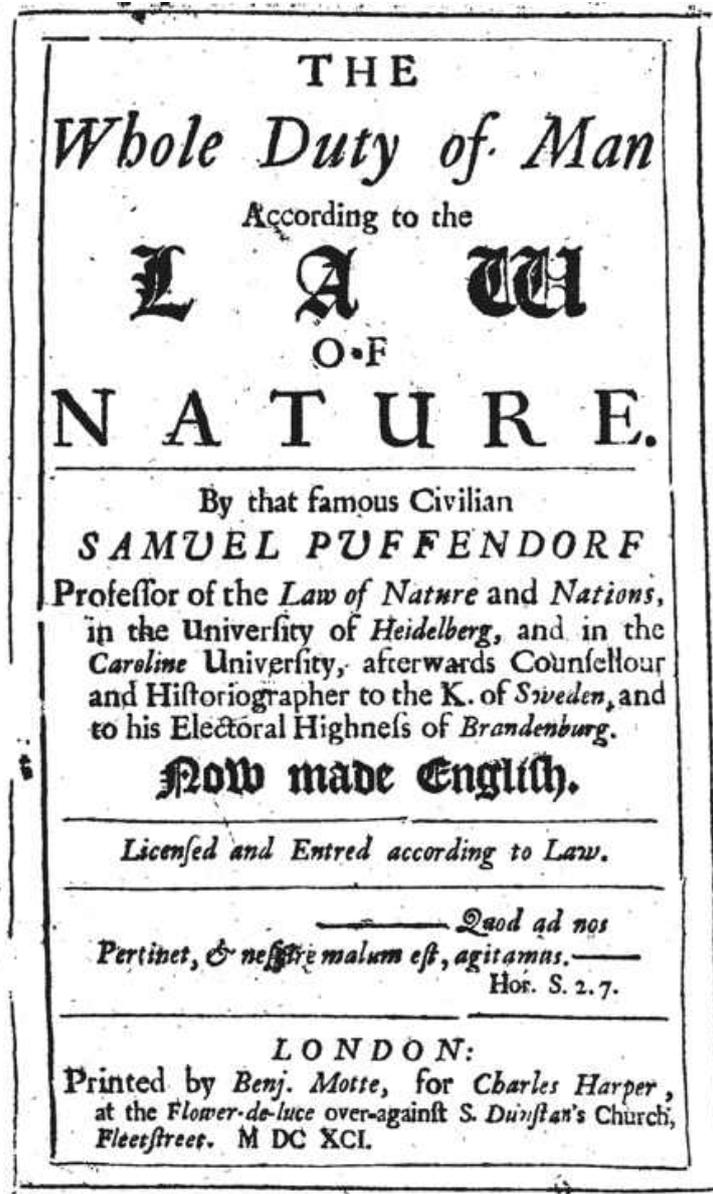


**SAMUEL PUFENDORF,**  
*The Whole Duty of Man according to the  
Law of Nature (1691)*



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Samuel Pufendorf, *The Whole Duty of Man According to the Law of Nature. By that famous Civilian Samuel Puffendorf Professor of the Law of Nature and Nations, in the University of Heidelberg, and in the Caroline University, afterwards Counsellour and Historiographer to the K. of Sweden, and to his Electoral Highness of Brandenburg. Now made English. Licensed and Entred according to Law.* London: Printed by Benj. Motte, for Charles Harper, at the Flower-de-luce over-against S. Dunstan's Church, Fleetstreet. MDCXCI (1691). Anonymous translator.

### *Editor's Introduction*

To make this edition useful to scholars and to make it more readable, I have done the following:

1. inserted and highlighted the page numbers of the original edition
  2. not split a word if it has been hyphenated across a new line or page (this will assist in making word searches)
  3. added unique paragraph IDs (which are used in the "citation tool" which is part of the "enhanced HTML" version of this text)
  4. retained the spaces which separate sections of the text
  5. created a "blocktext" for large quotations
  6. moved the Table of Contents to the beginning of the text
  7. placed the footnotes at the end of the book
  8. formatted short margin notes to float right
  9. inserted Greek and Hebrew words as images
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**To his Honour'd Friend Mr. *GEORGE WHITE* Of *London*, MERCHANT;**

This TRACTATE Concerning the *Law of Nature* IS Offer'd, Dedicated, Presented

BY His humblest and most obliged Servant, *The Translator*.

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## TO THE READER. ↩

THE Translator having observ'd, in most of the Disputes wherewith the present Age is disquieted, frequent Appeals made, and that very properly, from *Laws and Ordinances of a meaner Rank* to the everlasting *Law of Nature*, gave himself the Pains, to turn over several Writers on that Subject. He chanc'd, he thinks with great Reason, to entertain an Opinion that this Author was the clearest, the fullest and the most unprejudic'd of any he met with: and hereupon that he might the better possess himself of his Reasonings, he attempted to render the Work into Mother-Tongue, after he had first endeavour'd to set several better hands upon the Undertaking, [Page] who all for one Reason or other declin'd the Toil. He thought when 'twas done, it might be as acceptable to one or other to read it, as it had been to himself to translate it. If he have not done right to the Author, as he hopes he has not miss'd in any material Point, he is very willing to be corrected.

The Work, 'tis true, is as it were, an *Epitome* of the Author's large Volume; but having been extracted and publish'd by *Himself*, the Reader cannot be under any doubt, but that he has the Quintessence of what is there deliver'd. What is par'd off, being mostly Cases in the Civil Law, Refutations of other Authors, and some Notions too fine and unnecessary for a Manual.

Concerning the *Author* 'tis enough to say, that he has surely had as great regard paid him from Personages of the highest degree, as perhaps ever was given to the most learned of men; being invited from his Native Country, first by the *Elector Palatine* to be Professor of the Law of Nature and Nations [Page] in the University of *Heidelberg*; then by the King of *Sweden* to honour his new-raised Academy by accepting the same Charge therein, and afterwards being admitted of the Council and made Historiographer both to the same King, and to his Electoral Highness of *Brandenburgh*: Where, except he be very lately dead, he lives at this time in the greatest respect of all men of Sense and Understanding.

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## The AUTHOR'S PREFACE. ↩

HAD not the *Custom* which has so generally obtain'd among Learned men almost procur'd to itself the force of a *Law*, it might seem altogether superfluous to premise a Word concerning the Reason of the present Undertaking; the Thing itself plainly declaring my whole Design to be the giving as short and yet, if I mistake not, as *plain* and *perspicuous* a *Compendium* of the most material Articles of the *Law of Nature*, as was possible; and this, lest if those who betake themselves to this sort of Study should enter the vast Fields of Knowledge without [Page] having fully imbib'd the Rudiments thereof, should at first sight be terrified and confounded by the Copiousness and Difficulty of the Matters occurring therein. And at the same time it seems plainly a very expedient Work for the Publick that the minds of Youth especially should be early imbued with that *Moral Learning*, for which they will have such manifest occasion and so frequent use through the whole Course of the Lives. And although I have always look'd upon it as a Work deserving no great Honour, to Epitomize the larger Writings of others, and more especially ones own; yet having thus done out of Submission to the commanding Authority of my Superiors, I hope no honest man will blame me for having endeavour'd hereby the improvement of the Understandings of young Men more particularly; to whom so great regard is to be had, that whatsoever Work is undertaken for [Page] their sakes, though it may not be capable of great Acuteness or splendid Eloquence, yet it is not to be accounted unworthy of any mans Pains. Beside that no Man in his Wits will deny that these Principles thus laid down are more conducive to the understanding of all Law in general, than any Elements of the Law Civil can be.

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

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Now 'tis very manifest, that Men derive the Knowledge of their Duty, and what is fit to be done, or to be avoided in this Life, as it were from three Springs or Fountain-Heads; to wit, from the Light of Nature, from the Laws and Constitutions of Countries, and from the special Revelation of Almighty God. From the first of these proceed all those most common and ordinary Duties of a man, more particularly those that constitute him a *sociable Creature* with the rest of Mankind; from the second are derived all the Duties of a Man, as he is a *Member* of any particular *City* or *Common-wealth*; from the third result all the Duties of a *Christian Man*. And from hence proceed three distinct Sciences; the first of which is of the *Law of Nature*, common to all Nations; the second is of the Civil or Municipal Law peculiar to each Country, which is or may be as manifold and various as there [Page] are different States and Governments in the World: the third is Moral Divinity, as it is contra-distinct to that Part of Divinity, which explains the Articles of our Faith.

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

Of *Civil Laws* and Constitutions, the supreme Reason is the *Will* of the *Lawgiver*.

The Obligation of *Moral Divinity* lies wholly in this, because God in the sacred *Scripture* has so commanded.

Now as the *Civil Law* presupposes the *Law of Nature*, as the more general Science; so if there be any thing contained in the *Civil Law*, wherein the *Law of Nature* is altogether silent, we must not [Page] therefore conclude that the one is any ways repugnant to the other. In like manner if in *Moral Divinity* some things are delivered as from Divine Revelation, which by our Reason we are not able to comprehend, and which upon that score are above the reach of the *Law of Nature*; it would be very absurd from hence to set the one against the other, or to imagine that there is any real Inconsistency between these Sciences. On the other hand, in the Doctrin of the *Law of Nature*, if any things are to be presupposed, because so much may be inferr'd from Reason, they are not to be put in Opposition to those things which the *holy Scripture* on that Subject delivers with greater Clearness, but they are only to be taken in an abstracted Sense. Thus, for Example, from the *Law of Nature*, abstracted from the Account we receive thereof in holy Writ, there may be formed an *Idea* of the Condition [Page] and State of the first Man as he came into the World, only so far as is within the Comprehension of *Humane Reason*. Now to set those things in opposition to what is deliver'd in Sacred Writ concerning the same State, would be the greatest Folly and Madness in the World.

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

And upon this Subject I shall deliver my Opinion briefly, not with any Papal Authority, as if I was exempted from all Error by any Peculiar Right or Priviledge, neither as one who pretends to any Enthusiastick Revelation; but only as being desirous to discharge that Province which I have undertaken, according to the best of my Ability. And, as [Page] I am willing to hear all Candid and Ingenuous Persons, who can inform me better, and am very ready to retract what I have said amiss; so I do not value those Pragmatical and Positive Censurers and Busie-bodies, who boldly concern themselves with things which no ways belong to them; of these Persons we have a very Ingenious Character given by *Phaedrus*: *They run about, says he, as mightily concern'd, they are very busie even when they have nothing to do, they puff and blow without any occasion, they are uneasie to themselves, and troublesome to every body else.*

Now the Chief Distinction, whereby these Sciences are separated from one another, proceeds from the different Source or Spring, whence each derives its *Principles*; and of which I have already discours'd. From whence it follows; if there be some things, which we are enjoyn'd in Holy Writ either to do or forbear, [Page] the Necessity whereof cannot be discover'd by Reason alone, they are to be look'd upon as out of the Cognizance of the *Law of Nature*, and properly to appertain to *Moral Divinity*.

Moreover in *Divinity* the Law is consider'd as it has the Divine Promise annex'd to it, and with relation to the Covenant between God and Man; from which consideration the *Law of Nature* abstracts, because the other derives it self from a particular *Revelation* of God Almighty, and which *Reason* alone could not have found out. Besides too there is this Great Difference, in that the main End and Design of the *Law of Nature* is included within the Compass of this Life only, and so thereby a Man is inform'd how he is to live in Society with the rest of Mankind: But *Moral Divinity* instructs a Man how to live as a Christian, who is not oblig'd to live honesty and vertuously in this World; [Page] but is besides in earnest expectation of the Reward of his Piety after this Life, and therefore he has his Conversation in Heaven, but is here only as a Stranger and a Pilgrim. For altho the Mind of Man does with

very great ardency pursue after Immortality, and is extremely averse to its own Destruction, and thence it was that most of the Heathens had a strong persuasion of the separate State of the Soul from the Body, and that then Good Men should be rewarded, and Evil Men punish'd: yet notwithstanding such a strong Assurance of the certainty hereof, upon which the Mind of Man can firmly and entirely depend, is to be deriv'd only from the *Word of God*. Hence it is that the Dictates of the Law of Nature are adapted only to *Humane Judicature*, which does not extend it self beyond this Life; and it would be absurd in many respects to apply them to the Divine *Forum*, which [Page] concerns itself only about Theology. From whence this also follows, that, because *Humane Judicature* regards only the external Actions of Man, but can no ways reach the Inward Thoughts of the Mind, which do not discover themselves by any outward Sign or Effect; therefore the *Law of Nature* is for the most part exercised in forming the outward Actions of Men. But *Moral Divinity* does not content itself in regulating only the *Exterior Actions*; but is more peculiarly intent in forming the *Mind*, and its internal Motions agreeable to the good Pleasure of the Divine Being; disallowing those very Actions, which outwardly look well enough, but proceed from an impure and corrupted Mind. And this seems to be the Reason why the sacred Scripture doth not so frequently treat of those Actions, that are enjoyned under certain Penalties by Humane Laws, as it doth of those, which, as *Seneca* expresses it, [Page] are out of the reach of any such Constitutions. And this will manifestly appear to those, who shall carefully consider the Precepts and Virtues that are therein inculcated; although even those Christian Virtues do very much dispose the Minds of Men, towards the maintaining of Mutual Society; so likewise Moral Divinity does mightily promote the Practice of all the main Duties, that are enjoyned us in our Civil Department: So that if you should observe any one behave himself like a restless and troublesome Member in the Common-wealth, you may fairly conclude that the Christian Religion has made but a very slight impression on that Person, and that it has taken no Root in his Heart. And from these Particulars I suppose may be easily discovered not only the certain Bounds and Limits which distinguish the Law of Nature, as we have defin'd it, from Moral Divinity; but it may likewise [Page] be concluded that the Law of Nature is no ways repugnant to the Maxims of sound Divinity; but is only to be abstracted from some particular Doctrines thereof, which cannot be fathom'd by the help of Reason alone. From whence also it necessarily follows, that in the Science of the Law of Nature, a Man should be now considered, as being depraved in his very Nature, and upon that Account, as a Creature subject to many vile Inclinations: For although none can be so stupid, as not to discover in himself many Evil and Inordinate Affections, nevertheless, unless we were inform'd so much by Sacred Writ, it would not appear that this Rebellion of the Will, was occasioned by the first Mans Transgression; and consequently since the Law of Nature does not reach those Things which are above Reason, it would be very preposterous to derive it from the State of Man, as it was uncorrupt [Page] before the Fall; especially since even the greatest part of the Precepts of the Decalogue, as they are delivered in Negative Terms, do manifestly presuppose the depraved State of Man. Thus for Example, in the First and Second Commandment it seems to be supposed that Mankind was naturally prone to the belief of Polytheism and Idolatry. For if you should consider Man as in his Primitive State, wherein he had a clear and distinct Knowledge of the Deity, as it were by a peculiar Revelation; I do not see how it could ever enter into the Thoughts of such a one, to frame any thing to himself, to which he could pay Reverence instead of or together with the true God, or to believe any Divinity to reside in that which his own Hands had form'd; therefore there was no necessity of laying an Injunction upon him in Negative Terms, that he should not worship other Gods; but this Plain, [Page] Affirmative Precept would have been sufficient; Thou shalt love, honor and adore God, whom you know to have created both yourself and the whole Universe. And the same may be said of the Third Commandment, for why should it be forbidden in a Negative Precept, to blaspheme God, to such a one who had at the same time a clear and perfect Understanding of his Bounty and Majesty, and who was actuated by no inordinate Affections, and whose Mind did cheerfully

acquiesce in that Condition, wherein he was placed by Almighty God? How could such a one be Guilty of so great Madness? But he needed only to have been admonished by this Affirmative Precept, That he should glorifie the Name of God. But it seems otherwise of the Fourth and Fifth Commandments, which as they are Affirmative Precepts, neither do they necessarily presuppose the depraved State of [Page] Man, they may be admitted, Mankind being considered as under either Condition. But the thing is very manifest in relation to the other Commandments, which concern our Neighbour; for it would suffice plainly to have enjoyned Man, considered as he was at first created by God, that he should love his Neighbour, whereto he was beforehand enclined by his own Nature. But how could the same Person be commanded, that he should not kill, when Death had not as yet faln on Mankind, which entred into the World upon the account of Sin? But now there is very great need of such a Negative Command, when instead of loving one another, there are stir'd up so great Feuds and Animosities among Men, that even a great Part of them is owing purely to Envy, or an inordinate Desire of invading what belongs to another; so that they make no scruple not only of destroying [Page] those that are innocent, but even their Friends, and such as have done them signal Favors, and all this forsooth they are not ashamed to disguise under the specious pretence of Religion and Conscience. In like manner what need was there expresly to forbid Adultery among those married Persons, whose mutual Love was so ardent and sincere? Or what occasion was there to forbid Theft when as yet Covetousness and Poverty were not known, nor did any Man think that properly his own, which might be useful or profitable to another? Or to what purpose was it to forbid the bearing False Witness, when as yet there were not any to be found, who sought after Honor and Reputation to themselves, by Slandering and aspersing others with false and groundless Calumnies? So that not unfitly you may here apply the Saying of *Tacitus*, *Vetustissimi Mortalium, nulla adhuc prava libidine, [Page] sine probro, scelere, eoque sine poena aut coercionibus agebant; & ubi nihil contra morem cuperent, nihil per metum vetabantur.* *Whilst no corrupt Desires deprav'd Mankind, the first Men lived without Sin and Wickedness, and therefore free from Restraint and Punishment, and whereas they coveted nothing but what was their due, they were barr'd from nothing by Fear.*

And these things being rightly understood may clear the way for removing this Doubt; whether the Law was different or the same in the Primitive State of Nature before the Fall? Where it may be briefly answer'd, that the most material Heads of the Law were the same in each State; but that many particular Precepts did vary according to the diversity of the Condition of Mankind; or rather that the same Summary of the Law was explain'd by divers, but not contrary, Precepts; according to the [Page] different State of Man, by whom that Law was to be observ'd. Our Saviour reduc'd the Substance of the Law to two Heads: *Love God, and Love thy Neighbour*: To these the whole *Law of Nature* may be refer'd, as well in the Primitive, as in the deprav'd State of Man; (unless that in the Primitive State there seems not any or a very small difference between the *Law of Nature*, and *Moral Divinity*.) For that Mutual Society, which we laid down as a Foundation to the *Law of Nature*, may very well be resolv'd into the Love of our Neighbour. But when we descend to particular Precepts, there is indeed a very great difference both in relation to the Commands and Prohibitions. And as to what concerns the Commands, there are many which have place in this State of Mankind, which seem not to have been necessary in the Primitive State: And that partly because they presuppose such a [Page] Condition, as, 'tis not certain, could happen to that most happy State of Mankind; partly because there can be no Notion of them, without admitting *Misery* and *Death*, which were unknown there: As for Instance, we are now enjoyn'd by the Precepts of the *Law of Nature*, not to deceive one another in buying or selling, not to make use of false Weights or Measures, to repay Money that is lent, at the appointed time. But it is not yet evident, whether if Mankind had continued without sin, there would have been driven any Trade and Commerce, as there is now in the World, or whether there would then have been any Occasion for the Use of Money. In like manner if such kind of Communities, as are now

adays, were not to be found in the State of Innocence, there would be then likewise no Occasion for those Laws, which are presupposed as requisite for the well ordering and Government [Page] of such Societies. We are also now commanded by the *Law of Nature* to succour those that are in want, to relieve those that are oppressed, to take care of Widows and Orphans. But it would be to no purpose to have inculcated these Precepts to those who were no ways subject to Misery, Poverty or Death. The *Law of Nature* now enjoyns us to forgive Injuries, and to use our utmost Endeavours towards the promoting of Peace amongst Mankind; which would be unnecessary among those who never offended against the Laws of Mutual Society. And this too is very evident in the Prohibitory Precepts which relate to the Natural not Positive Law. For altho every Command does virtually contain in itself a Prohibition of the opposite Vice; (as for instance, he that is commanded to love his Neighbour, is at the same time forbidden to do such Actions, as may any [Page] ways thwart or contradict this Duty of Love:) yet it seems superfluous that these things should be ordain'd by express Commands, where there are no disorderly Inclinations to excite Men to the committing such Wrongs. For the Illustration of which, this may be taken notice of, that *Solon* would by no Publick Law enact any Punishment for *Parricides*, because he thought that no Child could be guilty of so horrid an Impiety. The like whereof we may find in what is reported by *Francis Lopez*, in his History of the *West-Indies*, Chap. 207. concerning the People of *Nicaragua*; he tells us, that they had not appointed any Punishment for those who should kill their Prince; because, say they, there can be no Subject, who would contrive or perpetrate so base an Action. I am afraid it may savour too much of Affectation to enlarge any farther in the Proof of what is in itself so clear and evident. [Page] Yet I shall add this one Example fitted to the meanest Capacity. Suppose there are two Children, but of different Dispositions, committed to the Care of a certain Person; One whereof is Modest and Bashful, taking great Delight in his Studies; the other proves Unruly, Surly, giving himself over more to loose Pleasures, than to Learning. Now the Duty of both of these is the same, to follow their Studies; but the particular Precepts proper to each, are different; for it is sufficient to advise the former to what kind of Studies he must apply himself, at what time and after what manner they are to be followed: But as for the other, he must be enjoyned under severe Penalties, not to wander abroad, not to Game, not to sell his Books, not to get others to make his Exercises, not to play the good Fellow, not to run after Harlots. Now if any one should undertake in a set Discourse [Page] to declaim against these things to him of the contrary Temper, the Child may very well enjoyn him Silence, and bid him inculcate them to any Body else, rather than to him, who takes no Delight or Pleasure in such Practices. From whence I look upon it as manifest, that the Law of Nature would have a quite different Face, if we were to consider Man, as he was in his Primitive State of Innocence. And now since the Bounds and Limits of this Science, whereby it is distinguished from Moral Divinity, are so clearly set down, it ought at least to have the same Priviledges with other Sciences, as the Civil Law, Physick, Natural Philosophy and the Mathematicks; wherein if any Unskilful Person presum'd to meddle, assuming to himself the Quality of a Censor, without any Authority, he may fairly have that objected to him, which was formerly done by *Apelles* to *Megabyzus* who undertook to talk at random [Page] about the Art of Painting; Pray, said he, be silent, lest the Boys laugh at you, who pretend to talk of Matters you do not understand.

Now upon the whole, I am contented to submit my self to the Judgment of Discreet and Intelligent Persons; but as for Ignorant, and Spiteful Detractors, 'tis better to leave them to themselves, to be punished by their own Folly and Malice; since, according to the Ancient Proverb, *The Ethiopian cannot change his Skin*.

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**Written by the same AUTHOR, and Translated by J. C. ↩**

THE History of *Popedom*, containing an Account of the *Rise, Progress, and Decay* thereof. Sold by *C. Harper* at the *Flower-de-luce* over against *S. Dunstan's Church* in *Fleetstreet*, and *J. Hindmarsh* at the *Golden Ball* over against the *Royal Exchange, Cornhill*.

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[1]

# THE *Whole Duty of Man*, According to the LAW of NATURE.

## BOOK I.

### CHAP. I.

#### *Of Human Actions.* ↪

WHAT we mean here by the word *Duty*, is, that *Action* of a Man, which *I. What is Duty.* is regularly ordered according to some prescribed *Law*, so far as he is thereto obliged. To the understanding whereof it is necessary to premise somewhat, as well touching the nature of a *Human Action*, as concerning *Laws* in general.

[2]

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

FOR it is not only put in the power of Man to *know* the various things *III. Human Capacity.* which appear in the World, to *compare* them one with another, and from thence to form to himself new *Notions*; but he is able to look forwards, and to consider *what* he is to do, and to carry himself to the performance of it, and this to do after some certain Manner, and to some certain End; and then he can collect what will be the Consequence thereof. Beside, he can make a *Judgment* upon things already done, whether they are done agreeably to their Rule. Not that all a mans Faculties do exert themselves continually, or after the same manner, but some of them are stir'd up in him by an internal Impulse; and when raised, are by the same regulated and guided. Neither beside hath a Man the same Inclinations [3] to every Object, but some he desires and for others he has an aversion: and often, though an Object of Action be before him, yet he *suspends* any motion towards it; and when many Objects offer themselves, he *chuses* one and *refuses* the rest.

AS for that Faculty therefore of comprehending and judging of things, *IV. Human Understanding.* which is called the *Understanding*, it must be taken for granted, first of all, That every Man of a mature Age, and entire Sense has so much Natural Light in him, as that, with necessary care and due consideration, he may rightly comprehend at least those *general Precepts* and *Principles* which are requisite in order to pass our lives here honestly and quietly; and be able to judge that these are congruous to the Nature of Man. For if this at least be not admitted within the bounds of our Humane *Forum*, men might pretend an invincible Ignorance for all their Miscarriages; because no man in *foro humano* can be *Civil Judicature.* condemned for having violated a Law which it was above his Capacity to comprehend.

[4]

THE *Understanding* of Man, when it is *rightly inform'd* concerning that *V. Conscience rightly inform'd and probable.* which is to be done or omitted, and this so, as that he is able to give certain and undoubted Reasons for his Opinion, is wont to be call'd *Conscience truly guided*. But when a Man has indeed entertain'd the *true Opinion* about what is to be done or not to be

done, the truth whereof yet he is not able to make good by *reasoning*; but he either drew such his Notion from his Education, way of living, Custom, or from the Authority of persons wiser or better than himself; and yet no reason appears to him that can persuade the contrary, this uses to be called *Conscientia probabilis*, Conscience grounded upon Probability. And by this the greatest part of Mankind are govern'd, it being the good fortune of few to be able to enquire into and to know the Causes of things.

AND yet it chances often, to some Men especially in singular Cases, *VI. Conscience doubting.* that Arguments may be brought on *both* sides, and they not be Masters of sufficient *Judgment to discern* clearly which are the strongest and most weighty. And this is call'd a *doubting Conscience*. In [5] which Case this is the Rule; as long as the Understanding is unsatisfied and in doubt, whether the thing to be done be good or evil, the doing of it is to be deferred. For to set about doing it before the Doubt is answered, implies a sinful design or at least a neglect of the Law.

MEN also oftentimes have *wrong apprehensions* of the matter, and take *VII. Error.* that to be true which is false; and then they are said to be in an *Error*; and this is called *Vincible Error*, when a man by applying due Attention and Diligence might have prevented his falling thereinto; and it's said to be *Invincible Error*, when the person with the utmost Diligence and Care that is consistent with the common Rules of Life, could not have avoided it. But this sort of Error, at least among those who give their Minds to improve the Light of Reason and to lead their Lives regularly, happens not in the common Rules of living, but only in peculiar matters. For the Precepts of the Law of Nature are plain; and that Legislator who makes positive Laws, both does and ought to take all possible Care, that they may be understood by those [6] who are to give obedience to them. So that this sort of *Error* proceeds only from a supine *Negligence*. But in particular Affairs 'tis easie for some Error to be admitted, against the will and without any fault of the person, concerning the Object and other Circumstances of the Action.

BUT where Knowledge simply is wanting it is called *Ignorance*. Which *VIII. Ignorance.* is two ways to be consider'd; first, as it contributes somewhat to the Action; and next, as it was in the person either against his will or not without his own fault. In the first respect Ignorance uses to be divided into *efficacious* and *concomitant*. That, is such as if it had not been, the present Action had not been undertaken: This, tho it had not been, it had not hindred the Undertaking. In the latter respect the Ignorance is either *Voluntary* or *Involuntary*. The first is, when it was *chosen* by the person, he rejecting the *means* of knowing the Truth, or suffering it to come upon him by not using such *diligence* as was necessary. The latter is, when a Man is ignorant of that, which he *could* not nor was *obliged* to know: And this again is twofold; for [7] either a man may indeed not be able to help his Ignorance for the *present*, and yet may be to blame because he *continues* in such a state; or else he may not only be for the *present* unable to conquer his Ignorance, but may also be *blameless* that he is fallen into such a Condition.

THE other Faculty which does peculiarly distinguish Men from Brutes *IX. The Will.* is called the *Will*, by which as with an internal Impulse Man *moves himself* to Action, and *chuses* that which best pleases him; and rejects that which seems unfit for him. Man therefore has thus much from his *Will*; first, that he has a power to act *willingly*, that is, he is not determin'd by any intrinsick *Necessity* to do this or that, but is Himself the Author of his own Actions; next, that he has a power to act *freely*, that is, upon the Proposal of one Object, he may *act* or not *act*, and either entertain or reject: or if divers Objects are proposed, he may *chuse* one and *refuse* the rest. Now whereas among human Actions some are undertaken for their *own* sakes, others because they subserve to the attaining of somewhat *farther*; that is, some are as [8] the *End*, and others as *Means*; as for the *End*, the Will is thus far concern'd, That being once known, this first *approves* it, and then moves vigorously towards the

*achieving* thereof, as it were driving at it with more or less earnestness; and this *End* once *obtain'd* it sits down quietly and *enjoys* its acquist with pleasure. For the Means, they are first to be approv'd, then such as are most fit for the purpose are *chosen*, and at last are *applied* to use.

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

[9]

FURTHERMORE, though the Will do always desire good in general, *XI. The Will variously affected.* and has continually an Aversion for *Evil* also in general; yet a great *variety* of *Desires* and *Actions* may be found among men. And this arises from hence, that all things that are good and evil do not appear *purely* so to Man, but *mixt* together, the good with the bad and the bad with the good; and because different Objects do particularly affect divers parts, as it were, of a Man; for instance, some regard that good Opinion and Respect that a Man has for himself; some affect the outward Senses; and some that Love of himself, from which he desires his own Preservation. From whence it is, that those of the first sort appear to him as *decorous*; of the second as *pleasant*; and of the last as *profitable*: And accordingly as each of these have made a powerful Impression upon a Man, it brings upon him a peculiar propensity that way-ward; whereto may be added the particular *Inclinations* and *Aversions* that are in most Men to some certain things. From all which it comes to pass, that upon any Action several *sorts* of *Good* and *Evil* offer themselves, which either *are* true or *appear* [10] so; which some have more, some less sagacity to distinguish with solidity of Judgment. So that 'tis no wonder that one man should be carried eagerly on to that, which another perfectly abhors.

BUT neither is the Will of Man always found to stand *equally* poised with regard to every Action, that so the Inclination thereof to this or that side should come only from an *internal Impulse*, after a due consideration had of all its circumstances; but it is very often pusht on one way rather than another by *some outward Movements*. For, that we may pass by that universal Propensity to Evil, which is in all Mortals, the Original and Nature of which belong to the Examination of another *Forum*; first, a *peculiar disposition of Nature* puts a particular kind of *byass* upon *The Judgment of the Divines.* the Will, by which some are strongly inclin'd to certain sorts of Actions; and this is not only to be found in single *Men*, but in whole *Nations*. This seems to proceed from the Temperature of the Air that surrounds us, and of the Soil; and from that Constitution of our Bodies which either was deriv'd to us in the Seed of our *Parents*, or was occasion'd in us by our *Age*, *Diet*, the [11] want or enjoyment of *Health*, the Method of our Studies or *way of Living* and Causes of that sort, beside the various *formations* of the *Organs*, which the *Mind* makes use of in the performance of its several Offices, and the like. And here, beside that a man may with due eare very much *alter* the *temperament* of his body and *repress* the exorbitances of his natural *Inclination*, it is to be noted, that how much power soever we attribute hereto, yet it is not to be understood to be of that force as to hurry a man into such a violation of the *Law of Nature* as shall render him obnoxious to the *Civil Judicature*, where evil *Desires* are not animadverted on, provided they break not forth into external *Actions*. So that after all the pains that can be taken to repel Nature, if it take its full swinge, yet it may so far be restrain'd as not to produce *open Acts* of Wickedness; and the *Difficulty* which happens in vanquishing those Propensities is abundantly recompensed in the *Glory* of the Conquest.

But if these Impulses are so strong upon the mind, that they cannot be contained from breaking forth, yet there may be found a way, as it [12] were to draw them off, without Sin.

THE frequent *Repetition* of Actions of the same kind does also *incline* <sup>XIII. By Custom.</sup> the Will to do certain things; and the Propensity which proceeds from hence is called *Habit* or *Custom*, for it is by this that any thing is undertaken readily and willingly, so that the Object being presented, the Mind seems to be forced thitherward, or if it be absent, the same is earnestly desirous of it. Concerning which this is to be observed, that as there appears to be no *Custom*, but what a Man may by applying a due Care, *break* and *leave off*; so neither can any so far put a force upon the Will, but that a Man may be able at any time to restrain himself from any *external Acts* at least, to which by that he is urged. And because it was in the persons *own Power* to have contracted this *Habit* or no, whatsoever easiness it brings to any Action, yet if that Action be good, it loses nothing of its value therefore, as neither doth an evil thing abate ought of its Pravity. But as a *good Habit* brings *Praise* to a man, so an *ill* one shews his *Shame*.

IT is also of great consideration, whether the mind be in a *quiet* and <sup>XIV. By Passion.</sup> *placid* [13] state, or whether it be affected with those peculiar Motions we call the *Passions*. Of these it is to be known, that how violent soever they are, a man with the right use of his *Reason* may yet conquer them, or at least contain them without the bounds of *Action*. But whereas of the *Passions* some are raised from the appearance of *Good*, and others of *Evil*; and do urge either to the procuring of somewhat that is *acceptable*, or to the avoiding of what is *mischievous*, it is agreeable to Human Nature, that *these* should meet among men more *favour* and *pardon*, than *those*; and that according to such degrees, as the Mischief that excited them was more hurtful and intolerable. For to *want* a *Good* not altogether necessary to the preservation of Nature is accounted more *easy*, than to *endure* an *Evil* which tends to Natures destruction.

FURTHERMORE, as there are certain Maladies, which take away all <sup>XV. By Intoxication.</sup> use of the *Reason* either perpetually or for a time, so 'tis customary in many Countries, for men on purpose to procure to themselves a certain kind of *Disease* which goes off in a short time, but which very much confounds the Reasoning Faculty. [14] By this we mean *Drunkness*; proceeding from certain kinds of Drink and Fumes, which incense and disturb the Blood and Spirits, thereby rendring men very prone to *Lust*, *Anger*, *Rashness* and immoderate *Mirth*; so that many by *Drunkness* are set as it were beside themselves, and seem to have put on *another Nature* than that which they were of, when *sober*. But as this does not always take away the *whole* use of *Reason*; so as far as the person does *willingly* put himself in this state, it is apt to procure an *Abhorrence* rather than a *favourable Interpretation* of what is done by its Impulse.

NOW of Human Actions as those are called *Voluntary*, which proceed <sup>XVI. Actions Involuntary.</sup> from and are directed by the Will; so if any thing be done *wittingly* altogether against the Will, these are call'd *Involuntary*, taking the word in the narrowest sense; for taking it in the largest, it comprehends even those which are done through *Ignorance*. But *Involuntary* in this place is to signifie the same as *forc'd*; that is, when by an external Power which is stronger, a man is compell'd to use his Members in any Action, to which he yet signifies his [15] Dissent and Aversion by Signs, and particularly by counterstriving with his Body. Less properly those Actions are also called *Involuntary*, which by the Imposition of a great Necessity are *chosen* to be done, as the lesser Evil; and for the Acting whereof the person had the greatest abomination, had he not been set under such Necessity. These Actions therefore are called *mixt*. With *Voluntary Actions* they have this in common, that in the present State of things the Will *chuses* them as the lesser Evil. With the *Involuntary* they are after a sort the same, as to the Effect, because they render the Agent either not at all, or not *so heinously* blameable, as if they had been done spontaneously.

THOSE Human Actions then which proceed from, and are directed by the *Understanding* and the *Will*, have particularly this natural Propriety, that they may be *imputed* to the Doer; that is, that a Man may justly be said to be the Author of them, and be obliged to render an *Account* of such his Doing; and the *Consequences* thereof, whether good or bad are chargeable upon him. For there can be no truer reason why any Action [16] should be *imputable* to a Man, than that, he did it either mediately or immediately, *knowingly* and *willingly*; or that it was in his power to have done the same or to have let it alone. Hence it obtains as the prime Axiom in matters of Morality which are liable to the Human Forum; That every man is accountable for all such Actions, the performance or omission of which were in his *own Choice*. Or, which is tantamount, That every Action, capable of human direction, is chargeable upon him who might or might not have done it. So on the contrary, no man can be reputed the Author of that Action, which neither in itself nor in its cause, was in *his Power*.

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

NONE of those Actions which are done by another *man*, nor any operation of whatsoever other *things*, neither any *Accident*, can be imputable to another person, but so far forth as it was in *his* [17] *Power*, or as he was *obliged* to guide such Action. For nothing is more common in the world, than to *subject* the Doings of *one Man* to the Manage and Direction of *another*. Here then, if any thing be perpetrated by one, which had not been done, if the other had performed his *Duty* and exerted his *Power*; this Action shall not only be chargeable upon him who immediately did the fact, but upon the other also who *neglected* to make use of his *Authority* and *Power*. And yet this is to be understood with some restriction; so as that *Possibility* may be taken *morally*, and in a *large* sense. For no *Subjection* can be so *strict*, as to extinguish *all* manner of *liberty* in the person subjected, but so that 'twill be in his Power to resist and act quite contrary to the direction of his *Superior*; neither will the state of *Human Nature* bear, that any one should be perpetually affix'd to the side of another, so as to observe *all* his motions. Therefore when a *Superiour* has done every thing that was required by the *Rules* of his *Director-ship*, and yet somewhat is acted amiss, this shall be laid only to the charge of *him* that *did* it. Thus whereas *Man* exercises dominion over other *Animals*, [18] what is done by them to the detriment of another, shall be charg'd upon the *Owner*, as supposing him to have been wanting of due *Care* and *Circumspection*. So also all those *Mischiefs* which are brought upon another, may be *imputed* to that person, who when he could and ought, yet did not take out of the way the Cause and Occasion thereof. Accordingly it being in the power of Men to *promote* or *suspend* the Operations of many *Natural Agents*, whatsoever Advantage or Damage is wrought by these, *they* shall be accountable for, by whose *application* or *neglect* the same was occasion'd. Beside, sometimes there are extraordinary Cases, when a man shall be charg'd with such Events as are above human Direction, as when *God* shall do particular *Works* with regard to some *single* person. These and the like Cases being excepted, for all the rest it suffices, if a Man can give an Account of his *own doings*.

WHATSOEVER *Qualifications* a Man hath or hath not, which it is not in his *power* to exert or not to exert, must not be *imputed* to him, unless so far as he is wanting in *Industry* to supply such Natural [19] Defect, or does not rowse up his native Faculties. So because no man can give himself an *Acuteness* of *Judgment* and *Strength* of *Body*, therefore no one is to be blamed for want of either, or commended for having them, except so far as he *improv'd*, or *neglected* the cultivating thereof. Thus *Clownishness* is not blameable in a Rustic, but in a *Courtier* or *Citizen*. And hence it is, that those Reproaches are

to be judg'd extremely absurd, which are grounded upon Qualities, the Causes of which are not in our power, as, *Short Stature*, a *deform'd Countenance* and the like.

THOSE things which are done through *invincible Ignorance* are not [XX. The third Conclusion.](#) imputable. Because we cannot properly *direct* our Action, unless by the Light of the Understanding; (and 'tis here supposed Man is unable to procure such Light) neither are we to blame that we cannot. Now in the common affairs of Life, the word *Possible* is to be morally understood, and by *Ability* is meant that *Faculty*, *Diligence* and *Circumspection* which is commonly judg'd to *suffice*, and which is well supported with probable reasons.

[20]

*Ignorance* of, or *Error* concerning the *Laws* and that *Duty*, which is [XXI. The fourth Conclusion.](#) incumbent upon every man, does not excuse from blame. For whosoever imposes *Laws* and *Services*, is wont and ought to take care that the Subject have *notice* thereof. And these *Laws* and *Rules of Duty* generally are and should be ordered to the *Capacity* of such *Subject*, if they are such as he is oblig'd to *know* and *remember*. Hence, he who is the *Cause* of the *Ignorance* shall be bound to answer for those *Actions* which are the effects thereof.

HE who, not by his own fault, wants an *opportunity* of doing his *Duty*, [XXII. The fifth Conclusion.](#) shall not be accountable, because he has not done it. Now to a fair occasion these four things are requisite; 1. That an *Object* of Action be ready: 2. That a proper *Place* be had, where we may not be hindred by others, or receive some Mischief: 3. That we have a fit *Time*, when business of greater Necessity is not to be done, and which may be seasonable for other matters which concur to the Action: and 4. lastly, That we have natural *Force sufficient* for the performance. For since an Action cannot be atchiev'd without these, 'twould be absurd to blame a man for [21] not acting, when he had not an opportunity so to do. Thus a Physician cannot be accused of *Sloth*, when no body is sick to employ him. Thus no man can be liberal, who wants it himself. Thus he cannot be reproved for burying his talent, who having taken a due care to set himself in a useful Station, has yet miss'd of it: though it be said, *To whom much is given, from him much shall be required*. Thus we cannot blow and suck all at once.

NO man is *accountable* for not doing that which *exceeded* his *Power*, [XXIII. The sixth Conclusion.](#) and which he had not strength sufficient to hinder or accomplish. Hence that Maxim, To Impossibilities there lies no Obligation. But this Exception must be added, Provided, that by the persons *own fault* he has not *impair'd*, or *lost* that strength which was necessary to the Performance; for if so, he is to be treated after the same manner, as if he *had* all that power which he *might* have had: For otherwise it would be easie to elude the performance of any difficult Obligation, by weakening ones self on purpose.

NEITHER can those things be *imputable*, which one acts or suffers by [XXIV. The seventh Conclusion.](#) *Compulsion*. [22] For it is supposed, that 'twas above his power to decline or avoid such doing or suffering. But we are said after a twofold manner to be *compell'd*; one way is, when another that's stronger than us *violently forces* our Members to do or endure somewhat: the other, when one more powerful shall *threaten* some grievous Mischief (which he is immediately able to bring upon us) unless we will, as of our own accord, apply our selves to the doing of this, or abstain from doing that. For then, unless we are *expresly oblig'd* to take the Mischief to our selves which was to be done to another, he that sets us under this *Necessity*, is to be reputed the *Author* of the Fact; and the same is no more chargeable upon us, than a *Murder* is upon the Sword or Ax which was the *Instrument*.

