if it is neceſſary, to make a part of the puniſhment fall on the perſons who are moſt dear to the criminal. Thus the children of traitors or ſtate criminals, may be excluded from poſts and honours. The father is certainly puniſhed by this means, ſince he ſees he is the cauſe why the perſons who are dearest to him, are reduced to live in obſcurity. But this is not properly a puniſhment in regard to the children, for the ſovereign having a right to give public employments to whom he pleaſes, he may, when the public good requires it, exclude even perſons who have done nothing to render themſelves unworthy of theſe employments. I confeſs that this is indeed a hardſhip, but neceſſity authoriſes it, to the end that the tenderneſs of a father for his children may make him more careful to undertake nothing againſt the ſtate. But equity ought always to direct theſe judgments, and to mitigate them according to circumſtances.

XLIV. I am not of opinion that we can juſtly puſh things beyond theſe bounds, neither does the public good require it. It is therefore a real piece of injuſtice, which is eſtabliſhed with ſeveral nations, namely, to baniſh or kill the children of a tyrant or traitor, and ſometimes all his relations, though they had no ſhare in his crimes. What has been ſaid is ſufficient to ſhew us what we ought to think of the famous law of *Arcadius** the Chriſtian Emperor.

* Cod. ad L. Jul. Maj. lib. ix. tit. 8. leg. 5.

CHAP. V.

Of the power of ſovereigns over the Bona Reipublicæ, *or the goods contained in the commonwealth.*

I. THE right of the ſovereign over the goods contained in the commonwealth, relates either to the goods of the ſubject, or to the public goods which belong to the commonwealth itſelf as ſuch.

II. The

II. The right of the ſovereign over the goods of the ſubject may be eſtabliſhed two different ways; for this right may either be founded on the very nature of the ſovereignty, or on the particular manner in which it was acquired.

III. If we ſuppoſe that a ſovereign primitively poſſeſſes, with a full right of property, all the goods contained in the commonwealth, and that he has collected, as it were, his own ſubjects, who originally hold their eſtates of him, then it is certain that the ſovereign has as abſolute a power over theſe eſtates, as every maſter of a family has over his own patrimony; and that the ſubjects cannot enjoy or diſpoſe of theſe goods or eſtates, except in as far as the ſovereign permits. In theſe circumſtances, as long as the ſovereign has remitted nothing of his right by irrevocable grants, his ſubjects poſſeſs their eſtates in a *precarious* manner, revocable at pleaſure, whenever the prince thinks fit; they can only ſupply themſelves with ſuſtenance and other neceſſaries from them: In this caſe the ſovereignty is accompanied with a right of abſolute property.

IV. But, 1. This manner of eſtabliſhing the power of the ſovereign over the goods of the ſubjects cannot be of great uſe; and if it has ſometimes taken place, it has only been among the Oriental nations, who eaſily ſubmit to deſpotic government.

2. Experience teaches us, that this abſolute dominion of the ſovereign over the goods of the ſubjects does not tend to the advantage of ſtates. A modern traveller obſerves, that the countries, where this propriety of the prince prevails, however beautiful and fertile of themſelves, become daily more deſolate, poor, and barbarous; or that at leaſt they are not ſo flouriſhing as moſt of the kingdoms of *Europe*, where the ſubjects poſſeſs their eſtates as their own property excluſive of the prince.

3. Sovereignty does not of itſelf require, that the prince ſhould have this abſolute dominion over the eſtates of the ſubjects. The property of individuals is prior to the formation of ſtates, and there is no reaſon which

which can induce us to suppose that these individuals have entirely transferred to the sovereign the right they had over their own estates; on the contrary, it is to secure a quiet and easy possession of their properties, that they have established government and sovereignty among them.

4. Besides, if we should suppose an absolute sovereignty acquired by arms, yet this does not of itself give an absolute dominion over the properties of the subjects. The same is true even of a patrimonial sovereignty, which gives a right of alienating the crown; for this right of the sovereign does not hinder the subjects from enjoying their several properties.

V. Let us therefore conclude, that in general, the right of the prince over the goods of the subject is not an absolute dominion over their properties, but a right founded on the nature and end of sovereignty, which gives him the power of disposing of those estates in different manners, for the benefit of individuals as well as of the state, without depriving the subjects of the right they have to their properties, except in cases where it is absolutely necessary for the public good.

VI. This being premised, the prince, as sovereign, has a right over the estates of his subjects principally in three different manners.

The first consists in regulating, by wise laws, the use which every one ought to make of his goods and estate, for the advantage of the state and that of individuals.

The second, in raising subsidies and taxes.

The third, in using the rights of sovereign or *transcendental* propriety*.

VII. To the first head we must reduce all *sumptuary laws*, by which bounds are set to unnecessary expences, which ruin families, and consequently impoverish the state. Nothing is more conducive to the happiness of a nation, or more worthy of the care of the sovereign, than to oblige the subjects to œconomy, frugality, and labour.

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* Dominium eminens.

When luxury has once prevailed in a nation, the evil becomes almoſt incurable. As too great authority ſpoils kings, ſo luxury poiſons a whole people. The moſt ſuperfluous things are looked upon as neceſſary, and new neceſſities are daily invented. Thus families are ruined, and individuals diſabled from contributing to the expences neceſſary for the public good. An individual, for inſtance, who ſpends only three fifths of his income, and pays one fifth for the public ſervice, will not hurt himſelf, ſince he lays up a fifth to increaſe his ſtock. But if he ſpends all his income, he either cannot pay the taxes, or he muſt break in upon his capital.

Another inconveniency is, that not only the eſtates of individuals are ſquandered away by luxury, but what is ſtill worſe, they are generally carried abroad into foreign countries, in purſuit of thoſe things which flatter luxury and vanity.

The impoveriſhing of individuals produces alſo another evil for the ſtate, by hindering marriages. On the contrary, people are more inclined to marriage, when a moderate expence is ſufficient for the ſupport of a family.

This the emperor *Auguſtus* was very ſenſible of; for when he wanted to reform the manners of the Romans among the various laws which he either made or renewed, he re-eſtabliſhed both the ſumptuary law, and that which obliged people to marry.

When luxury is once introduced, it ſoon becomes a general evil, and the contagion inſenſibly ſpreads from the firſt men of the ſtate to the very dregs of the people. The king's relations want to imitate his magnificence; the nobility that of his relations; the gentry, or middle ſort of people, want to equal the nobility; and the poor would fain paſs for gentry: Thus every one living beyond what he has, the people are ruined and all orders and diſtinctions confounded.

Hiſtory informs us, that, in all ages, luxury has been one of the cauſes which has more or leſs contributed to the ruin and decay even of the moſt powerful ſtates, becauſe it ſenſibly enervates courage, and deſtroys virtue. *Suetonius* obſerves that *Julius Cæſar* invaded

invaded the liberties of his country only becauſe he knew not how to pay his debts contracted by his exceſſive prodigality, nor how to ſupport his expenſive way of living. Many ſided with him becauſe they had not wherewith to ſupply that luxury to which they had been accuſtomed, and they were in hopes of getting by the civil wars enough to maintain their former pride *.

We muſt obſerve, in fine, that to render the ſumptuary laws more effectual, princes and magiſtrates ought, by the example of their own moderation, to put thoſe out of countenance who love extravagance, and to encourage the prudent, who would eaſily ſubmit to follow the pattern of a good œcomomy and honeſt frugality.

VIII. To this right of the ſovereign of directing the ſubjects in the uſe of their eſtates and goods, we muſt alſo reduce the laws againſt gaming and prodigality, thoſe which ſet bounds to grants, legacies aud teſtaments; and, in fine, thoſe againſt idle and lazy people, and againſt perſons that ſuffer their eſtates to run to ruin, purely by careleſſneſs and neglect.

IX. Above all, it is of great importance to uſe every endeavour to baniſh idleneſs, that fruitful ſource of a thouſand diſorders. The want of a uſeful and honeſt occupation is the foundation of an infinite number of miſchiefs. The human mind being of ſo active a nature as it is, cannot remain in a ſtate of inaction, and if it is not employed on ſomething good, it will inevitably apply itſelf to ſomething bad, as is certain from the experience of all ages. It were therefore to be wiſhed, that there were laws againſt idleneſs, to prevent its pernicious effects, and that no perſon was permitted to live without ſome honeſt occupation either of the mind or body. Eſpecially young people, who aſpire after political, eccleſiaſtical, or military employments, ought not to be permitted to paſs in ſhameful idleneſs, the time of their life moſt proper for the ſtudy of morality, politics, and religion. It is eaſy to perceive

* See Sall. ad Cæſar. de Repub. ordinand.

perceive that a wise prince may, from these reflections, draw very important instructions for government.

X. The second manner, in which the prince can dispose of the goods or estates of his subjects, is, by demanding taxes or subsidies of them. That the sovereign has this right, will evidently appear, if we consider that taxes are no more than a contribution which individuals pay to the state for the preservation and defence of their lives and properties, a contribution absolutely necessary both for the ordinary and extraordinary expences which the care of the government requires, and which the sovereign neither can nor ought to furnish out of his own fund: He must therefore have a right to take away part of the goods of the subject by way of tax for that end and purpose.

XI. *Tacitus* relates a memorable story on this subject. "*Nero*," he says, "once thought to abolish all "taxes, and to make this magnificent grant to the "Roman people; but the senate moderated his ar-"dour; and, after having commended the emperor "for his generous design, they told him that the em-"pire would inevitably fall, if its foundations were "sapped; that most of the taxes had been established "by the consuls and tribunes during the very height "of the liberty of the republic, and that they were "the only means of supplying the immense expences "necessary for the support of so great an empire."

XII. Nothing is then generally more unjust and unreasonable than the complaints of the populace, who frequently ascribe their misery to taxes, without reflecting that these are, on the contrary, the foundation of the tranquillity and safety of the state, and that they cannot refuse to pay them without prejudicing their own interests.

XIII. However, the end and prudence of civil government require not only that the people should not be over-charged in this respect, but also that the taxes should be raised in as gentle and imperceptible a manner as possible.

XIV. And, 1. The subjects must be equally charged, that they may have no just reason of complaint. A burthen equally supported by all, is lighter to every individual; but if a considerable number release or excuse themselves, it becomes much more heavy and insupportable to the rest. As every subject equally enjoys the protection of the government, and the safety which it procures; so it is just that they should all contribute to its support in a proper equality.

XV. 2. But it is to be observed, that this equality does not consist in paying equal sums of money, but in equally bearing the burthen imposed for the good of the state; that is, there must be a just proportion between the burthen of the tax and the benefit of peace; for though all equally enjoy peace, yet the advantages, which all reap from it, are not equal.

XVI. 3. Every man ought therefore to be taxed in proportion to his income, both in ordinary and extraordinary exigencies.

XVII. 4. Experience shews, that the best method of raising taxes is to lay them on things which are daily consumed in life.

XVIII. 5. As for merchandizes imported, it is to be observed, that if they are not necessary, but only subservient to luxury, very great duties may justly be laid on them.

XIX. 6. When foreign merchandizes consist of such things as may grow, or be manufactured at home, by the industry and application of our own people, the imposts ought to be raised higher upon them.

XX. 7. As to the exportation of commodities of our own growth, if it be the interest of the state, that they should not go out of the country, it may be right to raise the customs upon them: but on the contrary, if it is for the public advantage that they should be sent to foreign markets, then the duty of exportation ought to be diminished, or absolutely taken away. In some countries, by a wise piece of policy, rewards are given to the subjects, who export such commodities

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as are in too great plenty, and more than the wants of the inhabitants require.

XXI. 8. In a word, in the application of all these maxims, the sovereign must always attend to the good of trade, and take all proper measures to favour it and make it flourish.

XXII. It is not necessary to observe, that the right of the sovereign, with respect to taxes, being founded on the wants of the state, he ought never to raise them but in proportion to these wants, and that he ought never to employ them but with these views, and not to apply them to his own private uses.

XXIII. He ought also to attend to the conduct of the officers who collect them, to hinder their importunity and impertinence. Thus *Tacitus* commends a very wise edict of the emperor *Nero*, "who ordered "that the magistrates of Rome and of the provinces "should receive complaints against the publicans at "all times, and regulate them upon the spot."

XXIV. The *sovereign* or *transcendental* property*, which, as we have said, constitutes the third part of the sovereign's power over the estates of his subjects, consists in the right he has of making use of every thing the subject possesses, to answer the necessities of the state.

XXV. Thus, for example, if a town is to be fortified, he may take the gardens, lands, or houses of private subjects, which are situated in the place where the ramparts or ditches are to be made. In sieges, he may beat down houses and trees belonging to private persons, that the enemy may not be sheltered by them or the besieged incommoded.

XXVI. There are great disputes, among politicians, concerning this *transcendental property*. Some absolutely condemn it and will not admit of it; but the dispute turns more upon the word than the thing. It is certain that the very nature of sovereignty authorises a prince, in case of necessity, to make use of the goods and fortunes of his subjects; since, in conferring the sovereign authority upon him, they have at

* Dominium eminens.

the same time given him the power of doing and exacting every thing that is necessary for the preservation and advantage of the state. Whether this is called *transcendental property*, or by some other name, is altogether indifferent, provided we are agreed about the right itself.

XXVII. To say something more particular concerning this *transcendental property* of the sovereign, we must observe, that it is really a maxim of natural equity, that when contributions are to be made for the necessities of the state, and for the preservation of some particular thing, by persons that enjoy it in common, every man ought to pay his quota, and should not be forced to bear more of the burthen than another.

XXVIII. But since it may happen that the pressing wants of the state, and particular circumstances, will not permit this rule to be literally followed, there is a necessity that the sovereign may deviate from it, and have a right to seize on something in the possession of some private subject, the use of which, in the present circumstances, is become necessary to the public. Hence this right takes place only in a necessity of state, which ought not to have too great an extent, but should be tempered as much as possible with the rules of equity.

XXIX. It is therefore just in these cases, that the proprietors should be indemnified, either by their fellow subjects, or by the Exchequer, for what exceeds their proper share, at least as near as possible. But if the subjects have voluntarily exposed themselves to suffer this loss by building houses in a place where they are to be pulled down in a time of war, then the state is not in rigour obliged to indemnify them, and they may be reasonably thought to have consented to this loss. This is sufficient for what relates to the right of the sovereign over the estates of the subjects.

XXX. But besides these rights of the sovereign, of which we have been speaking, he has also originally a power of disposing of certain places which are called *public goods*, because they belong to the state as such: but as all these public goods are not of the same kind, the right of the sovereign in this respect also varies.

XXXI. There

XXXI. There are goods intended for the ſupport of the king and the royal family, and others to defray the public expences for the preſervation of the government. The firſt are called the crown-lands or the patrimony of the prince, and the other the public treaſure or the revenue of the ſtate.

XXXII. As to the firſt, the ſovereign has the full and entire profits, and may diſpoſe of the revenues ariſing from them as he abſolutely pleaſes. So that what he lays up out of his income makes an acceſſion to his own private patrimony, unleſs the laws of the kingdom have determined otherwiſe. With regard to the other public goods, he has only the ſimple adminiſtration of them, in which he ought to propoſe only the advantage of the ſtate, and to expreſs as much care and fidelity as a guardian with reſpect to the eſtate of his pupil.

XXXIII. By this diſtinction, and theſe principles, we may judge to whom the acquiſitions belong, which a prince has made during his reign; for if theſe acquiſitions ariſe from the goods intended to defray the public expences, they ought certainly to accrue to the public, and not to his own private patrimony. But if a king has undertaken and ſupported a war at his own expence, and without engaging or charging the ſtate in the leaſt, he may lawfully appropriate the acquiſitions he has made in ſuch an expedition.

XXXIV. From the principles we have here eſtabliſhed, it follows alſo that the king cannot, without the conſent of the people or their repreſentatives, alienate the leaſt part either of the public patrimony, or of the crown-lands, of which he has only the uſe. But we muſt diſtinguiſh between the goods themſelves and the profits or produce of them. The king may diſpoſe of the revenues or profits as he thinks proper, though he cannot alienate the principal.

XXXV. A prince indeed, who has a right of laying taxes when he thinks proper for good reaſons, may, when the neceſſities of the commonwealth require it, mortgage a part of the public patrimony: for it is the

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ſame thing to the people, whether they give money to hinder the mortgage, or it be levied upon them afterwards to redeem it.

XXXVI. Beſides, all that has been ſaid is to be underſtood upon ſuppoſition, that things are not otherways regulated by the fundamental laws of the ſtate.

XXXVII. As for the alienation of the kingdom, or ſome part of it; by the principles hitherto eſtabliſhed, we may eaſily learn what to think of it.

And 1. If there can be any ſuch thing as a patrimonial kingdom, it is evident that the ſovereign may alienate ſuch a kingdom, and, by ſtronger reaſon, ſome part of it*.

XXXVIII. 2. Except in this caſe, and if the kingdom is not poſſeſſed as a patrimony, the king cannot, by his own authority, transfer or alienate any part of it; for this purpoſe the conſent of the people is neceſſary. Sovereignty cannot of itſelf imply the right of alienation, and as the people cannot take the crown from the prince againſt his will, ſo neither has the king a power of ſubſtituting another ſovereign in his place without their conſent.

XXXIX. 3. But if only a part of the kingdom is to be alienated, beſides the approbation of the king and that of the people, it is neceſſary that the part, which is to be alienated, ſhould alſo conſent; and this laſt conſent even ſeems to be the moſt neceſſary. It is to no purpoſe that the other provinces of the kingdom conſent to the alienation of this, if its inhabitants themſelves oppoſe it. The right of the plurality of ſuffrages does not extend ſo far as to cut off from the body of the ſtate thoſe who have not violated their engagements, and the laws of ſociety.

XL. In fact, it is evident, that thoſe who firſt erected the commonwealth, and thoſe who voluntarily came into it afterwards, bound themſelves, by mutual compact, to form a permanent body or ſociety, under one and the ſame government, ſo long at leaſt as they incline to remain in the territories of the ſame ſtate; and it

* See Grotius, lib. ii. cap. 6.

it is with a view to the advantages which accrued to them in common from this reciprocal union, that they first erected the state. This is the foundation of their compacts in this respect. Hence, by virtue of such a compact, they cannot against their wills, be deprived of the right they have acquired of being a part of a certain body politic, except by way of punishment. Besides in this case, the *obligation* corresponds to the *right*. The state, by virtue of the same compact, has acquired a right over each of its members, by which no subject can put himself under a foreign government, nor disclaim the authority of his natural sovereign.

XLI. 4. It is however to be observed, that there are two general exceptions to the principles we have here established, and which are both founded on the right and privileges arising from necessity. The first is, that though the body of the state has not the right of alienating any of its parts, so as to oblige that part, against its will, to submit to a new master, this does not hinder the state from a power of lawfully abandoning one of its parts, when there is an evident danger of perishing if they continue united.

XLII. It is true that even in these circumstances, the sovereign cannot directly force one of his towns or provinces to submit to another government. He can only withdraw his forces, or abandon the inhabitants; but they retain the right of defending themselves if they can: so that if they perceive themselves strong enough to resist the enemy, there is no reason why they should not; and if they succeed, they may erect themselves into a distinct commonwealth. Hence the conqueror becomes the lawful sovereign of this country only by the consent of the inhabitants, or by their swearing allegiance to him.

XLIII. It may be said, that, properly speaking, the state or the sovereign do not alienate, in this case, such a part, but only renounce a society whose engagements are at an end by virtue of a tacit exception arising from necessity. After all, it would be in vain for the body to persist in defending such a part, since we suppose it unable to preserve or defend itself. It is therefore a

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pure misfortune which must be suffered by the abandoned part.

XLIV. 5. But if this be the right of the body with respect to the part, the part has also in like circumstances the same right with respect to the body. Thus we cannot condemn a town, which, after having made the best resistance it could, chooses rather to surrender to the enemy, than be pillaged and exposed to fire and sword.

XLV. In a word, every one has a natural primitive right to take care of his own preservation by all possible means; and it is principally for the better attainment of this end, that men have entered into civil societies. If therefore the state can no longer defend and protect the subjects, they are disengaged from the ties they were under before, and they resume their primitive right of taking care of themselves independently of the state, in the manner they think most proper. Thus things are equal on both sides, and the sentiment of Grotius, who wants to establish the contrary, and refuses the body of the state, with respect to the part, the same right which he grants the part with respect to the body, cannot be maintained.

XLVI. We shall end this chapter with two remarks. The first is, that the maxim which some politicians inculcated so strongly, namely, that the goods appropriated to the crown are absolutely unalienable, is not true, except on the terms, and agreeably to the principles we have here established. What the same politicians add, that an alienation, succeeded by a peaceable possession for the longest course of years, does not hinder a future right to what belong to the crown, and the resumption of it by main force, on the first occasion, is altogether unreasonable.

The second observation is, that since it is not lawful for a king, independently of the will of the people or of their representatives, to alienate the whole or any part of his kingdom, it is not lawful for him to render it feudatory to some other prince; for this is evidently a kind of alienation.

The End of the Third Part.

THE PRINCIPLES OF POLITIC LAW.

PART IV.

In which are considered the different rights of sovereignty with respect to foreign states; the right of war, and every thing relating to it; public treaties, and the right of ambassadors.

CHAP. I.

Of war in general, and first, of the right of the sovereign, in this respect, over his subjects.

I. WHatever has hitherto been said of the essential parts of sovereignty, properly and directly regards the internal administration of the state. But as the happiness and prosperity of a nation demands not only that order and peace should be maintained at home, but also that the state should be sheltered from the insults of enemies abroad, and should obtain all the advantages it can from other nations; we shall now proceed to examine these parts of sovereignty which directly regard the safety and external advantages of the state, and treat of the most essential questions which relate to this subject.

II. To trace things from their original, we must first observe, that mankind being divided into several particular societies called *states* or *nations*, and these different political bodies forming a kind of society among themselves, they are also subjected to those primitive and general laws, which God has given to all mankind.

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and that they are consequently obliged to practise certain duties towards each other.

III. It is the system or assemblage of these laws that is properly called the law of *nations:* and these are no more than the laws of nature, which men, considered as members of human society, in general, ought to practise towards each other; or, in other words, the law of nations is no more than the general law of *sociability*, applied not to the individuals who compose the society, but to men, considered as forming different bodies called *states* or *nations*.

IV. The natural state of nations, with respect to each other, is certainly that of society and peace. Such is the natural and primitive state of each man with respect to every other man; and whatever particular alteration mankind may have made in regard to their primitive state, they cannot, without violating their duties, break in upon that state of peace and society, in which nature has placed them, and which by her *laws*, she has so strongly recommended to them.

V. Hence proceed several maxims of the law of nations; for example, that all nations ought to look upon themselves as naturally equal and independent of each other, and to treat one another as such on all occasions. That they ought to do no harm to each other, but, on the contrary, repair that which they may have done. Hence also arises their right of endeavouring to provide for their safety and happiness, and of employing force and arms against those who declare themselves their enemies. Fidelity in treaties and alliances, and the respect due to ambassadors, also arise from the same principle. This is the idea we ought to form of the law of nations in general.

VI. We do not here propose to enter minutely into all the political questions which may occur concerning the law of nations; we shall only examine these three articles, which, being the most considerable, include almost all the rest, I mean the *right of war*, that of *treaties and alliances*, and that of *ambassadors*.

VII. The

VII. The ſubject of the right of war being equally important and extenſive, conſequently merits to be treated with great exactneſs. We have already obſerved, that it is a fundamental maxim of the law of nature and nations, that individuals and ſtates ought to live in a ſtate of union and ſociety, that they ought not to hurt each other, nor occaſion any mutual damage; on the contrary, that they ought to exerciſe the duties of humanity to one another.

VIII. When men practiſe theſe duties, they are ſaid to be in a ſtate of peace. This ſtate is certainly the moſt agreeable to human nature, the moſt capable of promoting its happineſs, and indeed that which the law of nature was given to men principally to eſtabliſh and preſerve.

IX. The oppoſite ſtate to this of union and peace, is what we call *war*, which in the moſt general ſenſe, is no more than the ſtate of thoſe who try to determine their differences by the ways of force, conſidered as ſuch. I ſay, this is the moſt general ſenſe, for, in a more limited ſignification, common uſe has reſtrained the word *war* to that carried on between ſovereign powers*.

X. Though a ſtate of peace and mutual benevolence is certainly moſt natural to man, and moſt agreeable to the laws which he ought to follow, war is nevertheleſs permitted in certain circumſtances, and is ſometimes neceſſary both for individuals and nations. This we have ſufficiently ſhewn in the ſecond part of this work, by eſtabliſhing the rights which nature gives to men for their own preſervation, and the means which they may lawfully employ for that purpoſe. All the principles of this kind, which we have eſtabliſhed with reſpect to particulars, equally, and even for ſtronger reaſons, are applicable to nations.

XI. The law of God no leſs enjoins a whole nation to take care of their preſervation, than it does private men. It is therefore juſt that they ſhould employ force againſt thoſe, who declaring themſelves their enemies, violate

* See afterwards, chap 3.

violate the law of ſociability towards them, refuſe them their due, ſeek to deprive them of their advantages, and even to deſtroy them. It is therefore for the good of ſociety, that people ſhould be able effectually to repreſs the malice and efforts of thoſe who ſubvert the foundation of it; otherwiſe the human ſpecies would become the victims of robbery and licentiouſneſs: for the right of making war is, properly ſpeaking, the moſt powerful means of maintaining peace.

XII. Hence it is certain that the ſovereign, in whoſe hands the intereſt of the whole ſociety is lodged, has a right to make war: but if it is ſo, we muſt of courſe give him a right of employing all the means neceſſary for that purpoſe. In a word, we muſt give him the power of levying troops, enliſting ſoldiers, and obliging them to perform the moſt dangerous duties even at the peril of their lives. And this is one branch of the right of life and death which manifeſtly belongs to the ſovereign.

