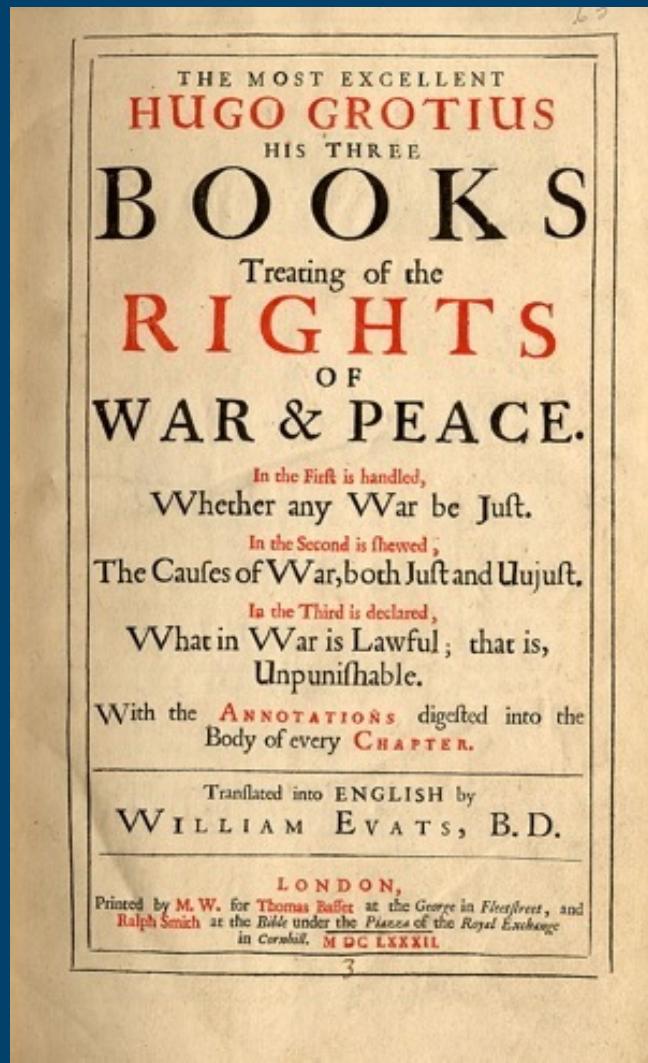


CLASSICS OF LIBERTY:  
HUGO GROTIUS, THE  
RIGHTS OF WAR AND PEACE  
(1625, 1738, 2005)

THE  
FIFTY  
YEARS



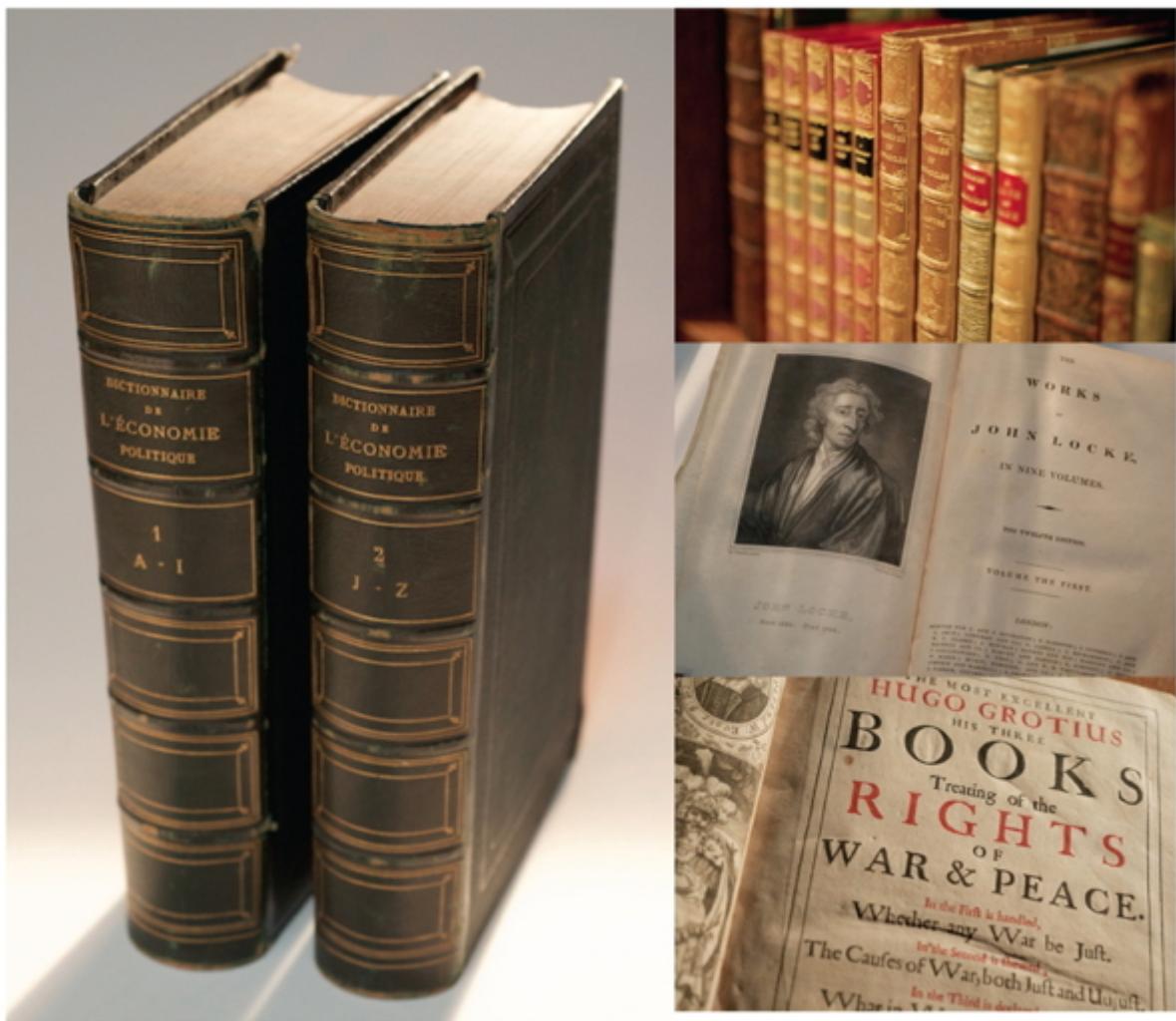
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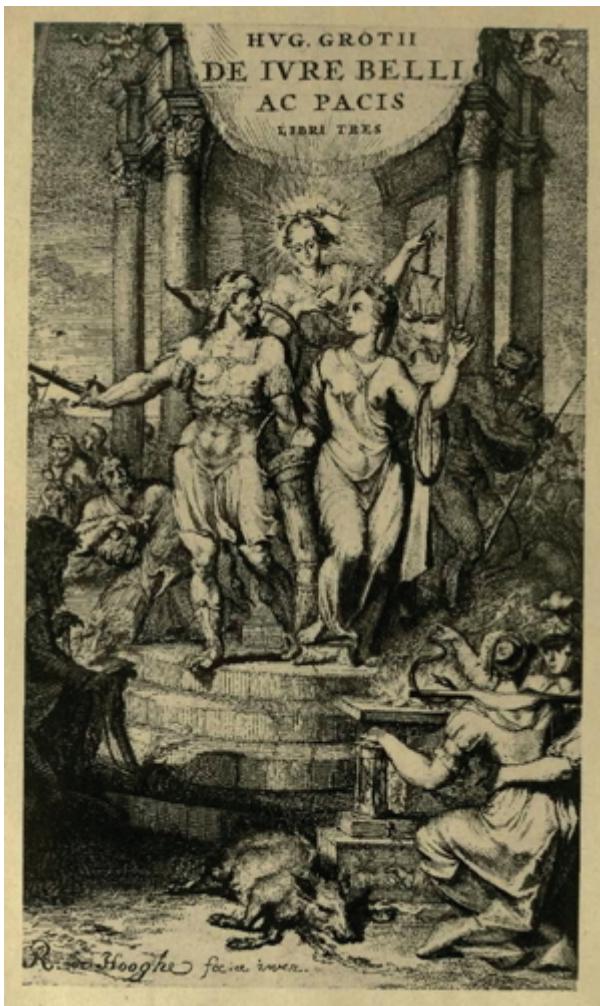
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**LIBERTY FUND, INC.**  
8335 Allison Pointe Trail, Suite 300  
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# The Enhanced Edition of Hugo Grotius, *The Rights of War and Peace* (1625)

## Introduction



Hugo Grotius's *Rights of War and Peace* is a classic of modern public international law which lays the foundation for a universal code of law and which strongly defends the rights of individual agents – states as well as private persons – to use their power to secure themselves and their property. Written while the Thirty Years War was being fought, it is a thinly veiled plea for moderation in the behaviour of the states which were involved in the conflict. Grotius does this in several ways. One is to provide a detailed description of historical practice in order to show how states, monarchs, and military leaders had conducted war in the past, and how some rules had arisen to regulate (or not as the case may be) behaviour in wartime. He combines this with his own theory of natural law and natural rights (as set out in the "Prolegomena" or "Preliminary Discourse" which defines how wars should be fought).