THE Actions of those who *want* the use of their *Reason* are not imputable; Because they cannot *distinguish* clearly what they do, and bring it to the Rule. Hitherto appertain the Actions of *Children*, before their reasoning Faculties begin to exert themselves. For though they are now and then chid or whipt for what they do; yet this is not as if they had [23] *deserv'd Punishment*, properly so called in the *Human Forum*; but barely by way of *Discipline* and in order to their *Amendment*; lest by their tricks they become troublesome to others, or get ill habits themselves. So also the doings of *Franticks*, *Crackbrains* and *Dotards* are not accounted *Human Actions*, nor *imputable* to those who contracted such incapacitating Disease, without any fault of their own.

XXV. The  
eighth  
Conclusion.

LASTLY, A man is not chargeable with what he seems to do in his *Dreams*; unless by *indulging himself* in the *day time* with such Thoughts, he has deeply impress'd the *Ideas* of such things in his mind; (though matters of this sort can rarely be within the cognizance of the *Human Forum*.) Otherwise the Phansie in sleep is like a Boat adrift without a Guide, so that 'tis impossible for any man to order what Ideas it shall form.

XXVI. The  
ninth  
Conclusion.

BUT concerning the *Imputation* of *another* mans Actions it is somewhat more distinctly to be observed, that sometimes it may so happen, that an Action ought not at all to be charged upon him that *immediately* did it, but upon another who made use of this only as an *Instrument*. But it is more frequent, that it should [24] be imputed *both* to *him* who perpetrated the thing, and to the *other*, who by doing or omitting something shew'd his concurrence to the Action. And this is chiefly done after a threefold manner; either, 1. As the other was the *principal* Cause of the Action, and this *less principal*, or, 2. As they were both *equally* concern'd; or, 3. As the other was *less principal*, and he that did the act was *principal*. To the first sort belong those who shall instigate another to any thing by their Authority; those who shall give their necessary *Approbation*, without which the other could not have acted; those who *could* and *ought* to have hindred it, but did not. To the second Class appertain, those who *order* such a thing to be done or *hire* a man to do it; those who *assist*; those who afford *harbour* and *protection*; those who had it in their *Power*, and whose *Duty* it was to have succoured the wronged person, but refused it. To the third sort are referred such as are of *counsel* to the Design; those that *encourage* and *commend* the Fact before it be done; and such as *incite* men to sinning by their *Example*, and the like.

XXVII.  
Imputation of  
another's  
Actions.



[25]

## CHAP. II.

### *Of the Rule of Human Actions, or of Laws in general.* ↪

BECAUSE all *Human Actions* depend upon the *Will*, and have their estimate according to the concurrence thereof; but the *Wills* of *single men* are not always the *same*, and those of other men run *divers* ways; therefore to preserve Decency and Order among Mankind, it was necessary there should be some *Rule*, by which they should be regulated. For otherwise, if where there is so great a *Liberty* of the *Will*, and such *variety* of *Inclinations* and *Desires*, any man might do whatsoever he had a mind to, without any regard to some *stated Rule*, it could not but give occasion to vast *Confusions* among Mankind.

THIS Rule is called Law; which is a Decree by which the Superior obliges one that is subject to him, to accommodate his Actions to the directions prescribed therein.

[26]

THAT this Definition may the better be understood, it must first be enquired, What is an *Obligation*? whence is its Original? who is capable of *lying under* an *Obligation*? and who is it that can *impose* it? *Obligation* then is usually said to be that rightful Bond, by which a man is necessitated to do somewhat. That is, hereby a *Bridle*, as it were is put upon our *Liberty*; so that though the *Will* does actually drive *another* way, yet we find our selves hereby struck as it were with an *internal Sense*, that if our Action be not perform'd according to the *prescript Rule* we cannot but confess we have not done *right*; and if any mischief happen to us upon that account, we may fairly charge *our selves* with the same; because it might have been avoided, if the *Rule* had been follow'd as it ought.

AND there are two reasons why *Man* should be subject to an *Obligation*; one is, because he is endow'd with a *Will*, which may be *divers* ways *directed*, and so be *conform'd* to a *Rule*; the other, because *Man* is not exempt from the power of a *Superior*. For where the *Faculties* of any Agent are by *Nature* form'd only for *one* way of acting, there 'tis to no purpose to expect any thing to be done of choice: and to such a Creature 'tis *in vain* to prescribe any *Rule*; because 'tis incapable of *understanding* the same or *conforming* its actions thereto. Now if there be any one who has no *Superior*, then there is no power that can of right impose a *Necessity* upon him; and if he perpetually observes a certain *Rule* in what he does, and constantly abstains from doing many things, he is not to be understood to act thus from any *Obligation* that lay upon *him*, but from his own *good pleasure*. It will follow then, that *He* should be capable of *Obligation*, who has a *Superior*, and is able to *understand* the *Rule* prescribed, and is endued with a *Will* which may be *directed* several ways; and yet which (when the *Law* is promulg'd by his *Superior*) knows he cannot rightly depart therefrom. And with all these *Faculties* 'tis plain Mankind is furnish'd.

AN *Obligation* is superinduc'd upon the *Wills* of Men properly by a *Superior*, that is, not only by such a one as being *greater* or *stronger*, can punish Gainsayers; but by him who has *just reasons* to have a power to restrain the *Liberty* of our *Will* at his own pleasure. Now when any man has either of these, as soon as he has signified what he would have, it necessarily stirs up in the mind of the party concern'd *Fear* mixt with *Reverence*; towards the first in contemplation of his *Power*; and toward the second

for the sake of those *other Reasons*, which even without *Fear*, ought to allure any man to a compliance with his Will. For he that can give me no *other reason* for putting me under an Obligation against my Will, beside this, that he's too *strong* for me, he truly may so terrifie me, that I may think it better to *obey* him for a while than suffer a *greater Evil*; but when this *Fear* is over, nothing any longer hinders, but that I may act after my *own choice* and not *his*. On the contrary he that has nothing but *Arguments* to prove that I should obey him, but wants *Power* to do me any Mischief, if I deny. I may with Impunity slight his commands, except one more potent take upon him to make good his despised Authority, Now the *Reasons* upon which one man may *justly* exact *Subjection* from another, are; If he have been to the other the *Original* of some extraordinary *Good*; and if it be plain, that he designs [29] the others *Welfare*, and is *able* to provide better for him than 'tis possible for *himself* to do; and on the same account does actually lay *claim* to the Government of him: and lastly if any one does *voluntarily* surrender his Liberty to another, and subject *himself* to his Direction.

FURTHERMORE, that a Law may exert its force in the minds of those to whom it is promulg'd, it is required, that both the *Legislator and the Law* also be known. For no man can pay obedience, if he know not *whom* he is to *obey*, and *what* he is to *perform*. Now the knowledge of the *Legislator* is very easie; because from the light of Reason 'tis certain the same must be the *Author* of all the *Laws of Nature*, who was the *Creator* of the *Universe*: Nor can any man in *Civil Society* be ignorant *who* it is that has power over him. Then for the *Laws of Nature*, it shall be hereafter declared how we come to the knowledge of them. And as to the *Laws* of a mans *Country* or *City*, the Subject has notice given of them by a *Publication* plainly and openly made. In which these two things ought to be ascertain'd, that the *Author* of the Law is he, who hath the *supreme Authority* [30] in the Community, and that this or that is the true meaning of the *Law*. The first of these is known, if he shall promulge the Law with his *own Mouth*, or deliver it under his *own Hand*; or else if the same be done by such as are *delegated* to that purpose by him: whose Authority 'tis in vain to call in question, if it be manifest, that such their acting belongs to that *Office* they bear in the Publick, and that they are *regularly plac'd* in the Administration thereof; if these *Laws* are to be put *judicially* in Execution, and if they contain nothing *derogatory* to the *Sovereign Power*. That the latter, that is, the true *Sense* of the *Law* be known, it is the Duty of those who promulge it, in so doing to use the greatest *Perspicuity* and *Plainness*; and if any thing *obscure* do occur therein, an *Explanation* is to be sought of the *Legislator*, or of those who are *publickly constituted* to give judgment according to Law.

OF every *perfect Law* there are two parts: One, whereby it is directed *what* is to be *done* or *omitted*: the other, wherein is declared what *punishment* he shall incur, who *neglects* to do what is commanded, or *attempts* that which is [31] prohibited. For as, through the Pravity of Human Nature ever inclining to things forbidden, it is to no purpose to say, *Do this*, if no Punishment shall be undergone by him who disobeys; so it were *absurd* to say, *You shall be punish'd*, except some reason preceded, by which a Punishment was deserv'd. Thus then all the force of a Law consists in signifying what the *Superior requires* or *forbids* to be done, and what *Punishment* shall be inflicted upon the Violators. But the power of *obliging*, that is, of imposing an intrinsick Necessity; and the power of *forcing*, or by the proposal of Punishments compelling the Observation of Laws, is properly in the Legislator, and in him to whom the Guardianship and Execution of the Laws is committed.

WHATSOEVER is enjoyn'd by any Law ought not only to be in the *power* of him to perform on whom the Injunction is laid, but it ought to contain somewhat *advantageous* either to him or others. For as it would be *absurd* and *cruel* to exact the doing of any thing from another, under a Penalty, which it is and always was beyond his *power* to perform; so it would be silly and to *no* [32] *purpose* to put a restraint

VI. The Legislator and the true meaning of the Law to be known.

VII. Two parts of a perfect Law.

VIII. Other Essentials.

upon the natural Liberty of the Will of any man, if no one shall receive any benefit therefrom.

BUT though a Law does strictly include *all* the *Subjects* of the [IX. Power of Dispensing](#). Legislator who are *concern'd* in the matter of the same, and whom the said Legislator at first *intended not* to be exempted; yet sometimes it happens that particular persons may be clear'd of any obligation to such Law: and this is call'd *Dispensing*. But as he *only* may dispense in whose power it is to *make* and *abrogate* the Law; so great care is to be taken, lest by too frequent Dispensations and such as are granted without very weighty reasons, the Authority of the Law be shaken and occasion be given of Envy and Animosities among Subjects.

YET there is a great difference between *Equity* and *Dispensing*: *Equity* [X. Equity](#). being a *Correction* of that in which the Law, by reason of its *General Comprehension* was deficient; or an apt *Interpretation* of the Law, by which it is demonstrated, that there may be some peculiar Case which is not comprized in the *Universal Law*, because if it were, some Absurdity would follow. For it being [33] impossible that *all Cases*, by reason of their infinite *Variety*, should be either foreseen or explicetly provided for; therefore the *Judges*, whose office it is to apply the *general Rules* of the Laws to *special Cases*, ought to except such from the Influence of them, as the *Lawgiver himself* would have excepted, if he were *present*, or had *foreseen* such Cases.

NOW the Actions of men obtain certain Qualities and Denominations [XI. Actions allowable good and bad](#). from their relation to and agreement with the Law of Morality. And all those Actions, concerning which the Law has determin'd nothing on either side, are call'd *allowable* or *permitted*. Altho sometimes in ordinary Law-Cases, where all matters cannot be examin'd with the greatest accuracy, those things are said to be *allowable*, upon which the Law has not assign'd some *Punishment*, though they are in themselves repugnant to *Natural Honesty*. And then those Actions which are consonant to the Law are *good*, those that are contrary to it are call'd *bad*: But that any Action should be *good*, 'tis requisite, that it be exactly agreeable in every point to the Law; whereas it may be *evil*, if it be deficient in one point only.

[34]

As for *Justice* it is sometimes the Attribute of *Actions*, sometimes of [XII. Justice of Persons](#). *Persons*. When it is attributed to *Persons*, 'tis usually defin'd to be, A constant and perpetual *desire* of giving every one their own. For he is call'd a *just* man, who is delighted in doing righteous things, who studies Justice, and in all his Actions endeavours to do that which is right. On the other side, the *unjust* man is he that neglects the giving every man his own, or, if he does, 'tis not because 'tis due, but from expectation of Advantage to himself. So that a *just man* may sometimes do unjust things, and an *unjust man* that which is just. But the *just* does that which is right, because he is so *commanded* by the Law; and acts the contrary only through *Infirmity*; whereas the *wicked* man does a just thing for fear of the *Punishment* which is the Sanction of the Command, but he acts wrongfully from the *naughtiness* of his heart.

BUT when Justice is attributed to *Actions*, then it is nothing else but a [XIII. Of Actions](#). right application of the same to the Person. And a just Action done of choice, or knowingly and wittingly, is applied to the person to whom it is due. So that the [35] *Justice* of Actions differs from *Goodness* chiefly in this, that the latter simply denotes an agreement with the Law, whereas Justice also includes the regard they have to those persons upon whom they are exercised. Upon which account Justice is called a *Relative Virtue*.

MEN do not generally agree about the Division of *Justice*. The most XIV. *Division of Justice.* receiv'd Distinction is, into *Universal* and *Particular*. The first is, when *every Duty* is practis'd and *all right* done to others, even that which could not have been extorted by force, or by the rigor of Law. The latter is, when *that Justice* only is done a man, which in his own right he could have *demand'd*; and this is wont to be again divided into *Distributive* and *Commutative*. The *Distributive* takes place in Contracts made between a Society and its Members concerning fair partition of Loss and Gain according to a rate. The *Commutative* is mostly in Bargains made upon even hand about things and doings relating to Traffick and Dealing.

KNOWING thus, what *Justice* is, 'tis easie to collect what is *Injustice*. XV. *Injustice what.* Where it is to be observ'd, that such an unjust Action is called *Wrong-doing*, which [36] is premeditatedly undertaken, and by which a violence is done upon somewhat which of absolute right was another mans due, or which by like right he one way or other stood possess'd of. And this Wrong may be done after a threefold manner, 1. if that be denied to another which in his own right he might demand (not accounting that which from Courtesie or the like Virtue may be anothers due); or 2. if that be taken away from another, of which by the same right then valid against the Invader, he was in full possession: or 3. if any damage be done to another, which we had not authority to do to him. Beside which, that a man may be charg'd with *Injustice*, it is requisite that there be a naughty *mind* and an evil *design* in him that acts it. For if there be nothing of these in it, then 'tis only call'd *Misfortune* or a *Fault*, and that is so much slighter or more grievous, as the Sloth and Negligence which occasion'd it was greater or less.

LAWS with respect to their Authors are distinguish'd into *Divine* and XVI. *Laws distinguisht.* *Humane*; that proceeds from *God*, and this from *Men*, But if Laws be considered, as they have a necessary and universal Congruity [73] with Mankind, they are then distinguisht into *Natural* and *Positive*. The former is that which is so agreeable with the *rational* and sociable Nature of Man, that *honest* and *peaceable Society* could not be kept up amongst Mankind without it. Hence it is, that *this* may be sought out and the knowledge of it acquir'd by the light of that *Reason*, which is born with every man, and by a consideration of *Human Nature* in general. The *latter* is that which takes not its rise from the common condition of *Human Nature*, but only from the good pleasure of the *Legislator*; not that this ought to be without its reason, but should carry with it advantage to those men or that Society, for which it is design'd. Now the Law *Divine* is either *Natural* or *Positive*; but all *Human Laws*, strictly taken, are *Positive*.

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## CHAP. III.

### *Of the Law of Nature.* ↪

THAT man who has throughly examin'd the *Nature* and *Disposition* of *I. Law Natural obvious.* Mankind, may plainly understand what the *Law Natural* is, the *Necessity* thereof, [38] and which are the *Precepts* it proposes and enjoyns to us Mortals. For as it much conduces to him who would know exactly the *Polity* of any *Community*, that he first well understand the *condition* thereof, and the *manners* and *humours* of the Members who constitute it: So to him who has well studied the common *Nature* and *Condition* of *Men*, it will be easie to find by what *Laws* the universal Safety must be preserv'd.

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

BUT in one particular *Man* seems to be set in a *worse* condition than *III. Society absolutely necessary.* that of [39] *Brutes*, that hardly any other Animal comes into the world in so great *Weakness*; so that 'twould be a kind of miracle, if any man should arrive at a mature Age, without the aid of some body else. For even now after so many helps found out for the *Necessities* of *Human Life*; yet a many Years *careful Study* is requir'd before a man shall be able of himself to get *Food* and *Raiment*. Let us suppose a man come to his full strength without any *over-sight* or *instruction* from *other* men; suppose him to have no manner of *knowledge* but what springs of itself from his *own natural wit*; and thus to be plac'd in some *Solitude* destitute of any *Help* or *Society* of all Mankind beside. Certainly a more miserable Creature cannot be imagin'd. He is no better than *dumb, naked*, and has nothing left him but *herbs* and *roots* to pluck, and the *wild fruits* to gather; to quench his thirst at the next *Spring, River* or *Ditch*; and, to shelter himself from the injuries of the weather, by creeping into some *Cave*, or covering himself after any sort with *Moss* or *Grass*; to pass away his tedious life in *Idleness*; to start at every Noise, and be afraid at the sight of any *other* Animal; in a word, [40] at last to perish either by *Hunger* or *Cold* or some wild *Beast*. It must then follow, that whatsoever Advantages accompany Human Life, are all owing to that *mutual help* men afford one another. So that next to *Divine Providence*, there is nothing in the world more *beneficial* to Mankind than *Men themselves*.

AND yet, as *useful* as this Creature is or may be to others of its kind, it *IV. Man to Man inclinable to do hurt.* has many faults, and is capable of being *equally noxious*; which renders mutual Society between man and man not a little dangerous, and makes *great caution* necessary to be used therein, lest *Mischief* accrew from it instead of *Good*. In the first place, a stronger *Proclivity* to injure another is observ'd to be generally in *Man*, than in any of the *Brutes*; for they seldom grow outrageous, but through *Hunger* or *Lust*, both which Appetites are satisfied without much pains; and that done, they are not apt to grow furious or to hurt their Fellow-Creatures without some *Provocation*. Whereas Man is an Animal always *prone* to *Lust*, by which he is much more frequently instigated than seems to be necessary to the Conservation of his Kind. His *Stomach* also is not only to be *satisfied*, but to be *pleased*; [41] and it often desires more than Nature can well digest. As for *Raiment*, Nature has taken care of the *rest* of the Creatures that they don't *want* any: but *Men* require not only such as will

answer their *Necessity*, but their *Pride* and *Ostentation*. Beside these, there are many *Passions* and *Appetites* unknown to the *Brutes*, which yet are to be found in *Mankind*; as an unreasonable *Desire* of possessing much *more* than is *necessary*, an earnest pursuit after *Glory* and *Preeminence*; *Envy*, *Emulation*, and *Outvyings* of Wit. A proof hereof is, that most of the Wars with which *Mankind* is harrass'd, are raised for causes altogether unknown to the *Brutes*, Now all these are able to provoke *men* to hurt one another, and they frequently do so. Hereto may be added the great *Arrogance* that is in many men, and *Desire* of *insulting* over others, which cannot but exasperate even those who are naturally meek enough, and from a care of preserving themselves and their Liberty, excite them to make resistance. Sometimes also *Want* sets men together by the ears, or because that Store of necessaries which they have at present seems not *sufficient* either for their *Needs* or *Appetites*.

[42]

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

BESIDE all this, it is to be considered that among *Men* there is a vast VI. And likely so to do. *diversity* of *Dispositions*, which is not to be found among *Brutes*; for of *them* all of the same kind have the *like Inclinations*, and are led by the *same* inward *motions* and *appetites*: Whereas among *Men*, there are so many *Minds* as there are *Heads*, and every one has his *singular* opinion; nor are they all acted with *simple* and *uniform* Desires, but with such as are *manifold* and *variously mixt* together. Nay, *one*, and the *same* man shall be often seen to *differ* from *himself*, and to *desire* that at *one* time which at *another* he extremely *abhorred*. Nor is the Variety less discernable, [43] which is now to be found in the almost *infinite* ways of living, of managing our *Studies*, our course of *Life*, and our methods of making use of our *Wits*. Now, that by occasion hereof Men may not dash against one another, there is need of wise *Limitations* and careful *Management*.

SO then Man is an Animal very desirous of his own *Preservation*; of VII. The Sum of the foregoing Paragraphs. *himself* liable to many *wants*; *unable* to support himself without the help of *other* of his kind; and yet wonderfully fit in *Society* to promote a *common Good*; but then he is *malitious*, *insolent* and easily *provok'd*, and not less *prone* to do mischief to his fellow than he is *capable* of effecting it. Whence this must be inferred, that in order to his *Preservation*, 'tis absolutely necessary, that he be *sociable*, that is, that he *joyn* with those of his kind, and that he so *behave* himself towards them, that they may have no justifiable cause to do him *Harm*, but rather to *promote* and *secure* to him all his Interests.

THE Rules then of this Fellowship, which are the Laws of *Human* VII. Law Natural defin'd. *Society*, whereby men are directed how to render themselves useful Members thereof, and [44] without which it falls to pieces, are called the *Laws of Nature*.

FROM what has been said it appears, that this is a *fundamental Law* of IX. The Means design'd where the End is so. *Nature*, That every man ought, as much as in him lies, to preserve and promote *Society*, that is, the *Welfare of Mankind*. And, since he that designs the *End*, cannot but be supposed to design those *Means* without which the *End* cannot be obtain'd, it follows that all such Actions as tend generally and are absolutely necessary to the preservation of this *Society*, are *commanded* by the Law of Nature; as on the contrary those that disturb and dissolve it are forbidden by the same. All other Precepts are to be accounted only *Subsumptions*, or *Consequences* upon this Universal Law, the Evidence whereof is made out

by that Natural Light which is engrafted in Mankind.

NOW though these *Rules* do plainly contain that which is for the general *Good*; yet that the same may obtain the force of *Laws*, it must necessarily be presupposed, that there is a *God*, who governs all things by his Providence, and that He has enjoyned us Mortals, to observe these *Dictates* of our Reason as *Laws*, promulg'd [45] by him to us by the powerful Mediation of that Light which is born with us. Otherwise we might perhaps pay some obedience to them in contemplation of their *Utility*, so as we observe the Directions of Physicians in regard to our Health, but not as *Laws*, to the Constitution of which a *Superior* is necessary to be supposed, and that such a one as has actually undertaken the Government of the other.

BUT that God is the Author of the *Law of Nature*, is thus demonstrated (considering Mankind only in its *present* State, without enquiring whether the *first* Condition of us Mortals were *different* from this, nor *how* the Change was wrought.) Whereas our Nature is so framed, that Mankind cannot be preserv'd without a *sociable Life*, and whereas it is plain that the *Mind of Man* is capable of all those Notions, which are *subservient* to this purpose; and it is also manifest, that Men not only, like the other Creatures, owe their *Original* to God, but that He *governs* them, let their Condition be as it will, by the wisdom of his *Providence*. Hence it follows, that it must be supposed to be the *Will of God*, that Man should make use of those Faculties with which he is [46] peculiarly endow'd beyond the Brutes, to the *preservation* of his own Nature; and consequently, that the Life of man should be different from the lawless Life of the *Irrational Creatures*. And since this cannot otherwise be achiev'd but by an Observance of the *Law Natural*, it must be understood that there is from God an obligation laid upon Man to pay obedience hereto, as a Means not *invented* by the Wit or *imposed* by the Will of Men, nor capable of being *chang'd* by their Humours and Inclinations; but *expressly* ordain'd by God himself in order to the *accomplishing* this *End*. For he that obliges us to persue such an *End*, must be thought to oblige us to make use of those *Means* which are necessary to the attainment thereof. And that the *Social Life* is positively enjoyn'd by God upon *Men*, this is a Proof, that in no other *Animal* is to be found any Sense of *Religion* or Fear of a *Deity*, which seems not so much as to fall within the Understanding of the ungovernable Brute; and yet it has the power to excite in the minds of *Men*, not altogether profligate, the tenderest Sense; by which they are convinc'd that by sinning against this *Law Natural*, they offend [47] him who is Lord of the Soul of Man, and who is to be fear'd, even where we are secure of any Punishment from our Fellow-Creatures.

THOUGH it be usually said, that we have the knowledge of this *Law* from *Nature* itself, yet this is not so to be taken, as if there were implanted in the Minds of men just *new-born* plain and distinct Notions concerning what is to be *done* or *avoided*. But Nature is said thus to teach us, partly because the knowledge of this *Law* may be attain'd by the help of the *Light of Reason*; and partly because the general and most useful points thereof are so *plain* and *clear*, that they at first sight force the Assent, and get such root in the minds of men, that nothing can eradicate them afterwards; let wicked men take never so much pains to blunt the edge and stupifie themselves against the Stings of their *Consciences*. And in this Sense we find in Holy Scripture, that this *Law* is said to be *written in the hearts of men*. So that having from our Childhood had a sense hereof instill'd into us together with other Learning in the usual Methods of Education, and yet not being able to remember the *punctual time* when first they [48] took hold of our Understandings and possessed our Minds; we can have no other opinion of our knowledge of this *Law*; but that it was *connate* to our Beings, or born *together* and at the *same time* with our selves. The Case being the same with every man in learning his *Mother-Tongue*.

THOSE *Duties* which from the Law of Nature are incumbent upon Man seem most aptly to be *divided* according to the *Objects* about which they are conversant. With regard to which they are ranged under three principal heads; the *first* of which gives us directions how by the single dictates of right Reason Man ought to behave himself towards *God*; the *second* contains our Duty towards *our selves*; and the *third* that towards *other men*. But though those Precepts of the Law Natural which have a relation to *other men* may primarily and directly be derived from that *Sociality*, which we have laid down as a Foundation; yet even the Duties of Man towards *God* may be indirectly deduced from thence, upon this account that the strongest obligation to mutual Duties between man and man arises from *Religion* [49] and a fear of the *Deity*; so as that Man could not become a *sociable* Creature if he were not imbued with *Religion*; and because *Reason* alone can go no farther in *Religion* than as it is useful to promote the common Tranquillity and Sociality or reciprocal Union in this Life: For so far forth as Religion procures the Salvation of Souls, it proceeds from peculiar Divine Revelation. But the Duties a man owes to *Himself* arise jointly from *Religion* and from the Necessity of *Society*. So that no man is so Lord of himself, but that there are many things relating to *himself*, which are not to be disposed altogether according to his Will; partly because of the obligation he lies under of being a religious Adorer of the Deity, and partly that he may keep himself a useful and beneficial Member of *Society*.

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## CHAP. IV.

*Of the Duty of Man towards God, or, concerning Natural Religion.* ↪

THE Duty of Man towards God, so far as can be discovered by Natural Reason, is comprehended in these two; that we have true Notions concerning him, or *know* him aright; and then that we conform our Actions to his Will, or *obey* him as we ought. And hence Natural Religion consists of two sorts of Propositions, to wit, *Theoretical* or Speculative, and *Practical* or Active.

AMONGST those *Notions* that every man ought to have of God, the *first* of all is, that he firmly believe his *Existence*, that is, that there *is* indeed some *supreme* and *first Being*, upon whom this Universe depends. And this has been most plainly demonstrated by learned and wise men, from the *Subordination* of *Causes* to one another, which must at last be found to have their Original in somewhat that was before them all; from the nature of *Motion*; from the consideration of this [51] great *Machin*, the World, and from the like Arguments. Which if any man denies himself to be able to *comprehend*, he is not therefore to be excused for his Atheism. For all Mankind having been perpetually, as it were, possessed of this persuasion, that man who undertakes to oppose it, ought not only solidly to *confute* all those Arguments that are brought to *prove* a God, but should advance *Reasons* for his own Assertion which may be *more plausible* than those. And since by this Belief of the *Deity* the Weal of Mankind may be supposed to have been *hitherto* preserved, he ought to shew that Atheism would *better* answer that end than sober Religion and the Worship of God. Now seeing this can by no means be done, the Wickedness of those men who attempt any way to eradicate this Persuasion out of the minds of men, is to be above all things abominated, and restrained by the severest Punishments.

THE Second is, that *God is the Creator of this Universe*. For it being manifest from Reason, that none of these things could exist of *themselves*, it is absolutely necessary that they should [52] have some *supreme Cause*; which *Cause* is the very same that we call GOD. And hence it follows, that those men are cheated, who every now and then are putting upon us *Nature*, forsooth, as the original Cause of all Things and Effects. For, if by that Word they mean that *Energy* and *power of acting* which we find in every thing, this is so far from being of any force to prove there is *no God*, that it proves Him to be the *Author of it self*. But if by *Nature* they would have us understand the *Supreme Cause* of all things, this is only out of a profane Nicety to avoid the receiv'd and plain appellation of GOD. Those also are in a great Error, who believe that any thing can be GOD, which is the Object of our *Senses*, and particularly the *Stars*, among the rest. For the *Substance* of these argues them all to derive their beings from somewhat else, and not to be the *first* things in nature. Nor do they think less unworthily of *God* who call him the *Soul of the World*. For the Soul of the World, let them conceive of it as they please, must signify a *Part* of the World; and how can a *Part* of a thing be the *Cause* of it, that [53] is, be something *before* itself. But if by the *Soul of the World*, they mean that *first* and *invisible Being*, from which all things receive their Vigour, Life and Motion, they only obtrude upon us an obscure and figurative Word for one that is plain and obvious. From hence also it appears, that the *World* did not exist from *all Eternity*; this being contrary to the nature of that which has a *Cause*. And he that asserts that the *World is Eternal*, denies that it had any *Cause* of its being, and consequently denies *God* himself.

THE Third is, that God *governs the whole World*, and particularly *IV. God governs the World.* *Mankind*: Which plainly appears from the admirable and constant *Order* which is to be seen in this Universe; and 'tis to the same *moral* purpose whether a man deny that *God is*, or that he *rules and regards the affairs of Men*; since either of them destroy all manner of Religion. For let him be never so excellent in himself, 'tis in vain to fear or worship him, if he be altogether regardless of us, and neither will nor can do us either good or hurt.

THE Fourth is, that *no Attribute can belong to God, which implies any* *V. God infinitely perfect.* *manner of [54] Imperfection*. For it would be absurd, He being the *Cause* and *Source* of all things, for any Creature of his to think itself able to form a notion of any *Perfection*, of which he is not fully possess'd. Nay, His *Perfection* infinitely surmounting the Capacity of so mean a Creature, it is most reasonable to express the same in *negative* rather than in *positive* terms. Hence nothing is to be attributed to God that is *finite* or *determinate*; because what is *finite* has always somewhat that is *greater* than itself: and whatsoever is *determinate* or subject to *Figure* and *Form*, must suppose *Bounds* and *Circumscription*. Neither can He be said to be *distinctly* and *fully comprehended* or conceived in our Imagination, or by any Faculty of our Souls; because whatsoever we can comprehend fully and distinctly in our Minds, must be *Finite*. And yet when we pronounce God to be *Infinite*, we are not to think we have a full *Notion* of Him, for by the word *Infinite* we denote nothing in the Thing itself, but only declare the Impotence of our Understandings, and we do, as it were, say, that we are not able to comprehend the Greatness of his Essence [55] Hence also it is, that we cannot rightly say of God that he has any *Parts*, as neither that *He* is *All* any thing; for these are Attributes of things *finite*; nor that he is contained in any *Place*, for that denotes limits and bounds; nor that he *moves* or *rests*, for both those suppose him to be in a place: So neither can any thing be properly attributed to God which intimates *Grief* or any *Passion*, such as *Anger*, *Repentance*, *Mercy*. I say *properly*; because when we find such things said of Him, they are to be supposed to have their signification from the *Effect* and not from any *Emotion* in the Mind of the Deity, the Expression being only conform'd to *Humane Passions* and *Capacities*. Nor may we say of Him ought that denotes the *Want* or *Absence* of any Good, as *Appetite*, *Hope*, *Concupiscence*, *Desire* of any thing; for these imply *Indigence* and consequently *Imperfection*, it not being supposable that one should desire, hope or crave any thing of which he does not stand in some need. And so when *Understanding*, *Will*, *Knowledge*, and Acts of the *Senses*, as Seeing, Hearing, &c. are attributed to God, they are to be taken in a much more sublime [56] sense, than we conceive them in our selves. For the *Will* is a *rational Desire*; but *Desire*, as is said afore, presupposes the *Want* or *Absence* of something that is agreeable and necessary. And *Understanding* and *Sense* implies some Operation upon the Faculties of a Man, wrought by exterior Objects upon the Organs of his Body and the Powers of his Soul; which being signs of a Power *depending* upon some other thing, demonstrate it not to be *most perfect*.

LASTLY, it is utterly repugnant to the Divine Perfection, to say there *V. God but One.* are *more Gods* than *one*; for, beside that the admirable Harmony of the World argues it to have but *one* Governour, then God must be *finite*, if there were more Gods of equal Power with himself and not depending upon Him; and it involves a Contradiction to say, There are *many Infinites*. Upon the whole then, 'tis most agreeable to Reason, when we attempt to express the Attributes of God, either to make use of words of a *Negative* signification, as, *Infinite*, *Incomprehensible*, *Immense*, *Eternal*, *i. e.* which had no beginning nor shall have end; or *Superlative*, as most Excellent, most Powerful, most Mighty, [57] most Wise, &c. or *Indefinite*, as Good, Just, Creator, King, Lord, &c. and this in such a sense as we would not think our selves to express *What* he is; but only in some sort to declare our *Admiration* of Him, and profess our *Obedience* to Him, which is a token of an humble Soul and of a Mind paying all the Veneration it is capable of.

THE Propositions of *Practical Natural Religion* are partly such as [VI. Internal Worship of God.](#) concern the *Internal*, and partly the *External Worship of God*. The *Internal* Worship of God consists in *honouring* Him. Now *Honour* is a high Opinion of another's *Power* conjoin'd with *Goodness*: And the Mind of Man is oblig'd from a consideration of this his *Power* and *Goodness* to fill itself with all that *Reverence* towards him of which its Nature is susceptible. Hence it is, that it is our *Duty* to *love* him as the Author and Bestower of all manner of good; to *hope* in him, as from whom only all our *Happiness* for the future does depend; to *acquiesce* in his *Will*, he doing all things for the best, and giving us what is most expedient for us; to *fear* him, as being most powerful, and the offending whom lays us [58] liable to the greatest Evil; lastly, in all things most humbly to *obey* him, as our Creator, our Lord, and our Best and Greatest Ruler.

THE *external Worship* of God is chiefly shewn in these instances: That [VII. External Worship of God.](#) Man give thanks to God for so many good things received of him: That, so far as is in his power, he transcribe God's *Will* into his *Actions*, that is, that he *obey* his *Commands*: That he *admire* and *celebrate* his *Greatness*: That he pour forth his *Prayers* before him, for the procuring of Good and averting of Evil; for *Prayer* is a sign of *Hope*, and *Hope* is an acknowledgment of the *Divine Power* and *Goodness*: That, if a just occasion shall require, he call *God* only a *Witness* to his *Oath*, and that he most religiously observe the same; upon the consideration that God is *Omniscient* and *Almighty*: That he speak not of God otherwise than *seriously* and *considerately*; for that is a *Token of Awe*, and *Awe* plainly confesses a *Power*: Hence it follows, that the *Name of God* ought not to be used rashly and in vain; both which to do is *inconsiderate*: Nor are we to *swear*, without a *lawful occasion*, for that is *in vain*: Neither [59] may we *dispute nicely and over-familiarly concerning the Nature of God and the Methods of his Providence*; for nothing comes of this, but only shews that we would measure Him and His *Workings* by the *Scantling* of our own *Reason*. Add to these, that *whatsoever is done for or given to God ought to be the best in its kind, and fit to express the Honour we have for him*. Also, *that we worship God not only in private, but openly and publickly in the sight of men*; for to do any thing in secret, seems to hint as if we were ashamed to act it openly, but *Worship publickly* paid not only gives testimony of our own devotion, but excites others by our example to do the like. And lastly, we are with our utmost endeavour to *observe the Laws of Nature*; for as it is the greatest *Affront* to slight the commands of God; so on the contrary, *Obedience* to him is more acceptable than any *Sacrifice*.

AND yet, after all, it must be confest, that the Effects of this [VIII. Eternal Salvation not acquired by Natural Religion alone.](#) *Natural Religion*, nicely considered and with regard to the *present State* of *Mankind*, are concluded within the prospect of *this* Life; but that it is of no avail towards procuring [60] *eternal Salvation*. For *Humane Reason* left alone to itself knows not that the *Pravity* which is so discernable in our *Faculties* and *Inclinations* proceeded from *Mans own Fault*, and that hereby he becomes obnoxious to the *Wrath* of God and to *eternal Damnation*: So that with the guidance of *this* only, we are altogether ignorant of the necessity of a *Saviour*, and of his *Office* and *Merit*; as well as of the *Promises* made by God to *Mankind*, and of the several *other* matters thereupon depending, by which alone, it is plain from the holy *Scriptures*, that everlasting *Salvation* is procured to mortal men.

IT may be worth the while, yet a little more distinctly to consider the [IX. Religion the firmest Bond of Society.](#) *Benefits* which through *Religion* accrue to *Mankind*; from whence it may appear, that *It is in truth the utmost and firmest bond of Humane Society*. For in the *Natural Liberty*, if you take away the *Fear* of a *Divine Power*, any man who shall have confidence in his own *Strength*, may do what violences he please to others who are weaker than himself, and will account *Honesty*, *Modesty* and *Truth* but as empty words; nor will he be persuaded [61] to do that which is right by any *Arguments*, but from a sense of his own *Inability* to act

the contrary. Moreover, lay aside *Religion*, and the *Internal Bands* of Communities will be always slack and feeble; the Fear of a temporal *punishment*, the *Allegiance* sworn to Superiors, and the *Honour* of observing the same, together with a *grateful consideration* that by the favour of the supreme Government they are defended from the Miseries attending a *State of Nature*; all these, I say, will be utterly insufficient to contain unruly men within the bounds of their Duty. For in this case that Saying would indeed have place, *He that values not Death, can never be compell'd*; because to those who fear not *God* nothing can be more formidable than *Death*. He that can once bring himself to despise *this* may attempt what he pleases upon those that are set over him; and to tempt him so to do, he can hardly want some *Cause* or *Pretence*; as, either to free himself of the uneasiness he seems to lie under by being subject to anothers command, or that himself may enjoy those Advantages which belong to him that possesses the Government; especially [62] when he may easily persuade himself, that his enterprise is just, either because He that at present sits at the helm of Government is guilty of Mal-Administration, or that himself thinks he could manage it by many degrees to better purpose. An *Occasion* too cannot long be wanting for such Attempts, either from the Princes want of Circumspection in the care of his Person (and indeed in such a state of things who shall guard even the Guards themselves?) or from a powerful Conspiracy, or, in time of forein War, from a Defection to the Enemy. Beside *private* men would be very prone to wrong one another; for the proceedings in *humane Courts* of Judicature being govern'd by *Proofs* of Matter of Fact all those *Wickednesses* and *Villanies* which could be *secretly* acted and without Witnesses, if any thing were to be gained by them, would be accounted *Dexterities of Wit*, in the practice of which a man might enjoy some Self-satisfaction. Again, no man would be found that would do works of *Charity* or of *Friendship*, except with probable expectation of Glory or Profit. From whence it would follow, that, supposing no Punishment [63] from above, one man not being able to place any solid confidence in the Troth of another, they must every one always live anxiously in a mutual *Fear* and *Jealousie*, lest they be cheated or harm'd each by his Neighbour. The *Governours* also would have as little inclination, as the *Governed*, to Actions that are *brave* and *Honourable*; for those that govern, not being obliged by any tie of Conscience, would put all Offices, and even Justice it self to sale; and in every thing seek their own *private Profit* by the Oppression of their Subjects; from whom they being always fearful of a *Rebellion*, they must needs know there can be no surer means to preserve themselves, than by rendring them as *heartless* and as *weak* as possible. The *Subjects* also, on the other side, standing in fear of the violences of their Rulers, will alway be seeking opportunities to *rebel* though at the same time they must be mutually distrustful and fearful of each other. The same would be the Case of *married persons*; upon any slight Quarrel, they would be suspicious lest one should make away the other by Poison or some such *clandestine* way; and the whole Family would be liable to the like danger. For it being [64] plain, that without *Religion* there will be no *Conscience*, it would not be easie to discover such *secret Villanies*; they being such as mostly are brought to light by the incessant prickings of the *Conscience*, and *internal horrors* breaking forth into outward Indications. From all which it appears, how much it is the Interest of Mankind, that all means be used to check the spreading of *Atheism* in the world; and with what *vain Folly* those men are possess'd, who think to get the reputation of being notable *Politicians*, by being seemingly inclined to *Looseness* and *Irreligion*.

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## CHAP. V.

### *Of the Duty of a Man towards Himself.* ↪

ALTHOUGH the *Love of Himself* be so deeply fixed in the mind of Man, as to put him always under a solicitous care of Himself, and upon endeavours by all means to procure his own advantage; so as, upon consideration *hereof*, it would seem superfluous to find out *Laws* to oblige him to the same: yet in *other* respects it is necessary, that he be bound to the [65] observation of some certain *Rules* touching *Himself*. For Man not being born for Himself alone, but being therefore furnish'd with so many excellent *Endowments*, that he may set forth his *Creators* Praise, and be rendred a fit Member of *Humane Society*; it follows hence, that it is his *Duty*, to cultivate and improve those Gifts of his Creator which he finds in himself, that they answer the end of their *Donor*; and to contribute all that lies in his power to the benefit of *Humane Society*. Thus, though true it is, that the *Ignorance* of any man is *his own* Shame and *his own* Loss; yet we accuse not the Master of Injustice, who chastises his Scholar for *Negligence* in not learning those Sciences of which he is capable.

I. *Man liable to  
Obligation to  
Himself.*

II. *Two parts of  
Man, I. the  
Mind.*

AND since Man consists of two parts, a *Soul* and a *Body*, whereof the first supplies the part of a *Director*, the other that of an *Instrument* or subordinate *Minister*, so that our Actions are all performed by the Guidance of the *Mind* and by the Ministrations of the *Body*; we are hence oblig'd to take care of *both*, but especially of the *former*: And that is above all things so to be form'd and accommodated as to bear a fit part in the *Social Life*, and to [66] be imbued with a Sence and Love of *Duty* and *Decency*. Then we are to be take our selves to the *learning* of somewhat proper to our *Capacity* and our *Condition* in the world; or else we shall become a useless burden to the earth, cumbersome to our selves, and troublesome to others. And after all we are in due time to make choice of some honest *State of Life*, agreeable to our natural *Inclinations*, the abilities of our *Body* and *Mind*, *Extraction*, or *Wealth*; or according as the just Authority of our *Parents*, the Commands of our *Superiors*, *Occasion* or *Necessity* shall require.