XIII. But as the ſtrength and valour of troops depend, in a great meaſure, on their being accuſtomed to military exerciſes, the ſovereign ought, even in times of peace, to train the ſubjects up to theſe exerciſes, that they may, when occaſion calls, be more able to ſuſtain the fatigues of war, and perform the different duties of it.

XIV. The obligation, under which ſubjects are in this reſpect, is ſo rigorous and ſtrong, that, ſtrictly ſpeaking, no man can be exempted from taking up arms when occaſion requires; and the refuſal of it would be a juſt reaſon not to tolerate ſuch perſons any longer in the ſociety. If in moſt governments there are ſome ſubjects exempted from military exerciſes, this immunity is not a privilege that belongs to them by right; it is only a toleration which has no force, but when there are troops enough beſides for the defence of the commonwealth, and the perſons to whom it is granted follow ſome other uſeful and neceſſary employment. Excepting this caſe, in time of need all the members of a ſtate ought to take the field, and none can be lawfully exempted

XV. In

XV. In consequence of these principles, military discipline should be very rigorous; the smallest neglect, or the least fault is often of the last importance, and for that reason may be severely punished. Other judges make some allowance for the weakness of human nature, or the violence of passions; but in a council of war, there is not so much indulgence; death is often inflicted on a soldier, whom the dread of that very evil has induced to quit his post.

XVI. It is therefore the duty of those who are once enlisted, to maintain the post where the general has placed them, and to fight bravely, even though they run a risque of losing their lives. To conquer or die, is the law of such engagements; and it is certainly much better to lose one's life gloriously, by endeavouring to destroy that of the enemy, than to die in a cowardly manner. Hence some judgment may be formed of what we ought to think of those captains of ships, who, by the order of their superior, blow themselves up into the air, rather than fall into the hands of the enemy. Suppose the number of ships equal on both sides, if one of our ships is taken, the enemy will have two more than we; whereas if one of ours is sunk they will have but one more; and if the vessel, which wants to take ours, sinks with it, which often happens, the forces will remain equal.

XVII. As for the question, whether subjects are obliged to take up arms, and serve in an unjust war, we must judge of it by the principles we have already established at the end of the first chapter of the third part, which treats of *the legislative power*.

XVIII. These are the obligations of subjects with respect to war and to the defence of the government; but this part of the sovereignty being of great importance, it requires the utmost precaution in the sovereign to exercise it in such a manner as may prove advantageous to the state. We shall here point out the principal maxims of politics in this respect.

XIX. First then it is evident, that the force of a state, with respect to war, consists chiefly in the number

ber of its inhabitants; ſovereigns therefore ought to neglect nothing that can either ſupport or augment the number of them.

XX. Among the other means, which may be uſed for this purpoſe, there are three of great efficacy. The firſt is, eaſily to receive all ſtrangers of a good character, who want to ſettle among us; to let them taſte the ſweets of government; and to make them ſhare the advantages of civil liberty. Thus the ſtate is filled with ſubjects, who bring with them the arts, commerce, and riches; and among whom we may, in time of need, find a conſiderable number of good ſoldiers.

XXI. Another thing, conducive to the ſame end, is to favour and encourage marriages, which are the pledges of the ſtate; and to make good laws for this purpoſe. The mildneſs of the government may, among other things, greatly contribute to incline the ſubjects to marry. People loaded with taxes, who can hardly, by their labour, find wherewithal to ſupply the wants of life and the public charges, are not inclined to marry, leſt their children ſhould ſtarve for hunger.

XXII. Laſtly, another means, very proper for maintaining and augmenting the number of inhabitants, is liberty of conſcience. Religion is one of the greateſt advantages of mankind, and all men view it in that light. Every thing which tends to deprive them of this liberty, appears inſupportable. They cannot eaſily accuſtom themſelves to a government which tyrannizes over them in this article. *France*, *Spain*, and *Holland* preſent us with ſenſible proofs of the truth of theſe obſervations. Perſecutions have deprived the firſt of a great part of her inhabitants; by which means ſhe has been conſiderably weakened. The ſecond is almoſt unpeopled; and this depopulation is occaſioned by the barbarous and tyrannical eſtabliſhment called the *Inquiſition*; an eſtabliſhment equally affronting to God and pernicious to human ſociety, and which has made a kind of deſert of one of the fineſt countries in *Europe*. The third, in conſequence of an entire liberty of conſcience, which ſhe offers to all the world, is conſiderably improved even amid wars and diſaſters. She has raiſed herſelf,

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as it were, on the ruins of other nations, and enjoys a credit and prosperity for which she is indebted to the number of her inhabitants, who have brought power, commerce and riches into her bosom.

XXIII. The great number of the inhabitants of a country is therefore its principal strength. But, for this purpose the inhabitants must also be formed betimes to labour and virtue. Luxury, effeminacy, and pleasures, impair the body and enervate the mind. A prince therefore, who wants good troops, and desires to put the military state on a good footing, must take great care of the education of youth, establish a good discipline, procure his subjects the means of forming themselves to bodily exercises, and prevent luxury and pleasures from rendering their manners effeminate, or weakening their courage.

XXIV. Lastly, one of the most efficacious means of having good troops, is to make them observe the military order and discipline with all possible care and exactness; to take particular care that the soldiers be punctually paid; to see that the sick be properly looked after, and to furnish them with the assistances they stand in need of; lastly, to preserve among them a knowledge of religion and of the duties it prescribes, by procuring them the means of instruction. These are the principal maxims which good policy suggests to sovereigns, and by means of which they may reasonably hope always to find good troops among their subjects, troops disposed to fight bravely in defence of their country.

CHAP. II.

Of the causes of war.

I. IF war is sometimes lawful, and even necessary, as we have already shewn; this is to be understood when it is undertaken only for just reasons, and on condition that he, who undertakes it, proposes, by that means, to obtain a solid and lasting peace. A war may therefore be either just or unjust, according to the cause which has produced it.

II. A war

II. A war is juſt, if it is undertaken for juſt reaſons; and unjuſt if it is entered into without a cauſe, or at leaſt without a juſt and ſufficient cauſe.

III. To render the thing more plain, we may, with Grotius, diſtinguiſh between the juſtifying reaſons, and the motives of the war. The firſt are thoſe which render, or ſeem to render, the war juſt with reſpect to the enemy, ſo that in taking up arms againſt him we do not think we do him injuſtice. The motives are the views of intereſt which determine us to declare war. Thus in the war of *Alexander* againſt *Darius*, the juſtifying reaſons of the former was; to revenge the injuries which the Greeks had received from the Perſians. The motives were, the ambition, vanity, and avarice of that conqueror, who took up arms the more chearfully, as the expeditions of *Xenophon* and *Ageſilaus* made him conceive great hopes of an eaſy ſucceſs. The juſtifying reaſon of the ſecond Punic war was, a diſpute about the city of *Saguntum*. The motives were, an old grudge entertained by the Carthaginians againſt the Romans for the hard terms they were obliged to ſubmit to when reduced to a low condition, and the encouragement given them by the good ſucceſs of their arms in *Spain*.

IV. In a war, in every reſpect innocent and perfectly juſt the juſtifying reaſons muſt not only be lawful, but alſo be blended with the motive; that is to ſay, we muſt never undertake a war but thro' the neceſſity we are reduced to of defending ourſelves againſt another's inſults, of recovering what is our undoubted right, or of obtaining ſatisfaction for a manifeſt injury.

V. Thus a war may be vicious or unjuſt, with reſpect to the cauſes, four different ways.

1. When we undertake it without any juſtifying reaſon, or ſo much as an apparent motive of advantage, but only from a fierce and brutal fury, which delights in blood and ſlaughter. But it may be juſtly doubted, whether we can find an example of ſo barbarous a war.

VI. 2. When we attack others only for our own intereſt, without their having done us any injury; that is, when we have no juſtifying cauſes: and theſe wars are,

are, with respect to the aggressor, downright robberies.

VII. 3. When we have some motives founded on justifying causes, but which have still only an apparent equity, and when well examined, are found at the bottom to be unlawful.

VIII. 4. Lastly, we may say that a war is also unjust, when though we have good justifying reasons, yet we undertake it from other motives, which have no relation to the wrong received; as for instance, through vain glory, or the desire of extending our dominions, &c.

IX. Of these four sorts of war, the undertaking of which includes some injustice, the third and last are very common, for there are few nations so barbarous as to take up arms without alleging some sort of justifying reasons. It is not difficult to discover the injustice of the third; as for the fourth, though perhaps very common, it is not so much unjust in itself, as with respect to the views and disposition of him who undertakes it. But it is very difficult to convince him of it, the motives being generally impenetrable, or at least most princes taking great care to conceal them*.

X. From the principles here established we may conclude, that every just war must be made, either to defend ourselves and properties against those who endeavour to injure us by assaulting our persons, and by taking away or ruining our estates; or to constrain others to yield up to us what they ought to do, when we have a perfect right to require it of them; or lastly, to obtain satisfaction for the damages we have injuriously sustained, and to force those who did the injury to give security for their future good behaviour.

XI. From hence we easily conceive what the causes of war may be. But to illustrate the subject more, we shall give some examples of the principal unjust causes of war.

* See the explication of these principles in *Budæus*'s Jurisprud. hist. specim. §. 28, &c.

II. A war is just, if it is undertaken for just reasons; and unjust if it is entered into without a cause, or at least without a just and sufficient cause.

III. To render the thing more plain, we may, with Grotius, distinguish between the justifying reasons, and the motives of the war. The first are those which render, or seem to render, the war just with respect to the enemy, so that in taking up arms against him we do not think we do him injustice. The motives are the views of interest which determine us to declare war. Thus in the war of *Alexander* against *Darius*, the justifying reasons of the former was; to revenge the injuries which the Greeks had received from the Persians. The motives were, the ambition, vanity, and avarice of that conqueror, who took up arms the more chearfully, as the expeditions of *Xenophon* and *Agesilaus* made him conceive great hopes of an easy success. The justifying reason of the second Punic war was, a dispute about the city of *Saguntum*. The motives were, an old grudge entertained by the Carthaginians against the Romans for the hard terms they were obliged to submit to when reduced to a low condition, and the encouragement given them by the good success of their arms in *Spain*.

IV. In a war, in every respect innocent and perfectly just the justifying reasons must not only be lawful, but also be blended with the motive; that is to say, we must never undertake a war but thro' the necessity we are reduced to of defending ourselves against another's insults, of recovering what is our undoubted right, or of obtaining satisfaction for a manifest injury.

V. Thus a war may be vicious or unjust, with respect to the causes, four different ways.

1. When we undertake it without any justifying reason, or so much as an apparent motive of advantage, but only from a fierce and brutal fury, which delights in blood and slaughter. But it may be justly doubted, whether we can find an example of so barbarous a war.

VI. 2. When we attack others only for our own interest, without their having done us any injury; that is, when we have no justifying causes: and these wars are,

are, with respect to the aggressor, downright robberies.

VII. 3. When we have some motives founded on justifying causes, but which have still only an apparent equity, and when well examined, are found at the bottom to be unlawful.

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* See the explication of these principles in *Budeus*'s Jurisprud. hist. specim. §. 28, &c.

1. Thus for example, to have a just reason for war, it is not sufficient that we are afraid of the growing power of a neighbour. All we can do, in these circumstances, is innocently to try to obtain *real caution*, that he will attempt nothing against us; and to put ourselves in a posture of defence. But acts of hostility are not permitted except when they are necessary, and they are never necessary so long as we are not morally certain that the neighbour we dread has not only the power, but also the inclination to attack us. We cannot, for instance, justly declare war against a neighbour purely because he orders citadels or fortifications to be built, which he may some time or other employ against us.

XII. 2. Neither does utility alone give the same right as necessity, nor is it sufficient to render a war lawful. Thus, for example, we cannot lawfully take up arms to make ourselves masters of a place which lies conveniently for us, and is proper to cover our frontiers.

XIII. 3. We must say the same of the desire of changing our former settlements, and of removing from marshes and deserts to a more fertile soil.

4. Nor is it less unjust to invade the right and liberty of a people under a pretext of their not being so polished in their manners, or of so quick understanding as ourselves. It was therefore unjust in the Greeks to treat the Barbarians as people who were naturally their enemies, on account of the diversity of their manners, and perhaps because they did not appear to have so much sense as themselves.

XIV. 5. It would also be an unjust war to take up arms against a nation in order to bring them under subjection, under pretence of its being their interest to be governed by us. Though a thing be advantageous to a person, yet this does not give us a right to compel him to submit to it. Whoever has the use of reason ought to have the liberty of choosing what he thinks advantageous to himself.

XV. We must also observe, that the duties which nations ought to practise towards each other, are not

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all equally obligatory, and that their deficiency in this respect does not always lay a foundation for a just war. Among nations as well as individuals, there are duties attended with a rigorous and perfect obligation, the violation of which implies *an injury properly so called*; and duties of an imperfect obligation, which give to another only an imperfect and less rigorous right. And as we cannot, in a dispute between individuals, have recourse to judges, to recover what in this second manner is our due; so neither can we, in contests between different powers, constrain them by force of arms.

XVI. We must however except from this rule, the cases of necessity in which the *imperfect* is *changed* into the *perfect right*; so that, in these cases, the refusal of him, who will not give us our due, furnishes us with a just reason for a war. But every war, undertaken on account of the refusal of what a man is not obliged by the laws of humanity to grant, is unjust.

XVII. To apply these principles we shall give some examples. The right of passing over the lands of another is really founded on humanity, when we design to use that permission only on a lawful account; as when people, expelled their own country, want to settle elsewhere; or when, in the prosecution of a just war, it is necessary to pass through the territories of a neutral people, &c. But this is only an office of humanity which is not due to another in virtue of a perfect and rigorous right, and the refusal of which does not authorise a nation to challenge it in a forcible manner.

XVIII. Grotius however, examining this question, pretends, " that we are not only obliged to grant a " passage over our lands to a small number of men " unarmed, and from whom we have consequently " nothing to fear; but moreover that we cannot re- " fuse it to a large army, notwithstanding the just ap- " prehension we may have that this passage will do us " a considerable injury, which is likely to arise ei- " ther from that army itself, or from those against " whom it marches: provided, continues he, 1. That

"this passage is asked on a good account. 2 That it "is asked before an attempt is made to pass by force."

XIX. This author then pretends, that, in these circumstances, the refusal authorises us to have recourse to arms, and that we may lawfully procure by force, what we could not obtain by favour, even though the passage may be had elsewhere by taking a larger circuit. He adds, "That the suspicion of danger from "the passing of a great number of armed men, is not "a sufficient reason to refuse it, because good precau-"tions may be taken against it. Nor is a fear of pro-"voking that prince, against whom the other marches "his army, a sufficient reason for refusing him pas-"sage, if the latter has a just reason for undertaking "the war."

XX. Grotius founds his opinion on this reason, that the establishment of property was originally made with the tacit reservation of the right of using the property of another in time of need, as far as it can be done without injuring the owner.

XXI. But I cannot embrace the opinion of this celebrated writer, for, 1. Whatever may be said, it is certain that the right of passing through the territories of another is not a perfect right, the execution of which can be rigorously demanded. If a private person is not obliged to suffer another to pass through his ground, much less is a nation obliged to grant a passage to a foreign army, without any compact or concession intervening.

XXII. 2. The great inconveniencies which may follow such a permission, authorise this refusal. By granting such a passage we run a risque of making our own country the seat of war. Besides, if they, to whom we grant the passage are repulsed and vanquished, let the reasons they had for making war be ever so just, yet will not the enemy revenge himself upon us who did not hinder those troops from invading him? But farther, suppose that we live in friendship with both the princes who are at war, we cannot favour one to the prejudice of the other, without giving this other a sufficient reason to look upon us as enemies, and as defective in that part of our duty which we owe

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to our neighbours. It would be in vain, on this occasion, to distinguish between a just and an unjust war, pretending that the latter gives a right of refusing the passage, but that the former obliges us to grant it. This distinction does not remove the difficulty; for besides that it is not always easy to decide whether a war is just or unjust, it is a piece of rashness to thrust in our arbitration between two armed parties, and to intermeddle with their differences.

XXIII. 3. But is there nothing to fear from the troops to whom the passage is granted? The abettors of the contrary opinion agree there is, for which reason they allow that many precautions ought to be observed. But whatever precautions we may take, none of them can secure us against all events; and some evils and losses are irreparable. Men that are always in arms are easily tempted to abuse them, and to commit outrages, especially if they are numerous, and to find an opportunity of making a considerable booty. How often have we seen foreign armies ravage and appropriate to themselves the estates of a people who have called them to their assistance? Nor have the most solemn treaties and oaths been able to deter them from this black perfidiousness*? What then may we expect from those who are under no such strict engagements?

XXIV. 4. Another observation we may make, which is of great use in politics, that almost all states have this in common, is, that the further men advance into the heart of a country, they find it more weak and unarmed. The Carthaginians, otherwise invincible, were vanquished near *Carthage* by *Agathocles* and *Scipio*. *Hannibal* said the Romans could not be conquered except in *Italy*. It is therefore dangerous to lay open these secrets to a multitude of strangers, who, having arms at hand, may take advantage of our weakness, and make us repent our imprudence.

XXV. 5. To this we must add, that in every state there are almost always mutinous and turbulent spirits, who are ready to stir up strangers either against their fellow-citizens, their sovereign, or their neighbours. These reasons sufficiently prove, that all the precautions which can be taken cannot secure us from danger.

6. Lastly,

* See Just. Lib. iv. cap. 4 & 8. and Liv. lib. vii. cap. 38.

6. Laſtly, we may add the example of a great many nations, who have been very ill requited for letting foreign troops paſs through their country.

XXVI. We ſhall finiſh the examination of this queſtion by making two remarks. The firſt is, that it is evident from the whole of what has been ſaid, that this is a matter of prudence; and that though we are not obliged to grant a paſſage to foreign troops, and the ſafeſt way is to refuſe it, yet when we are not ſtrong enough to reſiſt the violence of thoſe who want to paſs at any rate, and by reſiſting we muſt involve ourſelves in a troubleſome war, we ought certainly to grant a paſſage; and the neceſſity to which we are reduced, is a ſufficient juſtification to the prince whoſe territories thoſe troops are going to invade.

XXVII. My ſecond remark is, that if we ſuppoſe on the one hand, that the war which the prince, who demands a paſſage through our country, makes, is juſt and neceſſary, and on the other, that we have nothing to fear either from him that is to paſs, or him againſt whom he marches; we are then indiſpenſibly obliged to grant a paſſage. For if the law of nature obliges every one to aſſiſt thoſe whom he ſees manifeſtly oppreſſed, when he can do it without danger and with hopes of ſucceſs, much leſs ought he to be a hindrance to ſuch as undertake their own defence.

XXVIII. By following the principles here eſtabliſhed, we may judge of the right of tranſporting merchandizes through the territories of another. This is alſo only an imperfect right, and a duty of humanity, which obliges us to grant it to others; the obligation is not rigorous, and the refuſal cannot be a juſt reaſon for war.

XXIX. Truly ſpeaking, the laws of humanity indiſpenſibly oblige us to grant a paſſage to ſuch foreign commodities as are abſolutely neceſſary for life, which our neighbours cannot procure by themſelves, and with which we cannot furniſh them. But, except in this caſe, we may have good reaſons for hindering foreign commodities from paſſing through our country to be carried farther. Too great a reſort of ſtrang-

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ers is ſometimes dangerous to a ſtate; and beſides, why ſhould not a ſovereign procure to his own ſubjects that profit, which would otherwiſe be made by foreigners, by means of the paſſage granted them?

XXX. It is not however contrary to humanity to require toll or cuſtom for foreign commodities to which a paſſage is granted. This is a juſt reimburſement for the expences the ſovereign is obliged to be at in repairing the high roads, bridges, harbours, &c.

XXXI. We muſt reaſon in the ſame manner in regard to commerce in general between different ſtates. I ſay the ſame of the right of being ſupplied with wives by our neighbours; a refuſal on their ſide, though there be great plenty of women among them, does not authorize us to declare war.

XXXII. We ſhall here ſubjoin ſomething concerning wars undertaken on account of religion. The law of nature, which permits a man to defend his life, his ſubſtance, and all the other advantages which he enjoys, againſt the attack of an unjuſt aggreſſor, certainly grants him the liberty alſo of defending himſelf againſt thoſe who would, as it were, by force, deprive him of his religion, by hindering him to profeſs that which he thinks the beſt, or by conſtraining him to embrace that which he thinks to be falſe.

XXXIII. In a word, religion is one of the greateſt bleſſings man can enjoy, and includes his moſt eſſential intereſts. Whoever oppoſes him in this reſpect, declares himſelf his enemy; and conſequently he may juſtly uſe forcible methods to repel the injury, and to ſecure himſelf againſt the evil intended him. It is therefore lawful, and even juſt, to take up arms, when we are attacked for the cauſe of religion.

XXXIV. But though we are allowed to defend ourſelves in the cauſe of religion, yet we are not permitted to make war in order to propagate that which we profeſs, and to conſtrain thoſe who have ſome principle or practice different from ours. The one is a neceſſary conſequence of the other. It is not lawful to attack him who has a right to defend himſelf. If

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the defensive war is just, the offensive must needs be criminal. The very nature of religion does not permit that violent means should be used for its propagation: it consists in the internal sentiments of the mind. The right of mankind, in regard to the propagation of religion, is to inform and instruct those who are in an error, and to use the soft and gentle methods of persuasion. Men must be persuaded, and not compelled. To act otherwise, is to commit a robbery on them; a robbery so much the more criminal, as those who commit it endeavour to authorise it by the most sacred pretext. There is therefore no less folly, than impiety, in such a conduct.

XXXV. In particular, nothing is more contrary to the spirit of Christianity, than to employ the force of arms for its propagation. Jesus Christ, our divine master, taught men, but used no violence against them. The apostles followed his example; and the enumerations which St. Paul makes of the arms which he employed for the conversion of mankind, is a beautiful lesson to Christians*.

XXXVI. So far is a simple difference of opinion, in matters of religion, from being a just reason for pursuing, by force of arms, or disturbing in the least, those whom we think in an error; that, on the contrary, such as act in this manner, furnish others with a just reason of making war against them, and of defending those whom they unjustly oppress. Upon which occasion the following question occurs: *Whether Protestant princes may not, with a good conscience, enter into a confederacy to destroy the Inquisition, and oblige the powers, who suffer it in their dominions, to disarm that cabal, under which Christianity has so long groaned, and which, under a false pretence to zeal and piety, exercises a tyranny most horrible in itself, and most contrary to human nature?* Be that as it may, it is at least certain, that never would any hero have subdued monsters more furious and destructive to mankind, than he who could accomplish the design of purging the earth of those wicked men, who so impudently and cruelly abuse

* 2 Corinth. chap. vi. ver. 4. &c. and chap. x. ver. 4.

abuſe the ſpecious ſhew of religion, only to procure wherewith to live in luxury and idleneſs, and to make both princes and ſubjects dependent on them.

XXXVII. Theſe are the principal remarks which occur on the cauſes of war. To which let us here add, that as we ought not to make war, which of itſelf is a very great evil, but to obtain a ſolid peace, it is abſolutely neceſſary to conſult the rules of prudence before we undertake it, however juſt it may otherwiſe appear. We muſt, above all things, exactly weigh the good or evil, which we may bring upon ourſelves by it: For if in making war, there is reaſon to fear that we ſhall draw greater evil on ourſelves, or thoſe that belong to us, than the good we can propoſe from it; it is better to put up with the injury, than to expoſe ourſelves to more conſiderable evils, than that for which we ſeek redreſs by arms.

XXXVIII. In the circumſtances here mentioned we may lawfully make war, not only upon our account, but alſo for others; provided that he, in whoſe favour we engage, has juſt reaſon to take up arms, and that we are likewiſe under ſome particular tie or obligation to him, which authoriſes us to treat as enemies thoſe who have done us no injury.

XXXIX. Now among thoſe, whom we may and ought to defend, we may give the firſt place to ſuch as depend on the defender, that is, to the ſubjects of the ſtate; for it is principally with this view of protection that men, before independent, incorporated themſelves into civil ſociety. Thus the Gibeonites having ſubmitted themſelves to the government of the Iſraelites; the latter took up arms on their account, under the command of *Joſhua*. The Romans alſo proceeded in the ſame manner. But ſovereigns in theſe caſes ought to obſerve the maxim we have eſtabliſhed in ſect. 37. They ought to beware in taking up arms for ſome of their ſubjects, not to bring a greater inconveniency on the body of the ſtate. The duty of the ſovereign regards firſt and principally the intereſt of the whole, rather than that of a part; and

the greater the part is, the nearer it approaches to the whole.

XL. 2. Next to ſubjects come our allies, whom we are expreſsly engaged by treaty to aſſiſt in time of need; and his, whether they have put themſelves entirely under our protection, and ſo depend upon it; or whether aſſiſtance be agreed upon for mutual help and ſecurity.

XLI. But the war muſt be juſtly undertaken by our ally; for we cannot innocently engage to help any one in a war, which is manifeſtly unjuſt. Let us add here, that we may, even without prejudice to the treaty, defend our own ſubjects preferably to our allies, when there is no poſſibility of aſſiſting them both at the ſame time; for the engagements of a government to its ſubjects always ſuperſede thoſe into which it enters with ſtrangers.

XLII. As for what Grotius ſays, that we are not obliged to aſſiſt an ally, when there is no hope of ſucceſs; it is to be underſtood in this manner. If we evidently ſee that our united forces are not ſufficient to oppoſe the enemy, and that our ally, though able to treat with him on tolerable terms, is yet obſtinately bent to expoſe himſelf to certain ruin; we are not obliged by the treaty of alliance, to join with him in ſo extravagant and deſperate an attempt. But then it is alſo to be conſidered, that alliances would become uſeleſs, if, in virtue of this union, we were not obliged to expoſe ourſelves to ſome danger, or to ſuſtain ſome loſs in the defence of an ally.