Liberty Fund's edition is based upon that of the eighteenth-century French editor Jean Barbeyrac and also includes the "Prolegomena" to the first edition of *Rights of War and Peace* (1625); and an Introduction by the historian of political thought Richard Tuck.

This ebook anthology does not contain the entire text of the *Rights of War and Peace* as it is a very long 3 volume work. It includes some Supplementary Material such as essays, biographies,

introductions, and discussions of his work, along with several extracts from the book. These essays discuss Grotius's view about the laws governing war and how it might be limited in practice. It is hoped that the combination of the two will assist those who wish to deepen their knowledge of this important political and legal theorist.

Grotius' "Prolegomena" or "Preliminary Discourse" is a concise summary of his thinking about natural law which he inserted at the beginning of his much longer treatise on the laws of war and peace. As the scholars who participated in the "Liberty Matters" online discussion forum (included in this anthology) noted there is a tension between what Grotius the legal historian says about the actual historical practice of the laws which have governed declaring and waging wars and what the principles of natural law and natural rights say should be the practice.

The selection of chapters from the book deal with the nature of war, when it is just to go to war, when it is unjust to go war, and how war might be moderated once it has been declared. They come from Liberty Fund's edition *The Rights of War and Peace, edited and with an Introduction by Richard Tuck, from the Edition by Jean Barbeyrac* (Indianapolis: Liberty Fund, 2005). 3 vols.

<<http://oll.libertyfund.org/titles/1877>>. The sources of the other material is indicated below.

The footnoting and pagination of the book is rather complex. The typesetters preserved the original pagination of the 1738 English translation and we have retained the pagination of the LF edition as well. There are three layers of footnotes - Grotius's, Barbeyrac (the French transator and editor), and the LF editor's. There is also extensive use made of marginalia. Given the restrictions of the ebook format we have done our best to keep as much of this apparatus as possible. However, please refer to the online or the print editions if this becomes confusing.

## Contents

This enhanced book includes the following material:

- [About the Author](#)
- [About the Text](#)
- [Supplementary Material](#)
  - [Richard Tuck, "Introduction" \(2005\)](#)
  - [Jean de Barbeyrac, "The Life of Hugo Grotius" \(1738\)](#)
  - [David J. Hill, "Introduction" \(1901\)](#)
  - ["Grotius and the Natural Law Tradition" \(1978\)](#)
- [Liberty Matters: "Hugo Grotius on War and the State" \(March 2014\)](#)
- [Grotius, "The Preliminary Discourse Concerning the Certainty of Right" \(1621\)](#)
- [Selected Chapters from the \*Rights of War and Peace\* \(1625\)](#)
  - [BOOK I: CHAPTER I: What War is, and what Right is.](#)
  - [BOOK I: CHAPTER II: Whether 'tis ever Lawful to make War.](#)
  - [Book II: CHAPTER I: Of the Causes of War; and first, of the Defence of Persons and Goods.](#)
  - [Book II: CHAPTER XXII: Of the unjust Causes of War.](#)
  - [Book II: CHAPTER XXIII: Of the dubious Causes of War.](#)
  - [Book II: CHAPTER XXIV: Exhortations not to engage in a War rashly, tho' for just Reasons.](#)
  - [Book III: CHAPTER X: Advice concerning Things done in an unjust War.](#)
  - [Book III: CHAPTER XI: Moderation concerning the Right of killing Men in a just War.](#)
  - [Book III: CHAPTER XII: Concerning Moderation in regard to the spoiling of the Country of](#)

our Enemies, and such other Things.

- o Book III: CHAPTER XXV: The Conclusion, with Admonitions to preserve Faith and seek Peace.

## About the Author: Hugo Grotius (1583 - 1645)



Nationality: Dutch

Historical Period: The Early Modern Period

Hugo Grotius (1583-1645) was a Dutch scholar and jurist whose legal masterpiece, *De Jure Belli ac Pacis* (On the law of war and peace) (1625), contributed significantly to the formation of international law as a distinct discipline. In addition to that work, Grotius wrote a number of literary pieces of lasting merit, including *Sacra* (a collection of Latin poems) and the drama *Christus Patiens*. Like Erasmus, Grotius sought to end the religious schism and urged the papacy to reconcile with the Protestant faiths.

To read more by and about Grotius go to his [page](#) in the Online Library of Liberty.

Groups:

- 17th Century Natural Rights Theorists <<http://oll.libertyfund.org/groups/39>>

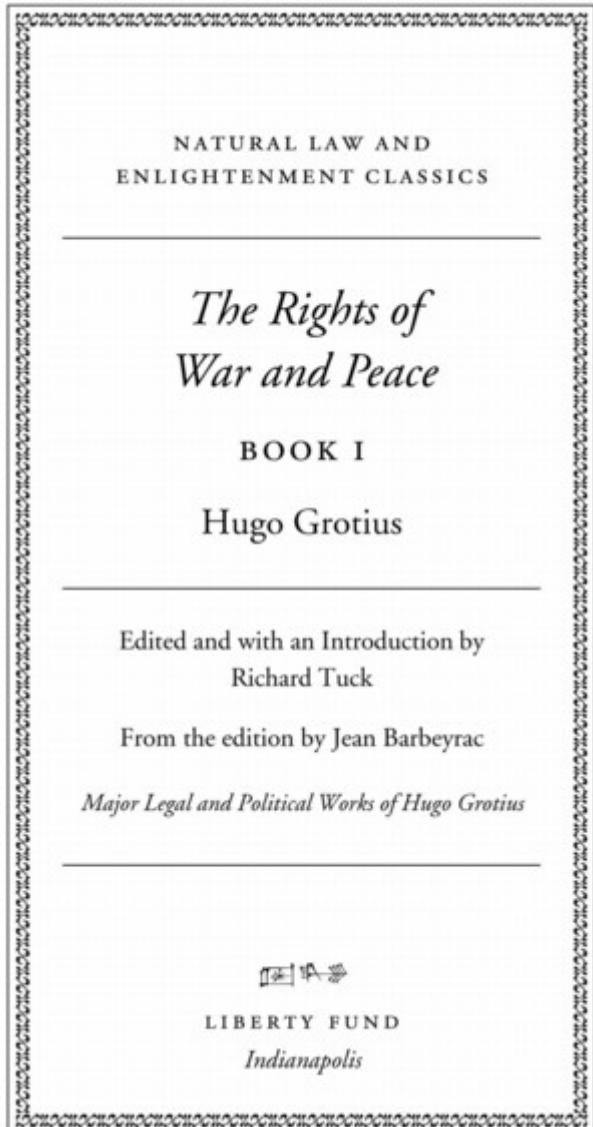
Topic: The Laws of War <<http://oll.libertyfund.org/groups/62>>

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- Law <<http://oll.libertyfund.org/groups/50>>  
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## About the Text



### Edition Used

Hugo Grotius, *The Rights of War and Peace*, edited and with an Introduction by Richard Tuck, from the Edition by Jean Barbeyrac (Indianapolis: Liberty Fund, 2005). 3 vols. <<http://oll.libertyfund.org/titles/1877>>.

### About this Title

Grotius's *Rights of War and Peace* is a classic of modern public international law which lays the foundation for a universal code of law and which strongly defends the rights of individual agents – states as well as private persons – to use their power to secure themselves and their property. This edition is based upon that of the eighteenth-century French editor Jean Barbeyrac and also includes the *Prolegomena* to the first edition of *Rights of War and Peace* (1625); this document has never before been translated into English and adds new dimensions to the great work.