III. *2. The Body.*

BUT the *Soul* being supported by and depending upon the *Body*, it is necessary that the strength thereof be continued and confirm'd by convenient *Nourishment* and *Exercise*; and that it be not weakned by any *Intemperate* eating or drinking; nor debilitated by *unseasonable* and *needless Labours*, or otherwise. Upon this account *Gluttony*, *Drunkeness*, the immoderate use of *Women* and the like are to be avoided: And besides since unbridled and exorbitant *Passions* not only give frequent occasion to disturb *Human Society*, but are very hurtful even to [67] the person *himself*; we ought to take care with our utmost to quell *them* and subject *them* to Reason. And because many dangers may be escap'd, if we encounter them with *Courage*, we are to cast off all *effeminacy* of the Mind, and to put on *Resolution* against all the terrible appearances that any Event may set before us.

AND yet because no man could give *himself* Life, but it must be accounted as the bounteous Favour of *God*, it appears that Man is by no means vested with such a power over his *own* Life, as that he may put an *end* to it when he pleases; but he ought to tarry, till he is call'd off by Him who plac'd him in this Station. Indeed since Men both can and ought to be serviceable to one another, and since there are some sorts of Labour or an over-straining in any, which may so waste the strength of a man, that Old Age and Death may come on much sooner than if he had led an easie and painless Life; there is no doubt but that a man may without any contravention to this Law, choose that way of living which may with some probability make his Life the shorter, that so he may become more [68] useful to Mankind. And whereas oftentimes the Lives of *many* will be

IV. *Man not  
Lord of his own  
Life.*

lost, except *some* number of men expose themselves to a Probability of losing their own on their behalf, in this case the lawful *Governour* has power to lay an Injunction on any *private* man under the most grievous penalties, not to decline by Flight such danger of losing his Life. Nay farther, he may of his *own accord* provoke such danger, provided there are not *Reasons more forcible* for the contrary, and by thus adventuring he hath hopes to save the Lives of *others*, and those *others* are such as are worthy so dear a Purchase. For it would be silly for any man to engage his Life together with another to *no purpose*, or for a person of *Value* to die for the preservation of a *paltry Rascal*. But for any other cases, there seems nothing to be requir'd by the *Law of Nature*, by which he should be persuaded to prefer another mans Life before his own, but that all things rightly compar'd, every man is allow'd to be *most dear* to *himself*. And indeed, all those who voluntarily put an end to their own Lives, either as *tir'd* with the many *Troubles* which usually accompany this Mortal State; or from [69] an *Abhorrence* of *Indignities* and *Evils*, which yet would not render them scandalous to *Humane Society*; or through *Fear* of *Pains* or *Torments*, by enduring which with fortitude they might become useful Examples to others; or out of a vain *Ostentation* of their *Fidelity* and *Bravery*; all these, I say, are to be certainly reputed *Sinners against the Law of Nature*.

BUT whereas it often happens that this *Self-Preservation*, which the *V. Self-Defence*. tenderest Passion and exactest Reason thus recommends to Mankind, does seem to interfere with our Precepts concerning *Society*, then when our own Safety is brought into jeopardy by another, so far that either we must perish or submit to some very grievous mischief, or else we must repel the Aggressor by force and by doing him harm: Therefore we are now to deliver, *With what Moderation the Defence of our selves is to be temper'd*. This Defence of our selves then will be such as is, either *without any harm* to him from whom we apprehended the mischief, by rendring any Invasion of us formidable to him and full of danger; or else by *hurting* or *destroying* him. Of the *former* way [70] there can be no doubt, but that 'tis lawful and altogether blameless:

BUT the *latter* may admit of scruple, because Mankind may seem to *VI. Self-Defence by hurting another*. have an *equal Loss*, if the *Aggressor* be kill'd, or if I lose *my Life*; and because one in the same Station with my self will be destroy'd, with whom it was my Duty to have liv'd in *Civil Society*: Beside that a *forcible Defence* may be the occasion of *greater outrages* than if I should be take my self to slight, or patiently *yield* my Body to the Invader. But all these are by no means of such weight as to render this sort of Defence unlawful. For when I am dealing fairly and friendly with another, it is requisite that he shew himself ready to do the like, or else he is not a fit Subject of such good Offices from me. And because the End of the Law of Society is the *Good of Mankind*, therefore the Sense thereof is so to be taken, as effectually to preserve the Welfare of every *Individual* or particular man. So that if another man make an *attempt* upon my Life, there is no Law that commands me to *forgo* my own Safety, that so he may practise his Malice with *Impunity*: And he that in such case is *hurt* or [71] *slain*, must impute his Mischief to his *own Wickedness*, which set me under a Necessity of doing what I did. Indeed otherwise, whatsoever *Good* we enjoy either from the bounty of *Nature* or the help of our own *Industry*, had been granted to us in vain, if we were not at liberty to *oppose* the Violences of Russians who would wrongfully ravish all from us; and *honest* men would be but a ready Prey for *Villains*, if they were not allow'd to make use of *Force* in defence of themselves against the others Insults. Upon the whole then, it would tend to the *Destruction* of Mankind, if *Self-Defence* even with *Force* were prohibited to us.

NOT however that hence it follows, that as soon as any *Injury* is *VII. Extremities last to be used* threaten'd us, we may presently have recourse to *Extremities*; but we must first try the *more harmless Remedies*; for instance, we must indeavour to keep out the Invader by cutting off his Access to us; to withdraw into strong places; and to admonish him to desist

from his outrageous Fury. And it is also the Duty of a prudent man to put up a *slight Wrong*, if it may conveniently be done, and to *remit* somewhat of his Right, [72] rather than by an unseasonable opposition of the Violence to expose himself to a *greater danger*; especially if that upon which the Attempt is made, be such as may easily be made amends for or repair'd. But in cases where by these or the like means I cannot secure my self, in order to it I am at liberty to have recourse even to *Extremities*.

BUT that we may clearly judge, whether a man contains himself within the bounds of an *unblamable Defence of himself*; it is first to be examin'd, whether the person be one who is in a state of *Natural Liberty* or *subject to no man*, or one who is obnoxious to some *Civil Power*. In the *first Case*, if another shall offer violence to me, and cannot be brought to change his malicious mind and live quietly, I may repel him even by *killing* him. And this not only when he shall attempt upon my *Life*, but if he endeavour only to *wound* or *hurt* me, or but to *take away* from me what is mine, without meddling with my *Body*. For I have no assurance but that from these *lesser Injuries* he may proceed to *greater*; and he that has once profess'd himself my *Enemy*, can no longer pretend any *Right* in his own defence, but that I [73] may resist him after what *manner* I please. And indeed the *Sociality* necessary to *Human Life* would become unpracticable, if a man may not make use even of *Extremities* against him who shall irreclamably *persist* in the commission though but of *meaner Wrongs*. For at that rate the most *modest* persons would be the continual Laughing-stock of the *vilest Rakehels*. Farther, in this State, I may not only oppose with force the *present danger* threatned, but having repell'd *that*, I may pursue the *Invader* to such purpose, as to render my self sufficiently *secure* of him for the *future*. Concerning which *Security* this is to be observ'd. If a man having done me wrong, afterward of his own accord repenting of what he has done, shall beg my *Pardon* and offer *Reparation* of the *Damage*, I am then obliged to be reconcil'd to him upon his faithful *Promise*; because 'tis the most certain *Token* of an amendment of *Mind*, if a man *repent* of himself and beg *pardon*. But he who then only pretends *Repentance* when he wants *Power* to prosecute his *Violences*, is not safely trusted for his bare *Word*; and therefore from such a one all *Possibilities* of doing mischief are to be cut off, or some *Confinement* [74] must be laid upon him, that so he may never after become formidable.

BUT in the *second State*, those who live *Subjects* to a *Civil Power*, may then only be take themselves to *Violence* in the *Defence* of themselves, when the *Time* and *Place* will not admit of any application to the *Magistrate* for his assistance in repelling the *Injury*, by which mans *Life*, or ought that is as valuable as *Life*, or some *Good* which can never be repair'd is manifestly endanger'd; and this is to be used *no farther* than for the *avoiding* the *Mischief*; the rest being left to the *Judgment* of the *Magistrate*, to wit, *Punishing* and *Caution* that the *Offender* do so no more.

IT is moreover not only lawful for us to defend our selves against such a one as out of an *evil design* against us shall offer us a *Mischief*, but against him also who shall do so by *Mistake*. For instance, if a *Mad man* shall set upon me, or one that takes me for another person for whom he hath a *grudge*. For 'tis enough, that no man has a *Right* to assault or kill me, and I am not under any *Obligation* to suffer *Death* for nothing.

[75]

CONCERNING the *Time* in which the *Defence* of our selves may be made, it is to be two ways consider'd, as in the *two Cases* just before laid down. Where each party live in their *Natural Liberty*, although it may and ought to be *presum'd*, that they will mutually comply with the *Duties* of the *Law of Nature*; yet considering the *Pravity* of *Humane Inclinations*, they are not obliged to be so *secure* of

themselves, but they may seasonably take care of their Safety by *innocent Methods* of Defence; as suppose, by fortifying their Avenues against any that shall pretend to act hostilities upon them; by providing Ammunition and listing Men; by making Confederacies; by having a watchful Eye upon the designs of others, and the like. But this *Suspicion*, which has its rise from the Pravity of Humane Nature, is not so to be improv'd, as to give occasion to oppress others by Violence under pretext of Self-Defence; no, not tho I see my Neighbors *Power* to grow too *great*, especially if such *Power* has its increase from *harmless Industry*, or be the effect of the Bounty of *Providence*, without the Oppression of others. Nay, if such Neighbour shall, beside his *Power* of hurting, demonstrate also [76] a *Design* so to do not to *me*, but to *another*, I may not presently without any more ado invade him in my own name; unless I am under an Alliance to assist that *other* who is assaulted by this greater *Power*. And then it goes farther in this Case, and makes it expedient to use greater Vigour in my Resistance, if it be probable, that as soon as this *great Power* has dispatch'd the *other*, I am like to be *next* invaded, and that the *first Conquest* he shall make is to be the Instrument of *another* which he intends. But again when it *plainly* appears, that another is *making preparation* to invade me, though he have not openly *declar'd* his Intention, I may immediately enter upon *violent Methods* for my own Defence, and *anticipate* the Aggressor; supposing that he would not lay by his hostile Designs upon any *friendly Advice*, or that the *proposing* such Advice may prove of ill consequence to my affairs. So that in this case he is to be accounted the *Aggressor*, who first *meditates mischief* to his Neighbour, and makes *preparation* to that purpose; and he shall be interpreted to proceed by way of *Self-Defence*, who acting with *greater expedition* shall surprise the former, before he can [77] bring his Design to perfection. For it is not absolutely necessary to *Self-Defence* that I *receive* the first stroke, or that I only *ward off* and *avoid* the Blows that are aim'd at me.

BUT among men who live in a *Community*, the liberties for *Self-Defence* ought not to be near so large. For here, though I may know for certain, that another man has *arm'd* himself in order to set upon me, or has openly *threatned* to do me a mischief; this will by no means bear me out in *assaulting* him; but he is to be *inform'd* against before the Civil Magistrate, who is to require *Security* for his good behaviour. The use of *Extremities* in repelling the Force being then only justifiable, when I am *already* set upon and reduc'd to such *streights*, that I have no opportunity to require the *Protection* of the Magistrate or the *Help* of my Neighbours; and even then I am not to make use of *Violence*, that by the slaughter of my Adversary I may *revenge* the Injury, but only because without it my *own Life* cannot be out of *danger*. Now the instant of *Time*, when any man may with impunity *destroy* another in his own defence, is, when the Aggressor being *furnish'd* with Weapons for the purpose [78] and *shewing* plainly a *design* upon my Life, is got into a *place* where he is very capable of doing me a mischief, allowing me some time, in which it may be necessary to prevent rather than be prevented; although in *foro humano* a little *Exceeding* be not much minded in regard of the great disturbance such a danger must be thought to raise in the Spirit of Man. And the *Space of Time* in which a man may *use Force in his own defence*, is so long as till the Assailant is either *repuls'd*, or has *withdrawn* of his own accord, (whether in that moment *repenting* of his wicked design, or for that he sees he is like to *miss* of his aim) so that for the present he cannot hurt us any more, and we have an opportunity of retiring into a place of Safety. For as for *Revenge* of the wrong done, and *Caution* for future Security, that belongs to the Care of the *Civil Magistrate*, and is to be done only by his Authority.

NEVERTHELESS though true it is, that we ought not to take away another mans *Life*, when it is possible for us after a more convenient way to avoid the Danger we are in; yet in consideration of that great *perturbation of Mind*, which is [79] wont to be occasion'd upon the appearance of *imminent Mischief*, it is not usual to be *over-rigorous* in the examination of these matters; for it is not likely that a man *trembling*

XIII.  
Allowances and  
Limitations.

under the *apprehension* of Danger should be able to find out so exactly all those *ways of escaping*, which to one who *sedately* considers the Case may be plain enough. Hence though it is *Rashness* for me to come out of a *safe* Hold to him who shall *challenge* me; yet, if another shall set upon me in an *open* place, I am not streight oblig'd to be take my self to *Flight*, except there be at hand such a place of *Refuge* as I may withdraw into without peril: Neither am I always bound to *retire*; because then I turn my defenceless Back, and there may be hazard of falling; beside that having once lost my posture, I can hardly recover it again. But as the Plea of *Self-Defence* is allow'd to that person who shall thus encounter Danger when he is going about his lawful *business*, whereas if he had staid at home he had been safe enough: so it is denied to him who being challeng'd to a *Duel*, shall by appearing *set himself* in that condition, that except he kill his Adversary, himself must be slain. For the *Laws* having [80] *forbidden* his venturing into such *Danger*, any excuse on account *thereof* is not to be regarded.

XIV. *Defence of Members.*

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

MOREOVER, what is lawful to be done for preservation of *Life*, is *XV. Defence of Chastity.* adjudged to be so for *Chastity*. Since there cannot be a more horrid *Abuse* offer'd to an honest *Woman*, than to force her out of that which being kept undefiled is esteemed the greatest *Glory* of their *Sex*; and to put upon her a *Necessity* of raising an *Offspring* to her *Enemy* out of her own blood.

[81]

AS for *Defence of Goods or Estate*, this may, among those who are in a *XVI. Defence of Goods Estate.* State of *Natural Liberty*, go as far as the *Slaughter* of the *Invader*, provided what is in controversie be not a *Thing contemptible*. For without *things necessary* we cannot keep our selves alive; and he equally declares himself my *Enemy*, who wrongfully seizes my *Estate*, as he that attempts upon my *Life*. But in *Communities*, where what is ravish'd from us may with the assistance of the *Civil Authority* be recover'd, this is not regularly allow'd; unless in such case when he that comes to take away what we have, cannot be brought to *Justice*; on which account it is, that we may lawfully kill *Highway-men* and *Night-robbers*.

AND thus much for *Self-Defence* in those who without provocation are *XVI. Self-Defence in him that first injur'd.* *unjustly invaded* by others. But for him who has *first* done an *Injury* to another, he can only then rightly *defend* himself with *force* and *hurt* the other *again*, when having *repented* of what he has done, he has offer'd *Reparation* of the *Wrong* and *Security* for the future; yet he who was *first injur'd* shall out of ill nature *refuse* the same, and endeavour to *revenge* himself by violence.

[82]

Lastly, *Self-Preservation* is of so much regard, that if it cannot *XVIII. Self-Preservation in cases of Necessity.* otherwise be had, in many cases it exempts us from our obedience to the standing *Laws*; and on this score it is, that *Necessity* is said to *have no Law*. For seeing Man is naturally inspirited with such an earnest desire to preserve himself, it can hardly be presum'd that there is any *Obligation* laid upon him, to which he is to sacrifice his *own Safety*. For though not only *God*, but the *Civil Magistrate*, when the *Necessity* of affairs

requires it, may lay upon us so strict an Injunction, that we ought rather to die than vary a tittle from it; yet the *general Obligation* of Laws is not held to be so rigorous. For the Legislators, or those who first introduc'd *Rules* for Mankind to act by, making it their design to promote the *Safety* and *common Good* of Men, must regularly be supposed to have before their eyes the condition of *Human Nature*, and to have consider'd how *impossible* it is for a man not to shun and keep off all things that tend to his own *Destruction*. Hence those Laws especially call'd *Positive*, and all *Human Institutions* are judg'd to except *Cases of Necessity*; or, not to oblige, when the Observation of them must be accompanied [83] with some Evil which is *destructive* to *Human Nature*, or not tolerable to the *ordinary Constancy* of men; unless it be *expresly* so order'd, or the *Nature* of the thing requires, that even *that* also must be undergone. Not that *Necessity justifies* the breach of a Law and commission of Sin; but it is presum'd from the favourable intention of the Legislators and the consideration of Mans Nature, that *Cases of Necessity* are not included in the general Words of a Law. This will be plain by an Instance or two.

THOUGH otherwise Man have no such Power over his own *Members*, [XIX. Cutting off Members.](#) as that he may lose or maim any of them at his pleasure; yet he is justifiable in *cutting off* a Gangren'd Limb, in order to save the *whole Body*, or to preserve those *parts* which are *sound*, or lest the other Members be rendred *useless* by a dead and cumberksom piece of Flesh.

IF in a *Shipwrack* more men leap into the Boat than it is *capable* of [XX. One lost to save many.](#) carrying, and no one has more right than another to it; they may *draw Lots* who shall be cast over-board; and if any man shall *refuse* to take his chance, he may be thrown over without any more ado, as one that seeks the destruction of *all*.

[84]

IF *two* happen into imminent danger of their Lives, where *both* must [XXI. One lost to save Self.](#) perish; one may, as he sees good, hasten the death of the other, that he may save *himself*. For instance, If I, who am a skilful Swimmer, should fall into some deep Water with another who could not swim at all, and he clings about me; I not being strong enough to carry *him* off and *my self* too, I may put him off with *force*, that I may not be drown'd together with him; though I might for a little while be able to keep him up. So in a Shipwrack, if I have got a Plank which will not hold *two*, and *another* shall endeavour to get upon it, which if he does, we are *both* like to be drown'd, I may keep him off with what *violence* I please. And so if *two* be pursued by an Enemy meaning to kill them, *one* may be shutting a Gate or drawing a Bridge after him, secure *himself*, and leave the *other* in great probability of *losing* his Life, if it be not possible to save *both*.

CASES of *Necessity* may happen, where one may *indirectly* put another [XXII. Another destroy'd or hurt to the same end.](#) in danger of *Death*, or some *great Mischief*, when at the same time he means no harm to the Person, but only for his own *Preservation* [85] he is forc'd upon some Action, which probably may do the other a damage; always supposing that he had rather have chosen any *other* way, if he could have found it, and that he make that damage as *little* as he can. Thus, if a stronger man than I pursues me to take away my Life, and one meets me in a narrow way through which I must fly, if upon my request he will not stand out of the way, or he has not time or room so to do, I may throw him down and go over him, though it be very likely that by the fall he will be much hurt; except he should be one who has such peculiar relation to me, that I ought for his sake rather to surrender my self to the Danger. And if he who is in the way cannot, upon my speaking to him, get out of the way, suppose being lame or a Child, I shall be excused who try to leap over him rather than to expose my self to my Enemy by delaying. But if any one shall out of wantonness or cross humour hinder me or deny to give me the liberty of escaping, I may immediately set upon him and throw him

down. Now those who in these Cases get any *Harm*, are to look upon it not as a *Fault* in the Person [86] that did it, but as an unavoidable *Misfortune*.

IF a man, not through his own fault, happen to be in *extreme want of* XXIII. Case of extreme Want. *Victuals and Clothes* necessary to preserve him from the Cold, and cannot procure them from those who are wealthy and have great store, either by intreaties, or by offering their value, or by proposing to do work equivalent; he may without being chargeable with *Theft* or *Rapine* furnish his Necessities out of their Abundance either by force or secretly, especially if he do so with a design to pay the Price, as soon as he shall have an opportunity. For it is the Duty of the rich man to succour one in such a needy condition. And though regularly what depends upon *Courtesie* ought by no means to be extorted by *Force*, yet the *Extreme Necessity* alters the Case, and makes these things as claimable as if they were absolutely due by a formal Obligation. But it is first incumbent upon the Necessitous person to try all ways to supply his Wants with the *Consent* of the Owner, and he is to take care that the Owner be not thereby reduc'd to the *same Extremity*, nor in a little time like to be so; and that *Restitution* be made, [87] especially if the Estate of the other be such, as that he cannot well bear the loss.

Lastly, THE *Necessity* of our own affairs seems sometimes to justify XXIV. Destroying other mens Goods. our destroying the *Goods of other men*; provided still, that we do not bring such Necessity upon our selves by our *own Miscarriage*; that there can not be any *better* way found; that we cast not away that of our Neighbours which is of *greater value* in order to save our own which is of *less*; that we be ready to pay the *Price*, if the Goods would not otherwise have been destroy'd, or to bear our share in the Damage done, if the Case were so that *his* must have perish'd together with *ours*, but now by their Loss *ours* are preserv'd. And this sort of Equity is generally found in the Law-Merchant. So also in case of *Fire*, I may pull down or blow up my Neighbours House, provided those whose Houses are by this means saved, do make good the Damage proportionably.

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## CHAP. VI.

*Of the Duty of one man to another, and first of doing no Injury to any man.* ↪

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

AMONG those Duties we call *Absolute*, or those of every man towards every man, this has the first place, that *one do no wrong to the other*; and this is the *amplest* Duty of all, comprehending *all Men* as such, and it is at the same time the *most easie*, as consisting only in an *omission* of acting, unless when unreasonable Desires [89] and Lusts are to be curb'd. It is also the *most necessary*, because without it *Human Society* cannot be preserv'd. For I can live quietly with him that does me no good, or with whom I have no manner of Correspondence, provided he do me *no harm*. Nay this is all we desire from the *greatest part* of Mankind, the doing mutually *good Offices* lying but between a few. But I can by no means live *peaceably* with him that *wrongs* me; Nature having instill'd into every man such a tender Love of *himself* and what is his *own*, that he cannot but by all means *repel* those men who shall make any attempt upon one or t' other.

BY this Duty are fenc'd not only what we have by the Bounty of *Nature*; such as our Laws, Bodies, Limbs, Chastity, Liberty: but whatsoever by any *Humane Institution* or *Compact* becomes our Propriety; so as by this it is forbidden to take away, spoil, damage or withdraw in whole or in part from our Use whatsoever by a lawful Title we are possess'd of. Whence all those Actions are hereby made Crimes, by which any Wrong is done to others, as Murther, Wounding, Striking, Rapine, Theft, Fraud, Violence, whether [90] practised directly or indirectly, mediately or immediately, and the like.

FARTHER, hence it follows, That *if any Harm or Damage be done to another, he who is truly chargeable as Author of the Wrong, ought as far as in him lies, to make Reparation*. For otherwise the Precept would be to no purpose, That no man shall be hurt nor receive damage; if when he has actually sustain'd a Mischief, he must put it up quietly, and he who did the Injury shall enjoy *securely* the Fruit of his Violence, without *refunding*. And setting aside this *Necessity of Restitution* the Pravity of Mans Nature is such, that they would never forbear *injuring* one another, and it would be very hard for him who has suffer'd Wrong, to compose his mind so as to live peaceably with the other, till *Reparation* were made.

THOUGH the word *Damage* may seem properly to belong to loss in Goods, yet we take it here in the large sense, that it may signifie all manner of *Harm, spoiling, diminishing, or taking away* what is already ours, or *intercepting* that which by an *absolute Right* we ought to have, whether it be bestow'd upon us by Nature, or given us by Man and humane [91] Laws; or lastly, the *Omission* or *Denial* of paying what by a *perfect Obligation* is due to us. But if such Payment only be stopt, as was *not due* by any *perfect Obligation*, it is not look'd upon as a Damage that ought to be made good; for it

would be unmeet to account it a *Wrong* suffer'd, if I receive not such Stipends, and unreasonable for me to demand as my *Right*, what I cannot expect from another but under the name of a *Free Gift*, and which I can by no means call *my own*, till after I have receiv'd it.

UNDER the head of *Damage* liable to Reparation, we must also *VI. Damage in expectations.* comprize not only a Mischief, Loss or Interception of what is ours or due to us; but also such *Profits*, as do naturally accrew from the thing, or have already accrew'd, or may fairly be *expected*, if it was the right of the Owner to receive them; allowing still the Expences necessary for gathering in such Profits. Now the Value of *Profits* thus in *Expectation* only is to be high or low according as they are certain or uncertain, and will be sooner or later receiv'd. And lastly, that also is to be called *Damage*, which upon a hurt given, does of Natural Necessity *follow* thereon.

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

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WHERE *many* have join'd in an Action from whence *Damage* has *VIII. Damage done by many.* come, he in the *first* place shall be chargeable with *Reparation*, by whose *Command* or powerful *Influence* the others were put upon the Action; and he who immediately perpetrates the thing, to which he could not decline his helping hand, shall be esteem'd but only as the *Instrument*. He who *without any constraint* concern'd himself in the *Enterprise* shall be *chiefly liable*, and then the rest who assisted in it. But this so, as that if *Restitution* be made by the former, then the latter are clear'd, (which in *Penal Cases* is otherwise.) If *many in combination* have committed an *Injury*, all are oblig'd for each one single and each one single is oblig'd for all; so as that if *all* are seiz'd, they must each pay their shares to make good the *Loss*; and if all escape but *one*, he shall be oblig'd to pay for all; but where some amongst 'em are *insolvent*, those who are *able* must pay the whole. If many *not in combination* concur to the same thing, and it can plainly be discern'd *how much* each of them contributed to the doing of the *Mischief*; each shall only be accountable for so much as *himself* was the *Cause* [94] of. But if *one shall pay* the whole, they are *all discharg'd* for the same.

NOT only he who out of an *evil design* does wrong to another, is bound *IX. Damage by Negligence.* to Reparation of the *Damage*, but he who does so through *Negligence* or *Miscarriage*, which he might easily have avoided. For it is not a slight part of the Duties of Society, to manage our selves so circumspectly, that our Conversation become not *mischievous* or *intolerable* to our Neighbour; and often men are by *peculiar Obligations* tied to use the *utmost Diligence* in certain affairs; nay, if the Nature of the Case did require the

*exactest Care*, then a very little blame shall suffice to make *Reparation* to be due: Unless the fault lay rather more in him who was harm'd than in him who did it; or unless some great Perturbation of mind or some Circumstance in the matter would not allow the most deliberate Circumspection; as, when a Soldier in the heat of Battel in handling his Arms shall hurt his Comrade.

BUT he who by *meer Chance*, without any Fault of his own, shall do *X. Damage by Chance.* harm to another, is not oblig'd to *Reparation*. Because nothing in this Case being done [95] which can be chargeable upon him, there is no reason, why he who *unwillingly* did a Mischief should rather suffer, than he to whom it was done.

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

THE same seems to be just in the Case of our *Cattel* or any *living XII. Damage by Cattel.* Creature we keep, that, when they *against* our Wills and by a motion of their own contrary to their *Natures*, do a Mischief to another, we either make *Reparation* or *give* [96] *up* the same. For, if I am hurt by any Animal that lives in its *Natural Liberty*, I have a Right, by what means I can, to give my self satisfaction by *taking* or by *killing* it; and this Right doubtless cannot be taken away by its being in the possession of another. And whereas the Owner of this Animal makes some *Gain* by it, but I have suffer'd *Loss* by the same; and whereas the *Reparation* of *Wrong* is more to be favour'd than procuring *Gain*; it appears that I may with reason demand Satisfaction from the *Owner*, or if the Animal be not worth so much, then that *it* at least be deliver'd to me on account of the Damage sustain'd.

THUS then he who without any *evil Intention* does an Injury to another, *XIII. Recapitulation.* ought of his own accord to offer *Reparation*, and to protest himself to have done it *unwillingly*, lest the injur'd person take him for his *Enemy* and endeavour to *retaliate* the Mischief. But he who with a *naughty design* shall wrong his Neighbour is not only bound to offer *Reparation*, but to declare his *Repentance* for the Fact and to beg *Pardon*. On the other side, the *wronged party* having Satisfaction made him, is oblig'd upon the *Repentance* of [97] the other and at his *Request* to grant him *Pardon*. For he that will not be content when *Reparation* is made him, and a fit *Submission*, but still seeks to revenge himself by force, does nothing else but gratifie his own ill Nature, and so disturbs the common Peace of Men without cause. And upon that account *Revenge* is by the Law of Nature condemn'd, as proposing no other end, than doing Mischief to those who have hurt us, and pleasing our selves in their Sufferings. Moreover, men ought to be the more apt to pardon *each others* Offences upon a consideration how often themselves transgress the *Laws of God*, and have therefore daily so much need of begging Forgiveness of *Him*.

## CHAP. VII.

*The Natural Equality of Men to be acknowledg'd.* ↪

MAN is a Creature not only most solicitous for the *Preservation* of *I. Equality of Mankind.* Himself; but has of Himself also so nice an *Estimation*, that to diminish any thing thereof does frequently move in him as great Indignation as if a Mischief were done to his Body or Estate. Nay there seems to him to be somewhat of *Dignity* in the appellation of *Man*, so that the last and most efficacious Argument to curb the Arrogance of insulting men, is usually, *I am not a Dog, but a Man as well as your self.* Since then Humane Nature is the *same* in us all, and since no man will or can cheerfully join in Society wity any, by whom he is not at least to be esteem'd equally as a Man and as a partaker of the same Common Nature: It follows that, among those *Duties which men owe to each other*, this obtain the *second* place, That *every man esteem and treat another, as [99] naturally equal to himself, or as one who is a Man as well as he.*

Now this *Equality* of Mankind does not alone consist in this, that men *II. Where this Equality consists.* of ripe age have almost the same *Strength*, or if one be weaker he may be able to kill the stronger, either by *Treachery*, or *Dexterity*, or by being better furnish'd with *Weapons*; but in this, that though Nature may have accomplish'd one man beyond another with various endowments of Body and Mind; yet nevertheless he is oblig'd to an observation of the *Precepts* of the *Law Natural* towards the meaner person, after the same manner as *himself* expects the same from *others*; and has not therefore any greater liberty given him to insult upon his Fellows. As on the other side the Niggardliness of *Nature* or *Fortune* cannot of themselves set any man so low, as that he shall be in a worse condition as to the enjoyment of *Common Right* than others. But what *one man* may rightfully demand or expect from *another*, the same is due to *others* also (Circumstances being alike) from *him*; and whatsoever *one* shall deem reasonable to be done by *others*, the like it is most just he practise *himself*: For the *Obligation of maintaining [100] Sociality among Mankind equally binds every man*; neither may one man more than another violate the Law of Nature in any part. Not but that there are other *popular Reasons* which illustrate this *Equality*; to wit, that we are all descended of the *same Stock*; that we all are born, nourished and die after the *same manner*; and that God has not given any of us a *certain Assurance* that our happy Condition in the World shall not at any time be *changed*. Besides, the Precepts of the Christian Religion tell us that God favours not man for his Nobility, Power or Wealth, but for *sincere Piety*, which may as well be found in a *mean* and *humble* man, as in those of *high degree*.

Now from this *Equality* it follows, that he who would make use of other *III. Recompence for Service done.* mens labour for his own benefit, ought to be ready to make a *Recompence*. For he who requires that other men should do him kindnesses, and expects *himself* to be *free* from doing the like, must be of opinion that those other men are below himself, and not his *Equals*. Hence as those persons are the *best Members* of a Community, who without any difficulty allow the same things to their *[101] Neighbor* that themselves require of him; so those are altogether *incapable of Society*, who setting a high rate on themselves in regard to others, will take upon 'em to act any thing towards their Neighbour, and expect a greater Respect than the rest of Mankind, and demand a larger share of matters to which no man has a claim, though they can make out no better Right than another: Whence this also is an universal Duty of the Law Natural, *That no man, who has not a peculiar Right, ought to arrogate more to himself, than he is ready to allow to his fellows, but permits other men to enjoy the same Equity with himself.*

THE same *Equality* also shews what every man's behaviour ought to be, when his business is to *distribute Justice* among others; to wit, that he treat them as *Equals*, and indulge not that, beside the Merits of the Cause, to one, which he denies to another. For if he do otherwise, he who is discountenanc'd is at the same time affronted and wrong'd, and loses somewhat of the Dignity which Nature bestow'd upon him. Whence it follows, that things which are in common, are of right to be *divided* by equal parts among [102] those who are equal; where the Thing will not admit of *Division*, they who are equally concerned, are to use it *indifferently*; and, if the Quantity of the thing will bear it, as much as each party shall think fit; but if this cannot be allow'd, then it is to be used after a *stated* manner, and *proportionate* to the Number of the Claimants; because 'tis not possible to find out any other way of observing *Equality*. But if it be a Thing of that nature as not to be capable of being *divided*, nor of being possess'd in *common*, then it must be used by *turns*; and if this yet will not answer the point, and it is not possible the rest should be satisfied by an *Equivalent*, the best way must be to determin Possession by *Lot*; for in such Cases a fitter Remedy cannot be thought on, as to removing all opinion of Partiality and Contempt of any party, and not debasing the person whom Fortune does not favour.

THIS Duty is violated by *Pride*, when one without any cause or for a *V. Pride*. cause not sufficient, bears himself above his Fellows, and despises them as beneath himself. We say, *without any Reason*. For where a man is regularly possess'd of some *Right*, [103] which gives him a Preference to other men, he may lawfully *make use of* and *assert* the same, so it be without vain Ostentation and the contempt of others; as on the contrary every one is with good reason to *yield* that *Respect* and *Honour* which is *due to another*. But for the rest, *true Generosity* has always for its Companion a *decorous Humility*, which arises from a Reflexion on the Infirmity of our Nature, and the Faults, of which our selves either have been or may hereafter be guilty, which are not less heinous than those which may be committed by other men. The Inference we ought to make from hence, is, that we do not over-value our selves with regard to others, considering that *they* equally with us are endow'd with a *free use of their Understanding*, which they are also capable of managing to as *good purpose*: the *regular Use* whereof is that alone which a man can call *his own*, and upon which the *true Value* of Himself depends. But for a man without any reason to set a high esteem upon himself is a most *ridiculous Vice*; first, because 'tis in itself silly, for a man to carry it high for nothing at all; and then because I must suppose all *other men* to be [104] Coxcombs, if I expect from them a great regard when I deserve none.

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

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## CHAP. VIII.

*Of the mutual Duties of Humanity.* ↪

AMONG the Duties of one man towards another, which must be *I. Doing good to others.* practised for the sake of *Common Society*, we put in the *third* place this, *That every man ought to promote the good of another, as far as conveniently he may.* For all Mankind being by Nature made, as it were, *akin* to each other; it would be no great matter for us not to *hurt* or not to *despise* our Fellows; but we ought also to do such *good Offices* to others, or mutually to communicate the same, as that common *brotherly Love* may be kept up among Men. Now we become beneficial to our Neighbour, either *indefinitely* or *definitely*; and that either parting with *something* or *nothing* our selves.

THAT man *indefinitely* promotes the good of others, who takes such *II. Benefactors, the first sort.* necessary care of his *Mind* and *Body*, that he may be able to perform such Actions as may be profitable to his Neighbour; or who by the *Acuteness* of his *Wit* finds out something [106] that may be of advantage to Mankind. So that those are to be accounted guilty of a *breach* of this *Duty*, who betaking themselves to no *honest Calling* spend their Lives in Sloth, as if their Souls were given 'em but to serve as Salt to keep their Bodies from stinking, or as if they were born but to make up a Number and eat their share: And such as being *content* with the Estates their *Ancestors* have left 'em, think they may give themselves up to *Idleness* without blame, because they have whereon to live by the Industry of others: And those who *alone* enjoy what they have got, not bestowing any part upon others: Finally, all those who like Hogs, do good to no one till they *die*; and all that sort of Wretches who only serve to load the Earth with their useless weight.

ON the other side, to those who make it their business to deserve well *III. Such deserve Honour.* of Mankind the rest of the World *owe* thus much, that they don't envy 'em, nor lay any rubs in their way while by their noble Actions they seek the Universal Good: And if there be no possibility for themselves to *imitate* 'em, they at least ought to pay a *Regard* to their *Memory* and promote [107] their *Honour*, which perhaps is all they shall get by their Labours.

NOW *not to do* readily all that *Good* to others which we can do without *IV. Good done without detriment to Self.* detriment, labour or trouble to our selves, is to be accounted detestable *Villany* and *Inhumanity*. These are wont to be called *Benefits which cost nothing*, or which are of advantage to the Receiver without being a charge to the Bestower. Such as, to allow the use of the running Water, the letting another light his Fire by mine, the giving honest Advice to him that consults me, the friendly directing a wandring man to the right Way, and the like. So if a man have a mind to quit the possession of a thing, either because he has too much, or because the keeping of it becomes troublesome, why should he not rather leave it fit for use to others, (provided they are not Enemies) than to mar or destroy it? Hence it is a Sin for us to *spoil Victuals*, because *our Hunger* is satisfied; or to *stop up* or cover a *Spring*, because we have quench'd *our Thirst*; or to destroy *Sea-marks* or *Mercuries*, when our selves have made use of them. Under this Head may be *Inscribed Posts set up in Highways to direct Travellers.* comprehended also the *little Alms* bestow'd by the wealthy upon [108] those who are in want; and that *Kindness* which we justly shew to *Travellers*, especially if under necessities, and the like.

BUT it is a higher degree of Humanity, out of singular favour to do a *V. Benefactors, the second sort.* good turn freely, which costs either *Charge* or *Pains*, that so another may either have his Necessities relieved, or acquire some considerable Advantage. And these, by way of Excellence, are called *Benefits*, and are the fittest matter for rendring men Illustrious, if rightly temper'd with Prudence and Magnanimity. The *Dispensation* whereof and the *Manner* are to be regulated according to the *Condition* of the *Giver* and *Receiver*. Wherein care is first of all to be taken, that the Bounty we are about to exercise do not *more hurt* than *good* to the person to whom we design a kindness, and to others; next, that our Bounty be not *greater* than consists with our Ability; then that the *worthiness* of men be regarded in our distribution, and preference given to the *well-deserving*; that we consider *how far* each stands in need of our help, and observe the degrees of *Relation* among men; moreover 'tis to be known *what* every one wants [109] most, and what they can or cannot compass *with* or *without* our *assistance*. The *Manner* also of exercising acts of Kindness will render them more acceptable, if they be done *cheerfully, readily, and heartily*.

AND then he who *receives* a Benefit ought to have a *grateful Mind*, by *VI. Gratitude.* which he is to make it manifest, that it was *acceptable* to him, and that for its sake he has kind *wishes* for the Donor, and that he wants nothing but an *opportunity* or an *ability* of making, if possible, a *Requital* of the full value or more. For it is not absolutely necessary that the Returns we make be *exactly tantamount* to the *Courtesie* we receive, but our Good-Will and hearty Endeavour are in lieu to be accepted. Not but that sometimes he who pretends to have done me a kindness, may not have reason to say, he has *obliged* me; as, if a man shall drag me out of the Water, into which he push'd me before, I owe him no thanks for that.

NOW by how much the more *Benefits* are apt to oblige and place *VII. Thanks.* engagements on the minds of men, by so much ought the party who is *beholden* be the [110] more eager to return his *Thanks*. If it be but because we ought not to suffer our Benefactor, who out of a good opinion he had of us has done us a kindness, to think worse of us; and because we should not receive any Favour, but with a design to endeavour, that the Giver shall never have cause to repent of what he has done for us. For, if for any particular reason we are not willing to be beholden to such or such a man, he may civilly *avoid* the accepting of the *Courtesie*. And truly if no grateful Returns were to be made upon the Receipt of Benefits, it would be unreasonable for any man to cast away what he has, and to do a good turn where beforehand he is sure it will be slighted. By which means all Beneficence, Good-Will and brotherly Love would be lost among men; and there would be no such thing as doing *kindnesses frankly* nor any opportunities of procuring *mutual Friendships* left in the World.

AND though, the *ungrateful man* cannot be precisely said to do a *VIII. Ingratitude.* *Wrong*; yet the charge of *Ingratitude* is look'd upon as more base, more odious and detestable than that of *Injustice*: because 'tis judg'd a sign of an *abject* and *rascally Soul* for a [111] man to shew himself unworthy of the good opinion which another had entertain'd of his Probity, and not to be mov'd to some sense of Humanity by *Benefits*, which have a power to tame even the Brutes. But, let *Ingratitude* be never so abominable, yet simply consider'd, as it is a bare *Forgetting* of a *Courtesie*, and a *Neglect* of making a due return upon occasion, Courts of Judicature take no cognizance of it; for it would lose the name of *Bounty*, if it were redemandable by Law, as Money lent is; because then it would be a *Credit*. And whereas it is a high instance of *Generosity* to be grateful, it would cease to be a *generous* Action, when so to do could not be avoided. Beside that it would take up the business of all Courts, by reason of the great difficulty in making an Estimate of all the Circumstances which either would enhance or lessen the Benefit: And that it was to this end I bestow'd it, (to wit, that I did not therefore demand a Promise of Repayment,) that so the

other might have an occasion of shewing his Gratitude, not for fear of Punishment, but out of love to Honesty; and to manifest, that it was not in hopes of Gain, but only out of mere Kindness that I was liberal [112] of that, which I would not take care should be reimburs'd to me. But for him who improves his Ingratitude, and not only gives no thanks to, but injures his Benefactor; this shall cause an *Aggravation* of his *Punishment*, because it plainly demonstrates the profligate Villany and Baseness of his Mind.

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## CHAP. IX.