XLIII. Here it may be enquired; when ſeveral of our allies want aſſiſtance, which ought to be helped firſt, and preferable to the reſt? Grotius anſwers, that when two allies unjuſtly make war upon each other, we ought to help neither of them; but if the cauſe of one ally is juſt, we muſt not only aſſiſt him againſt ſtrangers, but alſo againſt another of our allies, unleſs there is ſome particular article in a treaty, which does not permit us to defend the former againſt the latter, even tho' the latter has committed the injury. And, in fine, that if ſeveral of our allies enter into a league againſt

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a common foe, or make war ſeparately againſt particular enemies, we muſt aſſiſt them all equally, and according to treaties; but when there is no poſſibility of aſſiſting them all at once, we muſt give the preference to the oldeſt ally.

XLIV. 3. Friends, or thoſe with whom we are united by particular ties of kindneſs and affection, hold the third rank. For though we have not promiſed them a certain aſſiſtance, determined by a formal treaty; yet the nature of friendſhip itſelf lays a mutual engagement on friends to healp each other, as far as the ſtricter obligations they are under will permit; and the concern for each other's ſafety ought to be much ſtronger, than that which is demanded by the ſimple connection of humanity.

XLV. I ſay that we may take up arms for our friends, who are engaged in a juſt war; for we are not under a ſtrict obligation to aſſiſt them: and this condition ought to be underſtood, if we can do it eaſily, and without any great inconveniency to ourſelves.

XLVI. 4. In fine, we may affirm that the ſingle relation, in which all mankind ſtand to each other, in conſequence of their common nature and ſociety, and which forms the moſt extenſive connection, is ſufficient to authoriſe us in aſſiſting thoſe who are unjuſtly oppreſſed; at leaſt if the injuſtice is conſiderable, and manifeſt, and the party injured calls us to his aſſiſtance; ſo that we act rather in his name, than in our own. But even here we muſt make this remark, which is, that we have a right to ſuccour the diſtreſſed purely from humanity, but that we are not under a ſtrict obligation of doing it. It is a duty of an imperfect obligation, and which binds us only ſo far as we can practiſe it, without bringing a conſiderable inconveniency upon ourſelves; for all circumſtances being equal, we may, and even ought to prefer our own preſervation to that of another.

XLVII. It is another queſtion, whether we can undertake a war in defence of the ſubjects of a foreign prince, againſt his invaſions and oppreſſions, merely from the principle of humanity? I anſwer, that this is permitted

permitted only in cases where the tyranny is risen to such a height, that the subjects themselves may lawfully take up arms, to shake off the yoke of the tyrant, according to the principles already laid down.

XLVIII. It is true, that since the establishment of civil societies, the sovereign has acquired a peculiar right over his subjects; in virtue of which he can punish them, without any other power having any business to interfere. But it is no less certain, that this right has its bounds, and that it cannot be lawfully exercised, except where the subjects are really culpable, or at least when their innocence is dubious. Then the presumption ought to be in favour of the sovereign, and a foreign power has no right to intermeddle with what passes in another state.

XLIX. But if the tyranny is arrived at its greatest height, if the oppression is manifest, as when a *Busirus*, or *Phalaris* oppress their subjects in so cruel a manner, as must be condemned by every reasonable man living; we cannot refuse the subjects, thus oppressed, the protection of the laws of human society. Every man as such, has a right to claim the assistance of other men when he is really in necessity; and every one is obliged to give it him, when he can, by the laws of humanity. Now it is certain, that we neither do, nor can renounce these laws, by entering into society, which could never have been established to the prejudice of the laws of humanity: though it may be justly supposed to have engaged, not to implore a foreign aid for slight injuries, or even for great ones, which affect only a few persons.

But when all the subjects, or a considerable part of them, groan under the oppression of a tyrant, the subjects on the one hand, re-enter into all the rights of natural liberty, which authorises them to seek assistance wherever they can find it; and on the other hand, those who are in a condition of giving it them, without any considerable damage to themselves, not only may, but ought to do all they can to deliver the oppressed; for this single reason, that they are men, and

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members of human ſociety, of which civil ſocieties are parts.

L. It appears indeed, from ancient and modern hiſtory, that the deſire of invading the ſtates of others is often covered by ſimilar pretexts; but the bad uſe which men make of a thing, does not always hinder it from being juſt in itſelf. Pirates ſail on the ſeas, and robbers wear ſwords, as well as others.

CHAP. III.

Of the different kinds of war.

I. BESIDES the diſtinction above-mentioned of war into juſt and unjuſt, there are ſeveral others, which it is proper to conſider here. And firſt, war is diſtinguiſhed into *offenſive* and *defenſive*.

II. Defenſive wars are thoſe undertaken for the defence of our perſons, or the preſervation of our properties. Offenſive wars are thoſe which are made to conſtrain others to give us our due, in virtue of a perfect right we have to exact it of them; or to obtain ſatisfaction for damage unjuſtly done us, and to force them to give caution for the future.

III. 1. We muſt therefore take care not to confound this with the former diſtinction; as if every defenſive war was juſt, and, on the contrary, every offenſive war unjuſt. It is now-a-days the cuſtom to excuſe the moſt unjuſt wars, by ſaying they are purely defenſive. Some people think that all unjuſt wars ought to be called offenſive, which is not true; for if there are offenſive wars which are juſt, as there is no doubt of it, there are alſo defenſive wars which are unjuſt; as when we defend ourſelves againſt a prince who has reaſon to attack us.

IV. 2. Neither are we to believe, that he who firſt injures another, begins by that an offenſive war, and that the other, who demands ſatisfaction for the injury received, is always upon the defenſive. There are a great many unjuſt acts which may kindle a war, and

and which however are not the war; as the ill treatment of a prince's ambaſſador, the plundering of his ſubjects, &c. If therefore we take up arms to revenge ſuch an unjuſt act, we commence an offenſive, but a juſt war; and the prince who has done the injury, and will not give ſatisfaction, makes a defenſive, but an unjuſt war. An offenſive war is therefore unjuſt only, when it is undertaken without a lawful cauſe; and then the defenſive war, which on other occaſions might be unjuſt, becomes juſt.

V. We muſt therefore affirm, in general, that the firſt who takes up arms, whether juſtly or unjuſtly, commences an offenſive war; and he who oppoſes him, whether with or without a reaſon, begins a defenſive war. Thoſe who look upon the words *offenſive war* to be an odious term, as always implying ſomething unjuſt; and who, on the contrary, conſider a defenſive war as inſeparable from equity, confound ideas, and perplex a thing, which of itſelf ſeems to be ſufficiently clear. It is with princes as with private perſons. The plaintiff who commences a ſuit at law, is ſometimes in the wrong, and ſometimes in the right. It is the ſame with the defendant. It is wrong to refuſe to pay a ſum which is juſtly due; and it is right to forbear paying what we do not owe.

VI. In the third place, Grotius diſtinguiſhes war into *private*, *public*, and *mixed*. *Public war* he calls that which is made on both ſides by the authority of the civil power: *Private war*, that which is made between private perſons, without any public authority; and, laſtly, *mixed war*, that which, on one ſide, is carried on by public authority, and, on the other, by mere private perſons.

VII. We may obſerve concerning this diviſion, that if we take the word *war* in the moſt general and extenſive ſenſe, and underſtand by it *all taking up arms with a view to decide a quarrel*, in contradiſtinction to the way of deciding a difference by recourſe to a common judge, then this diſtinction may be admitted; but cuſtom ſeems to explode it, and has reſtrained the ſignification

nification of the word *war* to that carried on between ſovereign powers. In a civil ſociety, private perſons have not a right to make war; and as for the ſtate of nature, we have already treated of the right which men have in that ſtate to defend and preſerve their perſons and properties; ſo that as we are here treating only of the right of ſovereigns, with regard to each other, it is properly public, and not private war, that falls under our preſent enquiry.

VIII. 4. War is alſo diſtinguiſhed into *ſolemn according to the laws of nations*, and *not ſolemn*. To render a war ſolemn, two things are requiſite, the firſt, that it be made by the authority of the ſovereign; the ſecond, that it be accompanied with certain formalities, as a formal declaration, &c. but of this we ſhall treat more fully in its proper place. War not ſolemn, is that which is made either without a formal declaration, or againſt mere private perſons. We ſhall here only hint at this diviſion, referring a more particular examination of it, and an enquiry into its effects, till we come to treat of the formalities which uſually precede war.

IX. But a queſtion is moved, relating to this ſubject, which is, whether a magiſtrate, properly ſo called, and as ſuch, has a power of making war of his own accord? Grotius anſwers, that judging independently of the civil laws every magiſtrate ſeems to have as much right, in caſe of reſiſtance, to take up arms in order to exerciſe his juriſdiction, and to ſee his commands executed, as to defend the people intruſted to his care. Puffendorf, on the contrary, takes the negative, and criticiſes on the opinion of Grotius.

X. But it is eaſy to reconcile theſe two authors, the diſpute between them being merely about words. Grotius fixes a more vague and general idea to the term *war**: according to him, therefore, when a ſubordinate magiſtrate takes up arms to maintain his authority, and to reduce thoſe to reaſon who refuſe to ſubmit to him, he is ſuppoſed to act with the approbation of the ſovereign; who by intruſting him with a ſhare in

* See above, ſect. vii.

in the government of the ſtate, has at the ſame time inveſted him with the power neceſſary to exerciſe it. And thus the queſtion is only, whether every magiſtrate, as ſuch, has need on this occaſion of an expreſs order from the ſovereign; ſo that the conſtitution of civil ſocieties in general require it independently of the civil laws of each particular ſtate.

XI. Now I aſk, if a magiſtrate can have recourſe to arms for the reduction of one perſon, of two, ten, or twenty, who either refuſe to obey him, or attempt to hinder the exerciſe of his juriſdiction, why may he not uſe the ſame means againſt fifty, a hundred, a thouſand? &c. The greater the number is, the more he will have occaſion for force to overcome their reſiſtance. Now this is what Grotius includes under the term *war*.

XII. Puffendorf agrees to all this in the main; but he pretends that this coercive power, which belongs to a magiſtrate over diſobedient ſubjects, is not a right of war; war ſeeming to be entirely between equals, or at leaſt ſuch as pretend to be ſo. The idea of Puffendorf is certainly more regular, and agreeable to cuſtom; but it is evident, that the difference between him and Grotius conſiſts only in the greater or ſmaller extent which each of them gives to the word *war*.

XIII. If it be objected that it is dangerous to leave ſo much power to a ſubordinate magiſtrate; this may be true: but then it proves only that legiſlators act wiſely, in ſetting bounds to the power of the magiſtrate, in order to reſtrain that, which otherwiſe might be a neceſſary conſequence of the very deſign for which the magiſtrate is eſtabliſhed.

XIV. But to judge of the power of the magiſtrates, or of generals and leaders, in reſpect to war, properly ſo called, and which is carried on againſt a foreign enemy, we need only to attend to the extent of their commiſſions; for it is evident that they cannot lawfully undertake any act of hoſtility of their own head, and without a formal order of the ſovereign at leaſt reaſonably

ſonably preſumed, in conſequence of the circumſtances which they are under.

XV. Thus, for example, a general ſent upon an expedition with an unlimited authority, may act againſt the enemy offenſively, as well as defenſively, and in ſuch a manner as he ſhall judge moſt advantageous; but he can neither levy any new war, nor make peace of his own head. But if his power is limited, he ought never to paſs the bounds preſcribed to him, unleſs he is unavoidably reduced to it by the neceſſity of ſelf-defence; for whatever he does in that caſe, is ſuppoſed to be with the conſent and approbation of the ſovereign. Thus, if an admiral has orders to be upon the defenſive, he may, notwithſtanding ſuch a confinement, break in upon the enemy's fleet, and ſink and burn as many of their ſhips as he can, if they come to attack him: all that he is forbidden, is to challenge the enemy firſt.

XVI. In general, the governors of provinces and cities, if they have troops under their command, may by their own authority defend themſelves againſt an enemy who attacks them; but they ought not to carry the war into a foreign country, without an expreſs order from their ſovereign.

XVII. It was in virtue of this privilege ariſing from neceſſity, that *Lucius Panurius**, governor of *Enna* in *Sicily* for the Romans, upon certain information that the inhabitants deſigned to revolt to the Carthaginians, put them all to the ſword, and thus preſerved the place. But, except ſuch a caſe of neceſſity, the inhabitants of a town have no right to take up arms, to obtain ſatisfaction for thoſe injuries which the prince neglects to revenge.

XVIII. A mere preſumption of the will of the ſovereign, would not even be ſufficient to excuſe a governor, or any other officer, who ſhould undertake a war, except in a caſe of neceſſity, without either a general or particular order. For it is not ſufficient to know what part the ſovereign would probably act, if he were conſulted, in ſuch a particular poſture of affairs; but it ſhould rather be conſidered in general, what

* Livy, lib. xxi. cap. 18.

what is probable a prince would desire should be done without consulting him, when the matter will allow time, and when the affair is dubious. Now certainly sovereigns will never consent that their ministers should, whenever they think proper, undertake, without their orders, a thing of such importance as an offensive war, which is the proper subject of the present inquiry.

XIX. In these circumstances, whatever part the sovereign would have thought proper to act, if he had been consulted; and whatever success the war, undertaken without his orders, may have had; it is left to the sovereign whether he will ratify, or condemn the action of his minister. If he ratifies it, this approbation renders the war solemn, by reflecting back, as it were, an authority upon it, so that it obliges the whole commonwealth. But if the sovereign condemn the action of the governor, the hostilities committed by the latter ought to pass for a sort of robbery, the fault of which by no means affects the state, provided the governor be delivered up, or punished according to the laws of the country, and proper satisfaction be made for the damages sustained.

XX. We may here further observe, that in civil societies, when a particular member has done an injury to a stranger, the governor of the commonwealth is sometimes responsible for it, so that war may be declared against him on that account. But to ground this kind of imputation, we must necessarily suppose one of these two things, sufferance, or reception, viz. either that the sovereign has suffered this harm to be done to the stranger, or that he afforded a retreat to the criminal.

XXI. In the first case it must be laid down as a maxim, that a sovereign, who knowing the crimes of the subjects, as for example, that they practise piracy on strangers; and being also able and obliged to hinder it, does not hinder it, renders himself criminal, because he has consented to the bad action, the commission of which he has permitted, and consequently furnished a just reason of war.

XXII. The two conditions abovementioned, I mean the knowledge and sufferance of the sovereign, are absolutely

ſolutely neceſſary, the one not being ſufficient without the other, to communicate any ſhare in the guilt. Now it is preſumed, that a ſovereign knows what his ſubjects openly and frequently commit; and as to his power of hindering the evil, this likewiſe is always preſumed, unleſs the want of it be clearly proved.

XXIII. The other way, in which a ſovereign renders himſelf guilty of the murder of another, is by allowing a retreat and admittance to the criminal, and ſcreening him from puniſhment. Puffendorf pretends, that if we are obliged to deliver up a criminal who takes ſhelter among us, it is rather in virtue of ſome treaty on this head, than in conſequence of a common and indiſpenſable obligation.

XXIV. But Puffendorf, I think, has, without ſufficient reaſons, abandoned the opinion of Grotius, which ſeems to be better founded. The principles of the latter, in regard to the preſent queſtion, may be reduced to theſe following.

1. Since the eſtabliſhment of civil ſocieties, the right of puniſhing offences againſt human ſociety, which every particular perſon, if not chargeable himſelf with any ſuch crime, had in the ſtate of nature, has been transferred to the reſpective ſovereigns, ſo that they alone have the privilege of puniſhing, as they think proper, thoſe faults of their ſubjects, which properly intereſt the commonwealth.

XXV. 2. But this right of puniſhing offences againſt human ſociety, is not ſo excluſively theirs, but that either public bodies, or their governors have a right to procure the puniſhment of them in the ſame manner, as the laws of a particular ſtate allow every one an action for a certain crime.

XXVI. 3. And much more have they this right, with reſpect to crimes, by which they are directly offended, and with regard to which they have a perfect right of puniſhing, for the ſupport of their honour and ſafety. In theſe circumſtances, therefore, the ſtate, or the governor of the ſtate, where the criminal retires, ought not to obſtruct the right which belongs to the other power.

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XXIII. The other way, in which a ſovereign renders himſelf guilty of the murder of another, is by allowing a retreat and admittance to the criminal, and ſcreening him from puniſhment. Puffendorf pretends, that if we are obliged to deliver up a criminal who takes ſhelter among us, it is rather in virtue of ſome treaty on this head, than in conſequence of a common and indiſpenſable obligation.

XXIV. But Puffendorf, I think, has, without ſufficient reaſons, abandoned the opinion of Grotius, which ſeems to be better founded. The principles of the latter, in regard to the preſent queſtion, may be reduced to theſe following.

1. Since the eſtabliſhment of civil ſocieties, the right of puniſhing offences againſt human ſociety, which every particular perſon, if not chargeable himſelf with any ſuch crime, had in the ſtate of nature, has been transferred to the reſpective ſovereigns, ſo that they alone have the privilege of puniſhing, as they think proper, thoſe faults of their ſubjects, which properly intereſt the commonwealth.

XXV. 2. But this right of puniſhing offences againſt human ſociety, is not ſo excluſively theirs, but that either public bodies, or their governors have a right to procure the puniſhment of them in the ſame manner, as the laws of a particular ſtate allow every one an action for a certain crime.

XXVI. 3. And much more have they this right, with reſpect to crimes, by which they are directly offended, and with regard to which they have a perfect right of puniſhing, for the ſupport of their honour and ſafety. In theſe circumſtances, therefore, the ſtate, or the governor of the ſtate, where the criminal retires, ought not to obſtruct the right which belongs to the other power.

XXVII. 4. Now as one prince does not generally permit another to ſend armed men into his territories, upon the ſcore of exacting puniſhment, (for this would indeed be accompanied with terrible inconveniencies) it is reaſonable the ſovereign, in whoſe dominions the convicted offender lives, or has taken ſhelter, ſhould either puniſh the criminal according to his demerits, or elſe deliver him up, to be puniſhed at the diſcretion of the injured ſovereign. This is that delivering up, of which we have ſo many examples in hiſtory.

XXVIII. 5. The principles here laid down, concerning the obligation of puniſhing or delivering up, regard not only the criminals who have always been ſubjects of the government they now live under, but alſo thoſe who, after the commiſſion of ſome crime, have taken ſhelter in the country.

XXIX. 6. In fine, we muſt obſerve that the right of demanding fugitive delinquents to puniſhment, has not for ſome ages laſt paſt been inſiſted upon by ſovereigns, in moſt parts of *Europe*, except in crimes againſt the ſtate, or thoſe of a very heinous nature. As for leſſer faults, they are connived at on both ſides, unleſs it is otherwiſe agreed on by ſome particular treaty.

XXX. Beſides all theſe kinds of war, hitherto mentioned, we may alſo diſtinguiſh them into *perfect* and *imperfect* wars. A perfect war, is that which entirely, and in all reſpects, breaks the peace and tranquillity of the ſtate, and lays a foundation for all poſſible acts of hoſtility. An imperfect war, on the contrary, is that which does not break the peace in all reſpects, but only in certain particulars, the tranquillity of the ſtate ſubſiſting in other affairs uninterrupted.

XXXI. This laſt ſpecies of war is generally called repriſals, of the nature of which we ſhall give here ſome account. By repriſals then, we mean *that imperfect kind of war, or thoſe acts of hoſtility which ſovereigns exerciſe againſt each other, or, with their conſent, their ſubjects, by ſeizing the perſons or effects of the ſubjects of a foreign commonwealth, that refuſeth to do us juſtice; with a view to obtain ſecurity, and to recover*

cover our right, and in case of refusal, to do justice to ourselves, without any other interruption of the public tranquillity.

XXXII. Grotius pretends, that reprisals are not founded on the law of nature and necessity, but only on a kind of arbitrary law of nations, by which most of them have agreed, that the goods belonging to the subjects of a foreign state should be a pledge or security, as it were, for what that state, or the governor of it, might owe us, either directly, and in their own names, or by rendering themselves responsible for the actions of others, by refusing to administer justice.

XXXIII. But this is far from being an arbitrary right, founded upon any pretended law of nations, whose existence we cannot prove, and where all is reduced to a custom, more or less extended, but which, in itself, has never the force of a law. The right we here speak of, is a consequence of the constitution of civil societies, and an application of the maxims of the law of nature to that constitution.

XXXIV. In the independence of the state of nature, and before there was any civil government, if a person had been injured, he could come upon those only who had done the wrong, or upon their accomplices; because there was then no tie betweeen men, in virtue of which a person might be deemed to have consented, in some manner, to what others did even without his participation.

XXXV. But since civil societies have been formed; that is to say, communities, whose members are all united together, for their common defence, there has necessarily arisen from thence a conjunction of interests and wills; which is the reason, that as the society, or the powers which govern it, engage to defend each other against the insults of every other, whether citizen or foreigner; so every individual may be also deemed to have engaged to answer for what the society, of which he is a member, or the powers which govern it do or owe.

XXXVI. No

XXXVI. No human eſtabliſhment, no connection into which mankind enter, can ſuperſede the obligation of that general and inviolable law of nature, *that the damage we have done to another ſhould be repaired*; except thoſe who are thereby expoſed to ſuffer, have manifeſtly renounced their right of demanding reparation. And when ſuch eſtabliſhments hinder, in certain reſpects, thoſe who are injured, from obtaining ſatisfaction ſo eaſily as they might without them, this difficulty muſt be made up, by furniſhing the perſons intereſted with all the other poſſible methods of doing themſelves juſtice.

XXXVII. Now it is certain that ſocieties, or the powers which govern them, by being armed with the force of the whole body, are ſometimes encouraged to laugh at ſtrangers with impunity, who come to demand ſomething which is their due; and that every ſubject contributes, one way or other, to enable them to act in this manner; ſo that he may be ſuppoſed to conſent to it in ſome meaſure. But if he does not in reality conſent, there is, after all, no other manner of facilitating, to injured ſtrangers the proſecution of their rights, which is become difficult by the united force of the whole body, than to authoriſe them to come upon all thoſe who are members of it.

XXXVIII. Let us therefore conclude, that in conſequence of the conſtitution of civil ſocieties, every ſubject, ſo long as he continues ſuch, is reſponſible to ſtrangers for what the ſociety, or he who governs it, do or owe: with this clauſe, however, that he may demand indemnification, when there is any fault or injuſtice on the part of his ſuperiors. But if it ſhould be any man's misfortune to be diſappointed of this indemnification, he muſt look upon it as one of thoſe inconveniencies which, in a civil ſtate, the conſtitution of human affairs renders almoſt inevitable. If to all theſe we add the reaſons alleged by Grotius, we ſhall plainly ſee, that there is no neceſſity for ſuppoſing here a tacit conſent of the people to found the right of repriſals.

XXXIX. As repriſals are an act of hoſtility, and often the prelude or forerunner of a compleat and perfect

ſect war, it is plain that none but the ſovereign can lawfully uſe this right, and that the ſubjects can make no repriſals but by his order and authority.

XL. Beſides, it is proper that the wrong or injuſtice done us, and which occaſions the repriſals, ſhould be clear and evident, and that the thing in diſpute be of great conſequence. For if the wrong is dubious, or of no importance, it would be equally unjuſt and dangerous to proceed to this extremity, and to expoſe ourſelves to all the calamities of an open war. Neither ought we to come to repriſals, before we have tried, by the ordinary means, to obtain juſtice for the injury committed. For this purpoſe we muſt apply to the prince, whoſe ſubject has done us the injuſtice; and if the prince takes no notice, or refuſes ſatisfaction, we may then make repriſals, in order to obtain it.

XLI. In a word, we muſt not have recourſe to repriſals, except when all the ordinary means of obtaining our due have failed; ſo that, for inſtance, if a ſubordinate magiſtrate has refuſed us the juſtice we aſk, we are not permitted to uſe repriſals before we apply to the ſovereign himſelf, who will perhaps do us juſtice. In theſe circumſtances, we may therefore either detain the ſubjects of a foreign ſtate, if they detain ours; or we may ſeize their goods and effects. But whatever juſt reaſons we may have to make repriſals, we can never directly, and for that reaſon alone, put thoſe to death whom we have ſeized upon, but only ſecure them, and not uſe them ill, till we have obtained ſatisfaction: ſo that, during all that time, they are to be conſidered as hoſtages.

XLII. As for the goods ſeized by right of repriſals, we muſt take care of them till the time, in which ſatisfaction ought to be made, is expired; after which we may adjudge them to the creditor, or ſell them for the payment of the debt; returning to him, from whom they were taken, the overplus, when all charges are deducted.

XLIII. We muſt alſo obſerve, that it is not permitted to uſe repriſals, except with regard to ſubjects, properly ſo called, and their effects; for as to ſtrangers,

gers, who do not paſs through a country, or only come to make a ſhort ſtay in it, they have not a ſufficient connection with the ſtate, of which they are only members but for a time, and in an imperfect manner; ſo that we cannot indemnify ourſelves by them, for the loſs we have ſuſtained by any original and perpetual ſubject, and by the refuſal of the ſovereign to render us juſtice. We muſt farther except ambaſſadors, who are ſacred perſons even in the height of war. But as for women, clergymen, men of letters, &c. the law of nature grants them no privilege in this caſe, if they have not otherwiſe acquired it by virtue of ſome treaty.

XLIV. Laſtly, ſome political writers diſtinguiſh thoſe wars which are carried on between two or more ſovereigns, from thoſe of the ſubjects againſt their governors. But it is plain, that when ſubjects take up arms againſt their ſovereign, they either do it for juſt reaſons according to the principles eſtabliſhed in this work; or without any juſt and lawful cauſe. In this laſt caſe, it is rather a revolt or inſurrection, than a war, properly ſo called. But if the ſubjects have juſt reaſon to reſiſt their ſovereign, it is ſtrictly a war; ſince, in this caſe, there are neither ſovereign nor ſubjects, all dependance and obligation having ceaſed. The two oppoſite parties are then in a ſtate of nature and equality, trying to obtain juſtice by their own proper ſtrength, which conſtitutes what we underſtand properly by the term *war*.