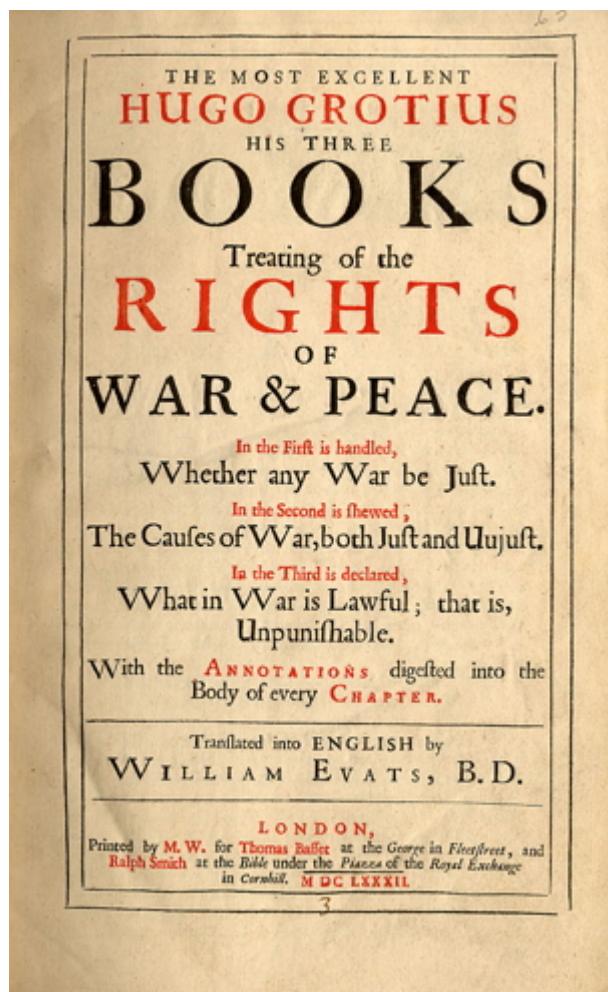
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# Supplementary Material ↵



# 1. Richard Tuck, "Introduction" ↵

## Source

Richard Tuck, "Introduction" to vol. 1 of Hugo Grotius, *The Rights of War and Peace, edited and with an Introduction by Richard Tuck, from the Edition by Jean Barbeyrac* (Indianapolis: Liberty Fund, 2005). <[http://oll.libertyfund.org/titles/1425#lf1032-01\\_head\\_001](http://oll.libertyfund.org/titles/1425#lf1032-01_head_001)>.

## INTRODUCTION ↵

In the famous dedication of his *Discourse on the Origin of Inequality* to the Republic of Geneva, Jean-Jacques Rousseau drew a vivid picture of his father sitting at his watchmaker's bench. "I see him still, living by the work of his hands, and feeding his soul on the sublimest truths. I see the works of Tacitus, Plutarch, and Grotius, lying before him in the midst of the tools of his trade. At his side stands his dear son, receiving, alas with too little profit, the tender instruction of the best of fathers...."

Rousseau's reminiscence is testimony to the authority which Grotius's *De Iure Belli ac Pacis* had come to possess in the century since it was first published in 1625; in the eyes of both father and son, the book had the same standing as the great works of classical antiquity. Rousseau was to devote much of his life to a complicated and subtle repudiation of Grotius, but he never lost his sense of the book's importance, describing Grotius in *Emile* as "the master of all the savants" in political theory (though he added that, nevertheless, he "is but a child, and, what is worse, a dishonest child," and that "true political theory is yet to appear, and it is to be presumed that it never will").<sup>1</sup> The same sense of Grotius's importance, without any of Rousseau's reservations, had led the Elector Palatine in 1661 to endow a chair in the University of Heidelberg for the express purpose of providing a commentary on the *De Iure Belli ac Pacis*, a fact which is noted in the *Life* prefaced to this edition; as the *Life* also notes, the book was issued as a full edition with notes by [x] various commentators,<sup>2</sup> "by which means our Author, within 50 Years after his Death, obtained an Honour, which was not bestowed upon the Ancients till after many Ages." The idea that the book represented something new and important for the modern age was repeatedly voiced in the "histories of morality," which began to appear in the late seventeenth century; Grotius was described as "breaking the ice" after the long winter of ancient and medieval ethics.<sup>3</sup> By the end of the seventeenth century there had been twenty-six editions of the Latin text, and it had been translated into Dutch (1626, reissued three times in the century), English (1654, reissued twice), and French (1687, reissued once). Its popularity scarcely slackened in the eighteenth century: there were twenty Latin editions, six French, five German, two Dutch, two English, and one Italian (and one Russian, circulated in manuscript).<sup>4</sup>

However, for many eighteenth-century readers the definitive version of the book had appeared in Latin in 1720, when Jean Barbeyrac issued a new edition, followed by a French translation in 1724 with elaborate notes.<sup>5</sup> Barbeyrac was a leading figure in the French Protestant diaspora, the network of scholars whose families had been driven out of France following the revocation of the Edict of Nantes by Louis XIV in 1685. He worked tirelessly to put his own version of modern natural law before the European public, and his editions of Grotius built on the success of a similarly elaborate edition which he had produced of Samuel Pufendorf's *De Iure Naturae et Gentium* in 1706. The notes to these editions [xi] keyed their texts into all the relevant discussions of natural law from antiquity down to the 1720s, and the two works together quickly became the equivalent of an encyclopedia of moral and political thought for Enlightenment Europe. The French version of *De Iure Belli ac Pacis* was reprinted steadily through the middle years of the century, and it found an audience beyond the

French-speaking polite world in an English translation of 1738, which is reprinted in this edition, and which seems to have been produced in a large print run.<sup>6</sup> Copies of it are very common, and are found in most academic and private libraries of the period—for example, General Washington, like most well-educated English gentlemen, possessed a copy, which is now in the Houghton Library at Harvard. An Italian translation appeared in 1777.

As this publishing history in itself illustrates, it would be hard to imagine any work more central to the intellectual world of the Enlightenment. But from the late eighteenth century onward, the stream of new editions dried up, and the book came to be treated not as the formative work of modern moral and political theory but as an important contribution to a different genre, “international law” (a term coined by Jeremy Bentham in 1780). Many intellectual developments of the period contributed to this shift, including the criticisms of Grotius found (alongside his admiration) in Rousseau, and the contempt expressed by Kant for the “sorry comforters” such as Grotius and Pufendorf, whose works “are still dutifully quoted in *justification* of military aggression, although their philosophically or diplomatically formulated codes do not and cannot have the slightest *legal* force, since states as such are not subject to a common external constraint.”<sup>7</sup> William Whewell, professor of international law at Cambridge and translator of Grotius, tried in the mid-nineteenth century to restore Grotius as a major moral thinker, but with limited success; by the time of the post–First World War settlement, Grotius was regarded almost exclusively as the founder of modern civilized interstate relations, and as a suitable tutelary presence for the new [xii] Peace Palace at The Hague. As we shall see, in some ways that was to radically misunderstand Grotius’s views on war; he was in fact much more of an apologist for aggression and violence than many of his more genuinely pacific contemporaries. It was also and more seriously to ignore the genuinely innovative qualities of his moral theory, qualities that entitle him to an essential place in the history of political theory.

Hugo Grotius was born on 10 April 1583, to one of the wealthy ruling families in the Dutch city of Delft. The De Groots (“Grotius” is the Latinized version of his Dutch name—in common with intellectuals all over Europe, Grotius spoke and wrote to his fellow writers in Latin, and gave himself an appropriately Latin name) were regents of the city; that is, they were members of the self-selecting oligarchy which governed Delft, like many other Dutch cities. The generation before Grotius’s birth, his relatives had fought in the great struggle that established the freedom of the northern provinces of the Netherlands from the rule of the Spanish Crown, and many of Grotius’s writings display the intense patriotism engendered by that struggle. In Grotius’s case, his patriotism was as much focused on what he called his “nation,” the province of Holland and Zeeland, as it was on the wider United Provinces, which had collectively asserted their independence, and which form the modern kingdom of the Netherlands. All his life, Grotius remained wedded to the oligarchic republicanism of cities such as Delft, and somewhat wary of bigger states.

His family had not merely fought in the war of independence; they were also participants in one of the great sources of Dutch wealth and power, the overseas trading and military activity of the Dutch East India Company. Formed out of a union of various smaller companies in 1602, the East India Company was the first of the enormous corporations that were to dominate the European overseas expansion in the seventeenth and eighteenth centuries; in its first year of operation its gross income already exceeded the ordinary revenue of the English government, and (like the English East India Company a hundred years later) it sent out military forces as well as trading vessels in order to overawe its rivals and offer help to dissident groups all over the Far East. The De Groots were [xiii] shareholders in the company and sat on the board of one of its “chambers” in Delft. The fact that one of the principal actors in international politics at the beginning of the seventeenth century was not a state but a private corporation was to be of enormous significance in the formation of Grotius’s political thought.

The young Grotius was educated as a humanist, in the tradition going back to the Italian Renaissance in which the study of classical texts provided an entire education, and in which the ability to write and speak persuasively, using all the ancient arts of rhetoric, was prized above all things. Although Grotius frequently cited philosophical texts written in a more “scholastic” style (that is, the style of the “schoolmen” of the Middle Ages, in which moral or legal issues were discussed in a kind of Aristotelian terminology, with little regard for literary elegance), his own writing was always essentially humanist in character. The *De Iure Belli ac Pacis* is full of literary and historical material from antiquity, and Grotius would have been delighted that a Genevan watch maker should think that his book was a natural companion to the works of Tacitus and Plutarch. Grotius was a prodigy within this education system and quickly made his reputation as a Latin poet and historian. For these rhetorical skills he was picked (as well-trained humanists always hoped to be) as an adviser and secretary by a leading politician, Jan van Oldenbarnevelt, who was in effect prime minister of the Dutch Republic. Grotius quickly became caught up in the political struggles of the new republic, an involvement that was ultimately to prove personally disastrous for him.