### *The Duty of men in making Contracts.* ↩

FROM the Duties *Absolute* to those that are *Conditional* we must take *I. Contracts.* our *Passage*, as it were, through the *intermediate Contracts*; for, since all Duties, except those already mention'd, seem to presuppose some Covenant either express'd or imply'd; we shall therefore in the next place treat of the *Nature of Contracts*, and what is to be observ'd by the parties concern'd therein.

NOW it is plain that *it was absolutely necessary for men to enter into mutual Contracts.* For though the Duties of *Humanity* [113] diffuse themselves far and near through all the instances of the Life of Man; yet *that* alone is not Ground sufficient whereon to fix all the Obligations which may be necessary to be made *reciprocal* between one and another. For all men are not endow'd with so much Good Nature, as that they will do all good Offices to every man out of *mere kindness*, except they have some certain expectation of receiving the *like* again: and very often it happens that the Services we would have to be done to us by *other men* are of that sort, that we cannot with *Modesty* desire them. Frequently also it may not *become* one of my Fortune or in my Station to be  *beholden* to another for such a thing. So that many times another cannot give, neither are we willing to accept, unless that other receive an *Equivalent* from us; and it happens not seldom, that my Neighbor *knows not* how he may be serviceable to my occasions. Therefore, that these *mutual good Offices*, which are the Product of *Sociality*, may be more freely and regularly exercised, it was necessary that men should agree among themselves concerning what was to be done on this side and on that, which no man from the Law of Nature [114] alone could have assur'd himself of. So that it was before-hand to be adjusted what, this man doing *so* by his Neighbour, he was to expect *in lieu* of the same, and which he might lawfully *demand*. This is done by means of *Promises* and *Contracts*.

WITH respect to this general Duty it is an Obligation of the Law of *III. Veracity.* Nature, that *every man keep his Word*, or fulfil his Promises and make good his Contracts. For without this a great part of that Advantage which might naturally accrew to Mankind by a *mutual communication* of good Offices and useful Things, would be lost. And, but that an exact Observance of ones Promise is *absolutely necessary*, no man could propose to himself any *Certainty* in whatever he design'd, where he must depend upon the assistances of *others*. Besides that Breach of Faith is apt to give the justest occasions to Quarrels and Wars. For if, according to my Agreement, I perform my part, and the other falsifie his word, whatsoever I have *done* or *deposited* in expectation of his performance, is *lost*. Nay, though I have done *nothing* as yet, yet it may be a Mischief for me by this Disappointment to have my *Affairs* [415] and *Purposes confounded*, which I could have taken care of some other way, if this man had not offer'd himself. And there is no reason I should become ridiculous for having trusted one whom I took to be an honest and a good man.

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

OUR Word may be given, either by a *single Act* where one party only is oblig'd; [116] or by an *Act reciprocal*, where more than one are parties. For sometimes *one man* only binds himself to do somewhat; sometimes *two* or *more* mutually engage each other to the performance of such and such things. The former whereof is call'd a *Promise*, the latter a *Covenant* or *Contract*.

PROMISES may be divided into *imperfect* and *perfect*. The former is, VI. Promises imperfect. when we mean indeed to be oblig'd to make good our word to him to whom we promise; but we intend not to give him a power of *requiring* it, or of making use of force to compel us to it. As, if I say thus, I really design to do this or that for you, and I desire you'll believe me. Here I seem more oblig'd by the rules of *Veracity* than of *Justice*; and shall rather appear to have done the promised Service out of a regard to *Constancy* and *Discretion*, than to *Right*. Of this sort are the Assurances of great men who are in favour, whereby they *seriously*, but not upon their *Honours*, promise their Recommendation or Intercession, their preferring a man or giving him their Vote, which yet they intend shall not be demanded of them as matters of *Right*, but desire they may be [117] wholly attributed to their *Courtesy* and *Veracity*; that the Service they do may be so much the more acceptable, as it was incapable of *Compulsion*.

BUT that is call'd a *perfect Promise*, when I not only oblige my self by my Word, but I give the other party Authority to *require* at my hands the performance of what I stipulated, as if 'twere a Debt. VII. Promise perfect.

MOREOVER, that *Promises* and *Contracts* may have a full Obligation VIII. Consent. upon us to *give* and to *do* somewhat, which before we were at liberty *not* to have done; or to *omit* that which we had a power to *do*, 'tis especially requisite that they be made with our *free Consent*. For whereas the making good of any *Promise* or *Contract* may be accompanied with some *Inconvenience*, there can be no readier Argument why we should *not complain*, than that we *consented* thereto of our own accord, which it was in our power not to have done.

AND this *Consent* is usually made known by outward *Signs*, as, by IX. Consent express or tacit. *Speaking*, *Writing*, a *Nod*, or the like; though sometimes it may also be plainly intimated without any of them, according to the [118] Nature of the thing and other Circumstances. So *Silence* in some Cases and so circumstantiated passes instead of a *Sign* expressing *Consent*. To this may be attributed those *tacit Contracts*, where we give not our formal Consent by the Signs generally made use of among men; but the Nature of the business and other circumstances make it fairly supposable. Thus frequently in the principal Contract, which is *express*, another is included which is *tacit*, the Nature of the Case so requiring: And it is usual, in most Covenants that are made, that some *tacit Exceptions* and *implied Conditions* must of necessity be understood.

BUT to render a man capable of giving a valid *Consent*, 'tis absolutely requisite, that he have so far the *Use of his Reason*, as fully to *understand* X. Who capable of giving consent. the business that lies before him, and to know whether it be *meet* for him, and whether it lie in his *power* to perform it; and having consider'd this, he must be capable of giving *sufficient* Indications of his *Consent*. Hence it follows, that the Contracts and Promises of *Ideots* and *Mad men* (except such whose Madness admits of lucid Intervals) are null and void: And the same [119] must be said of those of *Drunken men*, if they are besotted to that degree as that their Reason is overwhelm'd and stupefied. For it can never be accounted a *real* and *deliberate Consent*, if a man when his Brains are disorder'd and intoxicated, shall on a sudden and rashly make foolish Engagements, and give the usual Demonstrations of Consent,

which at *another* time would have *oblig'd* him: and it would be a piece of *Impudence* for any man to exact the performance of such a Promise, especially if it were of any considerable weight. But if one man shall lay hold on the *opportunity* of anothers being drunk, and craftily making an *advantage* of his Easiness of Temper under those Circumstances, shall procure any Promise from him, this man is to be accounted guilty of a *Cheat* and *Knavery*: Not but that, if, after the Effects of his Drink are over, he shall *confirm* such Promise, he shall be *oblig'd*; and this not with any regard to what he said when *drunk*, but to his Confirmation when *sober*.

AS for *Consent* in *young Persons*, it is impossible for the Laws Natural [XI. Consent in young Persons.](#) to determine so nicely the *exact time* how long Reason will be too weak in them to render [120] 'em capable of making Engagements; because Maturity of Discretion appears earlier in some than in others; Judgment therefore must be made hereof by the *daily Actions* of the Person. Though this is taken care for in most Common-Wealths by *Laws* prescribing a certain *Term* of years to all in general; and in many places it is become a commendable Custom to set these under the *Guardianship* of wiser men, whose Authority must be had to any Contracts they make, till the others youthful Rashness be a little abated. For persons of this Age, however perhaps they may well enough understand what they do, yet are prone to act with overmuch Eagerness and Imprudence, and to be too free of their Promises, having great Assurance, desiring to be accounted Liberal, apt to be obstinate in the choice of their Companions, and not inclin'd to Wariness and necessary Distrust. So that he can hardly pass for an *honest* man, who makes any advantage of the *Easiness* of this Age, and would gain by the *losses* of *young people*, who for want of Experience could not foresee or place a true estimate thereon.

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CONSENT also may be rendred invalid by a *Mistake* or *Error*. [XII. Mistake in Contracts.](#) Concerning which these Rules are to be observ'd. (1.) That when to my Promise, some *Condition* is supposed, without the consideration whereof I should not have made such Promise; the same shall, without the other, have no Obligation upon me: For in this Case the Promiser does not engage *absolutely*, but upon a *Condition*, which not being made good, the Promise becomes null and void. (2.) If I am drawn into a Bargain or Contract by a *Mistake*, which Mistake I find before, as we use to say, Bulk is broke, or any thing done in order to the Consummation thereof, it is but Equity that I should be at liberty to retract; especially if upon the Contract making, I plainly signified for what *Reason* I agreed to it; and that the other party suffers no *damage* by my going off from my Bargain, or, if he does, that I am ready to make *Reparation*. But when, as was said afore, Bulk is broke, and the *Mistake* is not found till the Covenant is either wholly or in part already perform'd, the party who was under an Error cannot retract, any farther than the other shall of *Courtesie* release to him. (3.) When a *Mistake* [122] shall happen concerning the *Thing*, which is the *Subject* of the Contract, such Contract is invalid, not for the sake of the Mistake, but because the Bargain is not made good. For in Bargains of this nature, the *Thing* and all its *Qualifications* ought to be known, without which knowledg a fair Agreement cannot be supposed to be made. So that he who is like to suffer wrong by any Defect therein either may throw up his Bargain, or force the other to make the Thing as it should be, or else to pay him the Value, if it happen'd through his Knavery or Negligence.

BUT if a man be drawn into a Promise or Bargain by the *Craft* and [XIII. Guileful Contracts.](#) *fraudulent* means of another; then the matter is thus to be consider'd. (1.) If a *third* man were guilty of the Cheat, and the party with whom the Bargain is driven was not concern'd in it, the Agreement will be valid: but we may demand of him who practised the Knavery so much as we are losers by being deceived. (2.) He who knavishly procures me to promise or contract with him, shall not set me under any Obligation. (3.) If a man will indeed

come freely with a plain *design* to drive a Bargain, but in the very *Action* shall have a [123] Trick put upon him; suppose, in the *Thing* bargain'd for, its Qualities or Value; the Contract shall be so far naught, as to leave it in the power of him who is deceived, either to relinquish his Bargain, or to require satisfaction for his loss. (4.) If unfair dealing chance to be used in some things not *essential* to the business, and which were not *expresly under regard*, this weakens not the Agreement, if for the rest it be regularly made; though perhaps *one party* might have an eye to it, whilst he bargain'd, and his Opinion might be cunningly cherish'd till the Contract were perfectly transacted.

WHENSOEVER *Fear* is to be consider'd in Promises or Bargains, it is [XIV. Contracts suspicious.](#) twofold, and may either be called a *probable Suspicion* lest we should be deceived by another, and this because he is one who is very much addicted to unjust practices, or has sufficiently intimated his fraudulent design; or else a *panic Terror of the Mind*, arising from some grievous Mischief threatned, except we make such a Promise or Contract. Concerning the first sort of *Fear*, (or *Mistrust* rather) these things are to be observed. (1.) He who trusts the Engagements of one who is *notoriously negligent* [124] of his Word and Troth, acts very imprudently; but, for that reason only can have no remedy, but shall be obliged. (2.) When a Bargain is made, and no *new Indications* appear of any knavish design, the same shall not be invalidated by any objection of Faults which were sufficiently known before the Agreement. For, that Reason which could not hinder the making of the Bargain, cannot excuse the fulfilling of it. (3.) Where *after* the Bargain made, it appears plainly that the other person intends to clude his part of the Contract, as soon as I have perform'd mine; here I cannot be forc'd to comply first, till I am secure of a performance on the other side.

As for the other sort of *Fear* these Rules are to be observed, (1.) [XV. Contracts through Fear.](#) *Contracts* entred into through *Fear*, occasion'd by a *third* man shall be valid; for there is no defect in the other party to the Bargain, but he may recover of me what is his due, beside that he is well worthy a Recompence, if by his Interposition, he have deliver'd me from *Fear* of that other. (2.) All such *Covenants* as are made out of *Fear* or *Reverence* of our lawful Superiours, or by the *Awe* we have for those to whom we [125] are very much beholden, shall be firm and good. (3.) Those *Bargains* which are wrongfully and forcibly extorted from a man by the person to whom the Promise or Agreement is made, are invalid. For the *Violence* he unjustly uses to set me under that *Fear* renders him incapable of pretending to any Right against me on account of such Action of mine. And whereas in other Cases every man is bound to Reparation of what Wrong he shall do to another, this Restitution to which he is bound is understood as it were to take off any Obligation from such Promise, since if what was promised were paid, it ought to be immediately restor'd.

MOREOVER not only in Contracts, but in Promises the *Consent* ought [XVI. Consent mutual.](#) to be *reciprocal*; that is, both the Promiser and he to whom the Promise is made must agree in the thing. For if the latter shall not *consent*, or refuse to *accept* of what is offered, the thing promised remains still in the power of the Promiser. For he that makes an *offer* of any thing, cannot be supposed to intend to *force* it upon one that is *unwilling* to receive it, nor yet to *quit* his own title to it; therefore when the other *denies* acceptance, he who [126] proffer'd it loses nothing of his Claim thereto. If the Promise was occasion'd by a *Request* before made, the same shall be accounted to oblige so long, as till such Request be expresly *revok'd*; for in that case the thing will be understood to be *accepted beforehand*; provided yet that what is offer'd be proportion'd to what was desir'd. For if it be not, then an *express Acceptance* is requisite; because it may often do me no good to answer my Request by halves.

AS for the *Matter* of our Promises and Contracts, it is absolutely necessary, that what we promise or make a bargain for be *in our power* to make good, and that so to do be not prohibited by any Law; otherwise we engage our selves either *foolishly* or *wickedly*. Hence it follows that *no man is oblig'd to do things impossible*. But if it be a thing which at the time of the Bargain-making was possible, and yet afterwards by some Accident without any fault of the Contracter became altogether impossible, the Contract shall be null, if there be nothing as yet done in it; but if one party have perform'd somewhat towards it, what he has advanc'd is to be restor'd to him, or an [127] Equivalent given; and if this cannot be done, by all means it is to be endeavour'd that he suffer no loss thereby. For in Contracts that is principally to be regarded which was *expresly* in the Bargain; if this cannot be obtain'd it must suffice to give an *Equivalent*; but if neither can this be had, at least the *utmost care* is to be taken that the party undergo no Damage. But where any man shall *designedly* or by some very *blameable miscarriage* render himself incapable of making good his part of the Bargain, he is not only oblig'd to use his utmost endeavour, but ought also to be *punish'd*, as it were, to make up the amends.

IT is also manifest that we cannot set our selves under any obligation to perform what is *unlawful*. For no man can engage himself farther than he hath *lawful Authority* so to do. But that Legislator who prohibits any Action by a Law takes away all legal power of undertaking it, and disables any man from obliging himself to perform it. For it would imply a Contradiction, to suppose, that from a Duty enjoin'd by the Laws should flow an Obligation to do that which the same Laws forbid to be done. So that [128] he transgresses who promises to do what is unlawful, but he is doubly a Transgressor who performs it. Hence also it follows, that neither are those Promises to be kept, the observation of which will be *mischievous* to him to whom they are made; because it is forbidden by the Law-Natural to do hurt to any man, even though he do foolishly desire it. And if a Contract be made to do some *filthy* and *base* thing, neither shall be oblig'd to fulfil it. If such filthy thing be done by one party pursuant to the Bargain, the other shall not be bound to give the Reward agreed for; but if any thing be already given on that account, it cannot be demanded again.

AND then, it is plain, that such Engagements and Bargains as we shall make of what belongs to *other men* are altogether insignificant, so far as they are not ours, but subject to the Will and Direction of others. But if I promise thus, "I will use my endeavour that such a man (always supposing him to be one not absolutely under my command) shall do so or so: then I am oblig'd by all methods morally possible, (that is, so far as the other can fairly request of me, and as will [129] consist with Civility) to take pains to move that person to perform what is desired. Nay we cannot promise to a third man *things* in our own possession or *Actions* to be done by our selves, to which another has acquir'd a Right, unless it be so order'd as not to be in force till the time of that others Claim is *expir'd*. For he who by *antecedent* Pacts or Promises has already transferred his Right to another, has no more such Right left to pass over to a *third* person: And all manner of *Engagements* and *Bargains* would be easily eluded, if a man after having contracted with one, might be at liberty to enter a Treaty with another, wherein Disposals should be made contrary to the *first* Agreement, and with which it is impossible *this* should consist. Which gives foundation to that known Rule, *First in time, prior in Right*.

BESIDE all which it is to be chiefly observed concerning Promises, that they are wont to be made *positively* and *absolutely*; or *conditionally*, that is, when the Validity thereof relies upon some *Event* depending on Chance or the Will of Man. Now *Conditions* are either *possible* or *impossible*; and the former are subdivided into *Casual* or fortuitous, which *we* cannot cause to be [130] or not to be; or *Arbitrary*, or such as are in the power of him to whom the Promise is made, that they are or are not comply'd with; or

else *Mixt*, the fulfilling of which depends partly on the Will of the person receiving the Promise and partly on Chance. *Impossible Conditions* are either such as are *naturally* or *morally* so, that is, some matters are by the *Nature* of things not capable of being done; others are forbidden by the Laws and Rules of Morality; and as for these *impossible Conditions*, if we follow the downright way of judging concerning them, they bring a *Negative* sense upon the Promissory words; though 'tis true by Laws it may be provided, that if they are annex'd to a serious business, the Pact may remain good, rejecting these Conditions as if they had never been made; that so men may not have busied themselves about that which otherwise can signifie nothing.

Lastly, WE promise and contract not only in our *own persons*, but [XXI. Mediatory Contracts.](#) oftentimes by the *Mediation* of other men, whom we constitute the *Bearers* and *Interpreters* of our Intentions: by whose Negotiations, if they deal faithfully by us in following the Instructions we gave, we are firmly [131] oblig'd to those persons who transacted with them as our Deputies.

AND thus we have done with the *Absolute* Duties of Man, and with [XXII. Conclusion.](#) those by which we *pass* to the other. The rest do all presuppose some Human Institution founded upon a *Universal Agreement* and so introduc'd into the World; or else some peculiar State or Condition. And of this sort of Institutions there are three chiefly to be insisted on, to wit, *Speech* or *Discourse*, *Propriety* and the *Value* of things, and the *Government* of Mankind. Of each of these and of the Duties arising there-from we shall next discourse.

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## CHAP. X.

### *The Duty of men in Discourse.* ↩

HOW useful and altogether necessary an Instrument of Human Society *I. General Rule.* *Discourse* is, there is no man can be ignorant; since many have made that only an Argument to prove Man to be by Nature design'd for a *Social Life*. Now that a *lawful* and *beneficial use* may be made hereof [132] for the good of the same Human Society, the Law of Nature has given men this for a Duty, *That no man deceive another either by Discourse, or any other Signs which customarily are accepted to express our inward meaning.*

BUT that the Nature of *Discourse* may be more thoroughly understood, *II. Uniform Signification of Words.* it must first be known, that there is a twofold Obligation respecting *Discourse*, whether express'd with the Voice or written in *Characters*. The first is, that those who make use of the *same Language*, are oblig'd to apply such certain *Words* to such certain *Things*, according as *Custom* has made them to signifie in each Language. For since neither any *Words* nor any particular *strokes* form'd into *Letters* can *naturally* denote any certain *Thing* (otherwise all Languages and Characters for writing would be the same.) and hence the use of the Tongue would be to no purpose, if every man might call every *Thing* by what *Name* he pleased; it is absolutely necessary among those who speak the same Language, that there be a *tacit Agreement* between 'em, that this certain *Thing* shall be so or so called and not otherwise. So that unless an *uniform Application of Words* [133] be agreed upon, 'twill be impossible for one man to gather the Meaning of another from his Talk. By virtue then of this *tacit Compact* every man is bound in his common *Discourse* to apply his *Words* to *that Sense*, which agrees with the *receiv'd Signification* thereof in that Language; from whence also it follows, that albeit a mans *Sentiments* may differ from what he expresses in *Words*, yet in the Affairs of Human Life he must be look'd upon as *intending* what he *says*, though as was said, perhaps his inward Meaning be the clean contrary. For since we cannot be inform'd of *another's Mind* otherwise than by outward Signs, all use of *Discourse* would be to no purpose, if by *mental Reservation*, which any man may form as he lists, it might be in his power to elude what he had declared by Signs usually accepted to that end.

THE other Obligation which concerns *Discourse*, consists in this, that *III. Discourse to be plain.* every man ought by his *Words* so to express to another his *Meaning*, that he may be plainly *understood*. Not but that it is in a Mans power to be *silent* as well as to *speak*; and whereas no man is bound to tell every one what he bears in his mind; it [134] is necessary that there be some *peculiar Obligation* that shall engage him first to speak, and then so to speak as that another shall fully understand his Meaning. Such Obligation may arise from a *particular Compact*, or some *common Precept of the Law Natural*, or from the *Nature of the present Affair*, in which Speech is made use of: For oftentimes a *Bargain* is made expresly with a man, that he shall disclose to me all that he knows in some matter; as, suppose I desired to be instructed in any Science: frequently also I may be *commanded* by some Precept of the *Law of Nature* to communicate my Skill to another, that by this means I may be helpful to him, or that I may save him from Mischief, or that I may not give him some cause or occasion of receiving a Harm: and lastly, the *present Case* may require me to declare my Opinion in a Matter wherein another is concern'd; as it happens often in Contracts of the greatest Importance.

BUT because it cannot *always* happen that upon any of these heads *IV. Silence.* I am *oblig'd* to signifie my thoughts upon any matter, it is plain that I am not bound to disclose in *Words* any more than another has a *Right* [135] either *perfect* or *imperfect* to require. So that I may by holding my tongue lawfully conceal, what he has no just Claim to the

knowledge of, or to the discovery whereof I lie under no Obligation, however earnestly it be desired.

NAY, Since *Speech* was not only ordain'd for the use of *others*, but our *own* benefit also: therefore whensoever my private Interest is concern'd and it occasions Damage to no body else, I may so order my Words, that they may communicate a Sense different from that which I bear in my mind. V. Counterfeit Discourse.

Lastly, BECAUSE oftentimes those to whom we talk upon some matters may be so disposed, that from a *downright* and *plain Discourse* they would perceive the true State of the Case, which ought rather to be *concealed*, because a full knowledge would not procure the good end we drive at, but be a *detriment* to 'em; we may in such Cases use a *figurative* or *shadow'd* way of *Speech* which shall not directly represent our Meaning and plain Sense to the Hearers. For he who would and ought to benefit another, cannot be bound to attempt it after such a manner, as shall incapacitate him from obtaining his End. VI. Figurative Speech.

[136]

FROM what has been said may be gather'd wherein that *Verity* consists, VII. Verity. for their regard to which good men are so much celebrated; to wit, that our *Words* do fitly represent our *Meaning* to any other person who *ought* to understand them, and which it is our *Duty* to *express plainly* to him, either by a perfect or imperfect Obligation; and this to the end either that he upon knowing our minds may make to himself some Benefit thereby, or that he may avoid some undeserv'd Evil, which he would incur upon a wrong understanding of the case. Hence by the by it is manifest, that it is not always to be accounted *Lying*, when even for the nonce a Tale is told concerning any thing in such a manner as does not exactly quadrate with the Thing it self, nor with our own Opinion of it; and consequently, that the Congruity of *Words* with *Things*, which constitutes the *Logical Verity*, is not in all points the same with *Moral Truth*.

ON the contrary that is rightly called a *Lye*, when our Words bear a different Signification from that which we think in our minds, whereas the person to whom we VIII. A Lye. direct our Discourse has a *Right* to understand the thing as it *really* is, and we [137] are under an *Obligation* of making our Meaning *plain* to him.

FROM what is said it appears, that those are by no means chargeable IX. Untruth. with *Lying*, who entertain *Children* or the like with Fables and fictitious Discourses for their better Information, they being supposed incapable of the naked Truth. As neither are those who make use of a *feign'd Story* to some *good end*, which could not be attain'd by speaking the *plain Truth*; suppose, to protect an Innocent, to appease an angry man, to comfort one who is in sorrow, to encourage the fearful, to persuade a nauseating Patient to take his Physick, to soften the obstinate, or to divert the evil Intention of another, and the like; or, if the Secrets and Resolutions of a Community are to be kept from publick knowledge, we may raise false Rumors in order to conceal them, and to mislead the importunate Curiosity of others; or, if we have an Enemy, whom by open force we cannot annoy, we may by way of Stratagem make use of any lying Tales to do him Mischief.

ON the other side, if any man be *bound* in Duty to signifie *plainly* his X. Part of the Truth &c. *true meaning* to another, he is not without [138] blame, if he discover only a *part* of the Truth, or amuse him with *ambiguous* Discourse, or use some *mental Reservation* not allow'd in the common Conversation of men.

## CHAP. XI.

### *The Duty of those that take an Oath.* ↩

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

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NOW the *End* and *Use* of an Oath is chiefly this, To oblige men the *II. The End and Use.* more firmly to speak the Truth, or to make good their Promises and Contracts out of an awe of the Divine Being who is infinitely Wise and Powerful; whose Vengeance they imprecate to themselves when they swear, if they wittingly are guilty of Deceit; whereas otherwise the Fear of what men can do may not be sufficient; because possibly they may hope to oppose or escape their Power, or to beguile their Understandings.

AND since nothing but the Deity is *Omniscient* and *Almighty*, it is *III. Swearing by what.* absurd to swear by any thing which we do not suppose to be *invested with Divinity*, in this sense, as to call upon such Thing to be a Witness to the Oath and an Avenger of the Perjury: though 'tis true it may be common to *name* in Oaths *some certain thing*, by which a man may be said to swear in this sense, that he implores God, if he swears falsely, to execute his Vengeance upon that thing chiefly, as being most dear and of greatest value to him who swears.

*IV. Forms how to be accommodated.*

IN Oaths the *Form* which is prescribed, (by which the person swearing invokes God as a Witness and an Avenger,) is [140] to be *accommodated to the Religion of the said Swearer*, that is, to that Persuasion and Opinion of God which he is of. For 'tis to no purpose to make a man swear by a God, whom he does not *believe*, and consequently does not *fear*. But no man supposes himself to take an Oath in any other Form nor under any other Notion than that which is consonant to the Precepts of *his Religion*, which in his opinion, is the *true*. Hence also it is, that he who swears by *false Gods*, which yet himself takes to be true ones, shall however be oblig'd, and if he break his word, shall be accounted guilty of Perjury. Because he set the general Notion of the Deity before his Eyes, 'tis no matter what singular Conceptions he might have thereof, and so having knowingly forsworn himself, he has as much as in him lay, violated the Reverence which is due to the Divine Majesty.

THAT an Oath may be *binding*, 'tis necessary it be taken with *VI. Deliberation necessary.* *Deliberation*; Whence he shall not be oblig'd by an Oath who merely *recites* it, or speaking in the *first Person* dictates the concept formal Words thereof to another who is to say after him. But he who shall *seriously* behave [141] himself as one that is about to *swear solemnly*, shall be oblig'd, whatsoever *mental Reservations* he all the while may harbour in his mind. For otherwise all Oaths, nay all Methods of mutual Obligation by the Intervention of the plainest Significations would be of no use to humane Life, if any man by his *tacit Intention* could hinder such an Act from producing those Effects which were the very Design of its being done.

OATHS do not of themselves produce any new and particular <sup>VI. Oaths how obliging.</sup> Obligation, but are superinduced upon an Obligation that was before valid, as an *Accessional Strength* to the *Engagement*. For always when we swear we have somewhat under our Contemplation, which not made good, we provoke the Divine Wrath upon our selves; and this 'twere absurd to think, if it were not unlawful not to perform what is supposed, and consequently not oblig'd so to do beforehand. Though sometimes it must be allow'd that the *prime Engagement* and the *Oath* too may be comprised in the same Sentence, as thus, *As God help me, I'll give you a hundred Pounds*. Where the Oath is not superfluous, albeit 'tis added to a Promise that was valid of it [142] self. Because though every good man believe a bare Promise to oblige, yet 'tis look'd upon to be the more firm when 'tis reinforc'd with an Imprecation of Vengeance from above upon a Failure. Hence it follows, that any Acts which have naturally a *flaw* in themselves, cannot be made obligatory by the Accession of an Oath; as neither can a *subsequent* Oath avoid a *former legitimate* Engagement, or annul that Right which *another* may claim thereby; thus a man would swear in vain not to pay another person what is justly due to him: Nor will an Oath be of any validity, where it appears, that 'twas made by the Juror upon *supposition* of a thing to be done which was not *really so*; and that he would not have so sworn, had not he *believed* it to be done; especially if he were *cajoled* into such his Error by the *Craft* of him to whom the Oath was made: Neither shall he, who by setting me under *panick Fear* forces me to take an Oath, have any good title to require my Performance. Farthermore, an Oath shall have no Obligation upon me to do any *unlawful Act*, or to *omit* the performing any *Duty* enjoin'd by the Laws of God or Man. Lastly, an Oath cannot *alter* the Nature [143] or Substance of the Contract or Promise to which it is annex'd; Hence it cannot oblige to *Impossibilities*. Again, a *Conditional* Promise by the addition of an Oath is not chang'd into *Positive* or *Absolute*; and to a sworn Promise, as well as to one without an Oath, *Acceptance* from the other party is requir'd to make it obligatory.

BUT the taking of an *Oath* has this Effect among men, for the sake of <sup>VII. Punishment.</sup> that Invocation of God which is therein made use of, whose Wisdom no mans Cunning can elude, and who suffers not the man that mocks Him to escape unpunish'd; that not only a *heavier Punishment* is assign'd to him who forswears himself, than to him who barely breaks his Word; but it puts them in mind to avoid all *Deceit* and *Prevarication* in the matters about which it is conversant.

NOT yet that *all Oaths* are to be consider'd in their greatest *Latitude*, <sup>VIII. Strict Interpretation.</sup> but that sometimes they must be interpreted in the *narrowest sense*, if so it be, that the Subject-matter seem to require it; for instance, if the Oath proceed from some *Malice* born to another, and so is not added to a *Promise*, but a *Threat*. Neither [144] does an Oath exclude *tacit Conditions* and *Limitations*, provided they are such as plainly result from the Nature of the Thing; as suppose, I have sworn to give another whatsoever he shall request, if he ask what it is wicked or absurd for me to grant, I am not at all oblig'd. For he who indefinitely promises any thing to him that desires, before he knows what he is like to ask, presupposes the other will crave nothing but what is honest and morally possible, not things absurd or mischievous to himself or any body else.

THIS is also to be noted, that in Oaths *the Sense of all the words thereof* <sup>IX. Sense of an Oath.</sup> is to be such as he shall acknowledge himself to take them in, who accepts the *Oath*, that is, to whom the other party swears. For the Oath is to be look'd upon to be made for *his* sake and not for the sake of the *Juror*. Whence it is *his* part to dictate the *Form* of the Oath, and this to do in words as *plain* as is possible; so that himself may signifie in what *Sense* he conceives them, and the person swearing may profess that he well understands his *Meaning*, and then those Words are *distinctly* to be express'd, that so no room may be left for Cavils or Shuffling.

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

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## CHAP. XII.

### *Duties to be observed in acquiring Possession of Things.* ↪

WHEREAS such is the Condition of Mans Body, that it cannot be *supported*, and *preserved* from that which would destroy its Fabric, without the assistance [146] of *Things without* him; and whereas by making use of *other Creatures* his Life may be rendred much more *comfortable* and *easie*; we may safely gather, that it is the Will of the supreme Moderator of the World, that he be allow'd to apply such other *Creatures* to his Service, and that he may even destroy many of them for his Occasions. Neither does this hold, as to *Vegetables* only which have no Sense of the loss of their beings; but it reaches even the *innocent Animals*, which though they die with Pain, yet are kill'd and devour'd by men for their Sustenance without Sin.

FARTHER, all these *outward Things* are understood to have been left in the beginning by God *indifferent to the claim of all men*, that is, so that none of them were the Propriety of this man rather than that. Not but that Men were at liberty to *dispose* Things so, as should seem requisite to the Condition of Mankind, and the Conservation of Peace, Tranquillity and good Order in the World. Hence it was that at first, while the Human Race was but of a small Number, it was agreed, that *whatever any one did first seize should be his, and not be taken from him by another*, [147] with this Provision, that he should apply it to his own use; and leave the *Body* or *Thing*, which *produc'd* it, still free from being claim'd by any particular man. But afterward, when Mankind was multiplied, and they began to bestow *Culture* and *Labour* upon those things which afforded them Food and Raiment; for the prevention of Quarrels, and for the sake of good Order, those *Bodies* or *Things* also, which *produc'd* such Necessaries, *were divided among particular men*, and every one had his proper Share assign'd him, with this general Agreement, that *Whatsoever in this first Division of Things, was yet left unpossess'd, should for the future be the Propriety of the first Occupant*. And thus God so willing, with the previous Consent or at least by a tacit Compact of Man, *Propriety or the Possession of Things* was introduc'd into the World.

NOW from *Propriety* flows a Right, whereby the Substance, as it were, of any thing so belongs to One, that it cannot after the *same manner wholly* belong to Another. From whence it follows, that we may at our own pleasure dispose of those things which are our Propriety, and hinder all other people from the use of them; [148] unless by Agreement they have procur'd from us some special Right. Although in Communities it does not always happen that Proprieties are kept so unmixt and absolute, but are sometimes circumscribed and limited by the Municipal Laws thereof, or by Orders and Agreements of men among themselves. But when any certain Thing belongs jointly to more persons than one after the same manner, then it is said to be *common* to those several Persons.

BUT as Things did not *all at once* become the Possessions of men, but successively, and according as the State of Mankind seem'd to require; so it was not necessary neither that *every Thing* in the World should be claim'd by one man or other, but, the Peace of Mankind being preserv'd, *some things may, and some things ought to continue, as at the beginning, common to all*. For there are Things which are, 'tis true, advantageous to man, but since they are *inexhaustible*, so that every man may have the Benefit of 'em, and yet no single person can have the less Use of them, it would be foolish and to no purpose for any one to enclose or lay claim to 'em. Such are the Light of the [149] Sun, the Air, the running Water, and the like: Among which also may be accounted the vast Ocean flowing between great Continents, for so much of it as is very far distant from the Shore. Because 'tis not only more than sufficient for the promiscuous use of all men, but 'tis

morally impossible for any single Nation to guard it. For where a Thing is of that Nature, that other men cannot by any means be hinder'd from the Use of it, it is not only in vain to divide or lay claim to it, but it is apt to give occasion for insignificant Quarrels.

THE Methods of acquiring Property are either *Original* or *Derivative*; [V. Twofold Propriety.](#) Those *deduce* Propriety from the beginning of things; These *transfer* Propriety already acquired from one to another. The former may be again subdivided into those which are *simply such* as give immediate Possession of some particular thing; and those which have a regard to some *other matter*, whereby some Improvement is made of what we before possess'd.

AFTER it had been covenanted among Mankind that Things should be [VI. Premier Seisin.](#) *appropriated* to this or that man, it was also agreed, that what things soever had not [150] *fallen* within that *first Division*, should thereafter become the Propriety of the *first Occupant*, that is, of him, who before any other, should actually seize it with a design of possessing the same. So that even at this time the Original Method of acquiring Propriety in many things is only *Premier Seisin* or the first Occupancy. After this manner Titles are made to desolate Regions, which no man ever claim'd, which become his who *first enters* upon 'em with an Intention of making them his own, provided he cultivate 'em and assign *Limits* how far he propounds to occupy. But when any number of men *jointly* possess themselves of any tract of Land, 'tis customary to assign to each Member of the Company a *Share*, and to account what is left undivided to belong to the Society in *common*. By this *first Occupancy* also are gain'd all the wild Beasts, Birds, and Fishes living in the Sea, Rivers or Lakes thereunto appertaining; as well as what by the Sea shall be thrown upon the Shore; except *particular Laws* inhibit the promiscuous Seizure of the same, or assign them to some certain Claimant. These if we would make our own, we must actually *seize* them and take 'em into our *Possession*. By [151] this Occupancy also we may rightfully acquire possession of things whereof the *Propriety* which any other person could have is *extinct*. As for instance, in things which are cast away with intention of the Owner not to have them any more, or in things which at first we lost unwillingly, but in time relinquish'd and fore-went. To which may be added what the Lawyers call *Treasure trove*, or Money found, the Owner whereof is not known, which goes to the Finder, except by the special Laws of a Countrey it be otherwise provided.

MOREOVER there are many things capable of being possess'd, which [VII. Accessional Improvements.](#) continue not always in the same state, but some after several manners *increase* of themselves or enlarge their Substance; to others some *external Additions* are made; many bring forth *Fruit*, and not a few by Mans Labour and Workmanship admit of *Improvement*. All these are comprised under the head of *Accessional Advantages*, and may be divided into two sorts; for *some* without the help of Man accrew from *Nature* alone; while *others* either wholly or in part are to be attributed to *Human Industry*. Concerning both which this is to be the Rule, To him who is the Owner of [152] the *Thing* to the same belong the *Improvements* and *Accessional Advantages*; and he who has form'd any Matter of his own into such or such a *Fashion*, is Owner of that *Form* or *Fashion*.

BUT Cases often happen, where either by Contract or some different [VIII. Services.](#) way, another man may get a Right to receive a certain *Profit* out of Things that are *ours*, or to prohibit us the using even of what is *our own* to *every* purpose. These Rights are wont to be called *Services*, and they are of two sorts, either *Personal*, where the Advantage from what belongs to another man comes to the Person *immediately*; or *Real*, where such Benefit is receiv'd from that which is anothers by the means or *Mediation* of that which is ours: among which are accounted the Right of receiving profits, of making use of what is anothers, of living in such a place, of commanding the work of Servants. The *Real Services* are again subdivided into such as regard the *City* or the *Country*: the *first* sort are the supporting my

Neighbours House or Wall which cannot but bear upon mine, affording the benefit of Lights, not stopping them up, allowing Prospects, carrying off the Rain-Water, and the like: [153] the latter are liberty of Passage for men or Cattel, leave to derive or draw Water, or to water Cattel, or to graze 'em for a time, &c. All which Services have been introduc'd for the preservation of good *Neighbourhood*.

AMONG the *derivative* Methods of acquiring Propriety, some are when IX. *Derivative Propriety*. by the Disposal of the Law Things are devolv'd from one upon another; others are when Possession is transferred by the *former Owner*; and this sometimes affecting the same in *whole*, and sometimes in *part*.

THE Whole of an Estate by the death of the former Owner generally X. *Inheritance*. passes by *Succession* to the *next Heir* of the Intestate. For it being repugnant to the common Inclinations of Men, and altogether disserviceable to the Peace of Mankind, that such Possessions should be accounted as *foregone* and *relinquish'd*, and as left to be a Prey to any one who shall seize them, which such Owner had while he lived, taken so much care and pains to get: Hence, by the Dictates of *Reason* it has obtain'd among all civiliz'd Nations, that if any man dies not having *disposed* of what he had, the same shall *devolve* to those, whom according to the *general Inclination* [154] of Mankind he must be thought to have holden most dear to him. And these, regularly consider'd, are those who *descend* from us, as our *Children*, &c. after them those who are of the same *Consanguinity*, according as they are nearly allied. And tho there may be many, who either for having receiv'd *Benefits* or from some *particular Affection* have a greater Respect for persons not at all by *Blood* related to them, than for the nearest *Kin*; yet for Peace sake it is necessary without taking notice of the peculiar Case of some Few, rather to follow the *universal Propensity* of Man, and to observe that *Method* of Succession which is most plain and least obnoxious to *Controversies*; which would be very apt to arise, if the *Benefactors* and *Friends* of the deceased might be admitted to contest Succession with the next of *Kin*. So that if a man has a mind to prefer those to whom he stands oblig'd by kindnesses, or such as he has on any other account a Love for, he is to make such Disposals openly and expressly.

WHENCE it follows, that the next *Heirs* to any man are his *Children*, XI. *Heirs*. which are given by Nature to Parents to be carefully bred and educated, and for whom [155] every Parent is supposed to wish a most plentiful Provision, and to design to leave whatsoever he shall die possess'd of. But by *Children* are chiefly understood such as are born in lawful Matrimony: For to these much Favour is due from *Reason* itself, from the *Honour* and *Decency* of the Married Life, and from the *Laws* of all Civiliz'd Countries, above the *Illegitimate*. All which Considerations obtain yet with these Exceptions, to wit, unless the Father has sufficient Reason not to *acknowledge* such a one for his Son, or *disinherits* him for some heinous Wickedness. In the same case with *Children* are also to be considered Progeny of *lower degrees*, as Grand-Children, whom the Grandfather is bound to bring up, and who have Right to share his Inheritance together with the Uncles on both sides; and this, because there can be no reason, that the Misery of losing their deceased Parent should be aggravated by being excluded from their Proportion of Inheritance in the Estate of their Grandfather. Upon failure of *Heirs descendent*, 'tis reasonable the Goods of Children revolve to their *Parents*; and that to those who are Fatherless, Motherless and Childless their *Brethren* should succeed; and [156] upon default of these the *next of kin* to the deceased ought to inherit. Though in order to prevent Contentions, to which on this score great occasions are frequently given, and that this matter may be settled for the publick Good, in most Communities the *Order of Succession* is found to be accurately stated; and such Directions of the Government it is most safe for every private man to follow in this Case, unless very weighty Causes force him to the contrary.

THE Whole also of an Estate may, by an Act of the former Proprietor [XII. Last Will](#). upon his Death be pass'd away by his *Last Will and Testament*; for this has been allow'd by most Nations that for some kind of Ease to our Thoughts of Mortality, a man yet alive may, if Death happen, transfer what he has of outward Goods to some person that he loves best. Now whereas in the most antient times it seems to have been customary, that the dying man upon the approach of his End *openly declared* his Heirs, and with his own hands *deliver'd* such or such Portions into the hands of them who were to receive; yet afterwards for good reasons, another manner of *Bequeathing* was approved by many [157] People; to wit, that a man may at any time, when himself thinks good, make his own Will, and either declare it *openly*, or keep it *close* in Writing, which Will also he may at his pleasure *alter*, and of which the Heirs he has named or written down cannot make any use till the Testator be *dead*. Not but that such *Last Wills* of how much authority soever they are among men, yet are to be ordered with Consideration of the Parties *various Relations* to men and of the Good of the Community; the Neglect whereof has given occasion for the *Laws* oftentimes to provide and give Rules for making them; from which prescribed *Directions*, if any man depart, he has no reason to *complain* that regard was not had to his *Last Will*.