CHAP. IV.

Of thoſe things which ought to precede war.

I. HOWEVER juſt reaſon we may have to make war, yet as it inevitably brings along with it an incredible number of calamities, and often injuſtices, it is certain that we ought not to proceed too eaſily to a dangerous extremity, which may perhaps prove fatal to the conqueror himſelf.

II. The following are the meaſures which prudence directs ſovereigns to obſerve in theſe circumſtances.

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1. Supposing the reason of the war just in itself, yet the dispute ought to be about something of great consequence to us; since it is better even to relinquish part of our right, when the thing is not considerable, than to have recourse to arms to defend it.

2. We ought to have, at least, some probable appearance of success; for it would be a criminal temerity, and a real folly, wantonly to expose ourselves to certain destruction, and to run into a greater, in order to avoid a lesser evil.

3. Lastly, there should be a real necessity for taking up arms; that is, we ought not to have recourse to force, but when we can employ no milder method of recovering our right, or of defending ourselves from the evils with which we are menaced.

III. These measures are agreeable not only to the principles of prudence, but also to the fundamental maxims of sociability, and the love of peace; maxims of no less force, with respect to nations, than individuals. By these a sovereign must therefore be necessarily directed; even the justice of the government obliges him to it, in consequence of the very nature and end of authority. For as he ought always to take particular care of the state, and of his subjects, consequently he should not expose them to all the evils with which war is attended, except in the last extremity, and when there is no other expedient left but that of arms.

IV. It is not therefore sufficient that the war is just in itself, with respect to the enemy; it must also be so with respect to ourselves, and our subjects. *Plutarch* informs us, " that among the antient Romans, when " the Feciales had determined that a war might be " justly undertaken, the senate afterwards examined " whether it would be advantageous to engage in it."

V. Now among the methods of deciding differences between nations without a war, there are three most considerable. The first is an amicable conference between the contending parties; with respect to which *Cicero* judiciously observes, " that this method of " terminating a difference by a discussion of reasons

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" on both ſides, is peculiarly agreeable to the nature " of man; that force belongs to brutes, and that we " never ought to have recourſe to it, but when we " cannot redreſs our grievances by any other method."

VI. The ſecond way of terminating a difference between thoſe who have not a common judge, is to put the matter to arbitration. The more potent indeed often neglect this method, but it ought certainly to be followed by thoſe who have any regard to juſtice and peace; and it is a way that has been taken by great princes and people.

VII. The third method, in fine, which may be ſometimes uſed with ſucceſs, is that of caſting lots. I ſay, we may ſometimes uſe this way; for it is not always lawful to refer the iſſue of a difference, or of a war to the deciſion of lots. This method cannot be taken juſt as we think proper, except when the diſpute is about a thing, in which we have fully a propriety, and which we may renounce whenever we pleaſe. But in general, the obligation of the ſovereign to defend the lives, the honour, the religion, and ſuch like of the ſubjects, as alſo his obligation to maintain the honour of the ſtate, are of too ſtrong a nature to ſuffer him to renounce the moſt natural and probable means of his own, and others ſecurity, and to refer immediately his caſe to chance, which in its nature is entirely uncertain.

VIII. But this excepted, if upon due examination he who has been unjuſtly attacked, finds himſelf ſo weak, that he has no probability of making any conſiderable reſiſtance, he may reaſonably decide the difference by the way of lot, in order to avoid a certain, by expoſing himſelf to an uncertain danger; which, in this caſe, is the leaſt of two inevitable evils.

IX. There is alſo another method, which has ſome relation to lots. This conſiſts in ſingle combats, which have often been uſed to terminate ſuch differences as were likely to cauſe a war between two nations. And indeed, to prevent a war, and its concomitant evils, I ſee no reaſon that can hinder us from referring mat-

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ters to a combat between a certain number of men agreed upon by both parties. Hiſtory furniſhes us with ſeveral examples of this kind, as that of *Turnus* and *Æneas*, *Menelaus* and *Paris*, the *Horatii* and the *Curiatii*.

X. It is a queſtion of ſome importance, to know whether it is lawful thus to expoſe the intereſt of a whole ſtate to the fate of theſe combats. It appears on the one hand, that by that means we ſpare the effuſion of human blood, and ſhorten the calamities of war; and, on the other hand, it promiſeth fairer, and looks like a better venture, to ſtand the ſhock even of a bloody war, than by one blow to riſque the liberty and ſafety of the ſtate by a deciſive combat; ſince, after the loſs of one or two battles, the war may be ſet on foot again, and a third perhaps may prove ſucceſsful.

XI. However, it may be ſaid, that if otherwiſe there is no proſpect of making a good end of a war, and if the liberty and ſafety of the ſtate are at ſtake, there ſeems to be no reaſon againſt taking this ſtep, as the leaſt of two evils.

XII. Grotius, in examining this queſtion, pretends that theſe combats are not reconcileable to internal juſtice, though they are approved by the external right of nations; and that private perſons cannot innocently expoſe their lives, of their own accord, to the hazard of a ſingle combat, though ſuch a combat may be innocently permitted by the ſtate or ſovereign, to prevent greater miſchiefs. But it has been juſtly obſerved, that the arguments made uſe of by this great man, to ſupport his opinion, either prove nothing at all, or prove, at the ſame time, that it is never lawful to venture one's life in any combat whatever.

XIII. We may even affirm, that Grotius is not very conſiſtent with himſelf, ſince he permits this kind of combats, when otherwiſe there is the greateſt probability that he who proſecutes an unjuſt cauſe will be victorious, and thereby deſtroy a great number of innocent perſons: For this exception evinces that the thing

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is not bad in itself, and that all the harm, which can be in this case, consists in exposing our own, or the life of others, without necessity, to the hazard of a single combat. The desire of terminating, or preventing a war, which has always terrible consequences, even to the victorious, is so commendable, that it may excuse, if not intirely justify those, who engage either themselves or others even imprudently in a combat of this kind. Be this as it may, it is certain that in such a case, those who combat by the order of the state, are intirely innocent; for they are no more obliged to examine whether the state acts prudently or not, than when they are sent upon an assault, or to fight a pitched battle.

XIV. We must however observe, that it was a foolish superstition in those people who looked upon a set combat as a lawful method of determining all differences, even between individuals, from a persuasion that the Deity gave always the victory to the good cause; for which reason they called this kind of combats *the judgments of God.*

XV. But if, after having used all our endeavours to terminate differences in an amicable manner, there remains no further hope, and we are absolutely constrained to undertake a war, we ought first to declare it in form to the enemy.

XVI. This declaration of war considered in itself, and independently of the particular formalities of each people, does not simply belong to the law of nations, taking this word in the sense of Grotius, but to the law of nature itself. Indeed prudence, and natural equity, equally require, that before we take up arms against any state, we should try all amicable methods, to avoid coming to such an extremity. We ought then to summon him, who has injured us, to make a speedy satisfaction, that we may see whether he will not have regard to himself, and not put us to the hard necessity of pursuing our right by the force of arms.

XVII. From what has been said it follows, that this declaration takes place only in *offensive wars*; for when we are actually attacked, that alone gives us reason

reason to believe that the enemy is resolved not to listen to an accommodation.

XVIII. From thence it also follows, that we ought not to commit acts of hostility immediately upon declaring war, but we should wait, so long at least as we can without doing ourselves a prejudice, until he who has done us the injury plainly refuses to give us satisfaction, and has put himself in condition to receive us with bravery and resolution; otherwise the declaration of war would be only a vain ceremony. For we ought to neglect no means to convince all the world, and even the enemy himself, that it is only absolute necessity that obliges us to take up arms, for the recovery or defence of our just rights; after having tried every other method, and given the enemy full time to consider.

XIX. Declarations of war are distinguished into *conditional* and *absolute*. The *conditional* is that which is joined with a solemn demand of restitution, and with this condition, that if the injury is not repaired, we shall do ourselves justice by arms. The *absolute* is that which includes no condition, and by which we absolutely renounce the friendship and society of him against whom we declare war. But every declaration of war, in whatever manner it be made, is of its own nature conditional *; for we ought always to be disposed to accept of a reasonable satisfaction, as soon as the enemy offers it; and on this account some writers reject this distinction of the declaration of war into conditional and absolute. But it may nevertheless be maintained, by supposing that he, against whom war is declared purely and simply, has already shewn, that he had no design to spare us the necessity of taking up arms against him. So far therefore the declaration may, at least as to the form of it, be pure and simple, without any prejudice to the disposition in which we ought always to be, if the enemy will hearken to reason: but this relates to the conclusion, rather than the commencement of war; to the latter of which the distinction of conditional and absolute declarations properly belongs.

XX. As

* See above, Numb. XVIII.

XX. As ſoon as war has been declared againſt a ſovereign, it is preſumed to be declared at the ſame time not only againſt all his ſubjects, who, in conjunction with him, form one moral perſon; but alſo againſt all thoſe who ſhall afterwards join him, and who are, with reſpect to the principal enemy, to be looked upon only as acceſſories, or adherents.

XXI. As to the formalities obſerved by different nations in declaring war, they are all arbitrary in themſelves. It is therefore a matter of indifference, whether the declaration is made by envoys, heralds, or letters; whether to the ſovereign in perſon, or to his ſubjects, provided the ſovereign cannot plead ignorance of it.

XXII. With reſpect to the reaſons why a ſolemn denunciation was required unto ſuch a war, as by the law of nations is called juſt; Grotius pretends it was, that the people might be aſſured that the war was not undertaken by a private authority, but by the conſent of one or other of the nations, or of their ſovereigns.

XXIII. But this reaſon of Grotius ſeems to be inſufficient; for are we more aſſured that the war is made by a public authority, when a herald, for inſtance, comes to declare it with certain ceremonies, than we ſhould be, when we ſee an army upon our frontiers, commanded by ſome principal perſon of the ſtate, and ready to enter the country? Might it not, on the contrary, more eaſily happen that a perſon, or ſome few perſons, ſhould aſſume the character of heralds than that a ſingle man ſhould, by his own authority, raiſe an army, and march at the head of it to the frontiers, without the ſovereign's knowledge?

XXIV. The truth is, the principal end of declarations of war, or at leaſt what has occaſioned them to be eſtabliſhed, is to let all the world know that there was juſt reaſon to take up arms, and to ſignify to the enemy himſelf, that it had been, and ſtill was, in his power to avoid it. The declarations of war, and the manifeſtoes publiſhed by princes, are marks of the due

reſpect

respect they have for each other, and for the society in general, to which by this means they give, in some measure, an account of their conduct, in order to obtain their approbation. This appears particularly by the manner in which the Romans made these denunciations. The person sent for this purpose took the gods to witness, that the nation, against whom they had declared war, had acted unjustly, by refusing to comply with what law and justice required.

XXV. Lastly, it is here to be observed, that we ought not to confound the *declaration* with the *publication* of war. This last is made in favour of the subjects of the prince who declares the war, and to inform them that they are henceforth to look upon such or such a nation as their enemies, and to take their measures accordingly.

CHAP. V.

General rules to know what is allowable in war.

I. IT is not enough that a war be undertaken with justice, or for a lawful reason, and that we observe the other conditions hitherto mentioned; but we ought also, in the prosecution of it, to be directed by the principles of justice and humanity, and not to carry the liberties of hostility beyond these bounds.

II. Grotius, in treating this subject, establishes three general rules, as so many principles, which serve to explain the extent of the rights of war.

III. The *first* is, that every thing which has a connection morally necessary with the end of the war, is permitted, and no more. For it would be to no purpose to have a right to do a thing, if we could not make use of the necessary means to bring it about. But, at the same time, it would not be just, that, under a pretence of defending our right, we should think every thing lawful, and should proceed, without any manner of necessity, to the last extremity.

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IV. The *second rule*. The right we have against an enemy, and which we purſue by arms, ought not to be conſidered only with reſpect to the cauſe which gave riſe to the war, but alſo with reſpect to the freſh cauſes which happen afterwards, during the courſe of the war: Juſt as at law, one of the parties often acquires ſome new right before the ending of the ſuit. This is the foundation of the right we have to act againſt thoſe who join our enemies, during the courſe of the war, whether they are his dependents or not.

V. The *third rule*, in fine, is, that there are a great many things, which though otherwiſe unlawful, are yet permitted in war, becauſe they are inevitable conſequences of it, and happen contrary to our intention, and without any formal deſign. Otherwiſe there would never be any way of making war without injuſtice; and the moſt innocent actions would be looked upon as unjuſt; ſince there are but few, from which ſome evil may not accidently ariſe, contrary to the intention of the agent.

VI. Thus, for example, in recovering our own, if juſt ſo much as is preciſely our due cannot be had, we have a right to take more, but under the obligation of returning the value of the overplus Thus we may attack a ſhip full of pirates, though there may be women, or children, or other innocent perſons on board, who muſt needs be expoſed to the danger of being involved in the ruin of thoſe whom we may juſtly deſtroy.

VII. This is the extent of the right we have againſt an enemy, in conſequence of a ſtate of war. By a ſtate of war, that of ſociety is aboliſhed; ſo that whoever declares himſelf my enemy, gives me a liberty to uſe violence againſt him *in infinitum*, or as far as I pleaſe; and that not only till I have repulſed the danger that threatened me, or till I have recovered, or forced from him, what he either unjuſtly deprived me of, or refuſed to pay me, but till I have further obliged him to give me good ſecurity for the future. It is not therefore always unjuſt to return a greater evil for a leſs.

VIII. But

VIII. But it is alſo to be obſerved, that though theſe maxims are true, according to the ſtrict right of war, yet the law of humanity fixes bounds to this right. That law directs us to conſider, not only whether ſuch or ſuch acts of hoſtility may without injury, be committed againſt an enemy; but alſo, whether they are worthy of a humane or generous conqueror. Thus, as far as is poſſible, and our own defence and future ſecurity will permit, we muſt moderate the evils we inflict upon an enemy, by the principles of humanity.

IX. As to the manner of acting lawfully againſt an enemy, it is evident that violence and terror are the proper characteriſtics of war, and the method moſt commonly uſed. Yet it is alſo lawful to employ ſtratagem and artifice, provided it be without treachery, or breach of promiſe. Thus we may deceive an enemy by falſe news, and fictitious relations, but we ought never to violate our compacts or engagements with him, as we ſhall ſhew more particularly hereafter.

X. By this we may judge of the right of ſtratagems; neither is it to be doubted but we may innocently uſe fraud and artifice, wherever it is lawful to have recourſe to violence and force. The firſt means have even the advantage over the laſt, in this, that they are attended by fewer evils, and preſerve the lives of a great many innocent people.

XI. It is true, ſome nations have rejected the uſe of ſtratagem and deceit in war; this, however, was not becauſe they thought them unjuſt, but from a certain magnanimity, and often from a confidence in their own ſtrength. The Romans, until very near the end of the ſecond Punic war, thought it a point of honour to uſe no ſtratagem in war.

XII. Theſe are the principles by which we may judge to what degree the liberties of hoſtility may be carried. To which let us add, that moſt nations have fixed no bounds to the rights which the law of nature gives us to act againſt an enemy: and the truth is, it is very difficult to determine preciſely, how far it is proper to extend acts of hoſtility even in the moſt legitimate wars, in defence of our perſons, or for the repa-

ration of damages, or for obtaining caution for the future; especially as those, who engage in war, give each other, by a kind of tacit agreement, an entire liberty to moderate or augment the violence of arms, and to exercise all acts of hostility, as each shall think proper.

XIII. And here it is to be observed, that though generals usually punish their soldiers, who have carried acts of hostility beyond the orders prescribed; yet this is not because they suppose the enemy is injured, but because it is necessary the general's orders should be obeyed, and that military discipline should be strictly observed.

XIV. It is also in consequence of these principles, that those who, in a just and solemn war, have pushed slaughter and plunder beyond what the law of nature permits, are not generally looked upon as murderers or robbers, nor punished as such. The custom of nations is to leave this point to the conscience of the persons engaged in war, rather than involve themselves in troublesome broils, by taking upon them to condemn either party.

XV. It may be even said, that this custom of nations is founded on the principles of the law of nature. Let us suppose, that in the independence of the state of nature, thirty heads of families, inhabitants of the same country, should have entered into a league to attack or repulse a body, composed of other heads of families: I say, that neither during that war, nor after it is finished, those of the same country, or elsewhere, who had not joined the league of either side, ought, or could punish, as murderers or robbers, any of the two parties who should happen to fall into their hands.

XVI. They could not do it during the war; for that would be espousing the quarrel of one of the parties; and since they continued neuter in the beginning, they had clearly renounced the right of interfering with what should pass in the war: much less could they intermeddle after the war is over; because, as the war could not be ended without some accommodation or treaty of peace, the parties concerned were reciprocally discharged from all the evils they had done to each other.

XVII. The

XVII. The good of ſociety alſo required that we ſhould follow theſe maxims. For if thoſe, who continued neuter, had ſtill been authoriſed to take cognizance of the acts of hoſtility, exerciſed in a foreign war, and conſequently to puniſh ſuch as they believe to have committed any injuſtice, and to take up arms on that account; inſtead of one war, ſeveral might have ariſen, and proved a ſource of broils and troubles. The more wars became frequent, the more neceſſary it was for the tranquillity of mankind, not to eſpouſe raſhly other people's quarrels. The eſtabliſhment of civil ſocieties only rendered the practice of theſe rules more neceſſary; becauſe wars then became, if not more frequent, at leaſt more extenſive, and attended with a greater number of evils.

XVIII. Laſtly, it is to be obſerved, that all acts of hoſtility, which can be lawfully committed againſt an enemy, may be exerciſed either in his territories, or ours, in places that belong to no body, or at ſea.

XIX. This does not hold good in a neutral country; that is to ſay, whoſe ſovereign has taken no ſhare in the war. In ſuch countries, we cannot lawfully exerciſe any acts of hoſtility, neither on the perſons of the enemy, nor on their effects; not in virtue of any right of the enemy themſelves, but through a juſt reſpect to the ſovereign, who having taken neither ſide, lays us under a neceſſity of reſpecting his juriſdiction, and of forbearing to commit any acts of violence in his territories. To this we may add, that the ſovereign, by continuing neuter, has tacitly engaged not to ſuffer either party to commit any acts of hoſtility within his dominions.

CHAP. VI.

Of the rights which war gives over the perſons of the enemy, and of their extent and bounds.

I. WE ſhall now enter into the particulars of the different rights which war gives over the enemy's perſon and goods; and to begin with the former.

I. It is certain that we may lawfully kill an enemy; I ſay lawfully, not only according to the terms of external juſtice, which paſſes for ſuch among all nations, but alſo according to internal juſtice, and the laws of conſcience. Indeed the end of war neceſſarily requires that we ſhould have this power, otherwiſe it would be in vain to take up arms, and the law of nature would permit it to no purpoſe.

II. If we conſulted only the cuſtom of countries, and what Grotius calls the *law of nations*, this liberty of killing an enemy would extend very far; we might ſay that it had no bounds, and might even be exerciſed on innocent perſons. However, though it be certain that war is attended with numberleſs evils, which in themſelves are acts of injuſtice, and real cruelty, but, under particular circumſtances, ought rather to be conſidered as unavoidable misfortunes; it is nevertheleſs true, that the right which war gives over the perſon and life of an enemy has its bounds, and that there are meaſures to be obſerved, which cannot be innocently neglected.

III. In general we ought always to be directed by the principles eſtabliſhed in the preceding chapter, in judging of the degrees to which the liberties of hoſtility may be carried. The power we have of taking away the life of an enemy, is not therefore unlimited; for if we can attain the legitimate end of war, that is, if we can defend our lives and properties, aſſert our rights, and recover ſatisfaction for damages ſuſtained, and good ſureties for the future, without taking away the life of the enemy, it is certain that juſtice and humanity directs us to forbear it, and not to ſhed human blood neceſſarily.

IV. It is true, in the application of theſe rules to particular caſes, it is ſometimes very difficult, not to ſay impoſſible, to fix preciſely their proper extent and bounds; but i is certain, at leaſt, that we ought to come as near to them as poſſible, without prejudicing our real intereſts. Let us apply theſe principles to particular caſes.

V. 1. It

V. 1. It is often disputed, whether the right of killing an enemy regards only those who are actually in arms; or whether it extends indifferently to all those in the enemy's country, subjects or foreigners? My answer is, that with respect to those who are subjects, the point is incontestable. These are the principal enemies, and we may exercise all acts of hostility against them, by virtue of the state of war.

VI. As to strangers, those who settle in the enemy's country after a war is begun, of which they had previous notice, may justly be looked upon as enemies, and treated as such. But in regard to such as went thither before the war, justice and humanity require that we should give them a reasonable time to retire; and if they neglect that opportunity, they are accounted enemies.

VII. 2. As to old men, women and children, it is certain that the right of war does not, of itself, require that we should push hostilities so far as to kill them; it is therefore a barbarous cruelty to do so. I say, that the end of war does not require this of itself; but if women, for instance, exercise acts of hostility; if, forgetting the weakness of their sex, they usurp the offices of men, and take up arms against us, then we are certainly excused in availing ourselves of the rights of war against them. It may also be said, that when the heat of action hurries the soldiers, as it were, in spite of themselves, and against the orders of their superiors, to commit these acts of inhumanity; as for example, at the siege of a town, which, by an obstinate resistance, has irritated the troops; we ought to look upon these evils rather as misfortunes, and as the unavoidable consequences of war, than as crimes that deserve to be punished.

VIII. 3. We must reason almost in the same manner, with respect to prisoners of war. We cannot, generally speaking, put them to death, without being guilty of cruelty. I say generally speaking; for there may be cases of necessity so pressing, that the care of our own preservation obliges us to proceed to extremities,

ties, which in any other circumſtances than theſe would be abſolutely criminal.

IX. In general, even the laws of war require that we ſhould abſtain from ſlaughter as much as poſſible, and that we ſhould not ſhed human blood without neceſſity. We ought not, therefore, directly and deliberately to kill priſoners of war, nor thoſe who aſk quarter, or ſurrender themſelves, much leſs old men, women and children; and in general, all thoſe whoſe age and profeſſion render them unfit to carry arms, and who have no other ſhare in the war, than their being in the country, or party of the enemy. We may alſo eaſily conceive, that the rights of war do not extend ſo far, as to authoriſe the outrages committed upon the honour and chaſtity of women; for this contributes nothing either to our defence or ſafety, or to the ſupport of our rights, but only ſerves to ſatisfy the brutality of the ſoldiers *.

X. Again, a queſtion is here moved, whether in caſes, where it is lawful to kill the enemy, we may not for that purpoſe, uſe all kinds of means indifferently? I anſwer, that to conſider the thing in itſelf, and in an abſtract manner, it is no matter which way we kill an enemy, whether by open force, or by fraud and ſtratagem, by the ſword, or by poiſon.

XI. It is however certain that according to the ideas and cuſtoms of civilized nations, it is looked upon as a criminal cowardice, not only to cauſe any poiſonous draught to be given to the enemy, but alſo to poiſon wells, fountains, ſprings, rivers, arrows, darts, bullets, or other weapons uſed againſt him. Now it is ſufficient, that this cuſtom of looking on the uſe of poiſon as criminal, is received among the nations at variance with us, to ſuppoſe we comply with it, when, in the beginning of war, we do not declare that we are at liberty to act otherwiſe, and leave it to our enemy's option to do the ſame.

XII. We may ſo much the more ſuppoſe this tacit agreement, as humanity, and the intereſt of both parties equally require it; eſpecially ſince wars are become ſo

* Grotius, lib. iii. cap. iv. ſect. 19.

so frequent, and are often undertaken on so slight occasions; and since the human mind, ingenious in inventing the means to hurt, has so greatly multiplied those which are authorised by custom, and looked upon as honest. Besides, it is beyond all doubt, that when we can obtain the same end by milder and more humane measures, which preserve the lives of many, and particularly of those in whose preservation human society is interested, humanity directs that we should take this course.

XIII. These are therefore just precautions, which men ought to follow for their own advantage. It is for the common benefit of mankind, that dangers should not be augmented without end. In particular, the society is interested in the preservation of the lives of kings, generals of armies, and other persons of the first rank, on whose safety that of societies generally depends. For if the lives of these persons are in greater safety than those of others, when attacked only by arms; they are, on the other hand, more in danger of poison, &c. and they would be every day exposed to perish in this manner, if they were not protected by a regard to some sort of law, or established custom.

XIV. Let us add, in fine, that all nations that ever pretended to justice and generosity, have always followed these maxims; and the Roman Consuls, in a letter they wrote to *Pyrrhus*, informing him that one of his people had offered to poison him, said, that it was the interest of all nations not to set such examples.

XV. It is likewise disputed whether we may lawfully send a person to assassinate an enemy? I answer, 1. That he who for this purpose employs only some of his own people, may do it justly. When it is lawful to kill an enemy, it is no matter whether those employed are many or few in number. Six hundred Lacedæmonians, with *Leonidas*, entered the enemy's camp, and went directly to the Persian king (*Xerxes*'s) pavilion; now a smaller number might certainly have done the same. The famous attempt of *Mucius Scævola* is commended by all antiquity; and *Porsenna* himself,

himſelf, whoſe life was aimed at, acknowledged this to be an act of great valour.

XVI. 2. But it is not ſo eaſy to determine whether we may for this purpoſe employ aſſaſſins, who by undertaking this taſk muſt be guilty of falſehood and treaſon; ſuch as ſubjects with regard to their ſovereign and ſoldiers to their general. In this reſpect there are in my opinion, two points to be diſtinguiſhed. Firſt, whether we do any wrong even to the enemy himſelf, againſt whom we employ traitors; and ſecondly, whether ſuppoſing we do him no wrong, we commit nevertheleſs a bad action.

XVII. 3. As for the firſt queſtion, to conſider the thing in itſelf, and according to the rigorous law of war, it ſeems, that admitting the war to be juſt, no wrong is done to the enemy, whether we take advantage of the opportunity of a traitor who freely offers himſelf, or whether we ſeek for it, and bring it about ourſelves.