Technically, the United Provinces was a kingdom with a vacant throne: the King of Spain had been driven out but had not been replaced. In his absence, and pending the appointment of a new monarch (which was seriously considered for the first fifty years of the republic’s existence), government was divided between the old royal governors of the seven provinces, the Statholders, and the old representative assemblies for the provinces, the Estates. The assemblies sent delegates to an Estates General of the Union at The Hague, while most of the provinces had come to appoint the same man as their Statholder, the Prince of Orange. The Union thus possessed both a monarchical and a republican element in its constitution, though the constitutional basis for the powers of the [xiv] different elements was far from clear; in practice, the Statholder possessed military authority as the commander in chief of the republic’s armies, while the Estates possessed the power of taxation and finance. Each element also had a different range of supporters: broadly speaking, the Calvinist Church and its ministry looked to the princes of the House of Orange to secure its power over the population, while other more heterodox religious groups looked to the oligarchical urban rulers for their protection.

During the first two decades of the seventeenth century, the religious antagonisms within the republic reached the point where civil war was threatened. Many people (including to some extent Grotius himself) felt that there had been little point in throwing off the tyranny of Spain if it was to be replaced by the tyranny of an organized and intolerant Calvinist Church. Oldenbarnevelt and Grotius worked tirelessly on behalf of the Estates to try to protect the more liberal theologians (in particular, the ministers who agreed with Jacobus Arminius’s denial of the Calvinist doctrine of grace) from the attacks of the Calvinists; Grotius also circulated privately a theological work of his own in which he argued for a minimalist and irenic version of Christianity.<sup>8</sup> But in the end, both Oldenbarnevelt and Grotius seem to have concluded that the only way to secure religious toleration in the republic was in effect to mount a military coup against the Statholder and thereby to remove the principal weapon in the hands of the Calvinists. There is a close parallel with events thirty years later in England, when the representatives of heterodox religious groups in the House of Commons also came to the conclusion that only a coup against their prince would destroy the power of the church that he supported. In England, the Commons won, though only after a long and bloody civil war; in the United Provinces, Oldenbarnevelt and Grotius lost. Prince Maurice arrested them both and had them arraigned for treason; Grotius gave evidence against his old friend [xv] and was sentenced to life imprisonment, while Oldenbarnevelt was publicly beheaded in May 1619.

Grotius was taken in the winter of 1618 to his prison, Louvestein Castle, in the south of the United Provinces. He lived there until March 1621, when he escaped in famous and romantic circumstances: his wife arrived with a basket of books; Grotius (who was quite a small man) hid in the empty basket

and was carried out of the castle. He succeeded in crossing the border to the Spanish Netherlands undetected, and took refuge in France, where he lived for most of the rest of his life. He returned to the United Provinces under a false identity in October 1631, hoping that Maurice's successor as Stadholder, Frederick William (who had always been personally sympathetic to Grotius), could arrange for him to be rehabilitated; but in the end Frederick William could not deliver an annulment of the original conviction, and Grotius slipped out of the country again in April 1632. As we shall see, these six months in his native land had an important effect on the received text of *De Iure Belli ac Pacis*, since Grotius issued a second edition of the work during this period in which some of his more disturbing claims were modified in order to win over his Dutch opponents. For the next three years he moved around Germany, until at the beginning of 1635 the government of Sweden appointed him as their ambassador to France, a post that allowed him to play a major role in the complex diplomacy surrounding the last years of the Thirty Years' War. There was always a certain amount of unease in Sweden about using him in this important position, however, and in 1645 Grotius visited Sweden to defend himself against criticism; he passed briefly through the United Provinces on his way, without molestation. He failed to persuade the Swedes to renew his appointment, and left the country; his ship was caught in a storm in the Baltic and wrecked on the coast near Rostock. Grotius collapsed on shore after being rescued, and died in Rostock on 28 August 1645. His body was returned to Delft and given an honored burial by the same Dutch authorities who had kept him in exile for twenty-four years.

Though it was not published until four years after his escape, *De Iure Belli ac Pacis* really grew out of Grotius's time in prison. Political prisoners [xvi] in the sixteenth and seventeenth centuries enjoyed full access to their books and papers, and unlimited time to write: Sir Walter Raleigh, for example, wrote his massive *History of the World* while awaiting execution in the Tower of London. His two years in Louveteau allowed Grotius to revisit old projects; as he wrote to his old friend G. J. Vossius in July 1619, "I have resumed the study of jurisprudence [*iuris studium*] which had been interrupted by all my affairs, and the rest of my time is devoted to moral philosophy [*moral sapientiae*]."<sup>9</sup> He told Vossius that to help his work in moral philosophy he was giving a Latin dress to the ethical passages in the Greek poets and dramatists collected by the Byzantine anthologist Stobaeus,<sup>10</sup> and the effect of this approach to the subject is visible on every page of the *De Iure Belli ac Pacis*. Rousseau was to remark sardonically that Grotius's use of quotations concealed the fundamental similarity between Grotius and Hobbes: "The truth is that their principles are exactly the same: they only differ in their expression. They also differ in their method. Hobbes relies on sophisms, and Grotius on the poets; all the rest is the same."<sup>11</sup> Grotius also turned his attention to rewriting and expanding his earlier work on theology, and it was this which he brought to fruition first after his escape;<sup>12</sup> but once settled in France he concentrated on his juridical and moral project and wrote *De Iure Belli ac Pacis* between the autumn of 1622 and the spring of 1624, partly while staying as a guest at the country house of one of the presidents [xvii] of the Parlement of Paris, Henri de Mesmes, at Balagny near Senlis.<sup>13</sup> Printing took place slowly and inefficiently from January to March 1625;<sup>14</sup> copies were rushed to the Frankfurt Book Fair in March in order to catch the eye of the European public,<sup>15</sup> and in May Grotius was at last able to give a presentation copy to the book's dedicatee, King Louis XIII of France.<sup>16</sup>

Among the papers to which he must have turned while in prison was a long manuscript which he had written in 1606, before the practical requirements of Dutch politics came to occupy all his time and attention. It was a defense of the military and commercial activity of the Dutch East India Company in the Far East, and in it the central themes of *De Iure Belli ac Pacis* were already adumbrated. He had begun to circulate the manuscript among his friends, no doubt with a view to publishing it, but in the end only Chapter XII of the manuscript had appeared in print, as the famous *Mare Liberum* (1609); clearly, Grotius decided that his enforced leisure at Louveteau was an ideal opportunity to rewrite this early draft and finally put it in a publishable form.<sup>17</sup> The manuscript lay unknown among Grotius's

papers until 1864, when it was discovered and published; its first editor gave it the title *De Iure Praedae, The Law of Prizes*, but Grotius himself referred to it more loosely as his *De Indis*, and its real scope was expressed by the subtitle of *Mare Liberum*, “a dissertation on the law which covers the Hollanders’ trade with the Indies.”<sup>18</sup> Dutch expansion in the Far East was a peculiarly fertile context for Grotius’s political theory to develop, since (as I said earlier) it was essentially driven by a private corporation, interacting with local rulers [xviii] such as the sultan of Johore and offering them military protection and beneficial trading arrangements. The Indian Ocean and the China Sea were an arena in which actors had to deal with one another without the overarching frameworks of common laws, customs, or religions; it was a proving ground for modern politics in general, as the states of Western Europe themselves came to terms with religious and cultural diversity. The principles that were to govern dealings of this kind had to be appropriately stripped down: there was no point in asserting to a king in Sumatra that Aristotelian moral philosophy was universally true, and not much more point in telling the admiral of the Dutch East India Company’s fleet that he had to wait for some judicial pronouncement by an appropriate sovereign before making war on a threatening naval force. The minimalist character of the principles that emerged from this setting caught the imagination of modern Europe, for they seemed to offer the prospect of an understanding of political and moral life to which all men—the poor and dispossessed and religiously heterodox of Europe as well as the exotic peoples of the Far East or the New World—could give their assent.

Grotius boldly stated his central argument as follows:

God created man αὐτεξούσιον, “free and *sui iuris*,” so that the actions of each individual and the use of his possessions were made subject not to another’s will but to his own. Moreover, this view is sanctioned by the common consent of all nations. For what is that well-known concept, “natural liberty,” other than the power of the individual to act in accordance with his own will? And liberty in regard to actions is equivalent to ownership in regard to property. Hence the saying: “every man is the governor and arbiter of affairs relative to his own property.”<sup>19</sup>

Grotius remained committed to this view in *De Iure Belli ac Pacis*, remarking in one of its most striking passages that “there are several Ways of living, some better than others, and every one may chuse what he [xix] pleases of all those Sorts.”<sup>20</sup> He thus presupposed the naturally autonomous agents familiar to us from later seventeenth- and eighteenth-century political theory, who constructed their political arrangements through voluntary agreements. Though he did not have precisely the concept of the “state of nature,” which was so central to Hobbes and his successors, and which they always contrasted with “civil Society” (the product of agreement among naturally free men), he did use the terms in somewhat similar ways;<sup>21</sup> and of course the domain of foreign trade and war was in itself the best example of such a state, and was always used as such by later writers.