WHILE men are yet living Things are transferred by the Act of the first [XIII. Gift](#). Proprietor, either *Gratis* or *Freely*; or else by the Mediation of some *Contract*. The former way of Transferring is called *Gift*; and of the latter, which is *Contracting*, we shall speak hereafter.

SOMETIMES also Things change their Owner without the Consent and [XIV. Forcible Possession](#). even *against the Will* of the same Owner; and this is mostly in Communities by way [158] of *Fine*, when sometimes *all* the Estate of a Convict, sometimes such a *Portion* only shall be forfeited, and the same shall be given either to a private person who has suffer'd wrong, or applied to the uses of the Publick. So in *War Goods* are *forcibly* taken from the Possessor, who parts with them very *unwillingly*, by an Enemy who is too strong for him, and become the true *Propriety* of the Seizer; not but that the first Owner has still a Right with a greater force, whenever he can, to recover 'em, so long as till by subsequent Treaties of Peace he does in effect renounce his Pretences thereto.

BESIDE these there is yet a peculiar way of acquiring Propriety, called [XV. Prescription](#). *Usucaption*, or *Prescription*; by which a man who without Violence, Knavery or Injustice has possess'd himself of any thing, and enjoy'd the same quietly and without interruption a long time, is at length accounted the absolute *lawful Owner* thereof; insomuch that he shall be able to keep off any *antient Claimant* who shall pretend a Title thereto. And the Reason of admitting this sort of Right, was, that any man must be adjudg'd to have *relinquish'd* and *forgone* a Thing which he [159] has time out of mind neglected to assert to himself, whereas occasions for so doing can hardly be suppos'd to be so long wanting; and partly for the sake of Peace and Tranquillity, which require that Possessions have some time or other in which they may be for ever *fix'd* and *settled* beyond dispute. And this still the rather, because it is much harder and more grievous to be turn'd out of a Possession honestly acquir'd, than never to enjoy one that was lost a great while ago, when all hankering Thoughts after the same have been long discontinued. But in Communities it is very necessary for the prevention of Controversies, that certain *limited Times* be set, which shall make a good *Prescription*, according to Reason and Convenience.

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## CHAP. XIII.

*The Duties which naturally result from Mans Property in Things.* ↩

1. PROPRIETY in Things being introduced among men, these Duties *I. Quiet Enjoyment.* from thence naturally arise, 1. *That every man is oblig'd to permit another, who is not a declar'd Enemy, quietly to enjoy what things soever are his, and neither by Fraud or Violence to spoil, embezle or convert them to his own use.* Whereby Thefts, Rapines and the like Crimes, which tend to the invading and encroaching upon other mens Properties, are forbidden.

2. WHEN *any thing that belongs to another comes fairly to our hands* *II. Restitution.* *without any trick or fraud of ours, and we have still the same in possession, we are oblig'd to take care as far as in us lies that it be returned to its right Owner.* Not that we are bound to restore it at our own charges, but if we have been at any cost in preserving it, we may justly demand to be reimburs'd, or stop the Thing till satisfaction be made. And in such a Case only [161] we are oblig'd to *Restitution*, when we certainly *know*, that the Thing does really and truly belong to another. For then we ought to give notice, that the same is in our Possession, and that we do not hinder the Right Owner from receiving it. Not but that, if we have purchased any thing justly and lawfully, we our selves are no ways oblig'd to call our own Title in question, and to make Enquiry by Proclamation, as 'twere, whether any one can lay claim thereto. And this *Duty* is superior to any *private Contracts*, so as in many Cases to bar their Obligation. As for instance, if a *Thief* does trust and deposite with me upon my Promise of Redelivery, somewhat that he has stollen, I being altogether ignorant of the matter; after which the *Right Owner* appears, the same is to be restor'd to *him* and not to the *Thief*.

BUT *if any thing belonging to another, which yet we came by fairly and honestly, be wasted and consum'd, 'tis our Duty to restore only so much to the Owner as we have received Profit by it.* *III. Restitution, part consum'd.* Because we have no Right to reap Advantage from anothers undeserved Loss.

[162]

FROM these Premisses we may deduce the following Conclusions, 1. A *IV. Conclusions. First.* *Presumptive Owner*, (or one who without any Covin on his part becomes the Possessor of what belongs to another man) *is not oblig'd to make any Restitution, if the Thing perishes;* because neither the thing it self is in his power, neither has he receiv'd any Gain or Advantage thereby.

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

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

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

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

6. IF a Presumptive Owner *makes over what he has purchased of IX. Sixth. another man upon a valuable Consideration, he is not bound to make Restitution;* unless so far as he has made any advantage by it.

7. A Presumptive Owner is oblig'd *to restore that which belongs to X. Seventh. another, though he bought it upon a valuable Consideration;* nor can he demand of the *true Owner* the Price he paid for it, but only of him from whom he had it; unless so far as the Charges which the Owner must necessarily have been at, in regaining the possession of [164] his Right; or that otherwise he did freely promise some Reward for the Recovery.

WHOSOEVER happens to *find* any thing belonging to another, which, *XI. Things found.* 'tis probable, the right Owner lost against his Will, he cannot take it up with an intention to detain it from him when he requires it. But if the Owner appear not, he may fairly keep it himself.

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## CHAP. XIV.

### *Of the Price and Value of Things.* ↪

AFTER *Propriety* was introduc'd into the World, all Things not being *I. Price.* of the same *Nature*, nor affording the same *Help* to Human Necessities; and every man not being sufficiently provided with such things as were necessary for his Use and Service, it was early brought into practice among men to make *mutual Exchanges* of one Thing for another. But because it very often happened, that Things of a *different Nature* and *Use* were to be transferred; lest either party should [165] be a loser by such *Exchanging*, it was necessary by a common Agreement and Consent among themselves to assign to Things such a *Quantity* or *Standard*, by which those *Things* might be compar'd and reduc'd to a Balance between each other. The same also obtaining as to *Actions*, which it was not thought good should be done *gratis* by one man for another. And this *Quantity* or *Standard* is that which we call *Price* or *Value*.

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

THE natural Ground of the *Common Value*, is that *Fitness* which any *III. Common Value.* Thing or Action has for supplying, either mediately or immediately, the *Necessities* of Humane Life, and rendring the same more *easie* or more *comfortable*. Hence it is we call those things which are not of any *Use* to us, *Things of no value*. There are nevertheless some *things most useful* to Humane [166] Life, which are not understood to fall under any *determinate Price* or *Value*; either because they are or ought to be exempted from Dominion and Property, or because they are not capable of being exchang'd, and therefore cannot be traded for; or else, because in Commerce they are not otherwise regarded than as Appendages to be supposed of course to belong to another Thing. Besides also when the Law of God or Man places some Actions above the reach of Commerce, or forbids that they should be done for a Reward, it is to be understood that the same Laws have set them without the bounds of Price or Valuation. Thus the upper Regions of the *Air*, the *Sky*, and the *Heavenly Bodies*, and even the vast *Ocean* are exempt from Human Property, so that no Rate or Value can be put upon them. So there is no Rate or Price to be set upon a *Freeman*, because Freemen come not within the compass of Commerce. So the clear Light of the *Sun*, the serene and pure *Air*, the delightful Aspect of the *Earth*, so far only as it pleases the Sight, the *Wind*, the *Shade*, and the like considered separately and in themselves, have no Price or Valuation; since men cannot enjoy these [167] things without the Use of the *Earth*. Nevertheless they are of great importance in advancing or lessening the Price of Countries, Lands or Farms. So likewise 'tis unlawful to set any Rate or Price on *Sacred Actions*, to which any moral Effect is assign'd by *Divine Institution*; which Crime is call'd *Simony*. And it is great Wickedness in a *Judge* to expose *Justice* to Sale.

NOW there are various Reasons why the Price of one and the same *IV. Enhaunsing or Debasing a Price.* thing should be *encreas'd* or *diminish'd*, and why one thing should be preferr'd before another, tho this may seem to be of *equal* or *greater Use* to Humane Life. For here the *Necessity* of the thing or its extraordinary *Usefulness* is not always regarded; but on the contrary we see those things are of the least account or Value, without which Human Life is least able to subsist; and therefore not without the singular Providence of Almighty God, *Nature* has been very *bountiful* in providing *plentiful* store of those things. But the *Rarity* or

*Scarceness* of Things conduces chiefly to the enhancing their Value; which is the more look'd upon, when they are brought from remote Countries. And hence the wanton Luxury of Mankind has set *extravagant Rates* [168] upon many things, which Humane Life might very well be without, for instance upon *Pearls* and *Jewels*. But the Prices of Things, which are of *daily Use*, are then chiefly rais'd where the *Scarcity*, is join'd with the *Necessity* or *Want* of them. The Prices of *Artificial Things*, besides their *Scarceness*, are for the most part enhans'd by their ingenious *Contrivance* and *Curiosity of Art*, that is seen in them, and sometimes by the Fame and Renown of the Artificer, the Difficulty of the Work, the want of Artists in that way, and the like. The Prices of *Works* and *Actions* are rais'd by their Difficulty, Neatness, Usefulness, Necessity, by the Scarcity, Dignity and Ingenuity of the *Authors* of them; and lastly by the Esteem and Reputation, which that Art has gotten in the World. The *Contrary* to these are wont to *diminish* the Price of Things. Sometimes again there may be some Certain Thing, which is not generally much esteem'd, but only by some *Particular Persons*, out of a Peculiar Inclination; for Example, because he, from whom we had it, is mightily *belov'd* by us, and that it was given as a *Token* of his Particular Affection to us; or because we have been *accustom'd* thereto, or because [169] it is a *Remembrancer* of some remarkable Accident, or because by the help thereof we have escap'd any extraordinary *danger*, or because the Thing was made by *Our selves*. And this is called *the Estimate of singular Affection*.

BUT there are other Circumstances likewise to be consider'd in stating *V. Particular Prices. Legal.* the Rates and Prices of *Particular Things*. And among those indeed, who live in a Natural Independence on any other, the Prices of Particular Things are determin'd no otherwise, than by the *Will* of the *Persons Contracting*; since they are entirely at their own liberty to make over or to purchase what they please, nor can they be controlled in their Dealings by any superior Authority. But in States and Governments the *Prices of Things* are determin'd two several ways. The *First* is by an *Order* from the *Magistrate* or some *Particular Law*; the *second* is by the Common *Estimate* and *Judgment* of Men, or according as the *Market* goes, together with the *Consent* and *Agreement* of those who Contract among themselves. The former of these by some is call'd the *Legal*, the other the *Vulgar Price*. Where the *Legal Rate* is fix'd for the sake of the *Buyers*, which it [170] is for the most part, it is not lawful for the *Sellers* to exact *more*; though they are not forbidden, if they will, to take *less*. So where the Rate of any *Labour* or *Work* is tax'd by the Publick Magistrate for the sake of those who have occasion to Hire, it is not lawful for the Workman to demand *more*, though he be not prohibited to take *less*.

BUT the *Vulgar Price*, which is not fix'd by the Laws, admits of a *VI. Vulgar Price.* Certain *Latitude*, within the Compass whereof more or less may be and often is either taken or given, according to the *Agreement* of the *Persons Dealing*; which yet for the most part goes according to the Custom of the *Market*. Where commonly there is regard had to the Trouble and Charges, which the Tradesmen generally are at, in the bringing home and managing their Commodities; and also after what manner they are bought or sold, whether by Wholesale or Retail. Sometimes also on a sudden the Common Price is alter'd by reason of the *Plenty* or *Scarcity* of *Buyers*, *Mony* or the *Commodity*. For the *Scarcity* of Buyers and of Mony, (which on any particular account may happen,) and the plenty of the Commodity may be a means [171] of *diminishing* the Price thereof. On the other hand the Plenty of Buyers and of Money, and the Scarcity of the Commodity *enhanses* the same. Thus as the value of a Commodity is lessened, if it *wants* a Buyer; So the Price is augmented, when the Possessor is solicited to sell what otherwise he would not have parted with. Lastly, it is likewise to be regarded, whether the Person offers *ready Money*, or desires *Time* for Payment; for allowance of *Time* is part of the *Price*.

BUT after Mankind degenerated from their primitive Simplicity, and *VII. Price eminent.* introduc'd into the World several kinds of Gaining; it was easily discern'd that that *Common* and *Vulgar* Price was not sufficient for the dispatching the Business of Men and for the carrying on of Commerce, which then daily encreas'd. For at first all kind of Trading consisted only in *Exchanging* and *Bartering*, and the Labours of others could no otherwise be valued than by Work for Work, or some Thing given in hand for Recompence. But after Men began to desire so many several things for *Convenience* or *Pleasure*, it was not easie for every one to become master of That which another would be willing to take [172] in Exchange, or which might be of equal value to the Things he wanted from him. And in Civiliz'd States or Societies, where the Inhabitants are distinguish'd into *several Stations*, there is an absolute necessity there should be different Degrees and Sorts of Men, which, if that simple and plain way of *bartering* of *Things* and *Works* had been still in use, could not, or at least not without great difficulty support themselves. Hence most Nations, which were pleased with a more sumptuous way of living, thought fit by Publick Consent to set an *Eminent Price* or *Value* upon some Certain Thing, whereby the *Common* and *Vulgar* Prices of other Things should be measured, and wherein the same should be virtually contained. So that by means of this *Thing* any one may purchase to himself whatsoever is to be sold, and easily manage and carry on any kind of Traffick and Bargain.

FOR this purpose most Nations chose to make use of the Nobler kind of *VIII. Gold, Silver, &c.* *Metals*, and such as were not very Common. Because these being of a very compacted substance, they cannot easily be *worn out*, and admit of being *divided* into many minute Parts; nor are they less proper to be [173] *kept* and *handled*; and for the *Rarity* of 'em are equivalent to many other things. Although sometimes for Necessity, and by some Nations for want of *Metals*, other *Things* have been made use of instead of *Money*.

MOREOVER, in Communities it is only in the power of the Chief *IX. Coin.* Magistrates to assign the *Value* of *Money*, and thence *Publick Stamps* are wont to be put upon them. Nevertheless in the assigning thereof, respect is to be had to the Common Estimate of the *Neighbouring Nations*, or of those with whom we have any *Traffick* or *Commerce*. For otherwise, if the State should set too *high a Value* on their Money, or if they should not give it a *just and true Allay*, all Commerce with Foreign Nations, which could not be carried on by *Exchange*, or *Barter* alone, would be at a stand. And for this very Reason the Value of Money is not rashly to be *alter'd*, unless a very great Necessity of State require it. Though as Gold and Silver grows more plentiful, the *Value* of *Money* in Comparison to the Price of Land, and things thereon depending, is wont as it were insensibly and of it self to grow lower.

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## CHAP. XV.

*Of those Contracts in which the Value of Things is presupposed, and of the Duties thence arising.* ↪

A *PACT* or *Agreement* in general is the Consent and Concurrence of *I. Pacts and Contracts.* Two or more in the same *Resolution*. But because oftentimes simple *Agreements* are contradistinguish'd to *Contracts*, the Difference seems chiefly to consist herein, that by *Contracts* are understood such Bargains as are made concerning *Things* and *Actions*, which come within the Compass of *Commerce*, and therefore suppose a *Property* and *Price* of Things. But such Covenants as are concluded upon, about other Matters, are call'd by the Common Term of *Pacts* or *Agreements*. Although even to some of these is promiscuously given the Name of *Pacts* and *Contracts*.

CONTRACTS may be divided into *Gratuitous* and *Chargeable*. The *II. Contracts of two sorts.* former sort affords *gratis* some Advantage to one of the Parties Contracting, as is a Commission, a Thing Lent, or Deposited. The [175] other obliges both Parties reciprocally to the *performance* of some certain *Condition*. For in these Contracts something is perform'd or deliver'd with intention, that an *Equivalent* thereto may be receiv'd.

NOW all *Chargeable Contracts* naturally imply an *Equality* in 'em, that *III. Equality.* is, that each of the Persons Contracting receive of the other so much in value as himself parts with; and if any *Inequality* happens, that Party who receiv'd too little, may lawfully demand what is wanting to be made up, or else he is at liberty wholly to throw up the Contract. And this is chiefly practis'd in Governments and Societies, where the Prices of Things are ascertain'd either by Law or the Custom of the Market. But for the better stating and determining this Equality, it is requisite, that the Contracting Parties do well understand the Thing about which they are driving a bargain, with all those of its Qualifications and Circumstances that are of any Consideration. And hence it is, that He who is about to transfer any Thing to another by Contract, ought to lay before him not only the Good Qualities of the Thing, but also its Faults and Defects. For without this a *Just Price* cannot be put upon it. [176] Not that 'tis necessary to declare such Circumstances, as no ways affect the Thing it self; nor is there any occasion to take notice of Faults which are already known on *both sides*. For he that *wittingly* buys any Thing that is amiss, must take the blame upon himself.

NOW in these Contracts an *Equality* is so far to be regarded, that *IV. Defects to be made good.* although nothing at all was conceal'd or dissembled; yet if afterwards any Inequality be found out, even though neither of the Parties Contracting were blameworthy, either for that the Defect lay altogether hid and undiscover'd, or that there was some mistake in the Price, such like things must be rectif'd, and he who has too much, must allow to him that wanted to make the Bargain good. Although for the avoiding a multitude of unnecessary Suits, the Laws of every Country have here chiefly made Provision against the most *Notorious Abuses*; as to the Rest, supposing every one will be careful in his own Concerns.

GRATUITOUS Contracts are chiefly Three, a *Commission*, a Thing *V. Deputation or Commission.* Lent, and a *Deposit* or Trust. A Commission is, when any one shall undertake *Gratis* the management [177] and Dispatch of Anothers business at his Desire and Request. And this happens two several ways, either when the Method of managing it is *prescrib'd* to him, or when it is *left* to his *Judgment* and *Discretion*. In this Case as Faithfulness and great Diligence is required, since no Body almost will give a Commission but to a Friend, and one of whom he has a very good Opinion; so on the other Hand the

Trustee ought to be indemnified from the Expences he is at upon the Thing committed to his Care; and also from the Losses he may incur by reason thereof, and which properly proceeded from the Commission it self.

A Thing *Lent* is, when we grant *gratis* the Use of what is our own, to [VI. Thing lent.](#) another. Wherein 'tis to be observ'd, that every one should carefully and diligently preserve and look after the Thing entrusted; not convert the same to other Uses, or further than the Person Lending does consent; and to restore the same entire and in the same Condition as he receiv'd it, allowing only for what detriment it must of necessity receive by the common and ordinary use thereof. But if any Thing be granted for a *Certain time*, and in the mean [178] while the Owner be in great want of it, by reason of some accident which was not foreseen at the time of the Lending thereof, the same must be restor'd whenever he demands it, without any shuffling or delay. But if the Thing Lent *perishes* suddenly or by any Accident, without any neglect of the Person to whom it was lent, the Value thereof is not to be made good, if the same in all Probability would have likewise perished in the Custody of the Right Owner. Otherwise it is but Equity that the Person to whom it was lent should pay the Price of it, because the Right Owner would not have lost it, had he not been so kind to Another. On the other hand if the *person borrowing* have been at any *necessary Expence* upon the Thing Lent besides that, which by Consequence attends the Use of it, the same ought to be refunded by the Owner thereof.

A *Deposit* or *Thing left* is, when we commit any thing of our own, or [VII. A Deposit.](#) any ways belonging to us, to the Trust of another Person, to keep the same *Gratis*. In which Case 'tis requisite, that the Thing so entrusted should be carefully look'd after, and restor'd to the Deponent, whenever [179] he pleases to call for it; unless such a Restitution would be prejudicial both to the Owner and to Others, and upon that score it may be deferr'd. Nor is it lawful to *make Use* of the Thing so deposited, without the Consent of the Owner, if it can any ways receive *Damage* by the *Use*, or it be for the Interest of the Owner, that it should not be seen. And if any one shall presume to do it, he shall make good whatsoever *Damages* it may have sustain'd by the *Use*. Neither is it Lawful to take the Thing deposited out of those Covers and Receptacles, wherein it was wrap'd up and inclosed by the Person who left it. But as it is very base and even more heinous than Theft it self to deny the Redelivery of any thing that was left to our Trust; so it is yet much more detestable for any one to disown a *Miserable Deposit*, that is, what was left with him by reason of any Misfortune, in Danger of Fire, Confusion or Tumult. Again, the Deponent is to refund the *Charges* that have been laid out upon the Thing Deposited.

NOW among *chargeable Contracts*, or Covenants which imply [VIII. Bartering.](#) somewhat to be done or given on both parts, the most Ancient, and that whereby Trading and [180] Commerce was carried on before the Invention of Money, was *Permutation* or *Bartering*, whereby on each side something was given for some other thing equivalent thereto. Altho at this day, since the Invention of Money, that sort of *Exchange* is chiefly practis'd among Merchants, whereby things are not simply compar'd between themselves, but they are first reduc'd to Money, and afterwards deliver'd as so much Money. But *Reciprocal Donation* is a different sort of a Thing from the Contract of Barter, for in this there is no necessity that an *Equality* should be observ'd.

BUYING and *Selling* is, when for Money the Property of any thing is [IX. Buying and Selling.](#) acquired, or else such a Right as is equivalent thereto, of which kind this is the most plain and obvious, when the Buyer, after the Value is agreed upon, immediately pays down the Price, and the Seller thereupon delivers the Commodity. Yet oftentimes the Agreement is made so, that the Commodity should be immediately deliver'd, and the Price thereof paid at a *Certain Time*. And sometimes the Price is agreed upon, but the Delivery of the Thing or Commodity is to be within a *Certain* [181] *Time Limited*. In which Case it

seems but Equity, that before the Time be elaps'd, the Seller should stand to the hazard of it; but if after the Time is elaps'd, the Buyer makes delay and neglects the taking it away, then, if the Commodity perishes, the Buyer shall stand wholly to the loss thereof. Now to this of Buying and Selling are wont to be added several other kinds of Bargains. As that, which is term'd *Addictio in diem*, whereby any Thing is sold with this Proviso, that it may be lawful for the Seller to accept of better Terms, offered by another within a Certain Time. So also the *Lex Commissoria*, which is such a Condition in any Contract, as, not being perform'd within a Time Limited, the Bargain becomes void. So likewise any kind of Recalling, or Priviledg of recanting a Bargain, which is to be either so understood, that if the Price be laid down within a certain Time limited, or at any time whatever is offer'd, the Buyer shall be oblig'd to restore it again to the Seller; or else so, as if the Thing be offer'd again, the Seller is bound to return back again the Price thereof; or so as, if the Buyer be willing to sell the same again, the First Seller should [182] have the Refusal of it, before any other, which is likewise call'd *Jus protimiseos* or the Right of Pre-emption. It is also customary that the Seller should reserve to himself a Certain Portion of the Lands which he sells, or some Use or Acknowledgment for the same. There is another way of Buying, which they call *per aversionem*, when several Things of different Prices are not valued singly, but at haphazard, and, as it were, in the lump. In that way of Sale, which is call'd an *Auction*, the Thing is adjudg'd to that Person, who, among several Bidders, offers most. Lastly, there is another way of Buying, whereby not any Certain Thing is bought, but only the Probable Hopes and Expectation thereof; which implies something of *Chance*; so as, neither the Buyer, if his Expectation fails him, nor the Seller, tho it much exceed, have any Reason to complain.

HIRING and *Letting* is when the Use of a Thing, or any Labour is *X. Hiring and Letting.* granted to another, upon a Certain Consideration. Wherein, although regularly the Price is for the most part agreed upon before hand; yet if any one without making a Bargain makes over his Labour or the Use of any Thing belonging to him, he is suppos'd [183] to expect so much as the Common Custom, or the Honesty and Equity of the Person Hiring will allow. Concerning this kind of Contract, 'tis to be observ'd, that if the Thing let out happens wholly to perish, from that time the Person Hiring is no longer oblig'd to pay the Wages or Pension agreed upon. But if the Thing hir'd has any Certain and Determin'd Use, so as the Owner is oblig'd to make it fit and serviceable for that purpose; in this Case if it receives any Prejudice, that Person who hires it may deduct so much of the Hire, as the Thing is decay'd as to its Use. But if the Profit or Increase of the Thing farmed out be uncertain, and have any thing of Chance attending it, as a large Increase happens to the Advantage of the Hirer, so a small one is to his Loss; nor can there be any Thing deducted from the Pension in strictness of Law, upon the Account of Barrenness; especially since a Dearth of one Year may be recompenc'd by the Plenty of another. Unless those Accidents, which prevent the Increase, do but very rarely happen, and the Person Hiring be presum'd not to have any ways imagin'd the taking such a Chance upon himself. For it is but equitable that such [184] like Accidents should contribute to the lessening of the Pension. But as he who lets out any Thing to another, is oblig'd to make the Thing fit for Use, and to undergo the Necessary Charges; so the Person Hiring must be a Good Husband in managing the Thing, and must make good what was lost through his Neglect. And he who has hir'd any Work to be done, which by his own fault was spoil'd, must do the like. He that has agreed with another for any Service of his, which he is to do presently, if he be hindred by any Accident from performing the same, he cannot demand any Reward. But he who has hir'd any one for some considerable Time, if he happens to be render'd unfit for Service for a short time by Sickness or any other Accident, it is inhuman to turn him out of his Business or to deduct any thing out of his Wages.

IN a Contract of *Things Lent*, Something is given to a Certain Person *XI. Things lent.* upon this Condition, that he be oblig'd to restore the same *Kind* after a Certain Time in the same *Quantity* and *Quality*. Now those Things which are usually Lent, are call'd *Fungibiles*, that is, such Things as are capable of being repaid in Kind, though not in [185] *Specie*; because any Thing of that kind may so perform the Part of another thing, that he who receives any thing of that *Kind* in the same *Quantity* and *Quality*, may be said to have receiv'd the *same*, which he gave. The same Things are likewise determin'd and specified by Number, Weight and Measure, in which respect also they are commonly call'd *Quantities*, as they are contradistinct to *Species*. Now a Thing is lent either *gratis*, so as no more is to be receiv'd than was deliver'd; or else for some Profit or Advantage, which is call'd *Usury*; and which is no ways repugnant to the Law of Nature, provided it be moderate, and proportionable to the Gain, which the other Person makes of the Money or the Thing Lent; and which had it not been put out, would have been neither Loss nor Gain; and that it be not exacted of *Poor Men*, to whom a Thing Lent is sometimes as good as an *Alms*.

IN a Contract of *Partnership* Two or More join together their *Money*, *XII. Partnership.* *Wares*, or *Works* with an Intention that every one should receive a proportionable share of the Profit; and if there happens to be any Loss, that likewise must be born ratably by each Party. In which kind of Society [186] as all Parties are oblig'd to Faithfulness and Industry; so no Party must break off the Partnership before the Time, or to the detriment of his Partner. But when the time of the Partnership is expired, after the Gain and Loss is allowed, each Party is to receive what Stock he put in. But if one Person puts in *Money* or *Goods*, and the other contributes his *Labour*, we must consider, after what manner such a Contribution was made. For when one mans *Labour* is only concern'd about the managing and disposing of the other Persons *Money* or *Goods*, the Shares of the Gain are so to be determin'd, as the Profit of the *Money* or *Commodity* bears Proportion to the Value of the *Labour*; the *Principal* still remaining the Property of him only who first contributed it. But when any *Labour* is bestow'd in the *Improvement* of any *Commodity* which is put in by another, he is suppos'd to have such a Share in the Thing it self as is Proportionable to the *Improvement* it has receiv'd. Again, when men engage all that they have in any Joint-Stock, as each of the Partners must faithfully bring into the Account the Profits they have made; so also every one of them is to be maintain'd out of the Joint-Stock [187] according to their Condition. But when the Partnership is broken off, the Division of the Goods is made ratably according as each Party at first brought in; without any Regard had, by whose Goods any Gain or Loss hapned to the Company, unless beforehand it was otherwise agreed.

THERE are likewise several Contracts, which imply a *Chance*: *XIII. Contracts upon Chance.* amongst which may be reckon'd *Wagers*, when the Certainty of any Event, which is not yet known by either Party, is affirmed by one and denied by the other, a Certain Value being laid on both sides, which is adjudg'd to that Person, to whose Assertion the Event is found to agree. Hitherto may also be referr'd all sorts of *Games*, wherein we play for any thing of Value. Among which those have the least Chance, which contain a Trial of *Wit*, *Dexterity*, *Skill* or *Strength*. In some of these *Skill* and *Chance* have both a like share. In others *Chance* does chiefly determin the matter. Altho it is the Part of the Civil Magistrate to consider how far such kind of Contracts may be tolerated, as consistent with the Publick or Private Good: Among these we may reckon the various sorts of *Lotteries*; [188] as either when several men having paid for a Thing by Money laid down jointly, refer it to a decision by Lot, which of them shall have the Whole: or when a Box or Pot of Lots is made use of, into which a Certain Number of Lots or Papers, both Blanks and Prizes are put, and for some set Price, Liberty is granted of drawing them out, so that the Person drawing may receive the Prize mark'd upon the Lot. To these Contracts the receiv'd Methods of *Insurance* have some kind of Affinity, which are such Bargains whereby is undertaken the securing from and making good any Damage, so that the Insurer, for a certain Sum of Money paid down, takes

upon himself and is oblig'd to satisfy for whatsoever Losses or Damages any Commodities may undergo in their transportation to remote Countries; so that if it shall happen that they be lost, he is bound to pay the Owner the Value of them.

FOR the rendering of Contracts and Covenants more firm and secure, [XIV. Sureties and Pledges.](#) *Sureties* and *Pledges* are frequently made use of. A *Surety* is, when another Person, who is approv'd of by the Creditor, takes upon himself the Obligation of the Principal [189] Debtor, so that unless he makes payment, the other must make it good; Yet so, that the Principal Debtor is oblig'd to repay him and save him harmless. And although the Surety cannot stand bound for a Greater Sum, than the Principal Debtor, yet nothing hinders but that the Surety is more firmly ty'd than the other, because more is rely'd upon his Credit than upon that of the Principal Debtor. Yet in course the Principal Debtor is to be call'd upon before the Surety, unless he has wholly taken the Obligation upon himself; and such a Person in the Civil Law is commonly call'd *Expromissor*, or an Undertaker. Now if several Persons be Security for one, each of them is to be call'd upon for his Proportion only; unless by Accident any one of them becomes Insolvent, or is not to be found. For in such a Case the others must be charg'd with his Share.

'TIS likewise oftentimes customary for the Debtor to deliver or make [XV. Pledge or Mortgage.](#) over to the Creditor for securing his Debt, some certain Thing, which is call'd a *Pledge* or a *Mortgage*, until the Debt be paid. The Intent of which is not only that the Debtor should be excited to make payment out of a desire of recovering what belongs to [190] him; but also that the Creditor should have some Prospect, how he may be satisfied. And upon this account Pledges ought regularly to be of equal, or greater Value than the Debt it self. Now the Things which may be offer'd as Pledges, are either Improveable, or not Improveable; as to the former kind there is commonly added a Covenant call'd *Pactum* [Greek word], which impowers the Creditor to enjoy the Fruits and Profits of that Pledge, instead of *Interest*; Now as to the other sort the *Lex Commissoria* takes Place; which provides that the Pledge shall be forfeited to the Creditor, if Payment be not made within a Certain time Limited: And this is no ways unreasonable, when the Pledge is not of greater Value than the Debt, together with the Use for the intermediate Time, and provided the Overplus be restored to the Owner. But as the Creditor is oblig'd to restore the Pledge upon payment of the Debt; so in the mean time he ought to be as careful in the preserving thereof, as if it were really his own. And when there is no *Pactum* [Greek word], and the thing be of that nature, as to receive any damage by Use, or if it be any ways for the Debtor's Advantage, [191] he ought not to make use of it without his Consent. Now a *Mortgage* differs from a *Pledge* in this, that a *Pledge* consists in the Delivery of the Thing, but a *Mortgage*, tho the Thing be not deliver'd, holds good by the bare Assignment of a Thing altogether Immoveable, from which, Payment not being made, the Creditor may receive satisfaction for his Debt.

AND thus what the Duties of Persons contracting are, will plainly [XVI.](#) appear from the End and Nature of these Contracts.

## CHAP. XVI.

### *The several Methods by which the Obligations arising from Contracts are dissolv'd.* ↩

AMONG the several ways of discharging Obligations arising from *I. Fulfilling or Payment.* Contracts, and by which likewise the Duties and Offices which proceed from thence do utterly expire, the chiefest and most Natural of all is the *Fulfilling or Payment* [192] of what was agreed upon. Where altho generally he that is the *Debtor*, is oblig'd to make the Payment; yet if it be perform'd by any other in *his name*, who contracted the Obligation, the same is dissolv'd; since 'tis no ways material by what Person the Thing is perform'd. Yet with this Proviso, that he who pays for another, without any Intention of bestowing it upon him, he may demand from the same again what he laid out upon his Account. Moreover, Payment must be made to that Person to whom it is due, or else to one whom he has *appointed* to receive the Debt in his Name. And lastly, *that very Thing* must be perform'd or paid, which was agreed upon; not any Thing else instead thereof, intire and not imperfect, not only in parcels or by piece-meal; and likewise at the *Place* and *Time* appointed. Altho frequently the *Courtesie* of the Creditor or the *Inability* of the Debtor may be the occasion of prolonging the time of Payment, or of receiving a Debt by little Sums at once, or else of accepting of one Thing for another.

OBLIGATIONS are likewise taken away by *Compensation*, which is an *II. Compensation.* Adjusting or Ballancing the Credit and the [193] Debt, one against the other, or when the Debtor is therefore discharg'd, because 'tis manifest that the Creditor himself stands indebted to him for something that is of the same kind, and of the same Value. Especially since in those *Things* (call'd *res fungibiles*, that is) which admit of being repaid in *kind* tho not in *specie*, an Equivalent is look'd upon to be the same Thing; and where the Debt is Mutual, since I must presently return back as much as I have receiv'd; for the declining of unnecessary Payments, it seems to be the most convenient way so to order the matter that each Party may keep what he has. Now it is evident that those Things aforementioned may very properly be brought to a Balance, of which the time for Payment is either present, or past. But it is not so in other Things or Performances which are of a Different Nature; unless they are estimated on both sides and reduc'd to Mony.

AN Obligation also ceases when the Thing is *released* and *forgiven* by *III. Release.* him, to whom it was due, and whose Interest it was that the Obligation should have been perform'd. And this is done either *expresly*, by some Certain Tokens declaring [194] his Consent; as by giving a Discharge, by giving up or cancelling the Bonds and Writings; or else *tacitly*, if he himself hinders, or is any ways the Occasion that what is owing to him cannot be paid.

THOSE Obligations are likewise some times dissolv'd, which imply *IV. Breaking off mutually.* some Performance on both sides, *by a mutual breaking off* before any thing on either side be done in the Contract; unless this be expresly forbidden by the Laws. But if any thing is perform'd by one of the Parties, the same must either be by him *releas'd* to the other, or else be made up some other way.

BESIDES, an Obligation is not indeed properly dissolv'd, but rather *V. Falseness on one side.* broken off by the *Falseness* of either Party; for when the one does not perform, what was agreed upon, neither is the other oblig'd to make good what he undertook, in contemplation of the Others performing. For as to the main Things which are to be performed in Contracts, the Former are always included in the Latter by way of *Condition*; as if it should be said, I will perform this, if you perform that first.

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OBLIGATIONS likewise cease, when that *State of things* upon which *VI. Case alter'd.* they chiefly depended is either *alter'd* by the Party who was oblig'd to perform somewhat, or by him to whom and for whose sake it was to be done.

SOMETIMES also *Time* it self puts an end to some Obligations, whose *VII. Time.* Duration depends upon a certain precise Day; unless it be prolong'd by the Express or *tacit Consent* of each Party. Yet there is a Necessity that the Power of exacting the Obligation within the time Limited should stand good.

Lastly, OBLIGATIONS which exist only with regard to some particular *VIII. Death.* Person, are dissolv'd by *Death*; for when the Subject is taken away, the Accidents also must of necessity be extinguish'd. Yet oftentimes the Obligations of the Deceased are continued in the Persons surviving. And that either because the Survivor, out of Duty, or for other Reasons takes upon himself to fulfil the Obligations of the Person Deceased; or because the Obligation must be satisfied out of the Goods of the Deceased, with which the Heir is charg'd when he receives the Possession.

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ANY one may make over by *Assignment* his Debtor to his Creditor, *IX. Assignment.* provided he approves him, that he, instead of the other may discharge the Debt. Where indeed there is required the Consent of the Creditor, but not of that third Person who is the Debtor, whom I may turn over without his knowledg or consent to the other Person that is to accept him. For it is no great matter, *to whom* any Person makes payment; but *from whom* the Debt is to be required, is very material.

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## CHAP. XVII.

### *Of Meaning or Interpretation.* ↩

SO indeed it is, that neither in those Things which are commanded by the Supreme Magistrate, no man is accounted to be bound any further than the same Magistrate requires; and whosoever of his own free Will sets himself under any Obligations, binds himself but according to his *own Intention*. Yet because one Man cannot make a judgment of another man's Intention, but by such Signs and Actios [197] as are apparent to the Senses; hence therefore every one in *foro humano* is adjudg'd to be *obliged to that Thing, which he may fairly be supposed to have suggested by a Right Interpretation of the outward Signs made by him*. Wherefore 'tis of great Use for the true Understanding both of Laws and Covenants, and for the better discharging the Duties thence arising, that there should be laid down *Certain Rules for the true Interpretation of Words* especially, they being the most common and ordinary Signs whereby we express our Mind and Intention.

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

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

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BUT for discovering the genuine meaning of Words 'tis sometimes necessary to make use of *Conjectures*, if either the Words in themselves or the Connection of them be Ambiguous and liable to a double Interpretation; or if some Parts of the Discourse seem to contradict the other, yet so as by a fair and true Explanation they may be *reconcil'd*. For where there is a plain and manifest Contrariety the latter part must be accounted to *contradict* that which went before.

NOW Conjectures of the Mind, and the Right meaning thereof in an Ambiguous, or Intricate Expression are chiefly to be taken *from the Subject Matter, from the Effects and the Accidents* or Circumstances As to the *Matter* this is the Rule: Words are generally to be understood according to the Subject Matter. For he that speaks is suppos'd to have always in view the Matter, of which he discourses, and therefore agreeable thereunto the meaning of the Words is always to be applied.

AS to the *Effects and Consequences* this is the Rule: When Words taken in the Literal and Simple Sense admit either of none or else of some absurd Consequences, we must recede so far from the more receiv'd [199] Meaning, as is necessary for the avoiding of a Nullity or Absurdity.

FARTHERMORE most probable Conjectures may be taken from the *Circumstances*; because of Consequence every one is presum'd to be consistent with himself. Now these Circumstances are to be consider'd either as to their *Place*, or only as to the *Occasion* of them. Concerning the *Former* of these this is the Rule: If the Sense in any Place of the Discourse be express'd plainly and clearly, the more obscure Phrases are to be interpreted by those plain and familiar ones. To this Rule there is another

nearly related: In the explaining of any Discourse the Antecedents and Consequents must be carefully heeded, to which those Things that are inserted between are presum'd to answer and agree. But concerning the *Latter* this is the Rule: The *obscure* Expressions of one and the same Man are to be interpreted by what he has deliver'd more clearly, tho it was at another Time and Place; unless it manifestly appears that he has chang'd his Opinion.

IT is likewise of very great Use for finding out the true Meaning, in [VIII. The Reason of the Thing.](#) Laws especially, to examine into the *Reason of* [200] *that Law*, or those Causes and Considerations which induced the Legislator to the making thereof; and more particularly when it is evident, that that was the *only Reason* of the Law. Concerning which this is the Rule: That Interpretation of the Law is to be followed, which agrees with the Reason of that Law; and the contrary is to be rejected, if it be altogether inconsistent with the same. So likewise when the Sole and Adequate Reason of the Law ceases, the Law it self ceases. But when there are several Reasons of the same Law, it does not follow that if one of them ceases, the whole Law ceases too, when there are more Reasons remaining, which are sufficient for the keeping it still in Force. Sometimes also the Will of the Lawgiver is sufficient, where the Reason of the Law is conceal'd.

MOREOVER, it is to be observ'd that many Words have *various* [IX. Words of various signification.](#) *Significations*, one meaning being of great Latitude and the other more *strict* and *confin'd*; and then the Subject Matter is sometimes of a *favourable* Nature, sometimes *invidious*, sometimes between both or *Indifferent*. Those are *favourable* where the Condition is Equal on both sides, where regard [201] is had to the Publick Good, where provision is made upon Transactions already ratified, and which tends to the promoting of Peace, and the like. The *Invidious* or most distastful is that which aggrieves one Party only or one more than the other, that which implies a certain Penalty, that which makes any Transaction of none effect or alters what went before, that which promotes Wars and Troubles. That which is between both and *Indifferent* is, That indeed which makes some Change and Alteration in the former State of things, but 'tis only for the sake of Peace. Concerning these, this is the Rule: That those Things which admit of a *Favourable* Construction are to be taken in the largest and most comprehensive meaning, but those things which are capable of an unpleasing Construction in the most Literal and strictest sense of the Words.

THERE are likewise some kind of Conjectures which are elsewhere to [X. Conjectures extended.](#) be fetch'd than from the Words, and which are the occasion that the Interpretation of them is sometimes to be *extended*, and at other times to be *confin'd*. Although 'tis more easie to give Reasons why the Explanation thereof should be *confin'd* and *limited* [202] than *extended*. But the Law may be *extended* to a Case, which is not express'd in the Law, if it be apparent, that the Reason which suits to this Case, was particularly regarded by the Lawgiver amongst other Considerations, and that he did design to include the other Cases of the like Nature. The Law also ought to be *extended* to those Cases, wherein the subtilty of Ill men have found out tricks in order to evade the force of the Law.