XVIII. The ſtate of war, into which the enemy has put himſelf, and which it was in his own power to prevent, permits of itſelf every method that can be uſed againſt him; ſo that he has no reaſon to complain of whatever we do. Beſides, we are no more obliged, ſtrictly ſpeaking, to reſpect the right he has over his ſubjects, and the fidelity they owe him as ſuch, than their lives and fortunes, of which we may certainly deprive them by the right of war.

XIX. 4. And yet I believe that this is not ſufficient to render an aſſaſſination, in theſe circumſtances, entirely innocent. A ſovereign, who has the leaſt tenderneſs of conſcience, and is convinced of the juſtice of his cauſe, will not endeavour to find out perfidious methods to ſubdue his enemy, nor be ſo ready to embrace thoſe which may preſent themſelves to him. The juſt confidence he has in the protection of heaven, the horror he conceives at the traitor's perfidy, the dread of becoming his accomplice, and of ſetting an example, which may fall again on himſelf and others, will make him deſpiſe and reject all the advantage he might propoſe to himſelf from ſuch a means.

XX. 5. Let

XX. 5. Let us alſo add, that ſuch a means cannot always be looked upon as entirely innocent, even with reſpect to the perſon who employs it. The ſtate of hoſtility, which ſuperſedes the intercourſe of good offices, and authoriſes to hurt, does not therefore diſſolve all ties of humanity, nor remove our obligation to avoid, as much as poſſible, the giving room for ſome bad action of the enemy, or his people; eſpecially thoſe, who of themſelves have had no part in the occaſion of the war. Now every traitor certainly commits an action equally ſhameful and criminal.

XXI. We muſt therefore conclude with Grotius, that we can never in conſcience ſeduce, or ſolicit the ſubjects of an enemy to commit treaſon, becauſe that is poſitively and directly inducing them to commit an abominable crime, which otherwiſe would, in all probability, have been very remote from their thoughts.

XXII. 7. It is quite another thing, when we only take advantage of the occaſion and the diſpoſitions we find in a perſon, who has had no need to be ſolicited to commit treaſon. Here, I think, the infamy of the perfidy does not fall on him who finds it intirely formed in the heart of the traitor; eſpecially if we conſider, that in theſe caſes between enemies, the thing with reſpect to which we take advantage of the bad diſpoſition of another, is of ſuch a nature, that we may innocently and lawfully do it ourſelves.

XXIII. 8. Be that as it may, for the reaſons above alleged, we ought not to take advantage of a treaſon which offered itſelf, except in an extraordinary caſe, and from a kind of neceſſity. And though the cuſtom of ſeveral nations has nothing obligatory in itſelf, yet as the people, with whom we are at variance, look upon the very acceptance of theſe offers of a certain kind of perfidy to be unlawful, as that of aſſaſſinating one's prince or general, we are reaſonably ſuppoſed to comply with it by a tacit conſent.

XXIV. 9. Let us obſerve, however, that the law of nations makes ſome difference between a fair and legitimate enemy, and rebels, pirates, or highwaymen.

The

The moſt religious princes make no difficulty to propoſe even rewards to thoſe who will betray ſuch perſons; and the public odium of all, which men of this ſtamp lie under, is the cauſe that no body thinks the meaſure hard, or blames the conduct of the prince in uſing every method to deſtroy them.

XXV. Laſtly, it is permitted to kill an enemy wherever we find him, except in a neutral country; for violent means are not ſuffered in a civilized ſociety, where we ought to implore the aſſiſtance of the magiſtrate. In the time of the ſecond Punic war*, ſeven Carthaginian galleys rode in a harbour belonging to *Syphax*, who was then in peace both with the Romans and Carthaginians, and *Scipio* came that way with two galleys only. The Carthaginians immediately prepared to attack the Roman galleys, which they might eaſily have taken before they had entered the port, but being forced by a ſtrong wind into the harbour before the Carthaginians had time to weigh anchor, they durſt not attack them, becauſe it was in a neutral prince's haven.

XXVI. Here it may be proper to ſay ſomething concerning priſoners of war. In former times, it was a cuſtom almoſt univerſally eſtabliſhed, that thoſe who were made priſoners in a juſt and ſolemn war, whether they had ſurrendered themſelves, or been taken by main force, became ſlaves, the moment they were conducted into ſome place dependent on the conqueror. And this right was exerciſed on all perſons whatſoever taken, even on thoſe who happened unfortunately to be in the enemy's country, at the time the war ſuddenly broke out.

XXVII. Further, not only the priſoners themſelves, but their poſterity for ever, were reduced to the ſame condition: that is to ſay, thoſe born of a woman after ſhe had been made a ſlave.

XXVIII. The effects of ſuch a ſlavery had no bounds; every thing was permitted to a maſter with reſpect to his ſlave; he had the power of life and death over him, and all that the ſlave poſſeſſed, or could afterwards acquire, belonged of right to the maſter.

XXIX. There

* Livy, lib. xxviii. cap. xvii. numb. 12, & ſeq.

XXIX. There is ſome probability, that the reaſon and end for which nations had eſtabliſhed this cuſtom of making ſlaves in war, was principally to induce the captors to abſtain from ſlaughter, from a view of the advantages they reaped from their ſlaves. Thus hiſtorians obſerve, that civil wars were more cruel than others, the general practice in that caſe being to put the priſoners to the ſword, becauſe they could not make ſlaves of them.

XXX. But Chriſtian nations have generally agreed among themſelves, to aboliſh the cuſtom of making their priſoners yield perpetual ſervice to the conqueror. At preſent it is thought ſufficient to keep thoſe that are taken in war, till their ranſom is paid, the eſtimation of which depends on the will of the conqueror, unleſs there is a cartel, or agreement, by which is fixed

CHAP. VII.

Of the rights of war over the goods of an enemy.

I. AS to the goods of an enemy, it is certain that the ſtate of war permits us to carry them off, to ravage, to ſpoil, or even entirely to deſtroy them; for as *Cicero* very well obſerves,* *It is not contrary to the law of nature, to plunder a perſon whom we may lawfully kill:* and all theſe miſchiefs, which the law of nations allows us to do to the enemy, by ravaging and waſting his lands and goods are called ſpoil or plunder.

II. This right of ſpoil, or plunder, extends in general to all things belonging to the enemy; and the law of nations, properly ſo called, does not exempt even ſacred things; that is, things conſecrated either to the true God, or to falſe deities, and deſigned for the uſe of religion.

III. It is true, the practices and cuſtoms of nations do not agree in this reſpect; ſome having permitted the plunder of theſe things ſacred and religious, and others having looked upon it as a criminal profanation. But

* Cic. de Off. lib. iii. cap. vi.

But whatever the usages and customs of different people are, they can never constitute the primitive rule of right. In order, therefore, to be assured of the right of war in regard to this article, we must have recourse to the law of nature and nations.

IV. I observe then, that things sacred are not in themselves different from those we call profane. The former differ from the latter, only by the religious use to which they were intended. But this application or use does not give the things the quality of holy and sacred, as an intrinsic and indelible character, of which they cannot be deprived.

V. The things thus consecrated, always belong either to the state, or to the sovereign; and there is no reason why the prince, who has devoted them to religious purposes, may not afterwards apply them to the uses of life; for they, as well as all other public things, are at his disposal.

VI. It is therefore a gross superstition to believe, that by the consecration, or destination of these things to the service of God, they, as it were, change master, and belong no more to men; that they are intirely withdrawn from commerce, and that the property of them passes from man to God. This is a dangerous superstition, owing to the ambition of the clergy.

VII. We must therefore consider sacred things as public goods, which belong to the state or sovereign. All the liberty which the right of war gives over the goods belonging to the state, it also gives with respect to things called sacred. They may therefore be spoiled or wasted by the enemy, at least as far as is necessary and conducive to the design of the war; a limitation which is no way peculiar to the plunder of sacred or religious things.

VIII. For, in general, it is evident that it is not lawful to plunder for plunder's sake, and that it is just and innocent only, when it has some relation to the design of the war; that is, when some advantage accrues directly from it to ourselves, by appropriating those goods, or at least, when by ravaging and destroying them, we in some measure weaken the enemy.

It

it would be a madness, equally brutal and criminal, to do evil to another without a prospect of doing some good, either directly or indirectly, to ourselves. It very seldom happens, for instance, that after the taking of towns, there is any necessity for ruining temples, statues, or other public or private structures: we should therefore generally spare all these, as well as the tombs and sepulchres.

IX. It may however be observed, with respect to things sacred, that those who believe they contain something divine, and inviolable, are really in the wrong to meddle with them at all; but this is only because they act against their own conscience. And here, by the way, we may take notice of a reason given to clear the Pagans of the imputation of sacrilege, even when they pillaged the temples of the gods whom they acknowledged as such; which is, they imagined that when a city was taken, the guardian deities of that place quitted, at the same time, their temples and altars, especially after those deities, with every thing else that was sacred, had been *invited out* with certain ceremonies. This is excellently described by *Coccei-us*, in his dissertation *De Evocatione Sacrorum*.

X. Let us on this subject add the wise reflections which Grotius makes, to persuade generals to behave with moderation in regard to plunder, from the advantages which may accrue to themselves from such a conduct. And first he says, "by this means we take "from the enemy one of the most powerful weapons, "desperation. Besides, by sparing the enemy's coun-"try, we give room to believe, that we are pretty "confident of victory: and clemency is of itself pro-"per to soften and engage the minds of men. All "which may be proved by several illustrious ex-"amples."

XI. Besides the power which war gives to spoil and destroy the goods of an enemy, it likewise confers a right of acquiring, appropriating, and justly retaining the goods we have taken from him, till the sum due to us is paid, including the expences of the war, in which

his

his refusal of payment engaged us; and whatever else we think necessary to secure to ourselves, by way of caution, from the enemy.

XII. By the law of nations, not only he that makes war for a just reason, but also every man, in a just war, acquires a property in what he takes from the enemy, and that without rule or measure, at least as to the external effects, with which the right of property is accompanied; that is to say, neutral nations ought to regard the two parties at war, as lawful proprietors of what they can take from each other by force of arms; the state of neutrality not permitting them to espouse either side, or to treat either of the contending powers as an usurper, pursuant to the principles already established.

XIII. This is generally true, as well with respect to moveables as immoveables, so long as they are in the possession of him who has acquired them by the right of war. But if from the hands of the conqueror they have passed into the power of a third, there is no reason, if they are immoveables, why the antient owner should not try to recover them from that third, who holds them of the enemy, by what title soever; for he has as good a right against the new possessor, as against the enemy himself.

XIV. I said, *if they are immoveables*; for with respect to moveable effects, as they may easily be transferred by commerce into the hands of the subjects of a neutral state, often without their knowing that they were taken in war; the tranquillity of nations, the good of commerce, and even the state of neutrality, require that they should always be reputed lawful prize, and the property of the person of whom we hold them. But the case is otherwise with respect to immoveables, they are immoveable in their nature; and those to whom a state, which has taken them from an enemy, would resign them, cannot be ignorant of the manner in which it possesses them.

XV. Here a question is moved, when is it that things are said to be taken by the right of war, and are justly deemed to belong to him who is in possession of them?

them? Grotius anſwers as a civilian, that a man is deemed to have taken moveable things by the right of war, as ſoon as they are ſecured from the purſuit of the enemy; or when he has made himſelf maſter of them in ſuch a manner, that the firſt owner has loſt all probable hopes of recovering them. Thus, ſays he, at ſea, ſhips and other things are not ſaid to be taken, till they are brought into ſome port or harbour belonging to us, or to ſome part of the ſea where our fleet rides; for it is only then that the enemy begins to deſpair of recovering them.

XVI. But in my opinion, this manner of anſwering the queſtion is altogether arbitrary, and has no foundation in nature. I ſee no reaſon why the prizes taken from the enemy, ſhould not become our property as ſoon as they are taken. For when two nations are at war, both of them have all the requiſites for the acquiſition of property, at the very moment they take a prize. They have an intention to acquire a title of juſt property, namely, the right of war; and they are actually in poſſeſſion of the thing. But if the principle, which Grotius ſuppoſes, was to be allowed, and the prizes taken from the enemy were not deemed a lawful acquiſition, till they are tranſported to a place of ſafety, it would follow, that the booty which a ſmall number of ſoldiers has taken from an enemy, may be re-taken from them by a ſtronger body of troops of the ſame party, as ſtill belonging to the enemy, if this ſecond body of troops has attacked the firſt before they had conveyed their booty to a place of ſafety.

XVII. This laſt circumſtance is therefore altogether indifferent, with reſpect to the preſent queſtion. The greater or ſmaller difficulty the enemy may find, in recovering what has been taken from him, does not hinder the capture from actually belonging to the conqueror. Every enemy as ſuch, and ſo long as he continues ſuch, always retains the will to recover what the other has taken from him; and his preſent inability only reduces him to the neceſſity of waiting for a more favourable opportunity, which he ſtill ſeeks and deſires. Hence with reſpect to him, the thing ought

ought no more to be deemed taken, when in a place of ſafety, than when he is ſtill in a condition of purſuing it. All that can be ſaid, is, that in the latter caſe, the poſſeſſion of the conqueror is not ſo ſecure as in the former. The truth is, this diſtinction has been invented only to eſtabliſh the rules of the right of poſtliminy, or the manner in which the ſubjects of the ſtate, from whom ſomething has been taken in war, re-enter upon their rights; rather than to determine the time of the acquiſition of things taken by one enemy from another.

XVIII. This to me ſeems to be what the law of nature determines in this point. Grotius obſerves alſo, that by the cuſtom eſtabliſhed in his time among the ſtates of *Europe*, it is ſufficient that the prize has been twenty four hours in the enemy's poſſeſſion, to account it loſt. *Thuanus* in his hiſtory of the year 1595, gives us an example, that this cuſtom was obſerved alſo by land. The town of *Liere* in *Brabant* having been taken and re-taken the ſame day, the plunder was returned to the inhabitants, becauſe it had not been twenty-four hours in the hands of the enemy. But this rule was afterwards changed, with reſpect to the *United Provinces*; and in general we may obſerve, that every ſovereign has a right to eſtabliſh ſuch rules, in regard to this point, as he thinks proper, and to make what agreements he pleaſes with other powers. There have been ſeveral made, at different times, between the Dutch and Spaniards, the Portugueſe and the northern ſtates.

XIX. Grotius applies theſe principles alſo to lands; they are not to be reputed loſt as ſoon as they are ſeized on, but for this effect they are to be ſo ſecured with durable fortifications, that without being forced, they cannot be repoſſeſſed by the firſt owner. But to this caſe we may alſo apply the reflections already made. A territory belongs to an enemy as ſoon as he is maſter of it, and as long as he continues in poſſeſſion of it. The greater or leſſer precautions he may take to ſecure it, are nothing to the purpoſe.

XX. But

XX. But be this as it may, it is to be obſerved, that during the whole time of the war, the right we acquire over the things we have taken from the enemy, is of force only with reſpect to a third diſintereſted party; for the enemy himſelf may retake what he has loſt, whenever he finds an opportunity, till by a treaty of peace he has renounced all his pretenſions.

XXI. It is alſo certain, that in order to appropriate a thing by the right of war, it muſt belong to the enemy; for things belonging to people who are neither his ſubjects, nor animated with the ſame ſpirit as he againſt us, cannot be taken by the right of war, even though they are found in the enemy's country. But if neutral ſtrangers furniſh our enemy with any thing, and that with a deſign to put him into a condition of hurting us, they may be looked upon as taking part with our enemy, and their effects may conſequently be taken by the right of war.

XXII. It is however to be obſerved, that in dubious caſes it is always to be preſumed, that what we find in the enemy's country, or in their ſhips, is deemed to belong to them; for beſides that this preſumption is very natural, if the contrary maxim was to take place, it would lay a foundation for an infinite number of frauds. But this preſumption, however reaſonable in itſelf, may be deſtroyed by contrary proofs.

XXIII. Neither do the ſhips of friends become lawful prizes, though ſome of the enemy's effects are found in them, unleſs it is done by the conſent of the owners; who by that means ſeem to violate the neutrality, or friendſhip, and give us a juſt right to treat them as an enemy.

XXIV. But in general we muſt obſerve, with reſpect to all theſe queſtions, that prudence and good policy require, that ſovereigns ſhould come to ſome agreement among themſelves in regard to theſe different caſes, in order to avoid the diſputes which may ariſe from them.

XXV. Let us alſo take notice of a conſequence of the principles here eſtabliſhed; which is, that when we have taken things from the enemy, which he himſelf

ſelf had taken from another by the right of war, the former poſſeſſor cannot claim them.

XXVI. Another queſtion is, whether things, taken in a public and ſolemn war, belong to the ſtate, or to the individuals who are members of it, or to thoſe who made the firſt ſeizure? I anſwer, that as the right of war is lodged in the ſovereign alone, and is undertaken by his authority, all that is taken is originally and primarily acquired to him, whatever hands it firſt falls into.

XXVII. However, as the war is burthenſome to the ſubjects, both equity and humanity require that the ſovereign ſhould make them partake of the advantages which may accrue from it. This may be done, either by aſſigning to thoſe who take the field a certain pay from the public, or by ſharing the booty among them. As to foreign troops, the ſovereign is obliged to give them no more than their pay; what he gives them above that, is pure liberality.

XXVIII. Grotius, who examines this queſtion at large, diſtinguiſhes between acts of hoſtility truly public, and private acts that are done upon the occaſion of a public war. By the latter, according to him, private perſons acquire to themſelves principally, and directly, what they take from the enemy; whereas, by the former, every thing taken, belongs to the whole body of the people, or to the ſovereign. But this deciſion has been juſtly criticiſed upon. As all public war is made by the authority of the people, or of their chief, it is from this ſource we muſt originally derive whatever right individuals may have to things taken from the enemy. In this caſe there muſt always be an expreſs or tacit conſent of the ſovereign.

XXIX. It is alſo to be obſerved, that in treating this point Grotius has confounded different things. The queſtion does not relate to the law of nations, properly ſo called; for in whatever manner that law is underſtood, and whatever it is founded on, it ought to relate to the affairs in diſpute between two different ſtates. Now whether the booty belongs to the ſovereign who makes war, or to the generals, or to the ſoldiers,

diers, or to other perſons, who take any thing from the enemy; that is nothing to the enemy, nor to other ſtates. If what is taken be a good prize, it is of ſmall conſequence to the enemy in whoſe hands it remains. As to neutral people, it is ſufficient that ſuch of them as have purchaſed, or any other way acquired a moveable thing taken in war, cannot be moleſted or proſecuted upon that account. The truth is, the regulations and cuſtoms, relating to this ſubject, are not of public right; and their conformity, in many countries, implies no more than a civil right, common to ſeveral nations ſeparately.

XXX. As for what in particular relates to the acquiſition of *incorporeal things* by the right of war; it is to be obſerved, that they do not become our property, except we are in poſſeſſion of the ſubject in which they inhere. Now the ſubjects they inhere in, are either things or perſons. We often annex, for inſtance, to certain lands, rivers, ports and towns, particular rights, which always follow them, whatever poſſeſſors they come to; or rather thoſe who poſſeſs them, are thereby inveſted with certain rights over other things and perſons.

XXXI. The rights which belong directly and immediately to perſons, regard either other perſons, or only certain things. Thoſe which are annexed to perſons over other perſons, are not obtained but with the conſent of the perſons themſelves; who are ſuppoſed not to have given a power over them to any man promiſcuouſly, but to ſome certain perſon. Thus, for inſtance, though a king happen to be made priſoner of war, his enemies have not therefore acquired his kingdom with him.

XXXII. But with reſpect to perſonal rights over things, the bare ſeizure of the perſon of the enemy, is not a ſufficient title to the property of all his effects, unleſs we really take poſſeſſion of theſe effects at the ſame time. This may be illuſtrated by the example, given by Grotius and Puffendorf, of the preſent which *Alexander the Great* made to the Theſſalonians, after having deſtroyed the city of *Thebes*, of

an inſtrument, in which the Theſſalonians acknowledged that they owed the Thebans a hundred talents.

XXXIII. Theſe are the rights which a war gives us over the effects of the enemy. But Grotius pretends, that the right by which we acquire things taken from the enemy, is ſo proper and peculiar to a ſolemn war, declared in form, that it has no force in others, as in civil wars, &c. and that in civil wars, in particular, there is no change of property, but in virtue of the ſentence of a judge.

XXXIV. We may obſerve, however, upon this point, that in moſt civil wars no common judge is acknowledged. If the ſtate is monarchical, the diſpute turns either upon the ſucceſſion to the crown, or upon a conſiderable part of the ſtate's pretending that the king has abuſed his power, in a manner which authoriſes the ſubject to take up arms againſt him.

XXXV. In the firſt caſe, the very nature of the cauſe, for which the war is undertaken, occaſions the two parties of the ſtate to form, as it were, two diſtinct bodies, till they come to agree upon a chief by ſome treaty. Thus, with reſpect to the two parties which were at war, it is on ſuch a treaty that the right depends, which perſons may have to that which has been taken on either ſide; and nothing hinders, but this right may be left on the ſame footing, and admitted to take place in the ſame manner, as in public wars between two ſtates always diſtinct.

XXXVI. As to other nations, who were not concerned in the war, they have no more authority to examine the validity of the acquiſitions, than they have to be judges of a war made between two different ſtates.

XXXVII. The other caſe, I mean an inſurrection of a conſiderable part of the ſtate againſt the reigning prince, can rarely happen, except when that prince has given room for it, either by tyranny, or by the violation of the fundamental laws of the kingdom. Thus the government is then diſſolved, and the ſtate is actually divided into two diſtinct and independent bodies;

bodies; so that we are to form here the same judgment as in the first case.

XXXVIII. For much stronger reasons does this take place in the civil wars of a republican state, in which the war, immediately of itself destroys the sovereignty, which subsists solely in the union of its members.

XXXIX. Grotius seems to have taken his ideas on this subject from the Roman laws; for these decreed, that prisoners taken in a civil war could not be reduced to slavery. This was, as *Ulpian* the civilian * remarks, because they looked upon a civil war not properly as a war, but as a *civil dissension*; for, adds he, a real war is made between those who are enemies, and animated with a hostile spirit, which prompts them to endeavour the ruin of each other's state. Whereas, in a civil war, however hurtful it often proves to the nation, the one wants to save itself in one manner, and the other in another. Thus they are not enemies, and every person of the two parties remains always a citizen of the state so divided.

XL. But all this is a supposition, or *fiction of right*, which does not hinder what I have been saying from being true. and from taking place in general. And if, among the Romans, a person could not appropriate to himself the prisoners taken in a civil war, as real slaves, this was in virtue of a particular law received among them, and not on account of any defect of the conditions or formalities, which according to Grotius are required by the law of nations, in a public or solemn war.

XLI. Lastly, as for the wars of robbers and pirates, if they do not produce the effects we have mentioned; if they do not give to these pirates a right of appropriating what they have taken, it is because these people are robbers, and enemies to mankind, and consequently persons whose acts of hostility are manifestly unjust, which authorises all nations to treat them as enemies. Whereas, in other kinds of war, it is often difficult to judge on which side the right lies;

* Lib. xxi. sect. 1. ff. de capt. & reverf.

lies; so that the dispute continues, and ought to continue undecided, with respect to those who are unconcerned in the war.

CHAP. VIII.

Of the right of sovereignty acquired over the conquered.

I. BESIDES the effects of war, hitherto mentioned, there remains one more, the most important of all, and which we shall here consider; I mean the right of sovereignty acquired over the conquered. We have already remarked, when explaining the different ways of acquiring sovereignty, that in general it may be acquired either in a violent manner, and by the right of conquest, &c.

II. We must however observe, that war or conquest, considered in itself, is not properly the cause of this acquisition; that is, it is not the source, or immediate origin of sovereignty. This is always founded on the tacit or express consent of the people, without which the state of war still subsists; for we cannot conceive how there can be an obligation to obey a person, to whom we have promised no subjection. War then is, properly speaking, no more than the occasion of obtaining the sovereignty; as the conquered chuse rather to submit to the victor's sway, than to expose themselves to total destruction.

III. Besides, the acquisition of sovereignty by the right of conquest cannot, strictly speaking, pass for lawful, unless the war be just in itself; and unless the lawful end proposed, authorises the conqueror to push the acts of hostility so far, as to acquire the sovereignty over the vanquished: that is to say, either our enemy must have no other means of paying what he owes us, and of indemnifying us for the damages he has committed: or our own safety must absolutely oblige us to make him dependent on us. In these circumstances, it is certain that the resistance of a vanquished enemy, authorises us to push the acts of hostility against him so far, as to reduce him entirely under our power; and

and we may, without injuſtice, take advantage of the ſuperiority of our arms, to extort from him the conſent which he ought to give us voluntarily, and of his own accord.

IV. Theſe are the true principles on which ſovereignty, by the right of conqueſt is grounded. Hence we may conclude, that if, upon theſe foundations, we were to judge of the different acquiſitions of this nature, few of them would be found well eſtabliſhed; for it rarely happens, that the vanquiſhed are really reduced to ſuch an extremity, as not to be able to ſatisfy the juſt pretenſions of the conqueror, otherwiſe than by ſurrendering and ſubmitting themſelves to his dominion.

V. Let us however obſerve, that the intereſt and tranquillity of nations require, that we ſhould deviate a little from the rigour of the principles now eſtabliſhed. Indeed, if he who has conſtrained another, by the ſuperiority of his arms, to ſubmit to his ſway, had undertaken a war manifeſtly unjuſt, or if the pretext on which it is founded, is viſibly frivolous in the judgment of every reaſonable perſon, I confeſs that a ſovereignty, acquired in theſe circumſtances, would to me appear viſibly unjuſt; and I ſee no reaſon, why the vanquiſhed people ſhould be more obliged to keep ſuch a treaty, than a man, who had fallen into the hands of robbers, would be obliged to pay at their demand, the money he had promiſed them for the ranſom of his life and liberty.