The principles governing these autonomous natural individuals were also stated very plainly in *De Iure Praedae*. The Prolegomena to the work began with two fundamental laws of nature:

first, that It shall be permissible to defend [one’s own] life and to shun that which threatens to prove injurious; secondly, that It shall be permissible to acquire for oneself, and to retain, those things which are useful for life. The latter precept, indeed, we shall interpret with Cicero as an admission that each individual may, without violating the precepts of nature, prefer to see acquired for himself rather than for another, that which is important for the conduct of life. Moreover, no member of any sect of philosophers, when embarking upon a discussion of the ends [of good and evil], has ever failed to lay down these two laws first of all as indisputable axioms. For on this point the Stoics, the

Epicureans, [xx] and the Peripatetics are in complete agreement, and apparently even the Academics [i.e., the Skeptics] have entertained no doubt.[22](#)

The last part of this passage emphasizes Grotius's concern that whatever one's ethical commitments, his minimalist principles should be acceptable; in *De Iure Belli ac Pacis* he made the same point by selecting Carneades, the leader of the Skeptical Academy, as the person whom he needed to defeat in argument. Grotius termed these "laws" of nature, but since they were permissive in form they might be better termed "rights"; and this is what he duly did in *De Iure Belli ac Pacis*, where the "Right of recurring to Force, in defence of one's own Life" (I.II.3) and the right "of innocent Profit; where I only seek my own Advantage, without damaging any Body else" (II.II.11) are the basic rights which recur throughout the book.

The right to defend oneself, Grotius always believed, extends beyond merely responding to an immediate attack. It also includes what we would normally think of as *punishment*, that is, the exercise of violence against a third party by whom we are not directly threatened. He was aware that this was an extremely disturbing idea, as traditionally this right was the special prerogative of civil sovereigns.

Is not the power to punish essentially a power that pertains to the state [*respublica*]? Not at all! On the contrary, just as every right of the magistrate comes to him from the state, so has the same right come to the state from private individuals; and similarly, the power of the state is the result of collective agreement.... Therefore, since no one is able to transfer a thing that he never possessed, it is evident that the right of chastisement was held by private persons before it was held by the state. The following argument, too, has great force in this connexion: the state inflicts punishment for wrongs against itself, not only upon its own subjects but also upon foreigners; yet it derives no power over the latter from civil law, which is binding upon citizens only because they have given their consent; and therefore, the law of nature, or law [xxi] of nations, is the source from which the state receives the power in question.[23](#)

This last argument is of course identical to the one used later by Locke and described by him as "a very strange doctrine."[24](#) Intriguingly, he would not have found this particular point in *De Iure Belli ac Pacis*, though he would have found a clear statement of the general claim, for example at II.XX.3.1.

The Subject of this Right, that is, the Person to whom the Right of Punishing belongs, is not determined by the Law of Nature. For natural Reason informs us, that a Malefactor may be punished, but not who ought to punish him. It suggests indeed so much, that it is the fittest to be done by a Superior, but yet does not shew that to be absolutely necessary, unless by Superior we mean him who is innocent, and detrude the Guilty below the Rank of Men, and place them among the Beasts that are subject to Men, which is the Doctrine of some Divines.

These natural rights of self-defense are balanced, in both *De Iure Praedae* and *De Iure Belli ac Pacis*, by two laws, properly so called. In the earlier work he specified the laws as "Let no one inflict injury upon his fellows" and "Let no one seize possession of that which has been taken into the possession of another." However, he was at pains to stress that the rights of nature took precedence (as they were to later in Hobbes):

the order of presentation of the first set of laws and of those following immediately thereafter has indicated that one's own good takes precedence over the good of another person—or, let us say, it indicates that by nature's ordinance each individual should be desirous of his own good fortune in preference to that of another....[25](#)

In the later work, he most clearly listed the basic laws of nature in a passage in the *Preliminary Discourse*, § VIII:

the Abstaining from that which is another's, and the Restitution of what we have of another's, or of the Profit we have made by it, the Obligation of fulfilling Promises, the Reparation of a Damage done through our own Default, and the Merit of Punishment among Men.

And he made clear in his long defense of violence, Book I, Chapter II, that these laws did not supersede our natural right to defend ourselves: “The Christian Religion commands, that we should lay down our Lives one for another; but who will pretend to say, that we are obliged to this by the Law of Nature[?]” (I.II.6.2).

The natural state of man was thus one of wary defensiveness: men should not unnecessarily injure one another, but they need not actually help one another. Only if they formed civil associations, with the express intention of improving one another's lives and creating something richer than the state of nature, would principles such as mutual aid apply. In a “city,”

*First, Individual citizens should not only refrain from injuring other citizens, but should furthermore protect them, both as a whole and as individuals; secondly, Citizens should not only refrain from seizing one another's possessions, whether these be held privately or in common, but should furthermore contribute individually both that which is necessary to other individuals and that which is necessary to the whole....[26](#)*

In *De Iure Belli ac Pacis* he said the same, in his discussion of the difference between “corrective” and “distributive” justice. Distributive justice, he argued, was concerned with

a prudent Management in the gratuitous Distribution of Things that properly belong to each particular Person or Society, so as to prefer sometimes one of greater before one of less Merit, a Relation before a Stranger, a poor Man before one that is rich, and that according as each Man's Actions, and the Nature of the Thing require; which many both [xxiii] of the Ancients and Moderns take to be a part of Right properly and strictly so called; when notwithstanding that Right, properly speaking, has a quite different Nature, since it consists in leaving others in quiet Possession of what is already their own, or in doing for them what in Strictness they may demand. (*Preliminary Discourse*, X)

Aristotle (the most relevant “Ancient” referred to) was therefore wrong: it was not part of basic justice to think about the needs of others. Justice properly understood involved merely a commitment not to injure other people, unless doing so was necessary in order to protect one's own rights.

In both *De Iure Praedae* and *De Iure Belli ac Pacis*, Grotius presented these principles of natural law as themselves derived from some fundamental metaethical commitments, and the character of these commitments occasioned extensive controversy, both in his own time and later. Although the Prolegomena to *De Iure Praedae* began with the simple statement “What God has shown to be His Will, that is law,” even in that work Grotius refused to derive the laws of *nature* from “oracles and supernatural portents.”[27](#) Instead, they were to be deduced solely from “the design [*intentio*] of the Creator” as manifested in the generally recognized constitution of the natural world. Self-defense was the first and most basic of all principles: all individuals (not just men, but also animals, and even inanimate objects) possessed a fundamental drive to preserve themselves. Grotius was even prepared

to say (quoting Horace) that to this extent “expediency [*utilitas*, “profit” or “self-interest”] might perhaps be called the mother of justice and equity,” though he acknowledged that only part of justice was based on self-defense. Once their preservation was secured, individuals had other goals; in the case of men (and to a degree far exceeding that of other creatures), they were endowed with a desire for a social life with other individuals of the same kind. Grotius more than once in *De Iure Praedae* described this trait as “*homini proprium*,” “special to men,”<sup>28</sup> and from it he derived the remaining part [xxiv] of natural justice, the laws obliging us to abstain from injuring our fellow men. But in his discussion of this part he always insisted on its subordinate status to the right of self-preservation and on its minimal character—mutual aid and distributive (as distinct from corrective) justice were not part of this natural “*cognatio*”<sup>29</sup> but appeared with cities and civil society.

In the Prolegomena to *De Iure Belli ac Pacis*, Grotius set out a very similar theory, though its similarities to the earlier work were appreciably clearer in the first edition than in the edition he produced while attempting to return to the United Provinces. Just as in *De Iure Praedae* he had restricted the derivation of natural law to what all men agreed on as the basic physical principles governing all beings, so in the Prolegomena to *De Iure Belli ac Pacis* he asserted that it “necessarily derives from intrinsic principles of a human being.”<sup>30</sup> He was now even more blunt about the exiguous role of God, declaring in the most famous remark of the book that “what I have just said would be relevant even if we were to suppose (what we cannot suppose without the greatest wickedness) that there is no God, or that human affairs are of no concern to him.”<sup>31</sup> As in *De Iure Praedae*, Grotius accepted that God had indeed created the world and peopled it with beings constituted along these lines; but one did not need to think about the divine character of the creation to apprehend what the constitution of the physical world was, and all peoples at all periods of history, irrespective of their religious commitments, had agreed on the principles of natural law. Self-preservation was still the first of these principles: “nature drives each animal to seek its own interests [*utilitates*],” and this was true “of man before he came to the use of that which is special to man [*antequam ad usum eius quod homini proprium est, pervenerit*]”. But this was balanced by the same ideas as in [xxv] the earlier work, that what is *proprium* or special to man is a desire for a much richer social life than is possessed by any other animals, and in particular for a social life governed by rational principles. This desire is the basis for our respect for one another’s rights, and is “the source of *ius*, properly so called, to which belong abstaining from another’s possessions, restoring anything which belongs to another (or the profit from it), being obliged to keep promises, giving compensation for culpable damage, and incurring human punishment.” Anything further, involving distributive justice and the recognition of merited distinctions between people, might arise from this natural justice but was not, strictly speaking, part of it. Grotius now denied that Horace had been right in saying that *utilitas* was the mother of justice, but since he had qualified his endorsement of the remark in *De Iure Praedae*, his new comment on the passage did not represent a major repudiation of his old view.