NOW the Reason why some Expressions deliver'd in General Terms [XI. Conjectures limited.](#) should be *restrain'd*, may happen either from the *Original Defect of the Will* or from the Repugnancy of some *Emergent Case* to the Will and Intention. That any Person is to be presum'd not at first to have intended any such thing, may be understood, 1. From the *Absurdity*, which otherwise would follow from thence; and which, 'tis believ'd, no man in his wits could design. Hence General Expressions are to be restrain'd, inasmuch as such Absurdity would thence otherwise arise. 2. From *Want of that Reason* which might chiefly cause him to be of that mind. Hence in a General Expression those Cases are not comprehended, which do no ways agree with the Sole [203] and Adequate Reason of the Law. 3. From *Defect of Matter*, which always he that speaks is suppos'd to have consider'd.

And therefore all those General Words are to be regarded with relation to the same.

NOW that an emergent State of Things is repugnant to the Intention of *XII. Emergent Cases.* the Person who made the Constitution, may be discover'd either from *Natural Reason* or else from some declared mark and *Signification* of his Meaning. The First happens, when we must exclude *Equity*, if some certain Cases be not exempted from the Universal Law. For *Equity* is the Correcting of what is defective in the Law by reason of its *Universality*. And because all Cases could neither be foreseen, nor set down, because of the infinite variety of them; therefore when General Words are apply'd to special Cases, those Cases are to be look'd upon as Exempt, which the Lawgiver himself would likewise have exempted, if he had been consulted upon such a Case. But we must not have recourse to *Equity*, unless there be very sufficient Grounds for it. The Chiefest of which is, if it be evident, that the Law of Nature would be violated, if we follow too closely the Letter of that Law. The next Ground of Exception is; [204] that tho it be not indeed unlawful to keep to the very words of the Law; yet, if upon an impartial consideration the Thing should seem too grievous and burdensom, either to Men in General, or to some certain Persons; or else if the Design be not of that Value, as to be purchas'd at so dear a Rate.

Lastly, AN Exception is to be made from a General Expression, if *XIII. Exception with regard to Time.* Words put in another Place, are not indeed directly opposite to the present Law or Agreement, but by reason of some Circumstance in Time *pro hic & nunc* cannot be observ'd all at once. Here therefore some certain Rules are to be taken notice of, in order to understand what Law in that Case, when both cannot be observed at the same Time, is to be prefer'd. 1. That which is only *permitted*, is to give place to what is *enjoin'd*. 2. What must be done at some *certain* Time, is to be prefer'd to that which may be done at *any* time. 3. An *Affirmative* Precept gives place to the *Negative*; or when the Affirmative Precept cannot be observ'd, without the Violation of the Negative, the Performance of the former is to be omitted for the present. 4. Among Agreements and Laws which are otherwise of equal Authority, [205] a *Particular* is to be prefer'd before a *General* one. 5. Of two Covenants made together at one and the same Time, whereof the One is founded upon more *honourable*, and *beneficial* Reasons than the other, it is but equal that the Former should take place of the Latter. 6. A Covenant or Contract that is confirm'd by an *Oath*, takes place of one which is not so, when both cannot be observ'd at the same time. 7. An *Imperfect* Obligation gives place to that which is *perfect*. 8. The Duty of *Beneficence*, all circumstances rightly compared, gives place to the Duty of *Gratitude*.

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**THE *WHOLE DUTY OF MAN*, ACCORDING TO THE LAW OF  
NATURE. BOOK II.**

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## CHAP. I.

### *Of the Natural State of Men.* ↪

IN the next place we are to enquire concerning those Duties which are incumbent upon a Man with regard to that *particular State* wherein he finds himself ordained by Providence to live in the World. What we mean by such *State* is in general that *Condition* or *Degree* with all its Relatives in which men being placed, they are therefore supposed to be obliged to those or these Performances: [208] And such *State*, whatever it be, has some peculiar Rights and Offices thereunto belonging.

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

THE *Natural State* of Man consider'd in the *first* mention'd way, is that Condition wherein he is plac'd by the Creator pursuant to his Divine Will, that he should be the most excellent Animal in the whole Creation. From the consideration of which *State* it follows, that Man ought to acknowledge the Author of his Being, to pay him Adoration, and to admire the Works of his hands; and moreover to lead his Life after a different manner from that of the Brutes. So that the contrary to this *State* is *the Life and Condition of Brutes*.

IN the *second* way we may contemplate the *Natural State* of Man, by seriously forming in our minds an Idea of what his Condition would be, if every one were left *alone* to himself without any help from *other* men, especially considering the present Circumstances under which we at this time find Humane Nature: Which would certainly be much more miserable than that of a Beast, if we think with our selves, with what weakness man enters this World, so that he must immediately perish, except he be sustained by others, and how rude a Life he must lead, if he could procure nothing for himself, but by means of his own single Strength and Skill. But 'tis plain, that we owe it all to the aid of *other persons*, that we are able to pass through so many Infirmities from our Infancy to Manhood; that we enjoy an infinite number of Conveniences; that we can improve our Minds and Bodies to such a degree as to be useful to our selves and our Neighbour. And in this sense the *Natural State* is opposed to a *Life not cultivated by the Industry of men*.

AFTER the *third* way we are to regard the *Natural State* of Man, according as Men are understood to stand in respect to one another merely from that common Alliance which results from the *Likeness* of their *Natures*, before any mutual Agreement [210] made or other Deed of Man perform'd, by which one could become obnoxious to the Power of another. In which Sense those are said to live reciprocally in a *State of Nature*, who acknowledge no *common Superior*, and of whom none can pretend Dominion over his fellow, and who do not render themselves known to each other either by the doing or good turns or injuries. And this *State* in this Sense distinguishes it self from the *Condition of Man in a Community*.

MOREOVER, the Property of this *Natural State* may be consider'd, either as it is represented to us *Notionally* and by way of *Fiction*, or as it is *really* and *indeed*. The *former* is done, when we imagine a certain Multitude of men at the beginning to have started up into beings all at once without any dependence upon one another, as it is fabled of the *Cadmean* Harvest of Brethren; or else when we form a

Supposition, that all the mutual Ties by which Mankind are one way or other united together were now dissolv'd, so that every man might set up for himself apart from the rest, and no one man should have any other Relation to his Fellow, but the likeness of their Natures. But the [211] true State of Nature, or that which is *really* so, has this in it, that there is no man who has not some peculiar Obligations to *some* other men, though with all the rest he may have no farther Alliance than that they are Men and of the same Kind, and beside what arises from thence he owes them no Service at all. Which at this time is the Case of many Kingdoms and Communities, and of the Subjects of the same with respect to the Subjects of the other; and the same was antiently the State of the Patriarchs when they liv'd independently.

IT is then taken for manifest, that all Mankind never were universally [VII. Paternal Authority.](#) and at once in the former *Natural State*; for those Children who were begotten and born of the Protoplasts, or first created Man and Woman, (from whom the whole Human Race derives its Original, as the Holy Scriptures tell us) were subject to the *Paternal Authority*. Not but that this Natural State arose afterwards among some People: for Men at first, in order to spread over this wide World, and that they might find for themselves and their Cattel more spacious Abodes, left the Families of their Fathers, and roaming into various Regions, almost [212] every single man became himself the Father of a Family of his own; and the Posterity of these again dispersing themselves, that *peculiar Bond* of Kindred and the Natural Affections thence arising by little and little were extinct, and no other Obligation remain'd, but that common one, which resulted from the Likeness of their Natures. Till afterwards when Mankind was vastly multiplied, they having observ'd the many Inconveniencies of that loose way of Living, the Inhabitants of places near one another by degrees join'd in Communities, which at first were small, but grew soon greater, either by the voluntary or forc'd Conjunction of many which were lesser. And among these Communities the State of Nature is still found, they being not otherwise oblig'd to each other, than by the common Tie of Humanity.

NOW it is the chief *Prerogative* of those who are in the State of Nature, [VIII. Natural Liberty.](#) that they are subject and accountable to none but God only; in which respect also this is called a State of *Natural Liberty*, by which is understood, that a Person so circumstanc'd without some antecedent human Act to the contrary, is to be accounted absolutely in his own power and disposition, [213] and above the controll of all mortal Authority. Therefore also any one person is to be reputed *equal* to any other, to whom himself is not subject, neither is that other subject to him. And furthermore whereas Man is indued with the Light of Reason, by the guidance whereof he may temper and regulate his Actions, it follows, that whosoever lives in a State of Natural Liberty, depends not on any other for the direction of his doings; but is vested with a Right to do according to his own Judgment and Will any thing he shall think good, and which is consonant to found Reason. And whereas Man, from that universal Inclination which is implanted in all Living Creatures, cannot but (in order to the Preservation of his Person and his Life, and to the keeping off whatsoever Mischiefs seem to threaten the Destruction thereof) take the utmost care and pains, and apply all necessary means to that end; and yet whereas no man in this Natural State has any superiour person, to whom he may submit his Designs and Opinions, therefore every one in this State makes use of his own Judgment only in determining concerning the Fitness of Means, whether they conduce to his Self-Preservation [214] or not. For tho he may give ear to the Advice of another, yet it is in his choice whether he will approve or reject the same. But that this absolute Power of governing himself be rightly manag'd, it is highly necessary, that all his Administrations be moderated by the Dictates of true Reason and by the Rules of the Law of Nature.

AND yet this Natural State, how alluring soever it appears to us with *IX. Its Inconveniences.* the Name of Liberty, and flattering us with being free from all manner of Subjection; yet was it clog'd, before men join'd themselves under Governments, with many *Inconveniences*; whether we suppose every single man as in that Condition, or only consider the Case of the Patriarchs or Fathers of Families, while they lived independent. For if you form in your mind the Idea of a Man even at his full growth of Strength and Understanding, but without all those Assurances and Advantages by which the Wit of man has rendred Human Life much more orderly and more easie than at the beginning; you shall have before you, a naked Creature, no better than dumb, wanting all things, satisfying his Hunger with Roots and Herbs, [215] slaking his Thirst with any Water he can find, avoiding the extremities of the Weather by creeping into Caves or the like, exposed an easie prey to the ravenous Beasts, and trembling at the sight of any of them. 'Tis true, the way of Living among the Patriarchs might be somewhat more comfortable even while they contain'd their Families apart; but yet it could by no means be compar'd with the Life of men in a Community, not so much for the Need they might have of things from abroad, which, if they restrain'd their Appetites, they might perhaps well enough bear withal; as because in that State they could have little Certainty of any continued Security. And that we may comprehend all in a few words, in a State of Nature every man must rely upon his own single Power, whereas in a Community all are on his side; there no man can be sure of enjoying the Fruit of his Labour, here every one has it secur'd to him; There the Passions rule, and there is a continual Warfare accompanied with Fears, Want, Sordidness, Solitude, Barbarity, Ignorance and Brutishness; here Reason governs, and here is Tranquillity, Security, Wealth, Neatness, Society, Elegancy, Knowledg and Humanity.

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BESIDE, in the Natural State, if any one either will not voluntarily *X. Most convenient Remedy in Controversies.* make good, what he has *covenanted* to do, or does another an *Injury*, or if upon any other account some Dispute arise; there's no man has Authority to force the naughty person to perform his Bargain, to cause him to repair the Wrong, or to determine the Controversie; as there is in Communities, where I may have recourse for help to the Civil Magistrate. And here because Nature allows not that upon every occasion we should be take our selves to *violent means*, even though we are very well satisfied in our Consciences of the Justice of our Cause; therefore we are first to try, whether the matter may not be composd after a milder way, either by an amicable reasoning of the point in question between the parties themselves, or by a free and unconditional Compromise, or *Reference* of the Debate to *Arbitrators*. And these Referees are to manage the matter with an equal regard to both sides, and in giving their Award they are to have an Eye only to the Merits of the Cause, setting aside all partial Animosity or Affection. For which reason it is not best to chuse any man an Arbitrator in such a Cause, wherein [217] he shall have greater hopes of Profit or particular Reputation, if one party get the better rather than the other; and consequently where it is his Interest that that Litigant at what rate soever gain the point. Hence also there ought not to be any under-hand Bargain or Promise between the Umpire and either of the Parties by which he may be obliged to give his Judgment on the behalf of the same. Now in this affair, if the Arbitrator cannot find out the Truth in Fact neither from the Confessions of the parties, nor from apparent Writings nor any other manifest Arguments and Signs; he must then inform himself by the Testimonies of Witnesses, whom though the Law of Nature obliges, especially being usually reinforc'd by the Religion of an Oath, to speak the Truth, yet it is most safe not to admit the Evidence of such as are so peculiarly affected to one party, that their Consciences will be forc'd to struggle with the Passions either of Love, Hatred, desire of Revenge, any violent Affection of the Mind, or else some strict Friendship or Dependence; all or any of which every man is not endued with Constancy enough to surmount. Controversies also are frequently made an end [218] of by the *Interposition* of the

common *Friends* of each party, which to do is deservedly accounted among the best Actions of a good man. For the rest, in this *State*, when Performances are not made good by either side of their own accord, the other seeks his Due after what manner he likes best.

NOW though it was the Will of Nature itself that there should be a sort of *Kindred* between all Mankind, by virtue of which they might be oblig'd at least not to hurt one another, but rather to assist and contribute to the Benefit of their Fellows: Yet this Alliance is found to be but of little force among those who live promiscuously in a State of *Natural Liberty*, so that any man who is not under the same Laws and possibilities of Coercion with our selves, or with whom we live loosely and free from any Obligation in the said State, is not indeed to be treated as an *Enemy*, but may be look'd upon as a *Friend* not too freely to be *trusted*. And the reason hereof is, that Man not only is accomplish'd with an Ability to do mischief to his like, but for many causes has also a Will so to do: For some the Pravity of their Natures, Ambition or Covetousness [219] incite to make insults upon other men; others, though of a meek and modest Nature, are forc'd to use Violence either in defending themselves from imminent Outrages, or by way of Prevention. Beside that a Rivalship in the desire of the same thing in some and in others Competition for Priority in one Quality or other shall set them at Variance. So that in this State 'tis hardly possible but that there should be perpetual Jealousies, Mistrusts, Designs of undoing each other, Eagerness to prevent every one his Fellow, or Hopes of making addition to his own Strength by the Ruin of others. Therefore as it is the Duty of every *honest* man to be content with his own, and not to give provocation to his Neighbor, nor to covet that which is his; so also it behoves him who would be as *wary* as is needful, and who is willing to take care of his own good, so to take all men for his Friends, as not to suppose yet but that the same may quickly become his Enemies; so to cultivate Peace with all men, as to be provided though it be never so soon chang'd to Enmity. And for this reason happy is that Common-wealth where in times of Quietness consideration is had of requisites for War.

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## CHAP. II.

*Of the Duties of the Married State.* ↪

AMONG those States of Man which we have call'd *Adventitious*, or in *I. Matrimony*. which a man is plac'd by some antecedent humane Act, *Matrimony* obtains the first place. Which also is the chief Representation of the Social Life, and the Seed-Plot of Mankind.

AND first it is certain, that that ardent Propensity found to be in both *II. Instituted by Nature*. Sexes to each other was not implanted in them by the All-wise Creator merely that they might receive the Satisfaction of a vain Pleasure; for had it been so, nothing could have been the occasion of greater Brutishness and Confusion in the world; but that hereby married persons might take the greater delight in each others Company; and that both might with the more chearfulness apply themselves to the necessary business of Propagation, and go through those Cares and Troubles which accompany the Breeding and Education of Children. Hence it follows, that all Use of [221] the Parts destin'd by Nature for this work is contrary to the Law Natural, if it tends not to this End. On which account also are forbidden all Lusts for a different *Species* or for the same Sex; all filthy Pollutions, and indeed all Copulations out of the State of Matrimony, whether with the mutual Consent of both parties, or against the Will of the Woman.

THE *Obligation* under which we lie to contract *Matrimony* may be *III. Obligation to Matrimony*. consider'd either with respect to *Mankind* in general, or to our particular *Station* and *Relation* in the World. The strength of the former of these consists in this, that the Propagation of Mankind neither can nor ought to be kept up by promiscuous and uncertain Copulations, but is to be limited and circumscribed by the Laws of *Wedlock*, and only to be endeavour'd in a married State: For without this no man can imagine any Decency or orderly Society among men, nor any Observation of the Civil Rules of Life. But men *singly* consider'd, are oblig'd to enter the Matrimonial State, when a convenient occasion offers itself; whereto also not only a mature Age and an Ability for Generation-Work is necessary, but there ought beside to be a possibility of lighting [222] on a person of the like Condition, and a Capacity of maintaining a Wife and the Posterity she shall bring forth; and that the Man may be such a one as is fit to become the Master of a Family. Not still but that any man is excepted from this Duty, who be takes himself to a chaste single life, finding his Constitution accommodated thereto, and that he is capable in that rather than in the married State, to be useful to Mankind or to the Common-wealth; especially also if the Case be so, that there is no fear of the want of People.

BETWEEN those who are about to take upon themselves the Married *IV. Matrimonial Contract*. State, a *Contract* ought and is wont to intervene, which, if it be *regular* and *perfect*, consists of these heads. First, because the Man (to whom it is most agreeable to the Nature of both Sexes that the Contract should owe its Original) intends hereby to get to himself Children of his own, not spurious or supposititious; therefore the Woman ought to *plight her troth* to the Man, that she will permit the use of her Body to no other man but to him; the same on the other hand being required of the Husband. And secondly, since nothing can be more flatly contrary to a Social and Civil Life, [223] than a vagabond, desultory and changeable way of Living without any Home, or certain Seat of his Fortunes; and since the Education of that which is the Off-spring of both, is most conveniently taken care of by the joint help of both Parents together; and whereas continual Cohabitation brings more of Pleasure and Comfort to a Couple who are well match'd, whereby also the Husband may have the greater Assurance of his Wives Chastity: Therefore the Wife does moreover engage

her Faith to her Husband, that she will *always cohabit* with him and join herself in the strictest bond of Society, and become of the same Family with him. And this mutual Promise must be supposed to be made from the Husband to her of the like Cohabitation, the Nature of this State so requiring. But because it is not only agreeable to the natural Condition of both Sexes, that the Case of the Husband should be the more honourable of the two, but that he should also be the Head of the Family, of which himself is the Author; it follows, that the Wife ought to be subject to his Direction in matters relating to their mutual State and to their Household. Hence it is the Prerogative of the Husband to chuse [224] his Habitation, and she may not against his Will wander abroad or lodge apart. Yet it does not seem essentially necessary to Matrimony, that the Man should have power of Life and Death or of inflicting any grievous Punishment, as neither of disposing at his pleasure of all the Estate or Goods of his Wife: but these points may be settled between the Married Couple by peculiar Agreements, or by the municipal Laws of the Place.

NOW though 'tis manifestly repugnant to the Law of Nature, that one *V. One Man and one Woman.* Woman should have more Men than one at once; yet it obtain'd among the *Jews* of old and many other Nations, that one Man might have two or more Wives. Nevertheless let us allow never so little weight to Arguments brought from the Primitive Institution of Marriage deliver'd in Holy Writ, yet it will appear from Right Reason, that 'tis much more decent and fit for one Man to be content with one Woman. Which has been approv'd by the Practice of all the Christians through the World that we know of, for so many Ages.

NOR does the Nature of this strict Union tell us less plainly, that the *VI. Contract perpetual.* Bond of *Matrimony ought to be perpetual*, and not [225] to be unloosed, but by the Death of one Party; except the *essential Articles* of the principal Matrimonial Covenant be violated either by *Adultery* or a wicked and dishonest *Desertion*. But for *ill dispositions* which have not the same Effect with such *lewd Desertion*, it has obtain'd among Christians that a Separation from Bed and Bord shall be sufficient, without allowing any Engagement in a new Wedlock. And one great Reason hereof, among others is this, that too free a Liberty of Divorce might not give encouragement to either party to cherish a stubborn Temper; but rather, that the irremediable State of each might persuade both to accommodate their Humours to one another and to stir them both up to mutual Forbearance. For the rest, if any Essential Article of the Matrimonial Contract be violated, the *wrong'd Party* only is discharg'd from the Oligation; the same still binding the other, so long as the former shall think good.

ANY man may contract with any Woman, where the Law makes no *VII. Moral Impediments.* special Prohibition, if their Age and Constitution of Body render them capable of Matrimony, except some *Moral Impediment* be in the way: presupposing that he or she is under [226] a Moral Impediment, who are already married to some other person.

AND it is accounted a Moral Impediment of lawful Matrimony, if the *VIII. Kinred.* parties are *too nearly allied by Blood or by Affinity*. On which score even by the Law of Nature those Marriages are accounted incestuous and wicked which are contracted between any persons related in the *Ascending or Descending Line*. And for those in the other *transverse Order*, as with the Aunt either on the Fathers or Mothers side, the Sister, &c. As also those in *Affinity*, as, with the Mother-in-Law, Step-Mother, Step-Daughter, &c. not only the positive Divine Law, but that of most civiliz'd Nations, with whom also all Christians agree, does abominate. Nay the Special Laws of many Countries forbid Marriage even in the more remote Degrees, that so they may keep men from breaking in upon those which are more sacred, by setting the Barrier at a greater distance.

NOW as the Laws are wont to assign to other Contracts and Bargains *IX. Ceremony.* some *Solemnities*, which being wanting, the Act shall not be adjudg'd of validity: so also it is in Matrimony, where the Laws require for the sake of Decency and good Order [227] that such or such *Ceremonies* be perform'd. And these though not enjoin'd by the Law Natural, yet without the same those who are Subjects of such a Community, shall not consummate a legal Matrimony; or at least such Contract shall not be allow'd by the Publick to be effectual.

IT is the Duty of a *Husband* to love his *Wife*, to cherish, direct and *X. Mutual Duties.* protect her; and of the *Wife* to love and honour her Husband, to be assistant to him not only in begetting and educating his Children, but to bear her part in the Domestick Cares. On both sides the Nature of so strict an Union requires, that the Married Couple be partakers as well in the good as ill fortune of either, and that one succour the other in all Cases of Distress; moreover, that they prudently accommodate their Humours to each other; in which matter it is the Wives Duty to submit.

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## CHAP. III.

*The Duty of Parents and Children.* ↪

FROM Matrimony proceeds *Posterity*, which is subjected to the *I. Paternal Authority*. *Paternal Power*, the most ancient and most sacred kind of Authority, whereby Children are oblig'd to reverence the Commands of their Parents and to acknowledge their Preeminence.

THE Authority of Parents over their Children hath its chief Foundation *II. Its Foundation twofold*. on a *twofold Cause*. First, because the Law of Nature itself, when Man was made a Sociable Creature, enjoin'd to *Parents the Care of their Children*; and lest they should herein be negligent, Nature implanted in them a most tender Affection for their Issue. Now that this Care may be rightly manag'd, it is requisite that they have a Power of ordering the Actions of their Children for their good, because these as yet understand not for want of Discretion how to govern themselves. Next, this Authority is also grounded on the *tacit Consent of their Off-spring*. For it may [229] fairly be presum'd, that if an Infant at the time of its Birth had the use of Reason, and saw that its Life could not be preserv'd without the Care of the Parents, to which must be join'd a Power over itself, it would readily consent to the same, and desire for itself a comfortable Education from them. And this Power as *actually* in the Parents, then when they breed and nurse up the Child, and from him as well as they can, that he may become a fit Member of Humane Society.

BUT whereas the Mother concurs no less than the Father to the *III. Which Parent has greater Right*. Generation of Children, and so the Off-spring is common to both, it may be enquir'd, *which hath the greatest Right thereto*. Concerning which point we are to distinguish. For if the Issue were begotten *not in Matrimony*, the same shall be rather the Mothers, because here the Father cannot be known except the Mother discover him. Among those also who live in a State of *Natural Liberty* and above Laws, it may be agreed that the Mothers claim shall be prefer'd to that of the Father. But in *Communities* which have their Formation from Men, the Matrimonial Contract regularly commencing on the Mans side, and he becoming [230] the Head of the Family, the *Fathers Right* shall take place; so as, though the Child is to pay the Mother all Reverence and Gratitude, yet is it not oblig'd to obey her, when she bids that to be done which is contrary to the just Commands of the Father. Yet upon the Fathers Decease his Authority over his Child, especially if not of Age, seems to devolve upon the *Mother*, and if she marry again, it passes to the *Step-Father*, he being esteem'd to succeed to the Trust and Care of a Natural Father. And he who shall allow liberal Education to an Orphan or a forsaken Child, shall have a Right to exact *filial Obedience* from the same.

BUT that we may handle more accurately the *Power of Parents over their Children*, we must distinguish first between *Patriarchs*, or Chiefs of *IV. Paternal Authority distinguish'd*. independent Families; and such as are *Members of a Community*: and then betwixt the *Power* of a *Father as Father*, and his *Power as Head of his Family*. And whereas it is enjoin'd by Nature to a *Father as such*, that he bring up his Children well, in order to render 'emfit Members of Human Society, so long as till they can take care of themselves; hence he has so much Power given him over them, [231] as is necessary for this End: which therefore by no means extends itself so as to give the Parents liberty to destroy their unborn Off-spring, or to cast away or kill it when it is born. For tho 'tis true, the Issue is of the Substance of the Parents, yet it is placed in a Human State equal to themselves, and capable of receiving Injuries from them. Neither also does this Authority vest them with the Exercise of a Power of Life and Death, upon occasion of any Fault, but only allows them to give moderate

Chastisement: since the Age we speak of is too tender to admit of such heinous Crimes as are to be punish'd with Death. But if a Child shall stubbornly spurn at all Instruction, and become hopeless of Amendment, the Father may turn him out of his own House, and abdicate or renounce him.

MOREOVER, this Power, thus nicely taken, may be consider'd *V. Childhood.* according to the *diverse Age of Children.* For in their *early years*, when their Reason is come to no maturity, all their Actions are subject to the Direction of their Parents. During which time, if any Estate fall to the young person, it ought to be put into the Possession and under the Administration of the [232] Father, so that the Property be still reserv'd to the Child: though it may be reasonable enough that the Profits arising therefrom should be the Fathers till the other arrive at Manhood. So also any Advantage or Profit, that can be made by the Labour of a Son, ought to accrew to the Parent; since with the latter lies all the care of maintaining and of educating the former.

WHEN Children are come to *Mans Estate*, when they are endued with a *VI. Manhood.* competent share of Discretion, and yet continue themselves a part of the Fathers Family, then the Power which the Father hath comes distinctly to be consider'd, either as he is a *Father*, or as *Head* of the Family. And since in the former Case he makes his End to be the Education and Government of his Children, it is plain, that when they are of *ripe years* they are to be obedient to the Authority of their Parents as wiser than themselves. And whosoever expects to be maintain'd upon what his Father has, and afterwards to succeed to the Possession of the same, is oblig'd to accommodate himself to the Methods of his Paternal Houshold; the management whereof ought to be in his Fathers power.

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PATRIARCHS or *Heads* of independent Families, before they join'd in *VII. Patriarchs Power abridg'd.* Communities, acted in many Cases after the manner of *Princes*, in their Houses. So that their Progeny, who continu'd a part of their Families, paid the highest Veneration to their Authority. But afterward this Family-Royalty (as well as some other private Rights) was moderated for the Benefit and Order of Communities; and in some places more, in others less of Power was left to Parents. Hence we see that in some Governments, Fathers have in Criminal cases a power of Life and Death over their Children; but in most it is not allow'd, either for fear Parents should abuse this Prerogative to the detriment of the Publick, or to the unjust Oppression of those so subjected; or lest through the tenderness of Paternal Affection many Vices should pass unpunish'd, which might break forth one time or other into publick Mischiefs; or else that Fathers might not be under a Necessity of pronouncing so sad and ungrateful a Sentence.

BUT when a *Son or Daughter have left the Fathers House*, and either *VIII. Piety ever due to Parents:* have set up a new Family of their own, or joined to another; the Paternal Authority indeed ceases, [234] but Piety and Observance is for ever due, as being founded in the Merits of the Parents, whom Children can never or very seldom be supposed to requite. Now these Merits do not consist in this only, that a Parent is to his Child the Author of Life, without which no good can be enjoyed; but that they bestow also a chargeable and painful Education upon them, that so they may become useful Parts of Humane Society; and very often lay up somewhat for them in order to make their Lives more easie and comfortable.

AND yet though the Education of Children be a Duty laid upon Parents by Nature itself, it hinders not but that, either in case of Necessity or for the benefit of the *IX. Education entrusted.* Children, the Care thereof may by them be *entrusted with another*; so still that the Parent reserve to himself the Oversight of the person deputed. Hence it is, that a Father may not only commit his Son to the *Tutorage* of proper Teachers; but he may give him

to another man to *adopt* him, if he perceives it will be advantageous to him. And if he have no other way to maintain him, rather than he should die for want, he may *pawn* him, or *sell* him into some tolerable servitude, reserving [235] still a liberty of redeeming him, as soon as either himself shall be able to be at the charge, or any of his Kinred shall be willing to do it. But if any Parent shall inhumanely expose and forsake their Child, he who shall take it up and educate it shall have the *Fatherly Authority* over it; so that the Foster-Child shall be bound to pay filial Obedience to his *Educator*.

AND as the Father ought not to *turn his Child out of his Family*, while *X. Marriage with Parents consent.* he stands in need of Education and Assistance from him, without the most weighty Reasons; so also ought not the Son or Daughter leave the Parents House without his Consent. Now whereas Children frequently leave their Fathers Family on occasion of Matrimony; and since it much concerns Parents what persons their Children are married to, and from whom they are to expect Grand-Children; hence it is a part of filial Duty, herein to *comply with the Will of the Parents*, and not to marry without their Consent. But if any do actually contract Matrimony against their liking, and consummate the same, such Marriage seems not to be void by the Law of Nature, especially if they intend to be no longer burthensom [236] to their Parents, and that for the rest their Condition be not scandalous. So that if in any Country such Marriages are accounted null and void, it proceeds from the Municipal Laws of the Place.

THE Duty of *Parents* consists chiefly in this, that they maintain their *XI. Duty of Parents.* Children handsomly, and that they so form their Bodies and Minds by a skilful and wise Education, as that they may become fit and useful Members of Humane and Civil Society, Men of Probity, Wisdom and good Temper. So that they may apply themselves to some fit and honest way of Living, by which they may as their Genius and Opportunity shall offer, raise and increase their Fortunes.

ON the other hand 'tis the Duty of *Children* to honour their Parents, that *XII. Duty of Children.* is, to give them Reverence not only in outward shew, but much more with a hearty Respect, as the Authors not only of their Lives, but of so many other unvaluable Benefits to 'em; to obey 'em; to be assistant to 'em to their utmost, especially if they are aged or in want; not to undertake any business of moment, without deferring to their Advice and Opinion; and lastly to bear with Patience their [237] Moroseness and any other their Infirmities, if any such be.

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## CHAP. IV.

### *The Duties of Masters and Servants.* ↩

AFTER Mankind came to be multiplied, and it was found how *I. Servile State how begun.* conveniently Domestic Affairs might be manag'd by the Service of other men; it early became a Practice to *take Servants into a Family* to do the Offices belonging to the House. There at first probably offer'd themselves, driven thereto by Necessity or a Consciousness of their own want of Understanding; and then being assur'd that they should constantly be supplied with Food and Necessaries, they devoted all their Services for ever to their Master. And then Wars raging up and down the World, it grew a Custom with most Nations, that those *Captives* to whom they granted their Lives should be made Slaves ever after, together with the Posterity born of them. Though in many Countries no such Servitude is in use; but all Domestic Offices [238] are perform'd by Mercenary Servants hired for a certain time.

NOW as there are several *Degrees*, as it were, of *Servitude*, so the *II. A temporary Servant.* Power of the Masters and the Condition of the Servants do vary. To a *Servant hired* for a time the Duty of the Master is to pay him his *Wages*; the other making good on his part the *Work* as agreed for: And because in this Contract the Condition of the Master is the better, therefore such Servant is also to pay Respect to his Master according to his Dignity; and if he have done his business knavishly or negligently, he is liable to Punishment from him; provided it go not so far as any grievous Maiming of his Body, much less so far as Infliction of Death.

BUT to such a Servant as *voluntarily offers himself to a perpetual Servitude* the Master is obliged to allow perpetual Maintenance and all *III. A voluntary perpetual Servant.* Necessaries for this Life; it being his Duty on the other hand to give his constant Labour in all Services whereto his Master shall command him, and whatsoever he shall gain thereby he is to deliver to him. In thus doing however the Master is to have a regard to the Strength and Dexterity of his Servant, not exacting rigorously of him what is above [239] his power to do. Now this sort of Servant is not only subject to the Chastisement of his Master for his Negligence, but the same may correct his Manners which ought to be accommodated to preserve Order and Decency in the Family: But he may not fell him against his Will; because he *chose this* for his Master of his own accord, and not another; and it concerns him much with whom he serves. If he have been guilty of any heinous Crime against one not of the same Family, he is subject to the Civil Power, if he live in a Community; but if the Family be independent, he may be expell'd. But if the Crime be against the same Family, it being independent, the Head thereof may inflict even Capital Punishment.

CAPTIVES *in War* being made *Slaves* are frequently treated with *IV. Captive Slaves.* greater Severity, something of a hostile Rage remaining towards 'em, and for that they attempted the worst upon us and our Fortunes. But as soon as there intervenes a *Mutual Trust*, in order to Cohabitation in the Family, between the Victor and the vanquish'd person, all past Hostility is to be accounted as forgiven: And then the Master does wrong even to a Servant thus [240] acquir'd, if he allow him not Necessaries for Life, or exercise Cruelty to him without cause, and much more if he take away his Life. when he has committed no fault to deserve it.

IT is also the Practice to pase away on Property in such *Slaves* who are *V. Alienable.* taken in War, or bought with our Mony, to when we please, after the same manner as we do our other Goods and Commodities. So that the *Body of such Servant* is holden to be a Chattel of his Master. And I yet here *Humanity* bids us not to forget that this Servant is a *Man*

however, and therefore ought not to be treated as we do our Moveables, use 'em or abuse 'em, or destroy 'em as we list. And when we all minded to part with him, we ought not to deliver him into the hands of such as we know will abuse him inhumanely and undeservedly.

Lastly, IT is every where allow'd, that the *Progeny* of Parents who are *VI. Off-spring of Slaves*. Bondmen, are also in a *Servile State*, and belong as Slaves to the Owner of their Mother. Which is justified by this Argument, that whosoever is Proprietor of the Body, is also Proprietor of whatsoever is the Product thereof; and because such Issue had [241] never been born, if the Master had executed the Rigor of War upon the Parent; and for that the Parent having nothing she can call her own, the Off spring cannot otherwise be brought up but at her Masters charge. Whereas therefore the Master afforded such Infant Nourishment, long before his Service could be of any use to him, and whereas all the following Services of his Life could not much exceed the value of his Maintenance, he is not to leave his Master's Service without his Consent. But 'tis manifest, that since these Bondmen came into a State of Servitude not by any fault of their own, there can be no Pretence they should be otherwise dealt withal, than as if they were in the condition of perpetual hired Servants.

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## CHAP. V.

### *The Impulsive Cause of Constituting Communities.* ↪

ALTHOUGH there be hardly any Delight or Advantage, but what may *I. This Enquiry necessary.* be obtain'd from those Duties, of which [242] we have already discours'd: It remains nevertheless that we enquire into the Reasons, why Men, not contenting themselves with those Primitive and small Societies have founded such as are more Ample call'd *Communities*. For from these Grounds and Foundations is to be deduc'd the Reason of those Duties, which merely relate to this Civil State of Mankind.

HERE therefore it suffices not to say, that Man is *by Nature inclin'd to Civil Society*, so as he neither can nor will live without it. For since indeed it is Evident, that man is such a kind of Creature, as has a most tender Affection for himself and his own Good; it is manifest, that when he so earnestly seeks after Civil Society, he respects some particular Advantage that will accrew to him thence. And although without Society with his Fellow-Creatures, Man would be the most miserable of all Creatures; yet since the Natural Desires and Necessities of Mankind might be abundantly satisfied by those Primitive kind of Societies, and by those Duties to which we are oblig'd either by Humanity or Contracts; it cannot immediately be concluded from this Natural Society between Man and Man, that [243] his Nature and Temper does directly encline him to the forming of Civil Communities.

WHICH will more evidently appear; if we consider, what Condition *III. Twofold Enquiry.* Mankind is plac'd in by the Constitution of *Civil Communities*: What is requir'd that he may be truly said to be a [Political Animal or] *Good Patriot and Subject*; and lastly, what *Aversion* may be discover'd in the Nature of Man to living in such *Civil Community*.

WHOSOEVER becomes a *Subject*, immediately loses his Natural *IV. Natural State.* Liberty, and submits himself to some Authority, which is vested with the Power of Life and Death; and by the Commands of which, many Things must be done, which otherwise he would have been no ways willing to do, and many Things must be let alone, to which he had a strong Inclination; Besides most of his Actions must terminate in the Publick Good, which in many Cases seems to clash with private mens Advantage. But man by his Natural Inclinations is carried to this, to be subject to no one, to do all things as he lists, and in every thing to consult his single Advantage.

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BUT we call him a [*Political Animal* or] *True Patriot*, and Good *V. Civil State.* Subject, who readily obeys the Commands of his Governors; who endeavours with his utmost to promote the Publick Good, and after that regards his Private Affairs; nay more who esteems nothing profitable to himself, unless the same be likewise profitable to the Community; lastly, who carries himself fairly towards his Fellow-Subjects. But there are few men to be found, whose Tempers are naturally thus well inclin'd. The greater part being restrain'd merely for fear of Punishment; and many continue all their Lifetimes ill Subjects and unsociable Creatures.

FURTHERMORE, there is no Creature whatsoever more fierce or *VI. Civil State.* untameable than Man, or which is prone to more Vices that are apt to disturb the Peace and Security of the Publick. For besides his inordinate Appetite to Eating, Drinking, and Venery, to which Brute Beasts are likewise subject, Mankind is inclin'd to many Vices, to which

Brutes are altogether Strangers; as is the insatiable desire and thirst after those things which are altogether superfluous and unnecessary, and above all to that worst of Evils, Ambition; [245] also a too lasting resentment and memory of Injuries, and a desire of Revenge increasing more and more by length of time; besides an infinite diversity of Inclinations and Affections, and a certain Stiffness and Obstinacy in every one to indulge his own particular Humour and Fancy. Moreover, Man takes so great delight in exercising his Cruelty over his Fellow-Creatures, that the greatest part of the Evils and Mischiefs, to which Mankind is obnoxious, is wholly owing to the merciless Rage and Violence of other Men.

THEREFORE the genuine and principal Reason which induc'd Masters *VII. Reason Change.* of Families to quit their own natural Liberty, and to form themselves into Communities, was; that they might provide for themselves a Security and Defence against the evils and mischiefs that are incident to Men from one another. For as, next under God, one Man is most capable of being helpful to another; so the same may be no less prejudicial and hurtful to one another. And those persons have entertain'd a right conception of the Malice of Men, and the remedy thereof, who have [246] admitted this as a common Maxim and Proverb; that unless there were Courts of Judicature, one Man would devour another. But after that by the Constituting of Communities, Men were reduc'd into such an Order and Method, that they might be safe and secure from mutual Wrongs and Injuries among themselves, it was by that means provided, that thereby they might the better enjoy those Advantages, which are to be reap'd and expected from one another, to wit, that they might from their Childhood be brought up and instructed in good Manners, and that they might invent and improve several kinds of Arts and Sciences whereby the Life of Man might be better provided and furnished with necessary Conveniences.

AND the Reason will be yet more cogent for the Constituting of *VIII. Farther Penalties.* Communities, if we consider, that other means would not have been capable of curbing the Malice of Men. For although we are enjoyn'd by the Law of Nature not to do any injury one to another; yet the respect and reverence to that Law is not of that prevalence as to be a sufficient security for Men to live altogether quietly and undisturb'd [247] in their Natural Liberty. For although, by accident, there may be found some few Men of that moderate quiet temper and disposition, that they would do no injury to others, though they might escape unpunish'd; and there may be likewise some others that in some measure bridle in their disorderly Affections through fear of some mischief that may ensue from thence; yet on the contrary there are a great number of such, as have no regard at all to Law or Justice, whenever they have any prospect of Advantage, or any hopes, by their own subtle Tricks and Contrivances of being too hard for, and deluding the injur'd Party. And as it behoves every one, that would take care of his own safety, to endeavour to secure himself against this sort of Persons; so no better care and provision can be made than by means of these Communities and Civil Societies. For altho some particular persons may mutually agree together to assist each other; yet unless there be some way found out, whereby their Opinions and Judgments may be united together, and their Wills may be more firmly bound to the performance of what they have agreed upon, it will be in vain for any one to expect and rely upon [248] any certain Succour and Assistance from them.

LASTLY, altho the Law of Nature does sufficiently insinuate unto Men, *IX. Advantage of Penalties.* that they, who do any violence or injury to other Men, shall not escape unpunish'd; yet neither the fear and dread of a Divine Being, nor the stings of Conscience are found to be of sufficient efficacy to restrain the Malice and Violence of all Men. For very many Persons, through the prejudice of Custom and Education, are as it were altogether deaf to the force and power of Reason. Whence it comes to pass, that they are only intent upon such things as are present, taking very little notice of those things which are future; and that they are affected only with those things which make a present impression upon their Senses.

But since the Divine Vengeance is wont to proceed on but slowly; from whence many ill Men have taken occasion to refer their evils and misfortunes to other Causes; especially since they very often see wicked Men enjoy a plenty and abundance of those things wherein the vulgar sort esteem their Happiness and Felicity to consist. Besides, the checks of Conscience, which precede any wicked Action, [249] seem not to be of that force and efficacy, as that Punishment which follows the Commission of the Fact, when, that which is done, cannot possibly be undone. And therefore the most present and effectual Remedy, for the quelling and suppressing the evil Desires and Inclinations of Men, is to be provided by the Constituting of Civil Societies.

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## CHAP. VI.

### *Of the Internal Frame and Constitution of any State or Government.* ↩

THE next Enquiry we are to make, is, upon what bottom Civil Societies *I. Conjunction necessary.* have been erected, and wherein their *Internal Constitution* does consist.