VI. But if the conqueror had undertaken a war for ſome ſpecious reaſon, though perhaps at the bottom not ſtrictly juſt, the common intereſt of mankind requires, that we ſhould exactly obſerve the engagements we have entered into with him, though extorted by a terror in itſelf unjuſt; ſo long, at leaſt, as no new reaſon ſupervenes, which may lawfully exempt us from keeping our promiſe. For as the law of nature directs that ſocieties, as well as individuals, ſhould labour for their preſervation, it obliges us, for this reaſon, not indeed to conſider the acts of hoſtility committed by an unjuſt conqueror as properly juſt, but to look upon

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the engagement of an expreſs, or tacit treaty, as nevertheleſs valid. So that the vanquiſhed cannot be releaſed by keeping it, under the pretext of its being cauſed by an unjuſt fear, as he might otherwiſe do, had he no regard to the advantages accruing from it to mankind.

VII. Theſe conſiderations will have ſtill a greater weight, if we ſuppoſe that the conqueror, or his poſterity, peaceably enjoy the ſovereignty which he has acquired by right of conqueſt; and beſides, that he governs the vanquiſhed like a humane and generous conqueror. In theſe circumſtances, a long poſſeſſion, accompanied with an equitable government, may legitimate a conqueſt, in its beginning and principle the moſt unjuſt.

VIII. There are modern civilians, who explain the thing ſomewhat differently. Theſe maintain, that in a juſt war the victor acquires a full right of ſovereignty over the vanquiſhed, by the ſingle right of conqueſt, independently of any convention; and even though the victor has otherwiſe obtained all the ſatisfaction, and indemnification he could require.

IX. The principal reaſon theſe doctors make uſe of to prove their opinion, is, that otherwiſe the conqueror could not be uncertain of the peaceable poſſeſſion of what he has taken, or forced the conquered to give him, for his juſt pretenſions; ſince they might retake it from him by the ſame right of war.

X. But this reaſon proves only that the conqueror, who has taken poſſeſſion of the enemy's country, may command in it while he holds it, and not reſign it till he has good ſecurity that he will obtain or poſſeſs, without hazard, what is neceſſary for the ſatisfaction and indemnity which he has a right to exact by force. But the end of a juſt war does not always demand, of itſelf, that the conqueror ſhould acquire an abſolute and perpetual right of ſovereignty over the conquered. It is only a favourable occaſion of obtaining it; and for that purpoſe, there muſt be always an expreſs or tacit conſent of the vanquiſhed. Otherwiſe the ſtate

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of war ſtill ſubſiſting, the ſovereignty of the conqueror has no other title than that of force, and laſts no longer than the vanquiſhed are unable to throw off the yoke.

XI. All that can be ſaid, is, that the neutral powers, purely becauſe they are ſuch, may, and ought to look upon the conqueror as the lawful poſſeſſor of the ſovereignty, even though they ſhould believe the war unjuſt on his ſide.

XII. The ſovereignty thus acquired by the right of war, is generally of the abſolute kind. But ſometimes the vanquiſhed enter into certain conditions with the conqueror, which put ſome limitations to the power he acquires over them. Be this as it may, it is certain that no conqueſt ever authoriſes a prince to govern a people tyrannically; ſince, as we have before ſhewn, the moſt abſolute ſovereignty gives no right to oppreſs thoſe who have ſurrendered; for even the thing itſelf, and the laws of nature, equally conſpire, to lay the conqueror under an obligation, to govern thoſe whom he has ſubdued, with moderation and equity.

XIII. There are, therefore, ſeveral precautions to be uſed in the exerciſe of the ſovereignty acquired over the vanquiſhed; ſuch, for inſtance, was that prudent moderation of the antient Romans, who confounded, in ſome meaſure the vanquiſhed with the victors, by haſting to incorporate them with themſelves, and to make them ſharers of their liberty and advantages. A piece of policy doubly ſalutary; which, at the ſame time that it rendered the condition of the vanquiſhed more agreeable, conſiderably ſtrengthened the power and empire of the Romans. "What would our empire now have been," ſays *Seneca*, "if the vanquiſhed had not been intermixed "with the victors, by the effect of a ſound policy?" "*Romulus*, our founder," ſays *Claudius* in *Tacitus*, "was very wiſe with reſpect to moſt of the people he "ſubdued, by making thoſe who were his enemies, "the ſame day citizens."

XIV. Another

XIV. Another moderation in victory, consists in leaving to the conquered, either kings or people, the sovereignty which they enjoyed, and not to change the form of their government. No better method can be taken to secure a conquest; and of this we have several examples in antient history, especially in that of the Romans.

XV. But if the conqueror cannot, without danger to himself, grant all these advantages to the conquered; yet things may be so moderated, that some part of the sovereignty may be left to them, or to their kings. Even when we strip the vanquished intirely of their sovereignty, we may still leave them their own laws, customs, and magistrates, in regard to their private and public affairs, of small importance.

XVI. We must not, above all things, deprive the vanquished of the exercise of their religion, unless they happen to be convinced of the truth of that which the conqueror professes. This complaisance is not only of itself very agreeable to the vanquished, but the conqueror is absolutely obliged to it; and he cannot without tyranny, oppress them in this respect. Not that he ought not to try to bring the vanquished to the true religion; but he ought only to use such means as are proportioned to the nature of the thing, and to the end he has in view; and such as have in themselves nothing violent, or contrary to humanity.

XVII. Let us observe, lastly, that not only humanity, but prudence also, and even the interest of the conqueror, require that what we have been saying, with respect to a vanquished people, should be strictly practised. It is an important maxim in politics, that it is more difficult to keep, than to conquer provinces. Conquests demand no more than force, but justice must preserve them. These are the principal things to be observed, in respect to the different effects of war, and to the most essential questions relative thereto. But as we have already had occasion to speak of neutrality, it will not be improper to say something more particular about it.

Of

Of Neutrality.

I. There is a *general*, and a *particular neutrality*. The general is, when without being allied to either of the two enemies at war, we are disposed to render to each the good offices which every nation is naturally obliged to render to others.

II. The particular neutrality is, when we are particularly engaged to be neuter by some compact either tacit or express.

III. The last species of neutrality is either full and entire, when we act equally in all respects towards both parties; or limited, as when we favour one side more than the other, with respect to certain things or actions.

IV. We cannot lawfully constrain any person to enter into a particular neutrality; because every one is at liberty to make, or not make particular treaties, or alliances, and because, at least, they are not bound to do it but by virtue of an imperfect obligation. But he, who has undertaken a just war, may oblige other nations to observe an exact and general neutrality; that is to say, not favour his enemy more than himself.

V. We shall give here an abstract, as it were of the duties of neutral nations. They are obliged equally to put in practise, towards both parties at war, the laws of nature, as well absolute as conditional, whether they impose a perfect, or only an imperfect obligation.

VI. If they do the one any office of humanity, they ought not to refuse the like to the other, unless there is some manifest reason which engages them to do something in favour of the one, which the other had otherwise no right to demand.

VII. But they are not obliged to do offices of humanity to one party, when they expose themselves to great dangers, by refusing them to the other, who has as good a right to demand them.

VIII. They ought not to furnish either party with things which serve to exercise acts of hostility, unless they

they are authorised to do it by some particular engagement; and as for those which are of no use in war, if they supply one side with them, they must also the other.

IX. They ought to use all their endeavours to bring matters to an accommodation, that the injured party may obtain satisfaction; and that the war may be brought to a speedy conclusion.

X. But if they are under any particular engagement, they ought to fulfil it punctually.

XI. On the other side, those who are at war must exactly observe, towards neutral nations, the laws of sociability, and not exercise any acts of hostility against them, nor suffer their country to be ravaged or plundered.

XII. They may however, in a case of necessity, take possession of a place situated in a neutral country; provided, that as soon as the danger is over, they restore it to the right owner, and make him satisfaction for the danger he has received.

CHAP. IX.

Of public treaties in general.

I. THE subject of public treaties constitutes a considerable part of the law of nations, and deserves to have its principles and rules explained with some exactness. By public treaties, we mean such agreements as can be made only by public authority, or those which sovereigns, considered as such, make with each other, concerning things which directly concern the good of the state. This is what distinguishes these agreements, not only from those which individuals make with each other, but also from the contracts of kings, in regard to their private affairs.

II. What we have before observed, concerning the necessity of introducing conventions betwixt private men, and the advantages arising from them, may be applied to nations and different states. Nations may, by

by means of treaties, unite themſelves more particularly into a ſociety, which ſhall reciprocally aſſure them of ſeaſonable aſſiſtance, either for the neceſſaries and conveniencies of life, or to provide for their greater ſecurity upon the breaking out of a war.

III. As this is the caſe, ſovereigns are no leſs obliged, than individuals, inviolably to keep their word, and be faithful to their engagements. The law of nations makes this an indiſpenſable duty; for it is evident, were it otherwiſe, not only public treaties would be uſeleſs to nations, but moreover, that the violation of theſe would throw them into a ſtate of diffidence and continual war; that is to ſay, into the moſt terrible ſituation. The obligation therefore of ſovereigns, in this reſpect, is ſo much the ſtronger, as the violation of this duty has more dangerous conſequences, which intereſt the happineſs of numbers of individuals. The ſanctity of an oath, which generally accompanies public treaties, is an additional motive to engage princes to obſerve them with the utmoſt fidelity; and certainly nothing is more ſhameful for ſovereigns, who ſo rigorouſly puniſh ſuch of their ſubjects as fail in their engagements, than to ſport with treaties and public faith, and to look upon them only as the means of deceiving each other.

The royal word ought therefore to be inviolable, and ſacred. But there is reaſon to fear, that if princes are not more attentive to this point, this expreſſion will ſoon degenerate into an oppoſite ſenſe, in the ſame manner as formerly *Carthaginian faith** was taken for perfidy.

IV. We muſt alſo obſerve, that all the principles we have heretofore eſtabliſhed concerning the validity or invalidity of conventions in general, agree to public treaties, as well as to the contracts of individuals. In both, therefore, there muſt be a ſerious conſent, properly declared, and exempt from *error*, *fraud*, and *violence*.

V. It

* Punica fides.

V. If treaties, made in these circumstances are obligatory between the respective states or sovereigns, they are also obligatory, with regard to the subjects of each prince in particular. They oblige, as compacts between the contracting powers; but they have the force of laws, with respect to the subjects considered as such; for it is evident that two sovereigns, who conclude a treaty, lay their subjects thereby under an obligation of doing nothing contrary to it.

VI. There are several distinctions of public treaties; and 1. Some turn simply on things, to which we were obliged by the law of nature before; and others superadd some particulars to the duties of natural law.

VII. Under the first head we may rank all those treaties, by which we are purely and simply engaged to do no harm to others, but on the contrary, to perform all the duties of humanity towards them. Among civilized nations, who profess to follow the laws of nature, such treaties are not necessary. Duty alone is sufficient, without a formal engagement. But among the antients these treaties were thought expedient, the common opinion being, that they were obliged to observe the laws of humanity only to fellow subjects, and that they might consider all strangers as enemies, and treat them as such, unless they had entered into some engagement to the contrary; and of this we have many instances in history. The profession of free-booter, or pirate, was no way shameful among several nations; and the word *hostis*, which the Romans used to express an enemy, originally signified no more than a stranger.

VIII. Under the second kind I comprehend all those compacts, by which two nations enter into some new, or more particular obligation, with respect to each other; as when they formally engage to things to which they were not obliged, but in virtue of an imperfect obligation, or even to which they were no ways before obliged.

IX. 2. Treaties, by which we engage to something more than what we were obliged to, in virtue of the law

law of nature, are alſo of two kinds; ſome *equal*, others *unequal*.

3. Both are made either in time of war, or in full peace.

X. Equal treaties, are thoſe contracted with an entire equality on both ſides; that is to ſay, when not only the engagements and promiſes are equal on both ſides, either purely and ſimply, or in proportion to the ſtrength of each contracting party; but alſo, when they engage on the ſame footing; ſo that neither of the parties is in any reſpect inferior to the other.

XI. Theſe treaties are made, either with a view to *commerce*, or to community of war, or, in ſhort, to any other matter. With reſpect to commerce, for example, by ſtipulating that the ſubjects, on either ſide, ſhall be free from all cuſtom or toll, or that no more ſhall be demanded of them, than of the natives of the country, &c. Equal treaties, or leagues relating to war, are, when we ſtipulate, for example, that each ſhall furniſh the other an equal number of troops, ſhips, and other things; and this in all kinds of war, defenſive as well as offenſive, or in defenſive only, &c. Laſtly, treaties of equality may alſo turn upon any other matter; as when it is agreed, that one ſhall have no forts on the other's frontiers; that one ſhall not grant protection to the other's ſubjects, in ſome criminal caſes, but order them to be ſeized and ſent back; that one ſhall not give the other's enemies paſſage through his country, and the like.

XII. What we have been ſaying, ſufficiently ſhews the meaning of unequal treaties, and theſe are, when the promiſes are either unequal, or ſuch as lay harder conditions on one of the parties, than on the other. The inequality of the things ſtipulated, is ſometimes on the one ſide of the moſt powerful confederate, as when he promiſes his aſſiſtance to the other, without requiring the like; and ſometimes on the ſide of the inferior confederate, as when he engages to do more for the ſtronger, than the latter promiſes in return.

XIII. All the conditions of unequal treaties are not of the ſame nature; ſome there are, which though burdenſome

denſome to the inferior ally, yet leave the ſovereignty entire; others, on the contrary, include a diminution of the dependance, and ſovereignty of the inferior ally.

Thus, in the treaties between the Romans and the Carthaginians, at the end of the ſecond Punic war, it was ſtipulated, that the Carthaginians ſhould not begin any war, without the conſent of the Roman people, an article which evidently diminiſhed the ſovereignty of *Carthage*, and made her dependant on *Rome*.

But the ſovereignty of the inferior ally continues entire, though he engages, for example, to pay the other's army, to defray the expences of the war, to diſmantle ſome towns, to give hoſtages, to look upon all thoſe as friends or enemies, who are friends or enemies to the other, to have no forts, or ſtrongholds in certain parts, to avoid ſailing in particular ſeas, to acknowledge the pre-eminence of the other, and, upon occaſion, to ſhew reverence and honour to his power and majeſty, &c.

XIV. However, though theſe, and other ſimilar conditions, do not diminiſh the ſovereignty, it is certain that ſuch treaties of inequality are often of ſo delicate a nature, as to require the greateſt circumſpection in managing them; and that if the prince, who is ſuperior to the other in dignity, ſurpaſſes him alſo conſiderably in ſtrength and power, it is to be feared that the former will gradually acquire an abſolute ſovereignty over him, eſpecially if the confederacy be perpetual.

XV. 4. Public treaties are alſo divided into *real* and *perſonal*. The latter are thoſe made with a prince, purely in regard to his perſon, and expire with him. The former are ſuch, as are made rather with the whole body of the ſtate, than with the king or government, and which conſequently outlive thoſe who made them, and oblige their ſucceſſors.

XVI. To know which of theſe two claſſes every treaty belongs to, the following rules may be laid down. 1. We

1. We muſt firſt attend to the form and phraſe of the treaty, to its clauſes, and the views propoſed by the contracting parties. *Utrum autem in rem, an in perſonam factum eſt, non minus ex verbis, quam ex mente convenientium æſtimandum eſt* *. Thus, if there is an expreſs clauſe that the treaty is perpetual, or for a certain number of years, or for the good of the ſtate, or with the king for him and his ſucceſſors, we may conclude that the treaty is real.

2. Every treaty made with a republic, is in its own nature real, becauſe the ſubject, with whom we contract it, is a thing permanent.

3. Though the government ſhould happen to be changed from a republic into a monarchy, the treaty is ſtill in force, becauſe the body is ſtill the ſame, and has only another chief.

4. We muſt however make an exception here, which is, when it appears that the preſervation of the republican government was the true cauſe of the treaty; as when two republics enter into an alliance, by which they agree to aſſiſt one another, againſt ſuch as ſhall endeavour by force to alter their conſtitution, and deprive them of their liberties.

5. In caſe of doubt, every public treaty made with a king ought to be deemed real, becauſe, in dubious caſes, the king is ſuppoſed to act as chief, and for the good of the ſtate.

6. Hence it follows, that as after the change of a democracy into a monarchy, the treaty is ſtill in force, in regard to the new king; ſo if the government, from a monarchy, becomes a republic, the treaty made with the king does not expire, unleſs it was manifeſtly perſonal.

7. Every treaty of peace is real in its own nature, and ought to be kept by the ſucceſſors; for as ſoon as the conditions of the treaty have been punctually fulfilled, the peace effectually effaces the injuries which excited the war, and reſtores the nations to their natural ſituation.

8. If one of the confederates has performed what the treaty obliged him to, and the other ſhould die be-

* Leg. vii. ſect. 8. ff. de Pactis.

fore he performs the engagements on his part, the ſucceſſor of the deceaſed king is obliged either intirely to indemnify the other party for what he has performed, or to fulfil his predeceſſor's engagement.

9. But if nothing is executed on either part, or the performances on both ſides are equal, then if the treaty tends directly to the perſonal advantage of the king, or his family, it is evident, that as ſoon as he dies, or his family is extinct, the treaty muſt alſo expire.

10. Laſtly, we muſt obſerve that it is grown into a cuſtom for ſucceſſors to renew, at leaſt in general terms, even the treaties manifeſtly acknowledged for real, that they may be the more ſtrongly bound to obſerve them, and may not think themſelves diſpenſed from that obligation, under a pretext that they have different ideas concerning the intereſt of the ſtate, from thoſe of their predeceſſors.

XVII. Concerning treaties, or alliances, it is often diſputed, whether they may be lawfully made with thoſe who do not profeſs the true religion? I anſwer, that by the law of nature there is no difficulty in this point. The right of making alliances is common to all men, and has nothing oppoſite to the principles of true religion; which is ſo far from condemning prudence and humanity, that it ſtrongly recommends both*.

XVIII. To judge rightly of the cauſes which put an end to public treaties, we muſt carefully attend to the rules of convention in general.

1. Thus a treaty, concluded for a certain time, expires at the end of the term agreed on.

2. When a treaty is once expired, it muſt not be ſuppoſed to be tacitly renewed; for a new obligation is not eaſily preſumed.

3. And therefore, if after the treaty expires, ſome acts are continued, which ſeem conformable to the terms of the preceding alliance, they ought rather to be looked upon as ſimple marks of friendſhip and benevolence, than as a tacit renovation of the treaty.

4. We

* See Grotius on War and Peace, lib. ii. ch. xv. ſect. 8, 9, 10, 11 and 12.

4. We muſt however make this exception, unleſs ſuch acts intervene, as can bear no other conſtruction, than that of a tacit renovation of the preceding compact. Thus, for example, if one ally has engaged to pay another a certain ſum annually, and after the expiration of the term of the alliance, the ſame ſum is paid the following year, the alliance is tacitly renewed for that year.

5. It is a conſequence of the nature of all compacts in general, that when one of the parties violates the engagements into which he had entered by treaty, the other is freed, and may refuſe to ſtand to the agreement; for generally each article of the treaty has the force of a condition, the want of which renders it void.

6. This is generally the caſe, that is to ſay, when there is no agreement otherwiſe; for ſometimes this clauſe is inſerted, that the violation of any ſingle article of the treaty ſhall not break it intirely, to the end that neither party ſhould fly from their engagements for every ſlight offence. But he who, by the action of another, ſuffers any damage, ought to be indemnified in ſome ſhape or another.

XIX. None but the ſovereign can make alliances and treaties either by himſelf, or by his officers and miniſters. Treaties concluded by miniſters, oblige the ſovereign and the ſtates, only when the miniſters have been duly authoriſed to make them and have done nothing contrary to their orders and inſtructions. And here it may be obſerved, that among the Romans the word *fœdus, a public compact*, or *ſolemn agreement*, ſignified a treaty made by order of the ſovereign power, or that had been afterwards ratified; but when public perſons, or miniſters of ſtate, had promiſed ſomething relating to the ſovereign power, without advice and command from it, this was called *ſponſio*, or a ſimple promiſe and engagement.

XX. In general it is certain, that when miniſters, without the order of their ſovereign, conclude a treaty concerning public affairs, the ſovereign is not obliged to ſtand to it; and the miniſter who has entered into

the negotiation without instructions may be punished according to the exigence of the case. However, there may be circumstances in which a sovereign is obliged, either by the rules of prudence, or even those of justice and equity, to ratify a treaty, though concluded without his orders.

XXI. When a sovereign is informed of a treaty, made by one of his ministers without his orders, his *silence* alone does not imply a *ratification*, unless it is accompanied with some act, or other circumstance, which cannot well bear another explication. And much more, if the agreement was made upon condition of its being ratified by the sovereign, it is of no force till the sovereign has ratified it in a formal and express manner.

CHAP. X.

Of compacts made with an enemy.

I. AMONG public compacts, those which suppose *a state of war*, and are made with an enemy, deserve a particular attention. There are two kinds of these; some which do not put an end to the war, but only moderate or suspend the acts of hostility; and others, which end the war intirely. But before we consider these compacts in particular let us first inquire into the validity of them in general.

Whether we ought to keep our faith given to an enemy?

II. This question is certainly one of the most beautiful and important belonging to the law of nations. Grotius and Puffendorf are not agreed in this point. The former maintains generally, that all compacts made with an enemy ought to be kept with an inviolable fidelity. But Puffendorf is somewhat dubious with respect to these compacts, which leave us in a state of war, without a design to remove it. Let us therefore endeavour to establish some principles, by means of which we may determine with respect to these two opinions.

III. I ob-

III. I obſerve, 1. That though war of itſelf deſtroys the ſtate of ſociety between two nations, we muſt not thence conclude that it is ſubjected to no law, and that all right and obligation are abſolutely at an end between two enemies.

2. On the contrary, every body grants that there is a right of war, obligatory of itſelf, between enemies, and which they cannot break through, without being defective in their duty. This is what we have proved before, by ſhewing that there are juſt and unjuſt wars; and that even in the juſteſt, it is not allowable to puſh acts of hoſtility to the utmoſt extremity, but that we ought to keep within certain bounds; and conſequently, that there are things *unjuſt* and *unlawful*, even with reſpect to an enemy. Since therefore war does not, of itſelf, ſubvert all the laws of ſociety, we cannot from this alone conclude, that becauſe two nations are at war with each other, they are diſpenſed from keeping their word, and from fulfilling the engagements they have made with each other, during the courſe of the war.

3. As war is in itſelf a very great evil, it is the common intereſt of nations, not to deprive themſelves voluntarily of the means which prudence ſuggeſts to moderate the rigour, and to ſuſpend the effects of it. On the contrary, it is their duty to endeavour to procure theſe means, and to make uſe of them upon occaſion; ſo far at leaſt, as the attainment of the lawful end of war will permit. Now there is nothing but *public faith* that can procure, to the parties engaged in war, the liberty to take breath; nothing but this can ſecure to towns, that have ſurrendered, the ſeveral rights which they have reſerved by capitulation. What advantage would a nation gain, or rather, what is it they would not loſe, if they were to have no regard to their faith given to an enemy, and if they looked upon compacts, made in ſuch circumſtances, only as the means of circumventing one another? Surely it is not to be ſuppoſed, that the law of nature approves of maxims ſo manifeſtly oppoſite to the common good of mankind. Beſides, we ought never to wage war, purely for the ſake of it, but only through neceſſity,

neceſſity, in order to obtain a juſt and reaſonable ſatisfaction and a ſolid peace; from whence it evidently follows, that the right of war between enemies cannot extend ſo far, as to render hoſtilities perpetual, and to create an invincible obſtacle to the re-eſtabliſhment of the public tranquillity.

4. And yet this would certainly be the conſequence, if the law of nature did not lay us under an indiſpenſable obligation of performing whatever agreement we have voluntarily made with the enemy during the war; whether theſe agreements tend only to ſuſpend or moderate acts of hoſtility, or whether they are deſigned to make them ceaſe intirely, and to re-eſtabliſh peace.

For, in ſhort, there are only two ways of obtaining peace. The firſt is, the total and entire deſtruction of our enemy; and the ſecond is, the entering into articles of treaty with him. If therefore treaties and compacts, made beween enemies, were not in themſelves ſacred and inviolable, there would be no other means of procuring a ſolid peace, than carrying on the war to the utmoſt extremity, and to the total ruin of our enemies. But who does not ſee that a principle, which tends neceſſarily to the deſtruction of mankind and ſocieties, is directly contrary to the law of nature and nations, whoſe principal end is the preſervation and happineſs of human ſociety in general, and of civil ſocieties in paticular?

5. We can make no diſtinction, in this reſpect, between the different treaties that we may enter into with an enemy; for the obligation which the laws of nature lay upon us, to obſerve them inviolably, relates as well to thoſe which do not put an end to the war, as to thoſe which tend to re-eſtabliſh peace. There is no medium, and we muſt lay it down as a general rule, that all compacts with an enemy are obligatory, or that none of them are really ſuch.

And, indeed, if it was lawful, for inſtance, to break on purpoſe a ſolemn truce, and to detain, without any reaſon for it, people, to whom we had given paſſports, &c. what harm would there be in circumventing an enemy, under a pretext of treating of peace?

When

When we enter into a negotiation of this kind, we are ſtill enemies; and it is properly but a kind of truce, which we agree to, in order to ſee if there are any means of coming to an accommodation. If the negotiations prove unſucceſsful, it is not then a new war which we begin, ſince the differences, that occaſioned our taking up arms, are not yet adjuſted; we only continue the acts of hoſtility which had been ſuſpended for ſome time: ſo that we could no more rely on the enemy's ſincerity, with reſpect to compacts which tend to re-eſtabliſh peace, than to thoſe whoſe end is only to ſuſpend, or moderate acts of hoſtility. Thus diſtruſts would be continual, wars eternal, and a ſolid peace unattainable.