It is clear that both Grotius’s derogation of the role of God and the priority he gave to self-interest were alarming to many of his contemporaries, particularly among the Calvinists who surrounded the Prince of Orange. In order to accommodate the book more to their views when he produced the second edition, Grotius toned down his argument. Thus he cut out the claim that man was driven purely by self-interest “before he came to the use of that which is special to man” and replaced it with the emphatic assertion that “*the Saying, that every Creature is led by Nature to seek its own private Advantage, expressed thus universally, must not be granted.*” Similarly, he contrived to widen the scope of God’s authority. For example, in 1625 the very first sentence of the Prolegomena included the claim that “few people have tackled the law that mediates between different countries or their rulers, whether that law stems from nature itself or from custom and tacit agreement, and so far no one at all has dealt with it comprehensively and methodically.” In 1631, this read “*that Law, which is common to many Nations or Rulers of Nations, whether derived from Nature, or instituted by Divine*

*Commands, or introduced by Custom and tacit Consent, few have touched upon, and none hitherto treated of universally and methodically*” —Grotius now allowed that the law of nature might be “instituted by Divine Commands.” Similarly, he [xxvi] dropped the word “necessarily” from the sentence where he had said that the natural law “necessarily derives from intrinsic principles of a human being” and added to his discussion at that point the thought that

*God by the Laws which he has given, has made these very Principles more clear and evident, even to those who are less capable of strict Reasoning, and has forbid us to give way to those impetuous Passions, which, contrary to our own Interest, and that of others, divert us from following the Rules of Reason and Nature; 32 for as they are exceeding unruly, it was necessary to keep a strict Hand over them, and to confine them within certain narrow Bounds. (Preliminary Discourse, XIII)*

So he now conceded that the natural law might properly be deduced not from the necessary constitution of the physical world, but from the records of God’s pronouncements about the law directly to mankind.

Almost all these changes are found in the Prolegomena; the remainder of the book continued to lay out the same case that Grotius had advanced in the first edition. The result of this was to throw many of his later readers, including Barbeyrac, into some confusion; Barbeyrac consistently sought to emphasize the wider character of Grotian sociability and to bring him in line with Pufendorf (whose main aim was to attack the account of man’s narrow and self-interested natural life found in Hobbes).<sup>33</sup> But anyone who read the first edition (as Hobbes himself [xxvii] probably did), or who could see through the confusion artfully introduced by Grotius (as Rousseau seems to have done), would be aware that Grotius’s theory of the law of nature was more like Hobbes’s than Pufendorf and Barbeyrac were ever prepared to acknowledge. When Rousseau said of Grotius and Hobbes (in the passage I quoted earlier) that “their principles are exactly the same,” he may well have been surprisingly close to the mark.

I now want to turn to the practical implications of Grotius’s ideas. The first and most obvious implication was that private war was legitimate. The East India Company, though legally a private individual, could indeed make war as if it were a state when it encountered any people with whom it did not already have some kind of civil association. Grotius was still an adviser to the company when he wrote *De Iure Belli ac Pacis*, and he continued to assert its right to engage in this kind of activity. The second implication, though less obvious, was even more far-reaching: the kind of war that private individuals could make included acts of *punishment* —that is, it encompassed much more than the limited violence which almost all moralists (other than the radically Christian ones) had allowed individuals to use in their own immediate self-defense. Grotius permitted the company, and anyone else dealing with the complicated power struggles and internecine violence of the world in which the European traders found themselves, to make judgments about the morality of the various parties and to punish those who seemed to be violating other people’s rights, even if there was no immediate threat to the Europeans themselves. Grotius was quite clear in *De Iure Belli ac Pacis* about the interventionary character of his theory, arguing in his great chapter on punishment (Book II, Chapter XX) that

We make no Doubt, but War may be justly undertaken against those who are inhuman to their Parents, as were the *Sogdians*, before *Alexander* persuaded them to renounce their Brutality; against those who eat human Flesh,... and against those who practise Piracy....And [xxviii] so far we follow the Opinion of *Innocentius* [Pope Innocent IV], and others, who hold that War is lawful against those who offend against Nature; which is

contrary to the Opinion of *Victoria*, *Vasquez*, *Azorius*, *Molina*, and others, who seem to require, towards making a War just, that he who undertakes it be injured in himself, or in his State, or that he has some Jurisdiction over the Person against whom the War is made. For they assert, that the Power of Punishing is properly an Effect of Civil Jurisdiction; whereas our Opinion is, that it proceeds from the Law of Nature....

(II.XX.40)

As Grotius said, this view was very contentious, and had usually been associated with enthusiasts for the medieval crusades, such as Innocent IV; modern writers, such as the principal theorist of the Spanish conquest of Mexico and Peru, Francisco de Vitoria, had expressly denied that the conquest was a crusade against immoral barbarians.

Many practices of non-European peoples, in Grotius's view, could count as grounds for intervention in order to punish breaches of the natural law. Perhaps the most surprising and historically important was any refusal by hunter-gatherers, such as the aborigines of North America, to let agriculturalists settle on their land. To understand this, we have to consider the most striking of all the implications that Grotius drew from his guiding principles, namely his theory of property. The basic right of self-preservation, according to the theory, entitled one to seize the necessities of life, even at the cost of another person's survival; but it did not entitle one *unnecessarily* to take from someone else what one needed. If we were to insist on our ownership of any commodity that we did not need and that someone else might make good use of, we would be indirectly injuring them. In *De Veritate Religionis Christianae*, which (as we have seen) also came out of the period of reflection allowed to Grotius in the early 1620s, he summed up his views as follows:

our natural needs are satisfied with only a few things, which may be easily had without great labour or cost. As for what God has granted us in addition, we are commanded not to throw it into the sea (as some Philosophers foolishly asserted), nor to leave it unproductive [*inutile*], nor to waste it, but to use it to meet the needs [*inopiam*] of other men, either by giving it away, or by lending it to those who ask; as is appropriate [xxix] for those who believe themselves to be not owners [*dominos*] of these things, but representatives or stewards [*procuratores ac dispensatores*] of God the Father....[34](#)

Throughout his discussion of property, especially in Book II, Chapters II and III of *De Iure Belli ac Pacis*, but also in *Mare Liberum* (which was the relevant portion of *De Iure Praedae*), Grotius made clear the extremely weak character of private property. In a state of nature, all commodities were in common, in the sense that each man took what he needed from the common store of nature and left what he did not need for other people to use; allocation of resources was simply on the basis of "first Occupancy" (II.III.1). The introduction of private property gave the owners merely a presumptive right to first use, entitling their own needs to be met by the commodity that they owned, before those of anyone else (II.II.8); but once the owners' needs had been met, Grotius always argued, the surplus could be claimed by the genuinely needy. A regime of private property did not give people a moral right to more extensive possessions; it merely changed the method by which they laid claim to the necessities of life.

Thus the sea could not be owned, as he insisted throughout *Mare Liberum* and in II.II.3 of *De Iure Belli ac Pacis*, because use of the sea itself (as distinct from the fish taken from it) could not be regarded as answering a basic need. The same was true of the original wastelands of the world, over which wild animals roamed. Agricultural land, on the other hand, could be owned, since (Grotius believed) only settled possession enabled the farmers to plant seed and harvest crops unmolested, and

thereby to produce new commodities that could be used to fulfill basic needs. The paradoxical consequence was that, according to Grotius, it was not the European settlers who were guilty of any injurious actions when they took hunting grounds away from the primitive peoples of the world; it was the primitive peoples themselves who were behaving [xxx] badly when they tried to resist the settlements, and who could be punished for their conduct.<sup>35</sup>

However, one practice that could *not* be used as justification for the conquest of primitive peoples was their religion. It had occasionally been argued that “infidels” could rightly be conquered by Christians, but Grotius was always adamant that war could never be made against any theists on the grounds that their religion was false. As he said in II.XX.46, “That there is a Deity, (one or more I shall not now consider) and that this Deity has the Care of human Affairs, are Notions universally received, and are absolutely necessary to the Essence of any Religion, whether true or false,” and “those who first attempt to destroy these Notions, ought, on the Account of human Society in general, which they thus, without any just Grounds, injure, to be restrained, as in all well-governed Communities has been usual.” So atheism was a moral crime, as it was to be for Locke (though not for Hobbes). But any religion that corresponded to this minimal definition should be tolerated, and Christianity could not be forced on its adherents (II.XX.48), though Christianity itself had to be tolerated by nonbelievers on pain of international punishment (II.XX.49).