Where in the first place this is manifest, that neither any Place, nor any sort of Weapons, nor any kind of brute Creatures can be capable of affording any better and safer Guard or Defence against the Injuries to which all men are liable by reason of the pravity of Mankind, than is *one Man to another*; but since their Power cannot be extended [250] to Places far remote, it was necessary that those, by whom this End was to be obtain'd, should be firmly *joined together and associated into Communities.*

NOR is it less evident, that the Consent and Agreement of *Two or Three* *II. Numbers necessary.* particular Persons cannot afford this Security against the Violence of other men: Because it may easily happen, that such a number may conspire the ruin of those *few Persons*, as may be able to assure themselves of a certain Victory over them; and 'tis very likely they would with the greater boldness go about such an Enterprise, because of their certain hopes of Success and Impunity. To this end therefore it is necessary that a very considerable *number* of men should unite together, that so the addition of a few men more to the Enemies, may not be of any great moment to determine the Victory on their side.

AMONG those many, which join together in order to this End, it is *III. Agreement to be perpetual.* absolutely requisite that there be *a perfect Consent and Agreement concerning the Use of such Means as are most conducive to the End aforesaid.* For even a great multitude of Men, if they do not agree among themselves, [251] but are divided and separated in their Opinions, will be capable of effecting but very little: Or although they may agree for a certain time, by reason of some present Motion or Disposition of the mind; yet as the Tempers and Inclinations of men are very variable, they presently afterwards may divide into Parties. And although by Compact they engag'd among themselves, that they would employ all their Force for the common Defence and Security; Yet neither by this means is there sufficient Provision made that this Agreement of the Multitude shall be permanent and lasting. But something more than all this, is requisite, to wit, that they who have once enter'd into a mutual League and Defence for the sake of the Publick Good, should be debar'd from separating themselves afterwards, when their private Advantage may seem any ways to clash with the Publick Good.

BUT there are Two Faults, which are chiefly incident to Humane *IV. Faults herein, how remedied.* Nature, and which are the occasion that many who are at their own Liberty, and independent one upon the other, cannot long hold together for the promoting of any Publick Design. The One is the *Contrariety* of [252] Inclinations and Judgments in determining what is most conducive to such an End: to which in many there is join'd a *Dulness* in discerning that Resolution, among several, which may be most advantageous, and a certain *Obstinacy* in defending whatsoever Opinion we have once embrac'd. The other is a certain *Carelessness* and *Abhorrence* of doing that freely, which seems to be convenient and requisite, whensoever there is no absolute Necessity that compels them, whether they will or no, to the performance of their Duty. The First of these Defects may be prevented by a Lasting Uniting of all their Wills and Affections together. And the Latter may be remedied by the constituting of such a Power as may be able to inflict a present and sensible Penalty upon such as shall decline their Contributing to the Publick Safety.

THE Wills and Affections of a great number of Men cannot be united <sup>V. *Union of Wills.*</sup> by any better means, than when every one is willing to submit his Will to the Will of One particular *Man*, or One Assembly of Men, so that afterwards whatsoever he or they shall will or determine concerning any Matters or Things necessary for the Publick [253] Safety, shall be esteemed as the Will of *All* and every particular Person.

NOW such a kind of Power, as may be formidable to All, can by no <sup>VI. *And of Forces.*</sup> better means be constituted among a great Number of Men, than when All and every one shall oblige themselves, to make use of their strength after that manner, as he shall command, to whom All Persons must submit and resign the ordering and direction of their united Forces. And when there is an Union made of their Wills and Forces, then this Multitude of men may be said to be animated and incorporated into a Firm and Lasting Society.

MOREOVER, that any Society may grow together after a Regular <sup>VII. *Other Requisites. One Covenant.*</sup> manner, there are requir'd Two *Covenants*, and One Decree or *Constitution*. For first, of all those many, who are suppos'd to be in a Natural Liberty, when they are join'd together for the forming and constituting any Civil Society, every Person enters into Covenant with each other, that they are willing to come into one and the same lasting Alliance and Fellowship, and to carry on the Methods of their safety and security by a common Consultation and Management among themselves; in a word, [254] that they are willing to be made Fellow-Members of the same Society. To which Covenant, it is requisite, that All and singular Persons do consent and agree, and he that does not give his Consent, remains excluded from such Society.

AFTER this *Covenant* it is necessary, that there should be a <sup>VIII. *Constitution.*</sup> Constitution agreed on by a Publick Decree setting forth, what *form* of *Government* is to be pitch'd upon. For till this be determin'd, nothing with any certainty can be transacted, which may conduce to the Publick Safety.

AFTER this Decree concerning the *Form* of *Government*, there is <sup>IX. *Another Covenant.*</sup> occasion for another *Covenant*, when he or they are nominated and constituted, upon whom the Government of this Rising Society is conferr'd: by which Covenant the Persons that are to Govern do oblige themselves to take care of the common Safety, and the other Members do in like manner oblige themselves to yield Obedience to them; whereby also all Persons do submit their Will to the Will and Pleasure of him or them, and they do at the same time convey and make over to him or them the Power of making use of and applying their united strength as shall seem most convenient for [255] the Publick Security. And when this Covenant is duly and rightly executed, thence at last arises a *Compleat* and *Regular Government*.

A Civil Society and Government thus constituted is look'd upon as if it <sup>X. *A Community defined.*</sup> were but *One Person*, and is known and distinguish'd from every particular man by one *Common Name*, and it has peculiar Rights and Priviledges, which neither Each one alone, nor Many, nor All together can claim to themselves, without him, who is the Supreme, or to whom the Administration of the Government is committed. Whence a Civil Society is defin'd to be, One Person morally incorporated, whose Will containing the Covenants of many united together, is look'd upon and esteem'd as the Will of All, so that he is in a Capacity of making use of the Strength and Power of every particular Person for the Common Peace and Security.

NOW the Will and Intention of any Constituted Government or Society <sup>XI. *How subjected to One.*</sup> exerts itself, as the Principle of Publick Actions, either by one particular Person, or by one Council or Assembly, according as the Power of managing Affairs is

confer'd on him or on such an Assembly. Where the [256] Government of the State is in the power of One man, the said Society is suppos'd to will, whatsoever shall be the Will and Pleasure of that Man, allowing that he is in his perfect Senses; and it being about those Affairs which only relate to Government.

BUT when the Government of a State is conferr'd upon a *Council*, <sup>XII. *How to many.*</sup> consisting of several Men, every one of them retaining his own Natural Free-Will; that regularly is esteem'd to be the Will and Pleasure of the State, whereto the *Major Part* of the Persons, of whom the Council is compos'd, does give their Assent; unless it be expressly declar'd, how great a Part of the Council consenting is requir'd to represent the Will of the whole. But where two differing Opinions are equally ballanc'd on both sides, there is nothing at all to be concluded upon, but the Affair still remains in its former State. When there are several differing Opinions, that shall prevail, which has more Voices than any of the other differing Opinions, provided so many concur therein, as otherwise might have represented the Will and Pleasure of the whole, according to the Publick Constitutions.

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A State or Government being thus constituted, the Party on whom the <sup>XIII. *Various Forms of Governm.*</sup> Supreme Power is conferr'd, either as it is a single Person, or a Council consisting of Select Persons, or of all in General, is call'd a *Monarchy*, an *Aristocracy*, or a *Free State*; the rest are look'd upon as Subjects, or Citizens, the word being taken in the most comprehensive Sense: Although in strictness of speech some call only those Citizens, who first met and agreed together in the forming of the said Society, or else such who succeeded in their Place, to wit, House-holders or Masters of Families. Moreover, Citizens are either Originally so, or such as are born in the Place, and upon that account claim their Priviledges, or else Adscititious, or such as come from forein Parts. Of the first sort are either those who at first were present and concern'd in the forming the said Society, or their Descendents, whom we call *Indigenae* or Natives. Of the other sort are those who come from forein Parts in order to settle themselves there. As for those who come thither only to make a short stay, although they are for that time subject to the Laws of the Place; nevertheless they are not look'd upon as Citizens, but [258] are call'd *Strangers* or Sojourners.

NOT that what we have deliver'd concerning the Original of Civil <sup>XIV. *Government from God.*</sup> Societies, does any ways hinder, but that *Civil Government* may be truly said to be from *God*. For it being his Will, that the Practices of Men should be order'd according to the *Law of Nature*; and yet, upon the Multiplication of Mankind, Human Life would have become so horrid and confused, that hardly any room would have been left for the same to exert its Authority; and seeing the Exercise thereof would be much improv'd by the Institution of Civil Societies; therefore (since he who commands the End, must be supposed to command likewise the Means necessary to the said End,) God also by the mediation of the Dictates of Reason is to be understood antecedently to have will'd that Mankind when they were multiply'd, should erect and constitute Civil Societies, which are, as it were, animated with a Supreme Authority. The Degrees whereof he expressly approves in Divine Writ, ratifying their Divine Institution by Peculiar Laws, and declaring that himself takes them into his especial Care and Protection.

## CHAP. VII.

*Of the several Parts of Government.* ↩

WHAT are the Constituent *Parts* of Supreme Power, and by what *I.* *Methods* it exerts its Force in Civil Societies, may easily be gather'd from the Nature and End of the said Societies.

IN a Civil Society all Persons are suppos'd to have submitted their Will *II. Will of the Supreme to be made known.* to the Will and Pleasure of the Governours, in such Affairs as concern the Safety of the Publick, being willing to do whatsoever they require. That this may be effected, it is necessary, that the Governours do *signifie* to those who are to be govern'd, what their Will and Pleasure is concerning such Matters. And this they do not only by their *Commands* directed to particular Persons about particular Affairs; but also by certain general *Rules*, whence all Persons may at all times have a clear and distinct Knowledge of what they are to do or to omit. By which likewise it is commonly defin'd and determin'd what ought to be look'd upon to be each Man's Right and Propriety, and what does properly belong [260] to Another, what is to be esteem'd Lawful, and what Unlawful in any Publick Society, what Commendable or what Base; what every man may do by his own Natural Liberty, or how every one may dispose and order his own particular Rights towards the advancement of the common Peace and Tranquillity; In fine, what and after what manner every one by Right may lay claim to from another. For it conduces very much to the Peace and Prosperity of any Civil Society, that all these things should be clearly and plainly laid down and determin'd.

MOREOVER, this is the Chief *End* of Civil Societies, that Men by a *III. Penalty.* mutual Agreement and Assistance of one another might be secur'd against the Injuries and Affronts which may and very often do befall us by the Violence of other men. Now that this End may the better be obtain'd by those Men, with whom we are link'd together in the same Society; it is not sufficient, that they should mutually agree among themselves not to injure one Another; nor is it enough that the bare Will and Pleasure of the Supreme Magistrate should be made known to them; but 'tis likewise requisite that there should be a [261] certain Fear and Dread of *Punishment*, and a Power and Ability of inflicting the same. Which *Punishment* or *Penalty*, that it may be sufficient for this End, is to be so order'd; that there may plainly appear a greater Damage in violating the Laws than in observing them; and that so the *Sharpness* and *Severity* of the Penalty may outweigh the *Pleasure* and *Advantage*, gotten or expected by doing the Injury. Because it is impossible but that of two Evils men should chuse the Least. For although there are many men who are not restrain'd from doing Injuries by any prospect of Punishment hanging over their heads, yet that is to be look'd upon as a Case that rarely happens; and such as considering the present Condition and Frailty of Mankind, cannot be wholly avoided.

BECAUSE also it very often happens that many Controversies do arise *IV. Controversies.* about the *Right Application* of the Laws to some particular Matters of Fact, and that many Things are to be nicely and carefully consider'd in order to determine whether such a Fact may be said to be against Law; therefore, in order to the establishment of Peace and Quietness amongst the Subjects, it is the part of the Supreme Governour to [262] take cognisance of and determine the *Controversies* arising between Subject and Subject, and carefully to examine the Actions of Particular Persons which are found to be contrary to Law, and to pronounce and execute such Sentence as shall be Agreeable to the same Law.

BUT that those, who by mutual Agreement have constituted a Civil Society, may be safe against the Insults of Strangers, the Supreme Magistrate has Power to *assemble*, to *unite* into a Body, and to *Arm*, or instead of that to list as many Mercenaries as may seem necessary, considering the uncertain Number and Strength of the Enemy, for the maintaining the Publick Security; and it is likewise entirely left to the Discretion of the same Magistrate to make Peace whenever he shall think convenient. And since both in times of Peace and War *Alliances* and *Leagues* with other Princes and States are of very great Use and Importance, that so the different Advantages of divers States and Governments may the better be communicated to each other, and the Enemy by their joint Forces may be repuls'd with the greater Vigor, or be more easily brought to Terms; it is also absolutely in the Power [263] of the Supreme Magistrate to enter into such *Leagues* and *Treaties* as he shall think convenient to each Occasion, and to oblige all his Subjects to the observation of them, and at once to derive and convey down to the whole Civil Society all the Benefits and Advantages thence arising.

SEEING also the Affairs of any Considerable State as well in time of War as Peace cannot well be manag'd by one Person, without the assistance of subordinate *Ministers* and *Magistrates*, it is requisite that able Men should be appointed by the Supreme Magistrate to decide and determine in his room the Controversies arising between Subject and Subject, to enquire into the Counsels of the Neighbouring Princes and States, to govern the Soldiery, to collect and distribute the Publick Revenue, and lastly in every Place to take special care of the common Good. And from each of these Persons the Supreme Magistrate may and ought to exact the Performance of their Duty, and require an Account of their Behaviour in their respective Stations.

AND because the Concerns of any Civil Society can neither in time of War nor Peace be manag'd without *Expences*, the Supreme Authority has power to compel [264] the Subjects to provide the same. Which is done several ways; either when the Community appropriates a certain Portion of the Revenues of the Country they possess, for this Purpose; or when each Subject contributes something out of his own Estate, and if occasion requires, gives also his Personal Help and Assistance; or when Customs are set upon Commodities importported and exported, (of which the first chiefly affects the Subjects, and the other Foreigners,) Or lastly, when some moderate Tax is laid on those Commodities which are spent.

To conclude, since the Actions of Each Person are govern'd by his own particular Opinion: and that most People are apt to pass such a judgment upon Things as they have been accustomed unto, and as they commonly see other People judg; so that very few are capable of discerning what is just and honest; upon this account therefore it is expedient for any Civil Society, that such kind of Doctrines should be publickly taught, as are agreeable to the Right End and Design of such Societies, and that the minds of the Inhabitants should be seasoned betimes with these Principles. It does therefore belong to the Supreme [265] Magistrate to constitute and appoint fitting Persons to inform and instruct them publickly in such Doctrines.

NOW these several parts of Government are naturally so connected, that to have a Regular Form suitable to any Civil Society, all these Parts thereof ought radically to center in One. For if any Part be wanting, the Government is defective, and incapable of procuring its End. But if these several Parts be divided, so that some of them be radically here, and others there, hence of Necessity will follow an irregular and incoherent State of Things.

## CHAP. VIII.

### *Of the several Forms of Government.* ↪

THE Supreme Power consider'd either as it resides in a single *Man*, or *I. Divers Forms.* in a select *Council* or *Assembly* of men, or of *all* in General, produces diverse Forms of Government.

NOW the Forms of Government are either *Regular* or *Irregular*. Of the *II. Regular and Irregular.* first [266] sort are those, where the Supreme Power is so united in one particular Subject, that the same being firm and entire, it carries on by one *Supreme Will* the whole Business of Government. Where this is not found, the Form of Government must of necessity be *Irregular*.

THERE are Three *Regular* Forms of Government: The First is, when *III. Three Regular Forms.* the Supreme Authority is in *one Man*; and that is call'd a *Monarchy*. The second, when the same is lodg'd in a select *Number* of Men, and that is an *Aristocracy*. The Third, when it is in a *Council* or *Assembly* of Free-holders and Principal Citizens, and that is a *Democracy*. In the First, he who bears the Supreme Rule, is stil'd a *Monarch*, in the Second the *Nobles*, and in the Third the *People*.

IN all these Forms the Power is indeed the same. But in one respect *IV. Forms compared.* *Monarchy* has a considerable Advantage above the rest, that in order to deliberate and determine, that is, actually to exercise the Government, there is no necessity of appointing and fixing certain Times and Places; but he may deliberate and determine in any Place and at any Time; so that a Monarch is always in a readiness to perform the [267] necessary Actions of Government. But that the Nobles and the People, who are not as one Natural Person, may be able so to do, it is necessary that they meet at a certain Time and Place; there to debate and resolve upon all Publick Business. For the Will and Pleasure of a Council, or of the People, which results from the Majority of Votes consenting, can no otherwise be discover'd.

BUT as it happens in other matters, so in Governments, that the same *V. A distemper'd State.* may be sometimes well, and at other times scurvily and foolishly manag'd. Whence it comes to pass, that some States are reputed *Sound*, and others *Distemper'd*: Not that on Account of such kind of Imperfections, there is any necessity of setting up any Peculiar Forms of Government. But these Distempers of Civil Societies sometimes are in the *Persons*, and sometimes in the *Constitution* it self. Whence the First are stil'd Imperfections of the *Men*, and the Latter, Imperfections of the *State*.

THE Imperfections of the Men in a *Monarchy* are, when he who *VI. Monarchy.* possesses the Throne, is not well skill'd in the Arts of Ruling, and takes none or but a very slight Care for the Publick Good, prostituting [268] the same to be torn in pieces and sacrific'd to the Ambition or Avarice of Evil Ministers; when the same Person becomes terrible by his Cruelty and Rage; when also he delights without any real necessity to expose the Publick to Danger; when he squanders away, by his Luxury and profuse Extravagance, those Supplies which were given for the support of the Publick; when he heaps up Treasure unreasonably extorted from his Subjects; when he is Insolent, Haughty or Unjust; or guilty of any other scandalous Vice.

THE Imperfections of the Men in an *Aristocracy* are, when by Bribery *VII. Aristocracy.* and base Tricks Ill men and Fools get into the Council, and Persons much more deserving than they, are excluded; When the Nobles are divided into several Factions; when they

endeavour to make the Common People their Slaves, and to convert the Publick Stock to their Private Advantage.

THE Imperfections of the Men in a *Democracy* are, when Silly and [VIII. Men in a Democracy.](#) Troublesom Persons stickle for their Opinions with great Heat and Obstinacy; when those Excellencies which are rather beneficial than hurtful to the Commonwealth are deprest [269] and kept under; when, through Inconstancy, Laws are rashly establish'd and as rashly annull'd, and what but just now was very pleasing is immediately without any Reason rejected: and when base Fellows are promoted in the Government.

THE Imperfections of the Men, which may promiscuously happen in [IX. Men in any Government.](#) any Form of *Government*, are; when those who are entrusted with the Publick Care, perform their Duty either amiss or slightly; and when the Subjects, who have nothing but the Honour of Obeying, grow restiff and ungovernable.

BUT the Imperfections of any *Constitution* are, when the Laws thereof [X. Faults in a Constitution.](#) are not accommodated to the Temper and Genius of the People or Country; or when the Subjects make use of them for fomenting intestine Disturbances or for giving unjust Provocations to their Neighbours; or when the said Laws render the Subjects incapable of discharging those Duties that are necessary for the preservation of the Publick; for instance, when through their defect the People must of necessity be dissolv'd in Sloth, or render'd unfit for the enjoyment of Peace and Plenty; or when the Fundamental Constitutions are order'd after [270] such a manner that the Affairs of the Publick cannot be dispatched but too slowly and with difficulty.

TO these distemper'd *Constitutions*, men have given certain Names; as [XI. How call'd.](#) a corrupt Monarchy is call'd *Tyranny*, a corrupt Aristocracy is stil'd an *Oligarchy*, or a Rump-Government. And a corrupt *Popular State* is call'd an *Anarchy*, or a Rabble-Government. Although it often happens, that many by these Nick-names do not so much express the Distemper of such a Government, as their own Natural Aversion for the present Governours and Constitution. For often-times he who is dissatisfied with his *King*, or a *Monarchical Government*, is wont to call even a Good and Lawful Prince, a Tyrant and Usurper, especially if he be strict in putting the Laws in Execution. So he who is vex'd because he is left out of the Senate, not thinking himself Inferior to any of the other Counsellors, out of Contempt and Envy he calls them a Pack of assuming Fellows, who though in no respect they excel any of the Rest, yet domineer and lord it over their Equals, nay over Better men than themselves. Lastly, those men who are of a haughty Temper, and who hate a [271] *Popular Equality*, seeing that all People in a Democracy have an equal Right to give their Suffrages in publick Affairs, tho in every Place the common People makes the greatest Number, they condemn that as an *Ochlocracy*, or Government by the Rabble, where there is no Preference given to Persons of Merit, as they, forsooth, esteem themselves to be.

AN *Irregular Constitution* is, where that Perfect Union is wanting, in [XII. An Irregular State.](#) which the very Essence of a Government consists: And that not through any Fault or Male-Administration of the Government, but because *this Form* has been receiv'd as Good and Legitimate by Publick Law or Custom. But since there may be Infinite varieties of Errors in this Case, it is impossible to lay down distinct and certain Species of Irregular Governments. But the Nature thereof may be easily understood by one or two Examples; for instance, if in a State the Nobles and the People are each vested with a Supreme and unaccountable Power; Or if in any Nation the Nobles are grown so great that they are no otherwise under the King, than as unequal Confederates.

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WE call those *Unions* when several Constituted Societies by some special Tie are so conjoin'd, that their Force and Strength may be look'd upon in effect as the United Force and Strength of one Civil Society. Now these Unions may arise two several ways: the one by a *Common Sovereign*, the other by *League* or *Confederacy*. *XIII. Union of several Communities.*

SUCH a *Union* happens, by means of a Common Sovereign, when divers separate Kingdoms, either by Agreement, or by Marriage, or hereditary Succession, or Victory, come to be subject to the same King; yet so that they do not close into one Realm, but each are still govern'd by the same Common Sovereign, according to their own Fundamental Laws. *XIV. Union by a common Sovereign.*

ANOTHER sort of *Union* may happen, when several Neighboring States or Governments are so connected by a perpetual League and Confederacy, that they cannot exercise some Parts of the Supreme Power, which chiefly concern their Defence and Security against Strangers, but by a general Consent of them All: Each Society nevertheless, as to other matters, reserving to its self its own Peculiar Liberty and Independency. *XV. Union by Confederacy.*

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## CHAP. IX.

*The Qualifications of Civil Government.* ↩

IT is always one Prerogative of the Government by which any *I. Supreme Authority.* Community is directed in every form of Commonwealth whatsoever, *to be invested with the Supreme Authority:* whereby it has the regulating of all things according to its own Judgment and Discretion, and acts without dependence upon any Superiour, that can pretend to annul or countermand its Orders.

FOR the same Reason, a Government so constituted remains *II. Unaccountable.* *unaccountable to all the World:* there being no Authority *above* it to punish it, or to examine whether its proceedings are right or no.

AND a *third qualification* of like nature with the former, is, that *III. Above the Laws.* inasmuch as all Civil Laws, of humane Authority, derive both their Beginning and their Continuance from the favour of the Government; it is impossible they should directly *oblige the very Power that makes them;* because the same Power would in consequence [274] be superiour to it self. Yet it is a happy Prospect and a singular advantage to the Laws, when a Prince conforms himself of his own pleasure, as occasion serves, to practise the same things that he commands his Subjects.

THERE is also a peculiar *Veneration* to be paid to the Supreme *IV. Obedience due to it.* Government, under which we live: not only in obeying it in its just Commands, wherein it is a Crime to disobey, but in *enduring its Severities* with the like Patience, as the rigor of some Parents is submitted to by dutiful Children. Wherefore when a Prince proceeds to offer the most heinous Injuries imaginable to his people, let them rather undergo it, or every one seek his safety by flight, than draw their Swords upon the Father of their Country.

WE find, in Monarchies and Aristocracies especially, that the *V. An absolute Monarchy.* Government is sometime *Absolute* and sometime *Limited.* An *absolute* Monarch is one, who having no prescribed form of Laws and Statutes perpetually to go by in the method of his Administration, proceeds entirely according to his own Will and Pleasure, as the condition of Affairs and the publick Good in his judgment seem to require.

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BUT because a single Person may be subject to be mistaken in his *VI. A limited Monarchy.* Judgment, as well as to be seduced to evil Courses in the enjoyment of so vast a Liberty; it is thought convenient by some States, to circumscribe the exercise of this Power within the *limits of certain Laws,* which are proposed to the Prince at his Succession to be the future Rule of his Government. And particularly when any Extraordinary Concern arises, involving in it the Interest of the whole Kingdom, for which there can be no provision extant in the Constitutions foregoing: They then oblige him to engage in nothing without the previous Advice and Consent of the People, or their *Representatives in Parliament;* the better to prevent the danger of his swerving from the Interest of the Kingdom.

WE see likewise a difference in the *right and manner of holding* some *VII. Right and Manner of holding.* Kingdoms, from what it is in others. For those Princes especially as have acquired Dominions by Conquest and made a People their own by force of Arms, can *divide, alienate,* and *transfer* their Regalities at pleasure in the manner of a patrimonial Estate.

Others that are advanced by the Voice of the [276] People, though they live in full possession of the Government during their Reigns, yet have no pretensions to such a Power. But as they attained to the Succession, so they leave it, to be determin'd either by the ancient Custom or the fundamental Laws of the Kingdom: for which reason they are compared by some to Usufructuaries or Life-Renters.

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## CHAP. X.

### *How Government, especially Monarchical, is acquired.* ↩

ALTHOUGH the *Consent of the Subject* is a thing to be required in Constituting of every lawful Government, yet it is not always obtain'd the same way. For as it is sometimes seen, that a Prince ascends the Throne with the *voluntary Acclamations of the People*; so sometimes he makes himself a King by *Conquest*, and brings a People to consent by *Military force*. *I. Consent of the Subject, free or forced.*

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WHICH latter Method of acquiring a Government is called *Conquest*: it happening, as often as a Victorious Prince, having Fortune on his side and a just Cause, reduces a People by his Arms to such Extremities, as compel them to receive him for their Governour. And the Reason of this Title is derived, not only from the Conquerours Clemency in saving the Lives of all those whom in strictness of War he was at liberty to destroy, and instead thereof laying only a lesser inconvenience upon them; but likewise from hence, that when a Prince will choose to go to War with one that he has injured, rather than he will condescend to satisfie him in a just and equal manner; He is to be presum'd to cast himself upon the fortune of War with this intention, that he does beforehand *tacitly* consent to accept of any Conditions whatsoever shall befall him in the Event. *II. Of Conquest.*

AS for the *Voluntary Consent of the People*, a Government is acquired by it, when in an *Election* the People either in order to their Settlement, or at any time after, do nominate such a One to bear that Office as they believe is capable of it. Who, upon presentation of their Pleasure to [278] him, accepting it; and also receiving their promises of Allegiance; he thereby actually enters upon the Possession of the Government. *III. Election.*

BUT betwixt this Election of a new Prince and the Death of the former, there uses in Monarchies that are already fix'd and settled to intercede an *Interregnum*; which signifies an imperfect kind of State, where the People keep together merely by Virtue of their *Original Compact*: Only that this is much strengthened by the common Name and love of their Country, and the settlement of most of their Fortunes there; whereby all good Men are obliged to preserve the Peace with one another, and study to restore their fallen Government again as soon as they can. Yet to prevent the mischiefs which are apt to arise in *Interregnums*, it is very convenient the Law should provide *Administrators*, to manage the publick Affairs during the vacancy of the Crown. *IV. An Interregnum.*

NOW tho, as is said, in some Monarchies; as every King dies, they proceed again to a *new Election*: Yet in others the Crown is conferred upon Conditions to descend to certain Persons *successively*, (without any intervening Election) for all time to come. [279] The right to which Succession may either be determined by the *order of the Prince*, or the *order of the People*. *V. Succession.*

WHEN Princes hold their Crowns in the manner of a *Patrimony*; they have the liberty of *disposing of the Succession as themselves please*. And their declared Order therein, especially if their Kingdoms are of their own founding or acquiring, shall carry the same force with the last Testament of any private Man. They may divide, if they please, their Kingdom amongst all their Children, not so much as excepting the Daughters. They may, if they think fit, make an Adoptive or their Natural Son their Heir, or one that is not in the least akin to them. *VI. Devisable when.*

AND when such an Absolute Monarch as this dies, without leaving VII. Succession upon an Intestate. order for the Succession; It is to be presumed he did not thereby intend the Kingdom should Expire with himself; but *first*, that it should devolve to his Children (before all others), because of the natural Affection of Parents to them. *Then*, That the same Monarchical Government shall continue, which he recommended by his own Example. *That* the Kingdom be kept undivided, as one Realm; because any Division [280] thereof must give occasion to great Troubles both among the Subjects and the Royal Family. *That* the Elder reign before the Younger, and the Male before the Female in the same Line: And lastly, *That* in default of Issue the Crown shall devolve upon the next in Blood.

BUT in those Monarchies, whose Constitution from the very Beginning VIII. Succession in the People. was founded upon the voluntary Choice of the People, there the *Order of Succession must have an Original Dependence upon the Will of the same People*. For if, together with the Crown, they did confer upon the Prince the Right of appointing his Successour; whosoever shall be nominated to the Succession by him, will have all the Right to enjoy it. If they did not confer it upon the Prince, it is to be understood as reserved to themselves. Who, if they pleased, might make the Crown Hereditary to their Princes Family: either prescribing the Order of Succession to be like other ordinary *Inheritances*, so far as can consist with the Publick Good; or set the same under any peculiar necessary *Limitations*.

WHEN a People have barely confer'd upon their King an hereditary IX. Of Hereditary Kingdoms. Right, with [281] out any thing farther express'd; Though 'tis true it may seem to be intended, that the Crown shall pass to the Heirs in the same common order of Descent as private *Inheritances* do; Yet the publick Good requires, that the sense of such a Publick Act shall be taken under some *restrictions*, notwithstanding their not being particularly express'd. As 1. It is supposed, *That* the Kingdom shall continue inseparable, as one Realm. 2. *That* the Succession shall go to the Descendants of the first Prince of the Line. Excluding 3. Illegitimate and adopted Children, with all that are not born according to the Laws of the Realm. 4. *That* the Heirs male be preferr'd before the female in the same Line, tho their Inferiours in Age. And 5. *That* each Prince esteem his Succession, not as the Gift of his Predecessor, but as the bounty of the People.

NOW because after a long Descent of Princes, there may easily arise X. A Lineal Succession. Controversies almost inextricable, about the person of the Royal Family, who approaches nearest in kindred to the Prince deceased; therefore, for prevention of such, in many Kingdoms they have introduced a *lineal Succession*, of this nature; *That* as every one descends from the Father of the Stem [282] Royal, they compose as it were a perpendicular Line; from whence they succeed to the Crown, according to the priority of that Line to others: And though perhaps the nearest of Kin to the Prince last deceased may stand in a *new* Line, different from that of *His*; Yet there is no passing out of the old Line thither, till Death has exhausted the same.

THE Series of Succession most regardable, are those two, deduced XI. By the Fathers side, or the Mothers. from the several *families of the Father and the Mother*: the Relation whereof is distinguish'd in the Civil Law by the names of *Cognition* and *Agnation*. The First does not exclude the Women, but only postpones them to Males in the same Line; for it recurs to them in the case of the others *default*. But by the second, both the Women and all their Issue, even Males, are excluded for ever.

WHEN in a Patrimonial Kingdom there arises a Dispute concerning the XII. Differences about Succession, how to be. Succession, the most adviseable way to determine it, is to put it to the Arbitration of some of the Royal Family; And where the Succession originally depended upon the Consent of the People, there their Declaration upon the matter will take away the doubt.



## CHAP. XI.

*The Duty of Supreme Governours.* ↪

IF we consider what is the End and Nature of Communities, and what I. the parts of Government, it will be easie from thence to pass a judgment upon the Rules and Precepts wherein consists the Office of a Prince.

BEFORE all things it is requisite, that he apply himself with the utmost Diligence to the study of *whatever may conduce to give him a perfect comprehension of the Affairs belonging to a person in his Station*: because no man can manage a place to his Honour, which he does not rightly understand. He is therefore to be sequestered from those remote and foreign Studies, which make nothing to this purpose. He must abridge himself in the Use of Pleasures and vain Pastimes, that would divert his Attention from this Mark and End. And for his more *familiar Friends*, instead of Parasites, and Triflers, or such as are accomplish'd in nothing but Vanities, (whose Company ought utterly to [284] be rejected;) Let him make choice of men of Probity and Sense, experienced in Business and skilful in the ways of the World: being assured, that until he throughly understands as well the Condition of his own State as the disposition of the People under him, he will never be able to apply the general Maxims of *State-Prudence*, to the Cases that will occur in Government, in such a manner as they ought. More especially let him study to be excellent in Virtues, that are of the greatest use and lustre in the exercise of his vast Charge; and so compose the manners of his Life, that they may be answerable to the height of his Glory.

THE most general Rule to be observed by Governours, is this; *The Good of the Publick is the Supreme Law of all*. Because in conferring the Government upon them, what is there else intended, but to secure the common End for which Societies were instituted in the beginning? From whence they ought to conclude, that whatsoever is not expedient for the Publick to be done, neither is it expedient for themselves.

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AND it being necessary in order to preserve a people at peace with one another, that the Wills and Affections of them should be disposed and regulated, according as it is most proper for the Publick Good; There ought to be some *suitable Laws* for the purpose prescribed by Princes, and also a *publick Discipline* established with so much strictness, that Custom as well as fear of Punishment may be able to confine men to the practice of their their Duty. To which end it is convenient to take care, that the Christian Religion after the most pure and most uncorrupt way be profess'd by the Subjects of every Realm or Community; and that no Tenets be publickly taught in the Schools, that are contrariant to the designs of Government.

IT will conduce to the advancement of the same end, if in the Affairs which are wont to be most frequently negotiated betwixt the Subjects, the Laws which are prescribed are *clear, and plain*; and *no more in Number* than will promote the good of the Kingdom and its Members. For considering that men use to deliberate upon the things they ought or ought not to do, more by the strength of their natural Reason, [286] than their understanding in the Laws; whenever the Laws do so abound in Number as not easily to be retain'd in Memory, and are so particular in their Matter, as to prohibit things which are unprohibited by the light of Reason, it must certainly come to pass, that innocent

Persons, who have not had the least ill intention to transgress the Laws, will be many times unknowingly hamper'd by them, as by Snares, to their unreasonable prejudice, against the very end of Societies and Government.

YET it is in vain for Princes to make Laws, and at the same time suffer *VI. And duly executed.* the violation of them to pass with impunity. They must therefore *cause them to be put in Execution*, both for every *honest Person* to enjoy his Rights without Vexation, Evasions, or Delays; and also for every *Malefactor* to receive the punishment due to the quality of his Crime, according to the intention and malice in the committing it. They are not to extend their Pardons to any without sufficient reason. For it is an unjust practice, which tends greatly to irritate the minds of people against the Government, not to use Equality (all Circumstances considered) towards persons [287] that are Equal in their deservings.

AND as nothing ought to be Enacted under a *Penalty*, without the *VII. Penalties.* consideration of some *profit* to the Common-wealth; So in the *fixing of Penalties proportionably to that end*, it is fitting to observe a Moderation; with care, that the damage thence arising to the Subject on the one hand, exceed not the advantage that redounds to the Common-wealth on the other. In sine, to render Penalties effectual in obtaining the end intended by them, it is clear they should still be magnified to such a degree, as by their severity to out-weigh the contrary gain and pleasure that is possible to proceed from choosing the Crime.

MOREOVER, inasmuch as the design of people in incorporating *VIII. Injuries.* together in a Common-wealth, is their security from harms and Violence; it is the Duty of the Supreme Magistrate to *prohibit any injury of one Subject to another* so much the more severely, because by their constant Cohabitation in the same place they have the fairer opportunities to do them or to resent them. Remembring, that no distinctions of Quality or Honour derive the least pretence to the greater to insult over [288] the less at their pleasure. Neither has any Subject whatsoever the liberty to seek his satisfaction for the Injuries, he presumes are done him, in the way of a private Revenge. For the design of Government is destroy'd by such a Proceeding as this.

AND although there is no one Prince, how ingenious soever in *IX. Ministers of State and Judges.* Business, that is able in his own person to manage all the Affairs of a Nation of any considerable extent, but he must have *Ministers to participate with him in his Cares and Counsels*; Yet as these Ministers borrow their Authority, in every thing they do, from Him; So the praise or dispraise of their Actions returns finally upon Him also. For which reason, and because according to the quality of Ministers, business is done either well or ill, there lies an Obligation upon a Prince to advance honest and fit Persons to Offices of Trust in the Government, and upon occasion to examine into the proceedings of the same; and as he finds them deserving, to reward or punish them accordingly, for an Example to others to understand, that there is no less fidelity and diligence to be used in managing the publick Business, than one would practise in any private Affair that relates to himself. [289] So when wicked people are encouraged to put their Inclinations in practice upon the hopes of escaping very easily unpunish'd under *Judges that are subject to Corruption*; it' is a Prince's Duty to animadvert severely upon such Judges, as Favourers of Vice, against the safety of the Subject and quiet of the Nation. And though the dispatching of the *ordinary* affairs may be committed to the Ministers care; yet a Prince is never to refuse to lend his Ear with Patience, when his Subjects present him with their Complaints and Addresses.

FOR Taxes and the like Duties, to which Subjects are upon no other *X. Of Taxes and Duties.* account oblig'd, than as they are necessary to support the publick Charge in Peace and War; it deserves to be the Care of Princes not to extort more, than either the

Necessities or signal advantages of the Nation require; and so to alleviate and soften them in the ways and means of laying them upon the Subject, that every one may find their weight as little offensive as it can possibly be; being charg'd upon particulars in a fair and Equitable proportion, without favouring of one to deceive or oppress another. And let not the Money [290] that is so rais'd be consum'd by Princes in Luxury and Vanities, or thrown away in Gifts and needless Ostentation; but laid out upon the occasions of the Nation: always foreseeing that their Expences be made to answer to their Revenue; and in case of any failure in the latter to do it, that they attempt a Remedy by means of Frugality and in retrenching unnecessary Expences.

IT is true, Princes have no Obligation upon them to find maintenance for their Subjects, otherwise than Charity directs them to a particular Care of those, for whom it is impossible to subsist of themselves by reason of some Calamity undeserved. Yet because the Money, that is necessary for the conservation of the Publick, must be raised out of the Subjects Estates, in whose Wealth and Happiness the strength of a Nation does consist; it therefore concerns Princes to use their best Endeavours, *that the fortunes of their Subjects improve and flourish*: as particularly by giving Orders, how the fruits of the Earth and Water may be received in the most plentiful measure; and that men employ their Industry on things of Domestick growth, not purchasing at their [291] Expence that Labour from others, which themselves are able conveniently to undergo. *That* all Mechanick Arts and Merchandise, and in Maritime places, Navigation be encourag'd, as of great consequence to the Common-wealth. That Idleness be banish'd from amongst them, and Frugality be restored by *Sumptuary Laws*, contrived on purpose to avoid superfluous Expences; especially those, which occasion the transporting of Riches out of the Kingdom. Whereof if the Prince is pleas'd to set an Example in his own Person, it is likely to prove of greater force than all the *Laws* besides.

*XI. Interest of the Subject to be advanc'd by Princes.*

FINDING also that the internal Health and Strength of a Nation proceeds in a particular manner from the *Unity that is between the People*; and according as this happens to be more and more perfect, the power of the Government diffuses it self through the whole Body with so much the greater Efficacy, it is yet a further care incumbent upon Princes, to hinder both the growth of *publick Factions* as well as of *private Associations* of particular persons by Agreements amongst themselves. As also to see, that neither all nor any of the Subjects, under any pretence whatsoever [292] Religious or Civil, do retain a dependence upon a Stranger, within or without the Kingdom, more than upon their lawful Prince: in whom alone, before all others, all their Expectations ought to be reposed.

*XII. Factions and Parties.*

Lastly, SINCE the Peace of Nations in reference to one another depends upon no very great Certainties; it ought to be the endeavour of Princes to encourage *Valour and Military Studies* in their Subjects; having all things, as Fortifications, Arms, Men, and Money (which is the Sinews of Business) ready prepared in case of an *Assult* to *repel* it: though not voluntarily to *begin one* upon another Nation, even after sufficient Cause of War given, unless invited by a very safe opportunity and the Publicks being in a good Condition conveniently to go through with the undertaking. For the same Reason it is proper to observe and search into the *Counsels* and Proceedings of Neighbours with all exactness; and to enter with them into *Leagues and Alliances* as prudently, as so great a Concern requires.

*XIII. Of War and Peace with foreign Nations.*

## CHAP. XII.

*Of the Special Laws of a Community relating to the Civil Government.* ↩

IT now remains, that we take a View of the particular parts of Supreme *I. What they are.* Government, together with such Circumstances thereunto belonging as we find are worthy to be observ'd. In the first place there are the *Civil Laws*, meaning the Acts and Constitutions of the highest *Civil Authority* for the time being, ordained to direct the Subject in the course of his Life as to what things he ought to do, and what to omit.

THEY are called *Civil*, upon two accounts especially: that is, either in *II. Why so call'd.* regard of their *Authority* or their *Original*. In the first sense, all manner of Laws whatsoever, of force whereby to try and decide Causes in a Court of Civil Judicature, let their *Original* be what it will, may pass under that denomination. In the other we call only those Laws *Civil*, which derive their *Original* from the Will of the [294] Supreme Civil Government, treating upon the Subject of such things, as neither the Laws of God or Nature have determined; yet are found to conduce much to the profit of Particular Commonwealths.

AS nothing therefore ought to be made the Subject of a Civil Law, but *III. The Law of Nature, to be reinforced by them.* what relates to the good of the Common-wealth that does ordain it; So it seeming in the highest degree expedient towards the beauty and ease of living in a Community, that in particular *the Law of Nature should be diligently observ'd by all people*; it lies upon Supreme Governours to authenticate the said Law with the Force and efficacy of a Civil Law. For since indeed the wickedness of a great part of Mankind is arriv'd to a degree, which neither the apparent Excellency of the Law of Nature nor the fear of God himself is sufficient to restrain; the most effectual Method remaining, to preserve the happiness of living in a Community, is, by the authority of the Government to inforce the *Natural* by the *Civil Laws*, and supply the Disability of the one with the Power of the other.