6. The more frequent unneceſſary wars are become, through the avarice and ambition of ſovereigns, the more a ſteady adherence to the principles here eſtabliſhed, is indiſpenſably neceſſary for the intereſt of mankind. *Cicero* therefore juſtly affirms, that there is a right of war, which ought to be obſerved between the contending parties, and that the enemy retains certain rights, notwithſtanding the war *.

Nor is it ſufficient to ſay, as Puffendorf does, that it is a cuſtom which, among others, has obtained among civilized nations, out of particular reſpect to military bravery, that all compacts made with an enemy ought to be looked upon as valid. He ſhould alſo have added, that this an indiſpenſable duty, that juſtice requires it, that it is not in the power of nations to eſtabliſh things on another footing, and that they cannot innocently deviate from the rules which the law of nature preſcribes, in this caſe, for their common advantage.

IV. It will not be difficult, by means of the principles here eſtabliſhed, to anſwer the reaſonings by which Puffendorf pretends to ſhew, that all compacts made with an enemy, are not of themſelves obligatory. We ſhall be content with obſerving, 1. That the arguments which he uſes prove nothing, becauſe they prove too much, &c. and 2. That all that can be concluded

*Eſt etiam jus bellicum; fideſque jurisjurandi ſæpe cum hoſte ſervanda. Off. lib. iv. cap. 29.

cluded from them is, that we ought to act prudently, and take proper precautions before we pass our word, or enter into any engagement with an enemy; because mankind are apt to break their promises for their own interest, especially when they have to deal with people whom they hate, or by whom they are hated.

V. But it will be said, is it not an incontestable principle of the law of nature, that all conventions and treaties, extorted by injustice and violence, are void of themselves; and consequently, that he who has been forced to make them against his will, may innocently break his word, if he thinks he can do it with safety?

Violence and force are the characteristics of war; and it is generally the conqueror that obliges the vanquished to treat with him, and by the superiority of his arms, constrains them to accept the conditions he proposes to them, whether the war he has undertaken be just or not. How then is it possible, that the law of nature and nations should declare treaties, made in these circumstances, to be sacred and inviolable?

I answer, that however true the principle on which this objection is founded, may be in itself, yet we cannot apply it, in all its extent, to the present question.

The common interest of mankind requires, that we should make some difference between promises extorted by fear, among private persons, and those to which a sovereign prince or people is constrained, by the superiority of the arms of a conqueror, whose pretensions were unjust. The law of nations then makes an exception here to the general rule of the law of nature, which disannuls conventions extorted by unjust fear; or in other words, the law of nations holds for just on both sides, that fear which induces enemies to treat with each other, during the course of a war; for otherwise, there would be no method, either of moderating its fury, or of putting a final period to it, as we have already shewn.

VI. But that nothing may be omitted, relating to this question, we shall add something for the further illustration of what we have been saying.

First

First then, it is necessary, I think, to distinguish here whether he, who by the superiority of his arms has compelled his enemy to treat with him, had undertaken the war without reason; or whether he could allege some specious pretext for it. If the conqueror had undertaken the war for some plausible reason, though perhaps unjust at bottom, then it is certainly the interest of mankind, that the law of nations should make us regard the treaties, concluded in such circumstances, as valid and obligatory; so that the conquered cannot refuse to observe them, under a pretext that they were extorted by an unjust fear.

But if we suppose that the war was undertaken without reason, or if the motive alleged is manifestly frivolous, or unjust, as *Alexander*'s going to subdue remote nations, who had never heard of him, &c. As such a war is a downright robbery, I confess I do not think the vanquished more obliged to observe the treaty to which they are compelled; than a man, fallen into the hands of thieves, is obliged to pay a sum of money, which he had promised them as a ransom for his life or liberty.

VII. We must also add, as a very necessary remark, that even supposing the war was undertaken for some apparent and reasonable cause, if the treaty, which the conqueror imposes on the vanquished, includes some condition manifestly barbarous, and intirely contrary to humanity; we cannot, in these circumstances, deny the vanquished a right of receding from their engagements, and of beginning the war afresh, in order to free themselves, if they can, from the hard and inhuman conditions to which they were subjected, by the abuse their enemy made of his victory, contrary to the laws of humanity. The justest war does not authorise the conqueror to keep no measures, or to use all liberties with respect to the vanquished; and he cannot reasonably complain of the breaking of a treaty, the conditions of which are both unjust in themselves, and full of barbarity and cruelty.

VIII. The Roman history furnishes us with an example to this purpose, which deserves our notice,

The

The Privernates had been several times subdued by the Romans, and had as often revolted; but their city was at last retaken by the consul *Plautius*. In these distressed circumstances, they sent ambassadors to *Rome* to sue for peace. Upon a senator's asking them what punishment they thought they deserved; one of them answered, *that which is due to men who think themselves worthy of liberty*. Then the consul asked them, whether there was any room to hope, that they would observe the peace, if their fault was pardoned? "The "peace shall be perpetual between us, replied the am-"bassador, and we shall faithfully observe it, if the "conditions you lay upon us are just and reasonable; "but if they are hard and dishonourable, the peace "will not be of long continuance, and we shall very "soon break it."

Though some of the senators were offended at this answer, yet most of them approved of it, and said that it was worthy of a man, and of a man who was born free: acknowledging therefore the force of the rights of human nature, they cried out, that those alone deserved to be citizens of *Rome*, who esteemed nothing in comparison of liberty. Thus the very persons, who were at first threatened with punishment, were admitted to the rights of citizens, and obtained the conditions they wanted; and the generous refusal of the Privernates to comply with the terms of a dishonourable treaty, gained them the privilege of being incorporated into a state, which at that time could boast of the bravest, and most virtuous subjects in the universe *.

Let us therefore conclude, that a due medium is to be observed, that we ought inviolably to observe treaties made with an enemy, and that no exception of an unjust fear should authorise us to break our promise, unless the war was a downright robbery, or the conditions imposed on us were highly unjust, and full of barbarity and cruelty.

IX. There is still another case, in fine, in which we may avoid the crime of perfidiousness, and yet not perform what we have promised to an enemy; which is, when a certain condition, supposed to be the basis of

* Livy, lib. viii. cap. xx, xxi.

the engagement, is wanting. This is a consequence of the very nature of compacts; by this principle, the infidelity of one of the contracting parties sets the other at liberty: for according to the common rule, all the articles of one and the same agreement are included one in the other, in the manner of a condition, as if a person was expressly to say, *I will do such or such a thing, provided you do so or so**.

CHAP. XI.

Of compacts with an enemy, which do not put an end to the war.

I. AMONG those compacts which leave us in a state of war, one of the principal is a *truce*.

A truce is an agreement, by which we engage to forbear all acts of hostility for some time, the war still continuing.

II. A truce is not therefore a peace, for the war continues. But if we agree, for instance, on certain contributions during the war, as these are granted only to prevent acts of hostility, they ought to cease during the truce; since, at that time, such acts are not lawful. And, on the contrary, if it is agreed that any particular thing is to take place in time of peace, the time of truce is not included.

III. As every truce leaves us in a state of war, it follows, that after the term is expired, there is no necessity that war should be declared again; because we do not begin a new war, but only continue that in which we were formerly engaged.

IV. This principle, that the war renewed after a truce is not a new war, may be applied to several other cases. In a treaty of peace, concluded between the Bishop of *Trent* and the Venetians, it was agreed, *that each party should be put in possession of what they enjoyed before the last war.*

In

* See above.

In the beginning of this war the bishop had taken a castle from the Venetians, which they afterwards retook. The bishop refused to give it up, under a pretext that it had been retaken after several truces, which had been made during the course of that war. The dispute was evidently to be decided in favour of the Venetians.

V. There are truces of several kinds.

1. Sometimes, during the truce, the armies on both sides are in the field and in motion; and these are generally limited to a few days. Sometimes the parties lay down their arms, and retire to their own countries; and in this case the truces are of longer duration.

2. There is a *general truce* for all the territories and dominions of both parties; and a *particular truce* restrained to particular places, as for example, by sea, and not by land, &c.

3. Lastly, there is an absolute, indeterminate, and general truce, and a truce limited and determined to certain things; for example, to bury the dead, or if a besieged town has obtained a truce, only to be sheltered from certain attacks, or from particular acts of hostility, such as ravage the country.

VI. We must also observe, that, strictly speaking, a truce can be made only by an express agreement; and that it is very difficult to establish a treaty of this kind on the footing of a tacit convention, unless the facts are such in themselves, and in their circumstances, that they can be referred to no other principle, than to a sincere design of suspending acts of hostility for a time.

Thus, though for a time we abstain from acts of hostility, the enemy cannot from that alone conclude, that we have consented to a truce.

VII. The nature of a truce sufficiently shews what the effects of it are.

1. If the truce is general and absolute, all acts of hostility ought, generally speaking, to cease, both with respect to persons and things; but this should not hinder us, during the truce, to raise new troops, erect magazines, repair fortifications, &c. unless there is some

ſome formal convention to the contrary; for theſe are not in themſelves acts of hoſtility, but defenſive precautions, which may be taken in time of peace.

2. It is a violation of the truce, to ſeize on any place poſſeſſed by the enemy, by corrupting the garriſon. It is alſo evident, that we cannot juſtly, during a truce, take poſſeſſion of places deſerted by the enemy, but really belonging to him, whether the garriſon were withdrawn before or after the truce.

3. In conſequence hereof, we muſt reſtore thoſe things belonging to the enemy, which during the truce have accidentally fallen into our hands, even though they had been formerly our property.

4. During a truce, it is allowed to paſs and repaſs from one place to another, but without any train or attendance that may give umbrage.

VIII. And here it may be aſked, whether they who, by any unexpected and inevitable accident, are found unfortunately in the enemy's country, at the expiration of a truce, can be detained priſoners, or whether they ought to have the liberty of retiring? Grotius and Puffendorf maintain, that by the right of war we may detain them as priſoners; but Grotius adds, that it is certainly more humane and generous, not to inſiſt on ſuch a right. As for my own part, I am of opinion that it is a conſequence of a treaty of truce, that we ſhould ſet ſuch perſons at liberty: for ſince, in virtue of that engagement, we are obliged to grant them free egreſs and regreſs, during the time of the truce; we ought alſo to grant them the ſame permiſſion after the truce is expired, if it appears manifeſtly that a ſuperior force, or unexpected accident has hindered them from making uſe of it during the time agreed upon. Otherwiſe, as theſe accidents may happen every day, ſuch a permiſſion would often become a ſnare to make a great many people fall into the hands of the enemy. Such are the principal effects of an abſolute and general truce.

IX. As for a particular truce, determined to certain things, its effects are limited by the particular nature of the agreement.

1. Thus

1. Thus if a truce is granted only for burying the dead, we ought not to undertake any thing new, which may alter our ſituation; for inſtance, we cannot, during that time, retire into a more ſecure poſt, nor intrench ourſelves, &c. for he, who has granted a ſhort truce for the interment of the dead, has granted it for that purpoſe only, and there is no reaſon to extend it beyond the caſe agreed on. Hence it follows, that if he, to whom ſuch a truce has been granted, ſhould take advantage of it, to intrench himſelf for example, or for ſome other uſe, the other party would have a right to prevent him by force. The former could not complain; for it never could be reaſonably pretended, that a truce, which was granted for the interment of the dead, and reſtrained to that ſingle act, gives a right to undertake, and carry on any other thing undiſturbed. The only obligation it impoſes on the perſon who has granted it, is, not forcibly to oppoſe the interment of the dead; though Puffendorf, indeed, is of a contrary opinion *.

2. It is in conſequence of the ſame principles, that if we ſuppoſe that by the truce perſons only, and not things, are protected from acts of hoſtility; in this caſe, if in order to defend our goods we wound any perſon, it is not a breach of the truce; for when the ſecurity of perſons on both ſides is agreed on, the right of defending againſt pillage is alſo reſerved. And hence the ſecurity of perſons is not general, but only for thoſe who go and come without deſign to take any thing from the enemy, with whom ſuch limited truce is made.

X. Every truce obliges the contracting parties, from the moment the agreement is concluded. But as for the ſubjects, on both ſides, they are under no obligation in this reſpect, till the truce has been ſolemnly notified. Hence it follows, that if before this notification the ſubjects commit ſome acts of hoſtility, or do ſomething contrary to the truce, they are liable to no puniſhment. The powers, however, who have concluded the truce, ought to indemnify thoſe that have ſuffered

* See the Law of Nature and Nations, lib. viii. c. vii. ſect.

ſuffered, and to reſtore things, as much as poſſible, to their former ſtate.

XI. Laſtly, if the truce ſhould happen to be violated on one ſide, the other is certainly at liberty to proceed to acts of hoſtility, without any new declaration. But when it is agreed, that he who firſt breaks the truce ſhall pay a certain fine; if he pays the fine, or ſuffers the penalty, the other has not a right to begin acts of hoſtility, before the expiration of the term: but beſides the penalty ſtipulated, the injured party has a right to demand an indemnification of what he has ſuffered by the violation of the truce. It is to be obſerved however, that the actions of private perſons do not break a truce, unleſs the ſovereign has ſome hand in them, either by an order, or by an approbation; and he is ſuppoſed to approve what has been done, if he will neither puniſh, nor deliver up the offender, or if he refuſes to reſtore the things taken during the ceſſation of arms.

II. Safe-conducts are alſo compacts made between enemies, and deſerve to be conſidered. By a ſafe-conduct, we underſtand a privilege granted to ſome perſon of the enemy's party, without a ceſſation of arms; by which he has free paſſage and return, and is in no danger of being moleſted.

XIII. All the queſtions relating to ſafe-conducts may be decided, either by the nature of the privilege granted, or by the general rules of right interpretation.

1. A ſafe-conduct granted to ſoldiers, extends not only to inferior officers, but alſo to thoſe who command in chief; becauſe the natural and ordinary uſe of the word has determined it ſo.

2. If leave is given to go to a certain part, it implies one alſo to return, otherwiſe the firſt permiſſion would be often uſeleſs. There may, however, be caſes, in which the one does not imply the other.

3. He that has had leave to come, has not generally ſpeaking, liberty to ſend another in his place. And, on the contrary, he who has had a permiſſion to ſend another perſon, cannot come himſelf; becauſe theſe are two different things, and the permiſſion ought to be

be naturally restrained to the person himself, to whom it was granted; for perhaps it would not have been given to another.

4. A father who has obtained a pass-port, cannot take his son with him, nor a husband his wife.

5. As for servants, though not mentioned, it shall be presumed to be allowed to take one or two, or even more, according to the quality of the person.

6. In a dubious case, and generally speaking, licence to pass freely, does not cease by the death of him who has granted it; it may, however, for good reasons, be revoked by the successor: but in such a case the person, to whom the pass-port has been granted, ought to have notice given him, and the necessary time allowed him for betaking himself to a place of safety.

7. A safe-conduct, granted during pleasure, imports of itself a continuation of safe conduct, till it is expresly revoked; for otherwise, the will is supposed to subsist still the same, whatever time may be elapsed: but such a safe-conduct expires, if the person who has given it, is no longer in the employment, in virtue of which he was impowered to grant such security.

XIV. The redemption of captives is also a compact which is often made, without putting an end to the war. The antient Romans were very backward in the ransoming of prisoners. Their practice was to examine whether those, who were taken by the enemy, had observed the laws of military discipline, and consequently, whether they deserved to be ransomed. But the side of rigour generally prevailed, as most advantageous to the republic.

XV. But in general, it is certainly more agreeable, both to the good of the state, and to humanity, to ransom prisoners; unless experience convinces us, that it is necessary to use that severity towards them, in order to prevent, or redress greater evils, which would otherwise be unavoidable.

XVI. An agreement made for the ransom of a prisoner cannot be revoked, under a pretext that he is found to be much richer than we imagined: for this circumstance, of the prisoner's being more or less rich, has

has no relation to the engagement; ſo that if his ranſom was to be ſettled by his worth, that condition ſhould have been ſpecified in the contract.

XVII. As priſoners of war are not now made ſlaves, the captor has a right to nothing but what he actually takes: hence money, or other things, which a priſoner has found means to conceal, certainly remain his property, and he may conſequently make uſe of them to pay his ranſom. The enemy cannot take poſſeſſion of what they know nothing of; and the priſoner lies under no obligation to make a diſcovery of all his effects to the enemy.

XVIII. There is alſo another queſtion, whether the heir of a priſoner of war is obliged to pay the ranſom, which the deceaſed had agreed upon? The anſwer is eaſy in my opinion. If the priſoner died in captivity, the heir owes nothing, for the promiſe of the deceaſed was made upon condition, that he ſhould be ſet at liberty: but if he was ſet at liberty before he died, the heir is certainly chargeable with the ranſom.

XIX. One queſtion more, is, whether a priſoner, who was releaſed on condition of releaſing another, is obliged to return to priſon, if the other dies before he has obtained his releaſement? I anſwer, that the releaſed priſoner is not obliged to return into cuſtody, for that was not ſtipulated in the agreement; neither is it juſt that he ſhould enjoy his liberty for nothing. He muſt therefore give an indemnification, or pay the full value of what he could not perform.

CHAP. XII.

Of compacts made during the war, by ſubordinate powers, as generals of armies, or other commanders.

I. ALL that we have hitherto ſaid concerning compacts between enemies, relates to thoſe made by ſovereign powers. But ſince princes do not always

conclude ſuch agreements themſelves, we muſt now enquire what we ought to think of treaties made by generals, or other inferior commanders.

II. In order to know whether theſe engagements oblige the ſovereign, the following principles will direct us.

1. Since every perſon may enter into an engagement, either by himſelf or by another, it is plain that the ſovereign is bound by the compacts made by his miniſters or officers, in conſequence of the full powers and orders expreſsly given them.

2. He that gives a man a certain power, is reaſonably ſuppoſed to have given him whatever is a neceſſary conſequence and appendage of that power, and without which it cannot be exerciſed. But he is not ſuppoſed to have granted him any thing further.

3. If he, who has had a commiſſion to treat, has kept within the bounds of the power annexed to his office, though he act contrary to his private inſtructions, yet the ſovereign is to abide by what he has done; otherwiſe we could never depend on engagements contracted by proxy.

4. A prince is alſo obliged by the act of his miniſters and officers, though done without his orders, if he has ratified the engagements they have made, either by an expreſs conſent, and then there is no difficulty, or in a tacit manner; that is to ſay, if being informed of what has paſſed, he yet permits things to be done, or does them himſelf, which cannot reaſonably be referred to any other cauſe, than the intention of executing the engagements of his miniſter, though contracted without his participation.

5. The ſovereign may alſo be obliged to execute the engagements contracted by his miniſters without his orders, by the thing itſelf; that is, by the law of nature, which forbids us to enrich ourſelves at another's expence. Equity requires, that in theſe circumſtances we ſhould exactly obſerve the conditions of the contract, though concluded by miniſters who had not full powers.

6. Theſe are the general principles of natural equity, in virtue of which ſovereigns may be more or

leſs

leſs obliged to ſtand to the agreements of their generals. But to what has been ſaid, we muſt add this general exception: unleſs the laws and cuſtoms of the country have regulated it otherwiſe, and theſe be ſufficiently known to the perſons with whom the agreement is made.

7. Laſtly, if a public miniſter exceeds his commiſſion, ſo that he cannot perform what he has promiſed, and his maſter is not obliged to it, he himſelf is certainly bound to indemnify the perſon with whom he has treated. But if there ſhould be any deceit on his part, he may be puniſhed for it, and his perſon, or his goods, or both, are liable to be ſeized, in order to make a recompence.

III. Let us illuſtrate theſe general principles, by applying them to ſome particular examples.

1. A commander in chief cannot enter into a treaty, that regards the cauſes and conſequences of the war; for the power of making war, in whatever extent it has been given, does not imply the power of finiſhing it.

2. Neither does it belong to generals to grant truces for a conſiderable ſpace of time; for 1. That does not neceſſarily depend on their commiſſion. 2. The thing is of too great conſequence to be left entirely to their diſcretion. 3. And laſtly, circumſtances are not generally ſo preſſing, as not to admit of time to conſult the ſovereign; which a general ought to do, both in duty and prudence, as much as poſſible, even with reſpect to things which he has power to tranſact of himſelf.

Much leſs, therefore, can generals conclude theſe kinds of truces, which withdraw all the appearance of war, and come very near a real peace.

3. With reſpect to truces of a ſhort duration, it is certainly in the power of a general to make them; for example, to bury the dead, &c.

IV. Lieutenant-generals, or even inferior commanders, may alſo make particular truces, during the attack, for inſtance, of a body of the enemy intrenched, or in the ſiege of a town; for this being often

very neceſſary, it is reaſonably preſumed, that ſuch a power muſt needs be included in the extent of their commiſſion.

V. But a queſtion here ariſes, whether theſe particular truces oblige only the officers who granted them, and the troops under their command, or whether they bind the other officers, and even the commander in chief? Grotius declares for the firſt opinion, though the ſecond appears to me the beſt founded; for 1. Since we ſuppoſe that it is in conſequence of the tacit conſent of the ſovereign, that ſuch a truce has been granted by an inferior officer, no other officer, whether equal or ſuperior, can break the agreement, without indirectly wounding the authority of the ſovereign.

2. Beſides, this would lay a foundation for fraud and diſtruſts, which might tend to render the uſe of truces, ſo neceſſary on ſeveral occaſions, uſeleſs and impracticable.

VI. It does not belong to a general to releaſe perſons taken in war, nor to diſpoſe of conquered ſovereignties and lands.

VII. But it is certainly in the power of generals to grant, or leave things, which are not as yet actually poſſeſſed: becauſe in war, many cities, for example, and often men ſurrender themſelves upon condition of preſerving their lives and liberties, or ſometimes their goods; concerning which the preſent circumſtances do not commonly allow time ſufficient to conſult the ſovereign. Inferior commanders ought alſo to have this right, concerning things within the extent of their commiſſion.

VIII. In fine, by the principles here eſtabliſhed, we may eaſily judge of the conduct of the Roman people, with reſpect to *Bituitus* king of the Arverni, and to the affair of the Caudine Forks.

CHAP.

CHAP. XIII.

Of compacts made with an enemy by private persons.

I. IT sometimes happens in war, that private persons, whether soldiers or others make compacts with an enemy. *Cicero* justly remarks, that if a private person, constrained by necessity, has promised any thing to the enemy, he ought religiously to keep his word *.

II. And, indeed, all the principles we have hitherto established, manifestly prove the justice and necessity of this duty. Besides, unless this be allowed, frequent obstacles would be put to liberty, and an occasion given for massacres, &c.

III. But though these compacts are valid in themselves, yet it is evident that no private person has a right to alienate what belongs to the public; for this is not allowed even to generals of armies.

IV. With respect to the actions and effects of each individual, though the covenants made with the enemy on these affairs may sometimes be prejudicial to the state, they are nevertheless obligatory. Whatever tends to avoid a greater evil, though determined in itself, ought to be considered as a public good; as for example, when we promise to pay certain contributions to prevent pillage, or the burning of places, &c. Even the laws of the state cannot, without injustice, deprive individuals of the right of providing for their own safety, by imposing too burthensome an obligation on the subjects, which is entirely repugnant to nature and reason.

V. It is in consequence of these principles that we justly tolerate the promise of a captive to return to prison. Without this he would not be suffered to go home; and it is certainly better for him, and for the state, that he should have this permission for a time, than that he should remain always in prison. It was, therefore, to fulfil his duty, that *Regulus* returned to *Carthage*,

* De Offic. lib. i. cap. xiii.

Carthage, and surrendered himself into the hands of the enemy *.

VI. We must judge, in like manner, of the promise by which a prisoner engages *not to bear arms against the releaser*. In vain would it be objected, that such an engagement is contrary to the duty we owe to our country. It is no way contrary to the duty of a good citizen, to procure our liberty by promising to forbear a thing which it is in the enemy's power to hinder. Our country loses nothing by that, but rather gains; since a prisoner, so long as he is not released, is as useless to it, as if he was really dead.

VII. If a prisoner has promised not to make his escape, he ought certainly to keep his word; even though he was in fetters when he made it. But if a person has given his word, on condition that he should not be confined in that manner, he may break it, if he be laid in irons.

VIII. But here some will ask, whether private men upon refusing to perform what they have promised to the enemy, may be compelled to it by the sovereign? I answer, certainly: otherwise it would be to no purpose, that they were bound by a promise, if there was no one who could compel them to perform it.

CHAP. XIV.

Of public compacts which put an end to war.

I. COMPACTS which put an end to war, are either *principals* or *accessories*. Principals are those which terminate the war, either by themselves, as a treaty of peace, or by a consequence of what has been agreed upon; as when the end of the war is referred to the decision of lot, to the success of a combat, or to the judgment of an arbitrator. Accessories are

* Cic. de Offic. lib. iii. cap xxix.

are such, as are sometimes joined to the principal compacts, in order to confirm them, and to render the execution of them more certain. Such are hostages, pledges, and guaranties.

II. We have already treated of single combats agreed on by both parties, and of arbitrators, considered as means of hindering or fomenting a war; it now only remains that we speak of treaties of peace.

III. The first question which presents itself on this subject, is whether compacts, which terminate a war, can be disannulled by the exception of an unjust fear which has extorted them.

After the principles which we have heretofore established, to shew that we ought to keep our faith given to an enemy, it is not necessary to prove this point again. Of all public conventions, treaties of peace are those which a nation ought to look upon as most sacred and inviolable, since nothing is of greater importance to the repose and tranquillity of mankind. As princes and nations have no common judge, to take cognizance of their differences, and to decide concerning the justice of a war, we could never depend on a treaty of peace, if the exception of an unjust fear was in this case to be generally admitted. I say *generally*, for when the injustice of the conditions of the peace is highly evident, and the unjust conqueror abuses his victory so far, as to impose the hardest, cruellest, and most intolerable conditions on the vanquished, the law of nations cannot authorise such treaties, nor lay an obligation on the vanquished tamely to submit to them. Let us also add, that though the law of nations ordains, that, except in the case here mentioned, treaties of peace are to be faithfully observed, and cannot be disannulled, under a pretext of an unjust constraint; it is nevertheless certain, that the conqueror cannot in conscience take the advantage of such a treaty, and that he is obliged, by internal justice, to restore all that he has taken in an unjust war.