A third and equally surprising practical implication of Grotius’s minimalist political principles was that he sanctioned certain kinds of slavery. As he said in his discussion of the issue in chapter V of Book II,

perfect and utter Slavery, is that which obliges a Man to serve his Master all his Life long, for Diet and other common Necessaries; which indeed, if it be thus understood, and confined within the Bounds of Nature, has nothing too hard and severe in it; for that perpetual Obligation to Service, is recompensed by the Certainty of being always provided for; which those who let themselves out to daily Labour, are often far from being assured of....

(II.V.27)

[xxxi]

The fundamental right to preserve oneself naturally (on Grotius’s view) led to the legitimacy of voluntary slavery, if one’s circumstances were such that only such a course of action would keep one alive. Similarly, parents could reasonably sell their children into slavery (II.V.29). But of course, the master of a slave could have no right to kill the slave, since such a right would defeat the object of the relationship from the point of view of the slave (II.V.28). This—to our eyes—disconcerting consequence of Grotius’s minimalist liberalism was a common feature of the rights theories of the seventeenth and eighteenth centuries, and it was of course one of the primary reasons why Rousseau was to turn in disgust from the Grotian tradition.

These implications of Grotius’s theory, all in various ways, relate to his defense of individual rights, including the private right to make war. But *De Iure Belli ac Pacis* also contains an influential account of the nature of a state. As we have seen, Grotius believed that all its rights “come to the state from private individuals;... the power of the state is the result of collective agreement.”<sup>36</sup> Individuals agree to pool their rights of self-preservation, and in addition to help their fellow citizens in ways that they would not think of doing in a state of nature. As he said in *De Iure Belli ac Pacis* I.I.14, “The State<sup>37</sup> is a compleat Body of free Persons, associated together to enjoy peaceably their Rights, and for their common Benefit” (the last phrase expressing what is added by civil association) (I.III.7). As long as

this “body of free persons” was independent of any other such body, it was itself free and sovereign: “we... exclude the Nations, who are brought under the Power of another People, as were the *Roman* Provinces; for those Nations are no longer a State, as we now use the Word, but the less considerable Members of a great State, as Slaves are the Members of a Family.”

But Grotius had to tread very carefully over the question of how such [xxxii] a body might be governed. He used the subtle analogy of the human eye:

As the Body is the common Subject of Sight, the Eye the proper; so the common Subject of Supreme Power is the State; which I have before called a perfect Society of Men....The proper Subject is one or more Persons, according to the Laws and Customs of each Nation.

I see with my eyes, and cannot see without them, but it is not my eyes that see: it is *me*. Similarly, Grotius argued, we cannot have a state without a government of one or more persons, but it is not the government that acts and creates political identity. The state, properly speaking, continues to be the whole association acting *through* its rulers. But that does not mean that the association can dispense with its particular rulers, any more than I can dispense with my eyes. After the passage just quoted, Grotius immediately went on to make one of his most famous claims, that

here we must first reject their Opinion, who will have the Supreme Power to be always, and without Exception, in the People; so that they may restrain or punish their Kings, as often as they abuse their Power. What Mischiefs this Opinion has occasioned, and may yet occasion, if once the Minds of People are fully possessed with it, every wise Man sees. I shall refute it with these Arguments. It is lawful for any Man to engage himself as a Slave to whom he pleases; as appears both by the *Hebrew* and *Roman* Laws. Why should it not therefore be as lawful for a People that are at their own Disposal, to deliver up themselves to any one or more Persons, and transfer the Right of governing them upon him or them, without reserving any Share of that Right to themselves? Neither should you say this is not to be presumed: For the Question here is not, what may be presumed in a Doubt, but what may be lawfully done? In vain do some alledge the Inconveniences which arise from hence, or may arise; for you can frame no Form of Government in your Mind, which will be without Inconveniences and Dangers. (I.III.8)

Since the *civitas*, the civil association or civil society, was an individual with the rights of any other individual, it simply followed on Grotius’s [xxxiii] account that it must be free voluntarily to enslave itself in the interests of its own survival. Only if it amalgamated with another association, or was treated as no longer a separate entity, would it destroy itself; any such union was tantamount to suicide by the state and could not be justified by the principle of self-preservation.<sup>38</sup> “Cases of extreme Necessity, by which all Things return to a mere State of Nature” (II.VI.5) might lead individuals to break up their own state and seek security in another, but this could not be an act of the civil society itself.

Whatever their different views about what he had done, Grotius’s readers in the seventeenth and eighteenth centuries were united in their praise for his originality, for in *De Iure Belli ac Pacis* we have indeed found many of the central themes of modern political theory. Grotius’s men are born free, under no authority but that which all men will recognize, the authority of a minimal kind of natural law. They are equal, for the essence of Grotius’s natural justice (as distinct from the distributive justice characteristic of civil societies) is that it treats all men as equal and does not recognize distinctions of rank or even of merit; furthermore, in nature our property is extremely exiguous, and no one can claim

property rights at the expense of the poor. And yet, on the other hand, his men are competitive and censorious, eager to conquer new territories if that will promote the rational use of the world's resources, and eager to intervene in the internal affairs of other nations if they see injuries being suffered by the innocent. The world Grotius depicted is indeed recognizably our world, for good or ill.

Richard Tuck

## Endnotes

### 1.

For the dedication, see *The Social Contract and Discourses*, trans. G. D. H. Cole, revised ed. J. H. Brumfitt and John C. Hall (Everyman 1973), 34; for *Emile*, see Rousseau, *Political Writings*, ed. C. E. Vaughan (Oxford: Oxford University Press, 1915), 2:147.

### 2.

This was the edition that appeared in 1691 from a press at Frankfurt-on-Oder, with commentary by Gronovius, Boecler, Henniges, Osiander, and Ziegler, names that will become familiar from Barbeyrac's notes in this edition.

### 3.

See Barbeyrac's remark in his *An Historical and Critical Account of the Science of Morality*, prefaced to his edition of Pufendorf, *The Law of Nature and Nations* (London, 1749), 67.

### 4.

This information is from J. ter Meulen and P. J. J. Diermanse, *Bibliographie des écrits imprimés de Grotius* (The Hague, 1950). For an exemplary modern edition of the Latin text, see B. J. A. De Kanter–van Hettinga Tromp's 1939 edition, reprinted with extensive additional material by R. Feenstra and C. E. Persenaire (Aalen: Scientia Verlag, 1993).

### 5.

Both the Barbeyrac Latin and French editions were from Amsterdam; the French version was dedicated to George I of England.

### 6.

For full details, see "A Note on the Text" at the end of the introduction.

### 7.

Immanuel Kant, *Political Writings*, ed. Hans Reiss, trans. H. B. Nisbet, 2d ed. (New York: Cambridge University Press, 1991), 103.

### 8.

His *Meletius sive De iis quae inter Christianos convenit epistola*, written in 1611; edited by G. H. M. Posthumus Meyjes (Leiden: Brill, 1988). See also his writings from 1614 onward on ecclesiastical power, discussed by H. J. van Dam in his edition of Grotius's *De Imperio Summarum Potestatum circa*

*Sacra* (Leiden: Brill, 2001).

9.

Grotius, *Briefwisseling*, ed. P. C. Molhuysen, vol. 2 (The Hague, 1936), 15 (no. 590).

10.

In 1623 he published these translations, with an introduction that broaches some of the themes later developed in *De Iure Belli ac Pacis*, in a volume entitled *Dicta Poetarum quae apud Io. Stobaeum exstant*. The book was published in Paris by Nicolas Buon, the same printer who was to produce *De Iure Belli ac Pacis*; Grotius had been staying at Buon's house since he arrived in Paris.

11.

Rousseau, *Political Writings*, 2:147.

12.

In 1622 he published *Bewys van den waren godsdienst*, the Dutch forerunner of his later *De veritate religionis Christianae*, which he had composed in prison; five years later he produced the Latin version. In 1622 he also published his *Disquisitio an Pelagiana sint ea dogmata quae nunc subeo nomine traducuntur*, picking up on the themes in debate between the Arminians and their opponents; and his *Apologeticus eorum qui Hollandiae ex legibus praefuerunt*, defending his conduct in the attempted coup of 1618.

13.

See among other references *Briefwisseling*, 2:254, 260, 283, 296, 327, 358.