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NOW the *Force and Power, which is in Civil Laws*, consists in this; that *IV. The Penal Sanction.* to the Assertory part of the Statute, concerning Things to be done or omitted, there is annex'd a *Penal Sanction*, rehearsing the Punishment that is appointed to attend a man in a Court of Justice for omitting what he ought to do, or doing what he ought to omit. Of which kind of Sanctions the Laws of Nature being of themselves destitute, the breaking of them does not fall under the punishment of any Court in this World; but yet is reserv'd for the Judgment of the Tribunal of God.

MORE particularly it is inconsistent with the nature of living in a *V. Of Actions.* Community, for every one, what he accounts to be his due, to exact it of his own proper Violence. So that here the Civil Laws come in to the assistance of the Natural. For they allow the Creditor the benefit of an *Action*, whereby the Debt that is owing to him by Virtue of a Law of Nature, with the help of the Magistrate, may be demanded and recovered in a Court of Justice, according to the Course of the Laws of the Kingdom: whereas without such enforcement of the said Laws, you can extort nothing from a Debtor against [296] his Will; but must entirely depend upon his Conscience and Honour. The Civil Laws admit of *Actions* chiefly in the Case of those Obligations, that are contracted betwixt Parties by an express Bond or Covenant. For as to other Affairs, where the Obligation arises from some indefinite Duty of the Law of Nature, the Civil Laws make them not subject to an Action at all; on purpose to give occasion to good men to exercise their Virtue, to their more extraordinary

Praise, when it is evident they do that which is just and honest without Compulsion. Beside that frequently the point in question may not be of Consequence enough to trouble a Court about it.

AND whereas the Law of Nature commands many things at large, in an indefinite manner, and leaves the application of them to every one in his own breast; the Civil Laws, being careful of the Honour and Tranquillity of the Community, prescribe a *certain time, manner, place, persons, and other circumstances*, for the due prosecution of those Actions, with the proposal of a Reward upon occasion to encourage people to enter upon them. And when any thing is obscure in the Law of [297] Nature, the Civil Laws *explain* it. Which Explication the Subjects are obliged to receive, and follow, although their own private Opinions do otherwise lead them to a contrary sense.

So that there being thus a number of Actions left by the Law of Nature to be considered according to the will and judgment of each person, which nevertheless in a Common-wealth ought to be regularly stated for the greater Decency and Quiet of the same; it uses to be the care of the Civil Laws to reduce all those Actions, with their respective Concerns, to a *proper Form*; as we see it is in Wills, Contracts, and divers other Cases: from whence it comes, that they limit us (as they do) in the exercise of several Rights, to the use whereof the Law of Nature left us much at liberty.

FOR so far as the Civil Laws do not openly contradict the Law of God, the Subject stands *oblig'd to obey them*, not merely out of fear of Punishment, but by an internal Obligation confirm'd by the Precepts of the Law of Nature it self. This being one of them, amongst others, that *Subjects ought to obey their lawful Sovereigns*.

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NAY, it is their Duty to obey even the *personal Commands* of their Sovereigns, no less than they do the Common Laws of the Kingdom. Only here they must observe, whether the thing commanded is to be done by them *as in their own Names*, in the quality of an Action belonging *properly to Subjects to do*; or whether it be barely to undertake the *Execution* of an Affair for the Sovereign, in consequence of that Authority which he has to command it. In the latter Case, the Necessity that is imposed upon the Subject excuses him from Sin, though the Fact it self is a Sin in the Sovereign to command. But in the other, for a Subject as in his own name to do a thing which is repugnant to the Laws of God and Nature, it can never be lawful. And this is the reason, why if a Subject takes up Arms in an unjust War at the Command of his Sovereign, he sins not: Yet if he condemns the Innocent, or accuses and witnesses against them falsely upon the like Command, he sins. For as he serves in War, he serves in the name of the Publick: but acting as a Judge, Witness, or Accuser, he does it in his Own.

## CHAP. XIII.

*Of the Power of Life and Death.* ↪

THE Civil Government, that is Supreme in every State, has a Right *I. Twofold.* over the Lives of its Subjects, either *indirectly*, when it exposes their Lives in defence of the Publick; or *directly*, in the punishment of Crimes.

FOR when the force of Foreigners in an Invasion (which often happens) *II. Indirectly.* is to be repell'd by Force; Or, that we cannot without the use of Violence obtain our Rights of them; it is lawful for the Government, by its Supreme Authority, to compel the Subjects to enter into its Service: not thereby purposely intending their Death, only their Lives are exposed unto some Danger of it. On which occasions that they may be able to behave themselves with Skill and Bravery, it is fit they should be exercised and prepared for the purpose. Now the Fear of Danger ought not to prevail with any Subject to render himself incapable of undergoing the duties of a Soldier. Much less ought [300] it to tempt a man that is actually in Arms to desert the Station appointed him: who ought to fight it out to the last drop of his blood, unless he knows it to be the will of his Commander that he should rather preserve his Life than his Post, or if he be certain that the maintaining of such Post is not of so great importance, as the preservation of the Lives engaged therein.

THE Government claims a Power to take away the Lives of Subjects *III. Directly.* *directly*, upon the occasion of any heinous Crimes committed by them; whereon it passes judgment of Death by way of *Punishment*. As likewise the Goods and Chattels of Criminals are subject to the Censure of the Law. So that here some General things concerning the nature of Punishments come to be discoursed.

PUNISHMENT is an Evil that is *suffered*, in Retaliation for another *IV. Of Punishments.* that is *done*. Or, a certain grievous pain or pressure, imposed upon a person by Authority, in the manner of a Force, with regard to an Offence that has been committed by him. For although the *doing* of some things may oftentimes be commanded in the place of a Punishment, yet it is upon this consideration, [301] that the things to be done are troublesome and laborious to the doer, who will therefore find his sufferings in the performance of such Action. A *Punishment* also signifies its being inflicted against the wills of people: For it would not otherwise obtain its end; which is, to deter them from Crimes by the sense of its Severity: An effect it never will produce, if it were only such, as an Offender is willing and pleased to undergo. As for other Sufferings, which happen to be undergone in Wars and Engagements; or which one bears innocently, through the means of an Injury done him: the former not being inflicted by Authority, and the other not referring to an antecedent Crime, they do neither of them import the proper sense and meaning of a *Punishment*.

BY our Natural Liberty we enjoy the Priviledge to have no other *V. Inflicted by the Government.* Superiour but God over us, and only to be obnoxious to punishments Divine. But since the introduction of Government, it is allowed to be a branch of the Office of those in whose hands the Government is intrusted, for the good of all Communities; that upon the representation of the unlawful practices of Subjects before them, [302] they shall have power effectually to coerce the same, that people may live together in Safety.

NEITHER does there seem to be any thing of Inequality in this; that *he VI. The Benefit of them.* *who Evil does should Evil suffer*. Yet in the course of Humane Punishments, we are not solely to regard the quality of the Crime, but likewise to have an Eye upon *the*

*benefit of the Punishment.* By no means executing it on purpose to feed the fancy of the party injured, or to give him pleasure in the pains and sufferings of his Adversary: Because such kind of Pleasure is absolutely inhumane, as well as contrary to the disposition of a good fellow-Subject.

THE *Genuine end of Punishments in a State*, is, the Prevention of [VII. The End of them.](#) wrongs and injuries: which then has its effect, when he who does the Injury is amended, or for the future incapacitated to do more, or others taking Example from his Sufferings are deter'd from like Practices. Or, to express it an other way; That which is to be considered in the business of Punishments, is the *Good*, either of the Offender, or the Party offended, or generally of All.

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First, WE consider the *Good of the Offender*: in whose mind the smart [VIII. Upon the Offender.](#) of the Punishment serves to work an alteration towards Amendment, and extinguishes the lust of doing the same again. Divers Communities leave such kind of Punishments as are qualified with this End to be exercised by Masters over the members of their own Families. But it never was thought good they should proceed so far as to Death, because he that is dead is past Amendment.

IN the next Place, a Punishment intends the *good of the party Offended*: [IX. Upon the Party offended.](#) securing him, that he suffer not the like mischief for the future, either from the same or other persons. It secures him from the same; if the mans Life, or, pardoning that, his Power to do hurt be taken from him; or perhaps sad Experience unteaches him the Art he has learnt to Offend. It secures him from others, by being perform'd in the most open and publick manner, accompanied with the circumstances of form and pomp that are apt to strike a dread into as many as behold it.

IN a word, the *good of all people* is intended by the Execution of [X. Upon All.](#) Punishments. For by this means care is taken, that he [304] who has done a mischief to one, shall do no such mischief again to another: the terror of whose Example may also be an Antidote for the rest against the temptations to his Crime: And this Good accreus after the same manner as the former.

BUT if together with the End of Punishments we consider the condition [XI. Internal Acts of the mind, not subject to them.](#) of Humane Nature, we shall see that *all sins are not of that quality, that they must necessarily fall under the Sentence of a Court of Justice.* The *Acts of the mind within it self*, which are merely internal; as thinking upon a Sin with delight, coveting, desiring, resolving to do an ill thing, but without effect; though they should be afterwards made known by mans own Confession, yet are all exempted from the stroke of humane Punishments. For so long as those internal Motions have not occasion'd the prejudice of any, whom does it concern or profit to cause the Author to suffer for the same?

IT would also be over-severe in Laws, to punish the most minute [XII. Nor minute Lapses.](#) Lapses in the actions of men: when in the condition of our Natures the greatest attention cannot prevent them.

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THERE are many instances of Actions more, of which the publick [XIII. And other Actions.](#) Laws dissemble the taking of any Notice, *for the peace of the Nation.* As sometimes, because a good Act shines with greater glory, by being wrought without sight of a Constraint: or perhaps, it is not altogether worth the troubling of Judges and Courts about it: Or, it is a matter extraordinarily difficult to be decided: or, some old inveterate Evil, which

cannot be removed without causing a Convulsion in the State.

ADD hereunto the *Vices of the mind, flowing from the common corruption that reigns in the World:* as Ambition, Avarice, Rudeness, Ingratitude, Hypocrisie, Envy, Pride, Anger, private Grudges, and the like. All these of necessity must be exempted from the cognisance of humane Judicatures, so long as they break not out into publick Enormities: seeing they abound to that degree, that if you should severely pursue them with Punishments, there would be no people left to be commanded.

*XIV. Nor the Vices of the Mind.*

FURTHER, When there have been Crimes committed, which are punishable by the Civil Judicature, it is not always necessary to exert the execution of Justice [306] upon them. For in some cases a *Pardon* may possibly be extended to Criminals, with a great deal of reason, (as it never ought to be granted without it;) and amongst other Reasons, these especially may be some; That the Ends, which are intended by Punishments, seem not so necessary to be attended in the case in question; where a Pardon may produce more good than the Punishment, and the said Ends be more conveniently obtain'd another way. That the Prisoner can alledg those excellent Merits of his own or of his Family towards the Commonwealth, which deserve a singular Reward. That he is famous for some remarkable rare Art or other; or, it is hoped, will wash away the stain of his Crime by performing of some Noble Exploit. That Ignorance did intervene in the Case, though not altogether such as render him blameless: or, that a particular reason of the Law ceases in a fact like his. For these reasons, and oftentimes for the number of the Offenders being very great, Pardons must be granted rather than the Community shall be exhausted by Punishments.

*XV. Of Pardons.*

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To take an Estimate of the *greatness of any Crime*, there is to be considered, first the Object, against which it is committed; How Noble and Precious *that* is. Then the Effects; what Damage more or less it has done to the Commonwealth: and next the pravity of the Author's Intention, which is to be collected by several signs and circumstances: As, whether he might not easily have resisted the Occasions that did tempt him to it; and besides the common reason, whether there was not a peculiar one for his forbearance? What circumstances aggravate the Fact; or, is he not of a Soul disposed to resist the allurements of a Temptation? Enquiring yet further, whether he was not the Principal in the Commission? or was he seduced by the Example of others? and once, or oftner, or after admonitions spent in vain upon him?

*XVI. The greatness of a Crime.*

BUT for the precise *Kind and Measure of Punishment* that is fit to be pronounc'd upon each Crime, it belongs to the Authority of the Government to determine it, with an intire regard to the profit of the Commonwealth. Whence the same Punishment may and oftentimes is imposed upon two *Unequal* Crimes; understanding [308] the Equality that is commanded to be regarded by Judges, to mean the particular case of those Criminals, who being guilty of the same kind of Fact, the one shall not be acquitted and the other condemned without very sufficient reason. And although men ought to shew to one another all the Mercy and Tenderness that may be, yet the good of the Nation and the security of its Subjects require upon occasion, when either a Fact appears most pernicious to the Publick, or there is need of a sharp Medicine to obviate the growing Vices of the Age, that the Government should *aggravate its Punishments:* which deserve at all times to be carried high enough, to be sufficient to controll the Propensity of men towards the Sins those Punishments are levell'd against. And let the Government observe, that no greater punishments be inflicted than the Law assigns, unless the Fact be aggravated by very heinous Circumstances.

*XVII. Measure and kind of punishment.*

MOREOVER since the same Punishment, not affecting all persons alike, meets with various returns to its endeavours to restrain in them the itch of evil-doing, according to the disposition of every one that encounters it; Therefore both in the Designation [309] of Punishments in general and in the Application of them to particulars, it is proper *to consider the person of the Offender*, in conjunction with as many qualities, as concur to augment or diminish the sense of Punishment; as Age, Sex, Condition, Riches, Strength, and the like. *XVIII. The person of the Offender.*

AND as no man in a Court of Civil Judicature can properly be punish'd for another's Crime; so in the *Commission of a Crime by a Community*, whoever does not consent to it, shall not be condemn'd for it; nor suffer the loss of any thing he does not hold in the name and service of the Community; further then it is usual on these occasions for the Innocent to feel the smart of the *Common Misfortune*. When all those are dead, who did consent or assist towards the said Crimes; then the guilt thereof expires, and the Community returns to its pristine Innocency. *XIX. Crimes done by Communities.*

YET it frequently happens, that the Crime of one *shall occasion the inconvenience of many others*, even to the intercepting of a future blessing from them that they justly expected to receive. So when an Estate is confiscated for a Crime done by the Parents, the innocent Children [310] fall into beggery. And when a Prisoner upon Bail makes his escape, the Bail is forced to answer the Condition of the Bond, not as a *Delinquent*, but because it was his voluntary act to oblige himself to stand to such an Event. *XX: Effect of one mans Crime upon another.*

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## CHAP. XIV.

### *Of Reputation.* ↪

REPUTATION in General is that *Value* set upon Persons in the World, *I. Defin'd.*  
by which they are Compared and Equalized, prefer'd or postponed to others.

IT is divided into *Simple*, and *Accumulative*. And may be considered as *II. Divided.*  
to both, either in a People living *at their natural liberty*, or United together under a  
Government.

SIMPLE *Reputation amongst a People in their Natural Liberty* consists *III. Simple  
reputation in a  
State of Nature.*  
chiefly in this; that by their Behaviour they have the Honour to be esteemed  
and treated with as Good men, ready to comport themselves in Society with others according  
[311] to the prescription of the Law of Nature.

THE Praise whereof remains *Entire*, so long as no Evil and Enormous *IV. How  
preserved.*  
fact is knowingly and wilfully done by them, with a wicked purpose, to  
Violate the Laws of Nature towards their Neighbour. Hence every one naturally is to pass for  
a Good Man, until the contrary is proved upon him.

THE sam is *diminish'd* by transgressing against the Law of Nature *V. Diminished,  
and repair'd.*  
maliciously, in any heinous matter: which serves also as a Caution for the  
future, to treat with him that does it with greater circumspection: though this *stain may be  
wash'd off* either by a voluntary Reparation of damages, or the testimonies of a serious  
Repentance.

BUT by a Course of life directly tending to do mischief, and the *VI. Lost, and  
recovered.*  
seeking of advantages to themselves by open and promiscuous injuries  
towards others, the Reputation described is *totally destroy'd*. And until men of this sort  
repent, they may lawfully be used as Common Enemies, by every one, that is in any manner  
liable to come within the reach of their Outrages. Yet it is not impossible even for [312] these  
men, to *retrieve their Credit*; if after they have repair'd all damages and obtain'd their  
Pardons, they abjure their vitious, to embrace for the time to come, an honest course of  
living.

SIMPLE Reputation *amongst those who live together in a Community*, *VII. Under  
Government.*  
is that, by which a man is understood to be of *some Account*; and has never  
been declared a vitious member, by the Laws and Customs of the Place.

HERE therefore the same *perishes*, either by reason *of the course of a VIII. Lost by an  
ill condition of  
life.*  
*man's life*, or in *Consequence of some Crime*. The first is the case of *Slaves*;  
whose Condition, tho naturally having no Turpitude in it, in many Communities places them,  
if possible, below Nothing. As likewise that of *Panders*, *Whores*, and such like, whose lives  
are accompanied with Vice, at least the scandal of it. For tho, whilst the Community thinks fit  
publickly to tolerate, they participate of the benefit of the Common Protection; yet they ought  
however to be excluded the Society of Civil Persons. And we may conclude no less of others,  
who are employ'd in works of Nastiness and Contempt, though naturally not including any  
Vitiousness in them.

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BY *Crimes* men utterly *lose* their Reputation, when the Laws set a brand of Infamy upon them for the same; either by Death, and so their Memory is disgraced for ever; or by Banishment out of the Community, or by Confinement in the quality of scandalous and corrupt Members. IX. *And his Crimes.*

OTHERWISE it is very clear, that the *Natural Honour of no man can be taken from him solely by the will of the Government*. For how can it be understood, that the Government should have a power collated on it, which conduces in no degree to the Benefit of the Common-Wealth? So neither does it seem as if a real Infamy can be contracted by executing the Commands of the Government, barely in the quality of a Minister. X. *Otherwise Indelible.*

ACCUMULATIVE *Reputation* we call *that*, by which Persons, reciprocally equal as to their Natural Dignity, come to be preferr'd to one another according to those Accomplishments, which use to move the minds of People to pay them Honour. For *Honour* is properly the signification of our judgment concerning the Excellency of another person. XI. *Accumulative Reputation.*

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THIS sort of Reputation may be considered, either as amongst those who continue in the *liberty of a State of Nature*, or amongst the *members of the same Common-wealth*. We will examine, what the *foundations* of it are, and how they produce in people, both a *Capacity* to expect the being Honoured by others; and an *actual Right, strictly so call'd*, to demand it of them as their due. XII. *Twofold.*

THE *foundations of an Accumulative Reputation* are in general reckoned to be all manner of Endowments, either really containing or such as are supposed to contain some great Excellency and Perfection, which has plainly a tendency in its effects to answer the ends of the Laws of Nature or Societies. Such are Acuteness and readiness of Wit, a Capacity to understand several Arts and Sciences, a sound Judgment in business, a steady Spirit, immoveable by outward Occurrences and equally superiour to Flatteries and Terrors, Eloquence, Beauty, Riches, but more especially the performing of brave Actions. XIII. *The grounds of it.*

ALL these things together produce a *Capacity* to receive Honour, *not a Right*. So that if any person should decline [315] the payment of his Veneration to them, he may deserve to be taken notice of for his Incivility, but not for an Injury. For a *perfect Right* to be honoured by others, and bear the Ensigns thereof, proceeds either from an Authority over them; or, from some mutual agreement; or from a Law that is made and approved by one Common Lord and Master. XIV. *The distinction of a Capacity and a Right to it.*

AMONGST *Princes and Independent States*, they usually alledg for *Honour and Precedence*, the Antiquity of their Kingdoms and Families; the extent and richness of their Territories, their Power abroad and at home, and the splendour of their Styles. Yet neither will all these pretences beget a *perfect right* in any Prince or State to have the Precedence of others, unless the same has been first obtain'd by Concession or Treaty. XV. *Amongst Princes and States.*

AMONGST *Subjects* the *Degree of Honour is determin'd by the Prince*, who wisely therein regards the Excellency of each Person and his Ability to advance the Publick Good. And whatever Honour a Subject receives in this Nature, as he may justly claim it against his fellow-Subject, so he ought no less to satisfie himself in the quiet enjoyment of it. XVI. *Amongst Subjects.*



## CHAP. XV.

*Of the Power of Governours over the Goods of their Subjects.* ↪

AS it wholly lies at the pleasure of Supreme Governours, to appoint with what Restrictions they will allow their Subjects to have Power over the Goods, *I. Threefold.* which themselves derive upon them; So also over the Goods of the Subject's *own acquiring* by their proper industry or otherwise, the said Governours claim a *threefold kind of Right*, resulting from the Nature and as being necessary to the End of Communities.

THEIR first, consists in this; that it belongs to them to *prescribe Laws* *II. By Laws.* to the Subjects, about the measure and quality of their Possessions; and which way to transfer the same from hand to hand, with other particulars of the like nature; and how to apply them in the Use to the best advantage of the whole Body.

BY the second, they claim to appropriate to themselves, out of the *III. By Taxes and Customs.* Goods of the Subjects, a *Portion* by the name of *Tribute* and *Customs*. And it is but reasonable, [317] that since the Lives and Fortunes of all the Members are defended by the Community, the necessary Charges thereof should be defray'd by a general Contribution. For he must be very impudent indeed, who will enjoy the Protection and Priviledges of a Place, and yet contribute nothing in Goods or Service towards its Preservation. Only herein there will be great occasion for Governours to accommodate themselves with Prudence to the querulous temper of common people: and let them endeavour to levy the Mony the most insensibly that they can: Observing first an Equality towards all, and then to lay the Taxes rather upon the smaller Commodities, of various kinds, than upon the chief in a more uniform way.

THE third is a *Right of Extraordinary Dominion*, consisting in this; that upon an *urgent Necessity of State*, the Goods of any Subject, of which the *IV. By Seisure for publick use extraordinary.* present occasion has need, may be taken and applied to *publick uses*, though far exceeding the proportion, that the party is bound to contribute towards the expences of the Commonwealth. For which reason, as much (if it be possible) ought to be refunded to him again, either out of the [318] publick Stock or by the Contribution of the rest of the Subjects.

BESIDES these three pretensions over the *private*, in divers *V. Publick Revenues unalienable.* Communities there are some, particularly call'd, the *Publick Estate*; which carry also the name of the *Kingdoms*, or the *Princes Patrimony*, according as they are distributed into the *Treasury* or the *Privy-Purse*. The latter serves for the maintenance of the Prince and his Family; who has a propriety in it during life, and may dispose of the Profits thence arising at his pleasure. But the Use of the other is appropriated for the publick occasions of the Kingdom: the Prince officiating therein as Administrator only, and standing obliged to apply all to the purposes that are design'd by them. And neither of the two *Patrimonies* can be *alienated* by the Prince without the Peoples Consent.

MUCH less can a *whole Kingdom* (that is not held *patrimonially*) or *VI. Neither Royal Power nor Allegiance alienable.* any *part* of it, be *alienated without their consent to it*: and in the latter case particularly the *consent of that part that is to be alienated*. As on the other hand no Subject against the will of his Community, can possibly *disingage himself from the bonds of his Duty* [319] and *Allegiance to it*; unless the force of forein Enemies reduces him to such a Condition, that he had no other way to be safe.



## CHAP. XVI.

### *Of War and Peace.* ↩

ALTHOUGH nothing is more agreeable to the Laws of Nature, than the [I. Necessity of War sometimes.](#) mutual Peace of men with one another, preserved by the Voluntary Application of each person to his duty; living together in a State of Peace being a peculiar distinction of men from Brutes; Yet it is sometimes both *lawful and necessary to go to War*, when by means of another's Injustice we cannot without the use of Force preserve what is our own, nor enjoy those Rights which are properly ours. But here common Prudence and Humaty do admonish us to forbear our Arms there, where the prosecution of the injuries we resent, is likely to return more hurt upon us and ours, than it can do good.

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THE *just Causes upon which a War may be undertaken*, come all to [II. Just Causes of War.](#) these. The Preservation of our selves, and what we have, against an unjust Invasion: and this sort of War is call'd *Defensive*. The Maintenance and Recovery of our Rights from those that refuse to pay them: The reparation of Injuries done to us, and Caution against them for the future. And this sort of War is call'd *Offensive*.

NOT that upon a Prince's taking himself to be injured, he is presently to [III. Amicable Composition.](#) fly to Arms, especially if any thing about the Right or Fact in Controversie remains yet under dispute; But first let him try to compose the matter in *an amicable way*, by Treaties, by appeal to Arbitrators, or by submitting the matter in question to the decision of a Lot, and those Methods are the rather to be chosen by that Party who *claims* from another, because Possession with any shew of Right is wont to meet with the most favourable Constructions.

THE *unjust Causes of War* are either those, which *openly to all the* [IV. Unjust Causes of War.](#) *World are such*; as Ambition and Covetousness, and what may be reduced thereto: or those, that admit of a faint and imperfect *Colour* [321] to be pretended in their excuse. Of this kind there is Variety. As the fear of a Neighbors growing Wealth and Power, Conveniency of a Possession to which yet no Right can be made out, Desire of a better Habitation, the denial of common Favours, the folly of the Possessor, the desire of extinguishing anothers Title lawfully acquired, because it may be prejudicial to us, &c.

AND though the most proper way of acting in War is by that of Force [V. Of Deceits in War.](#) and Terrour; Yet it is altogether as lawful to attack an Enemy by *Stratagems and Wiles*, provided that the Faith and Trust which you give him is inviolably observed. It is lawful to deceive him by Stories and feign'd Narrations, not by Promises and Covenants.

BUT concerning the *Violence*, which may be used against him and what [VI. Violence.](#) belongs to him; we must distinguish betwixt what it is possible for him to *suffer without injustice*, and what we may easily *inflict without the breach of Humanity*. Whoever declares himself my Enemy, as he makes profession by that very act of enterprizing upon me the greatest Mischiefs in the World; So at the same time he fully indulges me the leave to employ the [322] utmost of my Power, without Mercy, against himself. Yet Humanity commands me, as far as the fury of War will permit, that I do my Enemy no more harm, than the defence or vindication of my right requires, with care to my security for the time to come.

WE commonly divide War into *Solemn* and *Unsolemn*. To a *Solemn* [VII. Solemn and unsolemn Wars.](#) War it is required, that it be made on both sides by the Authority of the Sovereign Governours; and preceded by a publick Declaration. The *other* either is not

publicly denounc'd, or perhaps is begun amongst private persons. To which latter Head belongs also *Civil Wars*.

AS the *Power of making War* in all Nations lies in the same hands, that *VIII. Power of making War.* are intrusted with the Government; So it is a matter above the Authority of a *Subordinate Magistrate* to engage in, without a delegation from thence, though he could suppose with reason, that were they consulted upon the matter they would be pleased with it. Indeed all Military Governors of fortified places and Provinces, having Forces under them to command upon the defence thereof, may understand it to be enjoin'd them by the very Design of their Employments, [323] to repel an Invader from the parts committed to their trust by all the ways they can. But they are not rashly to carry the War into an Enemies Countrey.

IN a State of Natural Liberty, a Person is assaulted by Force only for the injuries that are done by himself. But in a Community, a War often happens upon the *Governor or the whole Body*, when *neither of them* has committed any thing. To make this appear just, it is necessary, the act of a third Party must by some way or other pass upon them. Now Governors do partake of the Offences not onely of their proper Subjects, but of others that occasionally fly to them; if either the Offences are done by their *Permission*, or that they *receive and protect* the Offender. The sufferance of an Offence becomes then blameable, when at the same time that one knows of the doing it, he has a power to hinder it. Things openly and frequently done by the Subjects, are supposed to be known to their Governors: in whom it is always presum'd there is a Power also to prohibit, unless a manifest proof appears of its defect. Yet to make it an occasion of War to give Admittance and Protection to a Criminal, who flies to us for the [324] sake only of escaping his Punishment, is what must proceed rather by virtue of a particular Agreement betwixt Allies and Neighbours, than from any common Obligation: unless the Fugitive, being in our Dominions, contrives Hostilities against the Common-wealth he deserts.

ANOTHER received Custom betwixt Nations, is; when a Debt is owing *X. Reprisals.* from one to another, which sometimes comes to be occasion'd by not administring of Justice rightly, to arrest the effects of the private Subjects of the Nation indebted, and assign them to the use and satisfaction of those of their own, to whom particularly the Debt is owing: leaving such as by this means have the misfortune to lose their Goods, to seek for Restitution of the Party, that is really guilty of the Debt. And these Executions use to be call'd *Reprisals*, which commonly prove to be the forerunners of War.

A War may be made by a person, not only *for himself, but for another.* *XI. Of Wars in the defence of others.* In order to do this with Honesty, it is requisite, that He for whom the War is undertaken shall have a just Cause; and his Friend, a probable Reason, why he will become an Enemy to *that other* for his sake. [325] Amongst those, in whose behalf it is not only lawful but our Duty to make War, there is in the first place *our Natural Subjects*, as well severally, as the universal Body of them; provided, that the War will not evidently involve the State in greater mischiefs still. Next there is the *Allies*, with whom we have engaged to associate our Arms by Treaty: Yet therein not only giving the Precedence to our own Subjects, if they should chance to stand in need of assistance at the same juncture; but presupposing also, that the Allies have a just Cause and begin the War with Prudence. After our Allies, our *Friends* deserve to be assisted by us, even without our Obligation to do it by a special Promise. And where there is no other reason, the common Relation alone of men to men may be sufficient, when the party imploring our aid is unjustly oppress'd, to engage our endeavours, as far as with convenience we are able, to promote his Defence.

THE *liberty, that is in War*, of killing, plundering and laying all things wast, extends it self to so very large a Compass, that though a man carries his Rage beyond the *uttermost bounds of Humanity*, yet in [326] the opinion of Nations he is not to be accounted infamous, or one that ought to be avoided by persons of Worth. Excepting that amongst the more Civilized World, they look upon some particular Methods, of doing hurt to Enemies, to *be base*; as poisoning or corrupting of Soldiers or Subjects to kill their Masters, &c. *XII. The liberty of killing, &c. in War.*

MOVEABLE *things* are understood to be *Taken* in War then, when they are carried out of the reach of the Enemy who before possess'd them. And *Things immoveable*, when we have them within our Custody so, that we can beat the Enemy away from thence. Yet the right of the former Possessor to retake the same, is never utterly extinguish'd, until he renounces all his pretensions to them by a subsequent Agreement. For without this, it will be always lawful, what by force is lost, by force to retrieve again. The Soldiers fight by the Authority of the Publick; and whatever they obtain from the Enemy, they get it not for themselves but properly for the Community they serve. Only it is customary in most places, to leave to them by Connivance the Moveables, especially those of small Value, that they take, in the place of a Reward or perhaps their [327] Pay, and for an Encouragement to them to be free of their Blood, besides in the Cases of Necessity. When *Things immoveable* that have been lost *to*, are retaken *from* the Enemy, they return into the possession of the former Owners: And Moveables ought to do the same; but that amongst most people they are delivered over as a prey to the Army. *XIII. Of things taken in War.*

EMPIRE also or Government comes to be acquired by War, not only over the *particular persons conquered*, but *entire States*. To render this lawful, and binding upon the Consciences of the Subjects, it is Necessary; that on the one side the Subjects swear Fidelity to the Conqueror; and on the other that the Conqueror cast off the State and Disposition of an Enemy towards *them*. *XIV. Conquest.*

THE Proceedings of War are suspended by a *Truce*; which is an Agreement, the State and Occasion of the War remaining still the same as before, to abstain on both sides from all acts of Hostility unto a time appointed. When that is past, if there be no Peace concluded in the *Interim*, they resume their Hostilities again, without the formality of a new Declaration. *XV. Truce.*

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NOW *Truces* are either *such* as they consent to during the continuance of the Expedition, whilst both sides keep their Forces on foot; or *those*, upon which they quite disband their Forces and lay aside all Military Preparations. The first are seldom taken but for a small time. The others they *may* and usually *do* take for a Continuance so great, as to carry the face of a Peace and sometimes also the very Name, with the addition of a term of Years, only to distinguish it from a perfect Peace indeed, which regularly is Eternal and extinguishes the Causes of the War for ever. Those that they call *tacit Truces*, oblige to nothing. For as on both sides they lie quiet for their pleasure, so whenever they think fit they may break out into acts of Hostility. *XV. Treaties of Truce.*

BUT when a Peace is mutually ratified by each Sovereign Governor, upon Articles and Conditions agreed betwixt themselves, which they engage to observe and put in Execution faithfully by a time prescribed; Then a War is perfectly ended. In confirmation whereof, it is usual, not only for both Parties to take their Oaths and interchange Hostages; but for some others oftentimes, especially amongst the [329] Assistants at the Treaty, to undertake the *Guaranty*, of the same, with promises of Aid to him, whoever is first injured by the other, in opposition to the Articles of the Peace that is *XVI. Treaties of Peace.*

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## CHAP. XVII.

### *Of Alliances.* ↩

ALLIANCES interchangeably passed betwixt Sovereign Governours, *I. Alliances twofold.* are of good use both in times of War and Peace. They may be *divided*, in respect of their Subject, either into such as *reinforce the Duty* already incumbent on us from the Law of Nature; or such as *superadd some thing* to the Precepts of that Law; at least they determin their Obligation to such or such particular Actions, which before seem'd indefinite.

BY the *first* sort are meant *Treaties of Peace*, wherein nothing more is *II. Treaties of Peace.* agreed upon than the simple exercise of Humanity towards one another, or a forbearance of Mischief and Violence. Or perhaps they may establish a general sort of Friendship [330] betwixt them, not mentioning particulars; or fix the Rules of Hospitality and Commerce, according to the directions of the *Law of Nature*.

THE others of the latter sort, are call'd *Leagues*, and are either *Equal* or *III. Equal Leagues.* *Unequal*. *Equal Leagues* are so far composed of the same Conditions on both sides, that they not only promise what is *Equal* absolutely or at least in proportion to the abilities of man; but they stipulate in such a manner too, that neither party is to the other obnoxious or in a worse condition.

UNEQUAL *Leagues* are those, wherein Conditions are agreed upon *IV. Unequal.* that are unequal, and render one side worse than the other. This Inequality may be either on the part of the *Superior*, or else of the *Inferior Confederate*. For if the Superior Confederate engages to send the other Succours, unconditionally, not accepting of any terms from him; or engages to send a greater proportion of them than He, the Inequality lies upon the *Superior*. But if the League requires of the inferior Confederate the performance of more things towards the Superior, than the Superior performs towards him, the inequality there no less evidently lies on the side of the *Inferior*.

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AMONGST the Conditions required of an Inferior Ally, some contain a *V. Conditions put upon Inferiors.* *diminution of his Sovereign Power*, restraining him from the Exercise thereof in certain Cases without the Superior's consent. Others *impose no such prejudice upon his Sovereignty*, but oblige him to the performance of those we call *transitory Duties*, which once done are ended altogether. As to discharge the pay of the others Army, to restore the expences of the War, to give a certain sum of Mony, to demolish his Fortifications, deliver Hostages, surrender his Ships, Arms, &c. And yet neither do some *perpetual Duties diminish the Sovereignty* of a Prince. As to have the same Friends and Enemies with another, though the other be not reciprocally engag'd to have the same with him: To be obliged to erect no Fortifications here, nor to sail there, &c. To be obliged to pay a certain friendly reverence to the other's Majesty, and to conform with Modesty to his pleasure.

BOTH these sorts of Leagues, as well *Equal* as the *Unequal*, are wont *VI. The Subject of Leagues.* to be contracted upon various Reasons: whereof such especially produce effects of the strongest and most binding Complexion, as tend [332] to the conjunction of many Nations in a League that is to last for ever. But the *Common Subject* of the Leagues most in use, is either the preservation of Commerce, or the furnishing of Succours in a War, Offensive or Defensive.

THERE is another famous Division of Leagues into *Real and Personal*. *VII. Real and personal Leagues.* The *Latter* express such a near regard to the Person of the Prince they are contracted with, that whenever he dies, they expire also. *Real Leagues* are those, which not being entred into in consideration so much of any particular Prince or Governour, as of the Kingdom or Common-wealth, continue in full force, even after the death of the first Contracters of them.

THE next in Nature to *Leagues*, are the Agreements of a *Publick* *VIII. Sponsions.* *Minister*, made upon the Subject of the Affairs of the Prince his Master, without Orders for the same: which are usually call'd *Overtures*. The Conditions whereof impose no Obligation upon the Prince, until he pleases afterwards to ratifie them by his own Authority. And therefore, if after the *Minister* has agreed upon the Compact absolutely, he cannot obtain his Prince's confirmation of it; it lies upon himself [333] to consider, what satisfaction he ought to render unto those, who depending upon his Credit have been deceiv'd by him with insignificant Engagements.

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## CHAP. XVIII.

### *The Duty of Subjects.* ↪

THE Duty of Subjects is either *General*, arising from the Common *I. Twofold.* Obligation which they owe to the Government as *Subjects*: or *Special*, upon the account of some particular *Office* and *Employment*, that the Government imposes upon them.

THEIR *General* Duty respects the demeaning of themselves severally, *II. General.* towards their Governors, the Common-wealth, and one another in particular.

To their Governors they owe Honor, Fidelity and Obedience. Beside *III. Towards their Governours.* that they ought to entertain good and honourable thoughts of them and their Actions, and speak accordingly; to acquiesce with Patience and Content under the present State of things, not suffering their desires to [334] wander after Innovations; nor adhering to any Persons, or admiring and honouring them, *more* than they do the Magistrates that are set over them.

IN reference to the *Common-Wealth*, their Duty is, to prefer the *IV. The Commonwealth.* Happiness and Safety of it to the dearest things they have in the World: to offer their Lives, Estates and Fortunes with cheerfulness towards its preservation; and study to promote its Glory and Welfare by all the powers of their Industry and Wit.

TOWARDS *one another*, their behaviour ought to be friendly and *V. One another.* peaceable, as serviceable and as affable as they can make it: not to give occasion of trouble by Moroseness and Obstinacy, nor envying the happiness of any, or interrupting their Enjoyments.

AND as for their *particular Duties*, as *Officers*, whether they influence *VI. Their special Duties.* the whole body of the Nation, or are employed only about a certain part of it, there is this one general Precept to be observ'd for all; *That* no person affect or take upon him any Employment, of which he knows himself by the sense of his disabilities to be unworthy and incapable.

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PARTICULARLY, let those who *assist at the Publick Counsels*, turn *VII. The Duty of Privy Counsellours.* their Eyes round into all parts of the Commonwealth; and whatever things they discover to be of use, thereupon ingenuously and faithfully without partiality or corrupt intentions lay open their observations. Let them not take their own Wealth and Grandeur, but always the Publick good, for the end of their Counsels; nor flatter their Princes in their Humours to please them only. Let them abstain from Factions and unlawful Meetings or Associations. Dissemble nothing that they ought to speak, nor betray what they ought to conceal. Let them approve themselves impenetrable to the corruptions of Foreigners, and not postpone the Publick Business to their private Concerns and Pleasures.

LET the *Clergy*, who are appointed publicly to administer in the *VIII. The Clergy.* *sacred Offices of Religion*, perform their work with gravity and attention; teaching the Worship of God, in Doctrines, that are most true, and making themselves an eminent Example of what they preach to others: that the dignity of their Function, and the weight of their Doctrine may suffer no [336] diminution by the Scandal of an ill led Life.

LET such who are publickly employ'd to *instruct the minds of People in the knowledge of Arts and Sciences*, teach nothing that is false and pernicious; delivering their *Truths* so, that the Auditors may assent to them, not out of a Custom of hearing but for the solid Reasons that attend them: and avoiding all Questions which encline to embroil Civil Society; let them assure themselves, that whatever humane Science or Knowledge returns no good to us either as men or Subjects, the same deserves their Censure as impertinent Vanity. *IX. Publick Readers.*

LET those Magistrates, whose Office it is to *distribute Justice*, be easie of Access to all, and ready to protect the Common people against the oppressions of the more mighty: administring Justice both to Rich and Poor, Inferior and Superior with a perfect Equality. Let them not multiply Disputes unnecessarily; abstain from Corruption; be diligent in trying of Causes, and careful to lay aside all Affections that may obstruct sincerity in Judgment; not fearing the person of any man while they are doing their Duty. *X. Lawyers.*

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LET the *Officers of War* diligently Exercise their men in all occasions and harden them for the enduring the Fatigue of a Military Life, and preserve the Discipline of them inviolable. Let them not rashly expose them to the danger of the Enemy, nor defraud them of any of their Pay or Provisions; but procure it for them with all readiness they are able, and keep them in the love of their Country, without ever seducing them to serve against it. *XI. Officers of the Army.*

ON the other hand, let the *Soldiers* be content with their Pay, without plundering, or harrassing the Inhabitants. Let them perform their Duty courageously and generously in the defence of their Country; neither running upon danger with Rashness, nor avoiding it with Fear: Let 'em exercise their Courage upon the Enemy, not their Comrades; and maintain their several Posts like men, preferring an honourable Death before a dishonourable Flight and Life. *XII. Soldiers.*

LET the *Ministers of the Common-wealth in foreign parts* be cautions, and circumspect; quick to discern Solidities from Vanity, and Truths from Fables: in the highest degree, Tenacious of Secrets, and [338] obstinately averse to all Corruptions out of their care of the Good of the Commonwealth. *XIII. Ambassadors and Envoys.*

LET the *Officers for Collecting and disposing of the Publick Revenue* have a care of using needless Severities, and of encreasing the Subjects Burden for their own Gain, or through their troublesom and petulant humours. Let them misapply nothing of the publick Stock; and satisfie the persons who have Money to be paid out of it, without delays unnecessary. *XIV. Officers of the Publick Revenues.*

ALL these *Particular Duties* of Subjects *continue*, during the time of Employment: And when that ceases, the other expire also. But their *General Duties are in force*, so long as ever Men continue to be *Subjects*: that is, till by either the *express* or *tacit* Consent of the Nation, they depart thence, to fix the Seat of their Fortunes elsewhere; that they are banisht, and deprived of the Rights of Subjects for their Crimes; or being overcome in Battel, they are forced to yield to the disposal of the Conqueror. *XV. The continuance of the Duties aforesaid.*

**The End.**