IV. Another question is to know whether a sovereign, or a state, is obliged to observe treaties of peace which they have made with their rebellious subjects?

jects? I anſwer, 1. That when a ſovereign has reduced rebellious ſubjects by force of arms, he may deal with them as he ſees beſt. 2. But if he has entered into any accommodation with them, he is thereby ſuppoſed to have pardoned them what is paſt; ſo that he cannot lawfully refuſe to keep his word under a pretext that he had given it to rebellious ſubjects. This obligation is ſo much the more inviolable, as princes are apt to give the name of rebellion to a reſiſtance, by which the ſubject only maintains his juſt rights, and oppoſes the violation of the moſt eſſential engagements of ſovereigns. Hiſtory furniſhes but too many examples of this kind.

V. None but he who has a right of making war, has a right to terminate it by a treaty of peace. In a word, this is an eſſential part of ſovereignty. But can a king, who is a priſoner, make a treaty of peace, which ſhall be valid, and ſhall bind a nation? I think not, for there is no probability, neither can it be reaſonably preſumed, that the people would have conferred the ſovereignty upon one, with a power to exerciſe it, even in matters of the greateſt importance, at a time when he is not maſter of his own perſon. But with reſpect to contracts which a king, though a priſoner, has made concerning what belongs to him in private, they are certainly valid, according to the principles we have eſtabliſhed in the preceding chapter. But what ſhall we ſay of a king who is in exile? If he has no dependance upon any perſon, it is certainly in his power to make peace.

VI. To know for certainty what things a king can diſpoſe of by a treaty of peace, we need only conſider the nature of the ſovereignty, and the manner in which he poſſeſſes it.

1. In patrimonial kingdoms, conſidered in themſelves, nothing hinders but that a king may alienate the ſovereignty, or a part of it.

2. But princes, who hold a ſovereignty only in an uſufructuary manner, cannot by any treaty alienate it, either in whole or in part. To render ſuch alienations valid, the conſent of the body of the people, or of the ſtates of the kingdom, is neceſſary.

3. With

3. With respect to the crown domains, or the goods of the kingdom, it is not generally in the power of the sovereign to alienate them.

4. As for the effects of private subjects, the sovereign, as such, has a transcendental or supereminent right over the goods and fortunes of private men; consequently he may give them up, as often as the public advantage, or necessity requires it; but with this consideration, that the state ought to indemnify the subject for the loss he has sustained beyond his own proportion.

VII For the better interpretation of the articles of a treaty of peace, we need only attend to the general rules of interpretation, and the intention of the contracting parties.

1. In all treaties of peace, if there is no clause to the contrary, it is presumed that the parties hold themselves reciprocally discharged from all damages occasioned by the war. Hence the clauses of general amnesty are only for the greater precaution.

2. But the debts between individuals, contracted before the war, and the payment of which could not be exacted during the war, are not to be accounted forgiven by the treaty of peace.

3. Unknown injuries, whether committed before, or during the war, are supposed to be comprehended in the general terms, by which we forgive the enemy the evil he has done us.

4. Whatever has been taken since the conclusion of the peace, must certainly be restored.

5. If the time be limited, in which the conditions of peace are to be performed, it must be interpreted in the strictest sense; so that when it is expired, the least delay is inexcusable, unless it proceeds from a superior force, or it manifestly appears that it is owing to no bad design.

6. It is lastly to be observed, that every treaty of peace is of itself perpetual, and, as it were, eternal in its nature; that is to say, the parties are deemed to be

be agreed never to take up arms on account of the differences which occasion the war, and for the future to look upon them as entirely at an end.

VIII. It is also an important question to know, when a peace may be looked upon as broken.

1. Some distinguish between *breaking a peace*, and *giving a new occasion of war*. To break a peace is to violate some articles of the treaty; but to give a new occasion of war, is to take up arms for some new reason not mentioned in the treaty.

2. But when we give a new occasion of war in this manner, the treaty is by that means indirectly broken, if we refuse to make satisfaction for the offence: for then the offended having a right to take up arms, and to treat the offender as an enemy, against whom every thing is lawful, he must also certainly dispense with observing the conditions of the peace, though the treaty has not been formally broken with respect to its tenour. Besides, this distinction cannot be much used at present, because treaties of peace are conceived in such a manner, as to include an engagement to live for the future in good friendship, in all respects. We must therefore conclude, that every new act of unjust hostility is an infringement of the peace.

3. As for those who only repel force by force, they by no means break the peace.

4. When a peace is concluded with several allies of him with whom the treaty has been made, the peace is not broken if one of those allies takes up arms, unless it has been concluded on that footing. But this is what cannot be presumed, and certainly they who thus invade us without the assistance of others, shall be considered as the breakers of the peace.

5. Acts of violence or hostility, which some subjects may commit of their own accord, cannot break the peace, except we suppose that the sovereign approves them; and this is presumed, if he knows the fact, has power to punish it, and neglects to do so.

6. The

6. The peace is ſuppoſed to be broken, when, without a lawful reaſon, acts of hoſtility are committed, not only againſt the whole body of a ſtate, but alſo againſt private perſons; for the end of a treaty of peace is, that every ſubject of the government ſhould for the future, live in perfect ſecurity.

7. The peace is certainly broken by a contravention to the clear and expreſs articles of the treaty. Some civilians, however, diſtinguiſh between the articles which are *of great importance*, and thoſe of *ſmall importance*. But this diſtinction is not only uncertain in itſelf, but alſo very difficult and delicate in its application. In general, all the articles of a treaty ought to be looked upon as important enough to be obſerved. We muſt, however, pay ſome regard to what is required by humanity, and rather pardon ſlight faults, than purſue the reparation of them by arms.

8. If one of the parties is, by an abſolute neceſſity, reduced to an impoſſibility of performing his engagements, we are not for that to look upon the peace as broken: but the other party ought either to wait ſome time for the performance of what has been promiſed, if there is ſtill any hope of it, or he may demand a reaſonable equivalent.

9. Even when there is treachery on one ſide, it is certainly at the choice of the innocent party to let the peace ſubſiſt; and it would be ridiculous to pretend, that he who firſt infringes the peace can diſengage himſelf from the obligation which he lay under, by acting contrary to that very obligation.

IX. To treaties of peace, for the ſecurity of their execution, are ſometimes joined hoſtages, pledges, and guarantees. Hoſtages are of ſeveral ſorts, for they either give themſelves voluntarily, or are given by order of the ſovereign, or they are forcibly taken by the enemy. Nothing, for inſtance, is at preſent more common, than to carry off hoſtages for the ſecurity of contributions.

X. The

X. The ſovereign may, in virtue of his authority, oblige ſome of his ſubjects to put themſelves into the hands of the enemy as hoſtages; for if he has a right, when neceſſity requires it, to expoſe them to the danger of their lives, much more may he engage their corporal liberty. But on the other hand, the ſtate ought certainly to indemnify the hoſtages for the loſſes they may have ſuſtained for the good of the ſociety.

XI. Hoſtages are demanded, and given, for the ſecurity of the execution of ſome engagement; therefore it is neceſſary that they ſhould be retained, in ſuch manner as ſhall be judged proper, till the performance of what has been agreed on. Hence it follows that an hoſtage, who has made himſelf ſuch voluntarily, or he who has been given by the ſovereign, cannot make his eſcape. Grotius, however, grants this liberty to the latter; but his opinion does not ſeem to be well founded: for either it was the intention of the ſtate, that the hoſtage ſhould not remain in the hands of the enemy; or the ſtate had not the power of obliging the hoſtage to remain. The firſt is manifeſtly falſe, for otherwiſe the hoſtage could be no ſecurity, and the convention would be illuſive. Nor is the other more true; for if the ſovereign, in virtue of his tranſcendental property, can expoſe the lives of the citizens, why may he not engage their liberty? Thus Grotius himſelf agrees, that the Romans were obliged to return *Clelia* to *Porſenna*. But the caſe is not preciſely the ſame, with reſpect to hoſtages taken by the enemy; for theſe have a right to make their eſcape, ſo long as they have not given their word to the contrary.

XII. it is a queſtion often controverted, whether he, to whom the hoſtages are given, can put them to death, in caſe the enemy do not perform their engagements? I anſwer that hoſtages themſelves cannot give the enemy any power over their lives, of which they are not maſters. As for the ſtate, it has certainly the power of expoſing the lives of the ſubjects, when the public good requires it. But in this caſe, all

all that the public good requires, is to engage the corporal liberty of the hoſtages; and they can no more be rendered reſponſable at the peril of their lives, for the infidelity of the ſovereign, than an innocent perſon can be treated as a criminal. Thus the ſtate by no means engages the lives of hoſtages. He, to whom they are given, is ſuppoſed to receive them on theſe conditions; and though by the violation of the treaty they are at his mercy, it does not follow that he has a right, in conſcience, to put them to death; he can only retain them as priſoners of war.

XIII. Hoſtages, given for a certain purpoſe, are free as ſoon as that purpoſe is anſwered, and conſequently cannot be detained upon any other account, for which no hoſtages were promiſed. But if we have broke our faith in any other caſe, or contracted ſome new debt, the hoſtages then may be detained, not as hoſtages, but in conſequence of this rule of the law of nations, which authoriſes us to detain the perſons of ſubjects for the deeds of their ſovereigns.

XIV. The query is, whether an hoſtage is at liberty by the death of the ſovereign, who made the covenant? This depends on the nature of the treaty, for the ſecurity of which the hoſtage was given; that is to ſay, we muſt examine whether it is *perſonal* or *real*. But if the hoſtage becomes ſucceſſor to the prince who gave him up, he is no longer obliged to be detained as an hoſtage, though the treaty be real: he ought only to put another in his place whenever it is demanded. This caſe is ſuppoſed to be tacitly excepted; for it cannot be preſumed that a prince, for example, who has given his own ſon and preſumptive heir as an hoſtage, could have imagined he ever intended, that in caſe he ſhould die, the ſtate ſhould be without its chief.

XV. Sometimes pledges are alſo given for the ſecurity of a treaty of peace; and as we have ſaid that hoſtages

hostages may be detained for other debts, this may also be applied to pledges.

XVI. Another way, in fine, of securing peace, is, when princes or states, especially those who have been mediators of the peace, become guarantees, and engage their faith, that the articles shall be observed on both sides; which engagement of theirs implies an obligation of interposing their good offices, to obtain a reasonable satisfaction to the party injured contrary to treaty, and even of assisting him against the injurious aggressor.

CHAP. XV.

Of the right of ambassadors.

I. NOTHING now remains but to say something of ambassadors, and of the privileges which the law of nations grants them. It is natural to treat of this subject here, since it is by means of these ministers that treaties are generally negotiated and concluded.

II. Nothing is more common than the maxim, which establishes that the person of ambassadors are sacred and inviolable, and that they are under the protection of the law of nations. We cannot doubt but that it is of the utmost importance to mankind in general, and to nations in particular, not only to put an end to wars and disputes, but also to establish and maintain commerce and friendship between each other. Now as ambassadors are necessary to procure these advantages, it follows that God, who certainly commands every thing that contributes to the preservation and happiness of human society, cannot but forbid, by the law of nature, the doing any injury to these

these persons; but on the contrary, that he orders we should grant them all the security and privileges, which the design and nature of their employment requires.

III. Before we enter into the application of the privileges which the law of nations grants to ambassadors, we must first observe with Grotius, that they belong only to ambassadors sent by sovereign powers to each other. For as to deputies sent by cities or provinces to their own sovereigns, it is not by the law of nations that we must judge of their privileges, but by the civil law of the country. In a word, the privileges of ambassadors regard only foreigners; that is to say, such as have no dependance on us.

Nothing then hinders an inferior ally from having a right to send ambassadors to a superior ally; for in the case of an unequal alliance, the inferior does not cease to be independent.

It is a question whether a king, vanquished in war, and stript of his kingdom, has a right of sending ambassadors? But indeed this question is useless, with respect to the conqueror, who will not even so much as think whether he ought to receive ambassadors from a person whom he has deprived of his kingdom. As for other powers, if the conqueror has entered into the war for some reasons manifestly unjust, they ought still to acknowledge him for the true king, who really is so, as long as they can do it without some great inconveniency; consequently they cannot refuse to receive his ambassadors.

But in civil wars the case is extraordinary; for then necessity sometimes makes way for this right, so as to receive ambassadors on both sides. The same nation, in that case, is for a time accounted two distinct bodies of people. But pirates and robbers, that do not constitute a settled government, can have no right of nations belonging to them, nor consequently that of sending ambassadors, unless they have obtained it by a treaty, which has sometimes happened.

IV. The

IV. The antients did not diſtinguiſh different ſorts of perſons ſent by one power to another; the Romans called them all *legati*, or *oratores*. At preſent there are various titles given to theſe public miniſters, but the employment is at bottom the ſame; and all the diſtinctions that are made, are founded rather on the greater or leſſer ſplendor with which they ſupport their dignity, and on the greatneſs or ſmallneſs of their ſalary, than on any other reaſon relating to their character.

V. The moſt common diſtinction of ambaſſadors, at preſent, is into *extraordinary* and *ordinary*. This difference was entirely unknown to the antients. All the ambaſſadors they ſent were extraordinary, that is to ſay, charged with only one particular negotiation; whereas the ordinary ambaſſadors are thoſe who reſide in the courts of allied nations, to manage all kinds of buſineſs, and even to obſerve what paſſes there.

The change of the ſituation of things in *Europe*, ſince the deſtruction of the Roman empire, the different ſovereignties and republics that have been erected, together with the increaſe of trade, have rendered theſe ordinary ambaſſadors neceſſary, and introduced the uſe of them. Hence ſeveral hiſtorians juſtly obſerve, that the Turks, who keep no miniſters in foreign countries, act very impoliticly in this particular, for as they receive their news only by Jewiſh or Armenian merchants, they do not generally hear of things till very late, or their informations are bad, which often makes them take falſe meaſures, becauſe they have had falſe advices.

VI. Grotius obſerves that there are two principal maxims of the law of nations, concerning ambaſſadors. The firſt, *that we ought to admit them*; the ſecond, *that we ſhould offer no violence to them, and that their perſons are ſacred and inviolable.*

VII. With regard to the firſt of theſe maxims, we muſt obſerve that the obligation of admitting ambaſſadors, is founded in general on the principles of ſociety

ciety and humanity: for as all nations form a kind of ſociety among themſelves, and conſequently ought to aſſiſt each other by a mutual commerce of good offices, the uſe of ambaſſadors becomes neceſſary between them for that very reaſon. It is therefore a rule of the law of nations, that we ought to admit ambaſſadors, and to reject none without a juſt cauſe.

VIII. But though we are obliged to admit ambaſſadors, it is only a bare duty of humanity, which produces but an imperfect, and not a ſtrict obligation. So that a ſimple refuſal cannot be regarded as an injuſtice, properly ſpeaking, ſufficient to lay a juſt foundation for a war. Beſides the obligation to admit ambaſſadors, regards as well thoſe ſent to us by an enemy, as thoſe who come from an allied power. It is the duty of princes, who are at war, to ſeek the means of re-eſtabliſhing a juſt and reaſonable peace; and they cannot obtain it, unleſs they are diſpoſed to liſten to the propoſals which may be made on each ſide; which cannot be ſo well negotiated, as by employing ambaſſadors or miniſters. The ſame duty of humanity obliges neutral, or indifferent princes, to afford a paſſage through their territories to ambaſſadors ſent by other powers.

IX. I mentioned that we ought not, without a juſt cauſe, to refuſe an admittance to an ambaſſador; for it is poſſible that we may have very good reaſons to reject him: for example, if his maſter has already impoſed upon us under a pretext of an embaſſy, and we have juſt reaſon to ſuſpect the like fraud; if the prince, by whom the ambaſſador is ſent, has been guilty of treachery, or of ſome other heinous crime againſt us; or, in fine, if we are ſure that, under pretext of ſome negotiations, the ambaſſador is ſent only in the character of a ſpy, to pry into our affairs, and to ſow the ſeeds of ſedition.

Thus, in the retreat of the ten thouſand of which *Xenophon* has left us the hiſtory, the generals reſolved, that as long as they were in the enemy's country they

would receive no heralds; and what moved them to this resolution, was their having found that the persons who had been sent among them, under pretence of embassies, came really to spy, and to corrupt the soldiers.

It may also be a just reason for refusing admittance to an ambassador, or envoy from an allied power, when by admitting him we are likely to give distrust to some other power, with whom it is proper we should have a good understanding. Lastly, the person or character of the ambassador himself may furnish just reasons for our not admitting him. This is sufficient concerning the maxim relating to the admittance of ambassadors.

X. As for the other rule of the law of nations, which directs that no violence be offered to ambassadors, and that their persons ought to be looked upon as sacred and inviolable, it is a little more difficult to decide the several questions relating to it.

1. When we say that the law of nations forbids any violence to ambassadors, either by words or actions, we do not by this give any particular privilege to ambassadors; for this is no more than what every man has a right to by the law of nature, a right that his life, his honour, and his property, should be perfectly secure.

2. But when we add, that the persons of ambassadors are sacred and inviolable by the law of nations, we attribute some prerogatives and privileges to them, which are not due to private persons, &c.

3. When we say that the person of an ambassador is sacred, this signifies no more than that we inflict a severer punishment on those who have offered violence to an ambassador, than on those who have done some injury or insult to private persons; and that the character which renders ambassadors sacred, is the reason of our inflicting so different a punishment for the same kind of offence.

4. Lastly,

4. Laſtly, the reaſon why we call the perſons of ambaſſadors ſacred, is becauſe they are not ſubject to the civil or criminal juriſdiction of the ſovereign to whom they are ſent, either with reſpect to their perſons, retinue or effects; ſo that we cannot act againſt them, according to the ordinary ways of juſtice; and it is in this that their privileges principally conſiſt.

XI. The foundation of theſe privileges, which the law of nations grants to ambaſſadors, is, that as an ambaſſador repreſents the perſon of his maſter, he ought of courſe to enjoy all the privileges and rights which his maſter himſelf as a ſovereign would have, was he to come into the ſtates of another prince to tranſact his own affairs, to negotiate, for inſtance, or conclude a treaty, or an alliance, to regulate ſome branch of commerce, and other things of a ſimilar nature, &c. Now, for whatever reaſon a ſovereign goes from his own into a foreign country, ſurely we cannot imagine that he loſes his character and independence, and that he becomes ſubject to the prince in whoſe territories he is: on the contrary, he ought to be thought to continue as he was before, equal and independent of the civil or criminal juriſdiction of the prince, into whoſe territories he goes; and the latter receives him on that footing as he would chooſe to be received himſelf, if he went into the other's dominions. We muſt grant the ambaſſador the ſame prerogative and immunities, in conſequence of his repreſentative character.

The very end and deſign of embaſſies render theſe privileges of ambaſſadors neceſſary; for it is certain, that if an ambaſſador can treat with the prince to whom he is ſent, with a full independence, he will be much better qualified to perform his duty, and ſerve his maſter effectually, than if he was ſubject to the juriſdiction of the prince with whom he is to negotiate, or if he and his retinue could be conſigned over to juſtice, and his goods arreſted and ſeized, &c.

It

It is not, therefore, without reason, that all nations have, in favour of ambassadors, made an exemption to the general custom, by which it is established, that people who reside in a foreign prince's dominions, shall be subject to that prince's laws.

XII. These principles being supposed, I say,

1. That there is no difficulty with respect to ambassadors, who come to a power with whom their master is at peace, and who have injured no man. The most common and most evident maxims of the law of nature, require they should be perfectly secure. So that if we affront or insult such an ambassador, in any manner whatsoever, we give his master just reason for declaring war. Of this king *David* furnishes us with an example *.

2. As to ambassadors who come from an enemy, and who have done no harm before they are admitted, their safety depends entirely on the laws of humanity; for an enemy, as such, has a right to annoy his enemy. Thus, so long as there is no particular agreement upon this article, we are obliged to spare the ambassador of an enemy, only in virtue of the sentiments of humanity, which we ought always to retain, and which oblige us to have a regard for every thing which tends to the preservation of peace.

3. But when we have promised to admit, or have actually admitted the ambassador of an enemy, we have thereby manifestly engaged to procure him entire security, so long as he behaves himself well. We must not even except heralds, who are sent to declare war, provided they do it in an indifferent manner. So much for innocent ambassadors.

4. As to ambassadors, who have rendered themselves culpable, they have done the injury either of their own head, or by their master's order.

If

* 2 Sam. ch. x.

If they have done it of their own head, they forfeit their right to ſecurity, and to the enjoyment of their privileges, when their crime is manifeſt and heinous: for no ambaſſador whatever can pretend to more privilege than his maſter would have in the ſame caſe; now ſuch a crime would not be pardoned in the maſter.

By *heinous crimes*, we here mean ſuch as tend to diſturb the ſtate, or to deſtroy the lives of the ſubjects of the prince to whom the ambaſſador is ſent, or to do them ſome conſiderable prejudice in their honour or fortunes.

When the crime directly affects the ſtate, or the head of it, whether the ambaſſador has actually uſed violence or not, that is to ſay, whether he ſtirred up the ſubjects to ſedition, or conſpired himſelf againſt the government, or favoured the plot; or whether he has taken arms with the rebels or the enemy, or engaged his attendants ſo to do, &c. we may be revenged on him, even by killing him, not as a ſubject, but as an enemy; for his maſter himſelf would have no reaſon to expect better treatment. And the end of embaſſies, eſtabliſhed for the general good of nations, does not require that we ſhould grant to an ambaſſador, who firſt violates the moſt ſacred rules of the law of nations, the privileges which that law allows to ambaſſadors. If ſuch an ambaſſador makes his eſcape, his maſter is obliged to deliver him up when he is demanded.

But if the crime, however heinous or manifeſt, affects only a private perſon, the ambaſſador is not for that alone to be reputed an enemy to the prince or ſtate. Suppoſe his maſter had committed a crime of the ſame nature, we ought to demand ſatisfaction of him, and not take up arms againſt him till he had refuſed it; ſo the ſame reaſon of equity directs, that the prince, at whoſe court the ambaſſador has committed ſuch a crime, ſhould ſend him back to his maſter, deſiring him either to deliver him up, or to puniſh him: for to keep him in priſon till his maſter

ſhall

ſhall recall him, in order to puniſh him, or declare that he has abandoned him, would be to teſtify ſome diſtruſt of the juſtice of his maſter, and by that means affront him in ſome meaſure, becauſe the ambaſſador ſtill repreſents him.

5. But if the crime is committed by the maſter's order, it would certainly be imprudence to ſend the ambaſſador back; ſince there is juſt reaſon to believe, that the prince who ordered the commiſſion of the crime, will hardly ſurrender, or puniſh the criminal. We may, therefore, in this caſe, ſecure the perſon of the ambaſſador, till the maſter ſhall repair the injury done both by his ambaſſador and himſelf. As for thoſe who do not repreſent the perſon of the prince, ſuch as common meſſengers, trumpets, &c. we may kill them on the ſpot, if they come to inſult a prince by order of their maſter.

But nothing is more abſurd than what ſome maintain, namely, that all the evil done by ambaſſadors, by order of their maſter, ought to be imputed intirely to the maſter. Were it ſo, ambaſſadors would have more privilege in the territories of another prince, than their maſter himſelf, ſhould he appear there: and, on the other hand, the ſovereign of the country would have leſs power in his own dominions, than a maſter of a family has in his own houſe.

In a word, the ſecurity of ambaſſadors ought to be underſtood in ſuch a manner, as to imply nothing contrary to the ſecurity of the powers to whom they are ſent, and who neither would nor could receive them upon other terms. Now it is plain, that ambaſſadors will be leſs bold in undertaking any thing againſt the ſovereign, or members of a foreign ſtate, if they are apprehenſive, that in caſe of treaſon, or ſome other heinous crimes, the ſovereign of the country can call them to an account for it, than if they had nothing to fear but correction from their maſter.

6. When

6. When the ambaſſador himſelf has committed no crime, it is not lawful to uſe him ill, or to kill him by the law of *retaliation*, or *repriſals*; for as ſoon as we have admitted him under that character, we have renounced the right we had to any ſuch revenge.

In vain would it be to object a great many inſtances of revenge taken after this manner, which are to be met with in hiſtory; for hiſtorians not only relate juſt and lawful actions, but alſo a great many things done contrary to juſtice in the heat of anger, by the influence of ſome irregular and tumultuous paſſion.

7. What has been hitherto ſaid of the rights of ambaſſadors, ought to be applied to their domeſtics, and all their retinue. If any of the ambaſſador's domeſtics has done an injury, we may deſire his maſter to deliver him up. If he does not comply he makes himſelf acceſſary to his crime, and in this caſe we have a right to proceed againſt him in the ſame manner, as if he had committed the crime himſelf.

An ambaſſador, however, cannot puniſh his own domeſtics; for as this is not conducive to the end of his employment, there is no reaſon to preſume that his maſter had given it him.

8. With reſpect to the effects of ambaſſadors, we can neither ſeize them for payment nor ſecurity, in the way of juſtice; for this would ſuppoſe, that he was ſubject to the juriſdiction of the ſovereign at whoſe court he reſides. But if he refuſes to pay his debts, we ought, after giving him notice, to apply to his maſter, and if his maſter refuſes to do us juſtice, we may ſeize the effects of the ambaſſador.

9. Laſtly, as for the right of aſylums and protections, it is by no means a conſequence of the nature and

and end of embaſſies. However, if it is once granted to the ambaſſadors of a certain power, nothing authoriſes us to revoke it, unleſs the good of the ſtate require it.

Neither ought we, without good reaſons, to refuſe ambaſſadors the other ſorts of rights and honours, which are eſtabliſhed by the common conſent of ſovereigns; for this would be a kind of an affront to them.

FINIS