14.

See, for example, *Briefwisseling*, 2:409, 417, 422, 426.

15.

Ibid., 31 (no folio numbering).

16.

Ibid., 449.

17.

Even as the *De Iure Belli ac Pacis* was being printed, Grotius was thinking about a new edition in which the work would appear alongside *Mare Liberum* and his essay on the Dutch constitution, *De Antiquitate Batavicae Reipublicae* of 1610 (*Briefwisseling*, 2:426). He clearly did not suppose then that *De Iure Belli ac Pacis* had superseded the earlier work. *De Iure Belli ac Pacis* and *Mare Liberum* did appear together in an Amsterdam edition of 1632, though this may not have been authorized.

18.

*De jure quod Batavis competit ad Indicana commercia dissertatio.*

19.

*De Iure Praedae Commentarius*, trans. Gwladys L. Williams and Walter H. Zeydel (Carnegie Endowment for International Peace, Oxford University Press, 1950), 1:18.

20.

I.III.8. As its context illustrates, of course, this stress on fundamental moral liberty is compatible with a voluntary renunciation of *civil* liberty—I.III.8 is the famous defense of absolutism. The term αὐτεξούσιον also occurs three times in *De Iure Belli ac Pacis*, with the same meaning as in *De Iure Praedae*. See, for example, his description of a child who has grown up and left home as “altogether αὐτεξούσιος, at his own Disposal” (II. V.6), and also II.XX.48.2 n. 6 and II.XXI.12.

21.

See in particular II.VII.27.1, which contrasts “the State of Nature” with civil “Jurisdiction.” II.VI.5, which in the English translation also refers to “a mere State of Nature” in opposition to civil society, in the original Latin refers to *ius naturae*. Other references to the state of nature, in the Latin as well as the English texts, occur at II.V.9.2 and II.V.15.2, though they contrast nature with grace, in a more traditional fashion. Grotius uses the term *civil society*: see, for example, I.IV.2.

22.

*De Iure Praedae Commentarius*, trans. Williams and Zeydel, 2:10–11.

23.

*De Iure Praedae Commentarius*, trans. Williams and Zeydel, 1:91–92. For the Latin text, the easiest source (since the Carnegie Endowment text is a photocopy of the manuscript) is still the original edition by H. G. Hanaker (The Hague, 1868), 91. See also Peter Borschberg, *Hugo Grotius: “Commentarius in Theses XI”* (Berne, 1994), 244–45, for an early statement of this idea, in the manuscript which seems to be part of the working papers for the *De Indis*.

24.

*Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 272 (II.9).

25.

*De Iure Praedae Commentarius*, trans. Williams and Zeydel, 1:21.

26.

Ibid., 21.

27.

Ibid., 8.

28.

*De Iure Praedae Commentarius*, ed. Hanaker, 12; see also page 13, “*medium justitiam, quae humano*

*generi propria est.*"

29.

That is, "relationship" or "similarity." *De Iure Praedae Commentarius*, ed. Hanaker, 13.

30.

See my translation of the Prolegomena in the appendix to Book III.

31.

This is the notorious *etiamsi daremus* clause, so called from the Latin for "even if we were to suppose."

32.

This is a translation of the sentence "& in diversa trahentes impetus, qui nobis ipsis, quique aliis consulunt, vagari vetuit," which appears in all the editions seen through the press by Grotius. Barbeyrac supposed that *aliis consulunt* should read *male consulunt*, but that seems to me to be a misrepresentation of what Grotius was saying. Grotius's point was that our self-interested and benevolent impulses did in principle keep us on the right road, though they might (as he claimed in 1631) need some sort of control by God to make sure that they did so. A better translation would read, "God has made these same principles more conspicuous by giving laws, even to those whose powers of reasoning are feeble: and he has forbidden those powerful impulses which attend to the interests of both ourselves and others from straying into the wrong courses, by strictly restraining the more vehement of them and by coercing them in both their ends and their means."

33.

See for example what he did to Grotius's remark at I.I.10, that *ius naturale* is "a dictate of right reason, indicating of any act whether it possesses moral turpitude or moral necessity, from its congruity or incongruity with rational nature itself, and consequently whether it was forbidden or permitted by God the author of nature" (my translation). Barbeyrac inserted at his own initiative the words "and social" (*ac sociali*) after the word "rational" in this passage—are vealing attempt to make Grotius more of a theorist of sociability than in fact he was.

34.

Grotius, *Opera Omnia Theologica* (London, 1679), 3:43(II.14)(my translation). The last sentence is a reference to 1 Tim. 6:17, 18. The similarity to Locke's sentiments in Chapter V of the *Second Treatise* is obvious and unaccidental.

35.

See II.II.17. Grotius there and elsewhere distinguished between "Property" and "Jurisdiction": Just as a fleet at sea can claim the right to regulate the use of the sea in its neighborhood (always allowing for the moral rights of other people to use surplus resources), so an aboriginal nation could regulate the use of its territory. But if it failed to allow settlement under its aegis, the land could be taken from it as punishment for its breach of the law of nature.

36.

*De Iure Praedae Commentarius*, trans. Williams and Zeydel, 1:91.

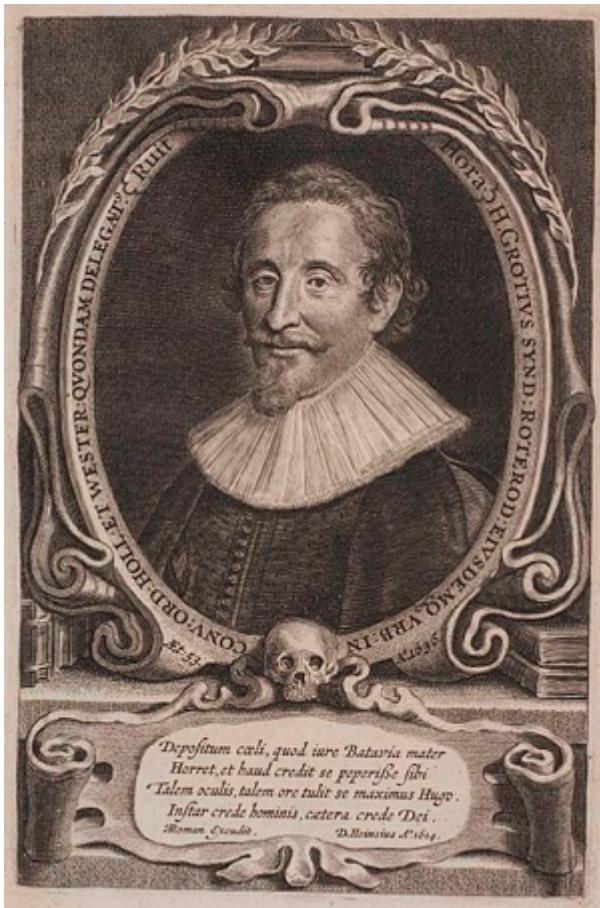
37.

In the Latin original, he used the word *civitas* or “city,” the word which continued to be used by, for example, Hobbes and Pufendorf in their Latin writings to mean “state.”

38.

“Nor let any Man pretend to tell me, that the Sovereign Power is lodged in the Body, as in its Subject, and may therefore be alienated by it, as a Thing that properly belongs to it. For if the Sovereignty resides in the Body, it is as in a Subject which it fills entirely, and without any Division into several Parts; in a Word, after the same Manner as the Soul is in perfect Bodies” (II.VI.6). Interestingly, the idea that sovereignty is like the soul (rather than the head) is precisely the analogy used by Hobbes. We should also remember in this context Grotius’s strong conviction that the United Provinces was an alliance of independent states and not a full union.

## 2. Jean de Barbeyrac, "The Life of Hugo Grotius" (1738) ↵



### Source

Jean de Barbeyrac, "The Life of Hugo Grotius" (1738) in volume 1 of Hugo Grotius, *The Rights of War and Peace, edited and with an Introduction by Richard Tuck, from the Edition by Jean Barbeyrac* (Indianapolis: Liberty Fund, 2005). <[http://oll.libertyfund.org/titles/1425#lf1032-01\\_head\\_008](http://oll.libertyfund.org/titles/1425#lf1032-01_head_008)>.

### THE LIFE OF HUGO GROTIUS[i] ↵

To look into the Manners of *Antiquity*, and recover the Memory of *preceding Ages*, is an Entertainment of the highest Pleasure and Advantage to the Mind, it establishes very lasting Impressions of *Virtue* in us, *enlarges* the Soul, and moves our Emulation to follow and excel the *leading Characters* before us; when we are tracing the Exploits of some *Worthy* of *Old*, with what *Delight* do we pursue him in every Circumstance of Action, we admire the *Example*, and transmit the *Beauties* of his Life into our own Conduct by *Practice* and *Imitation*; for the *Mind* of Man is of a *searching Nature*, very *wide* and *extensive* in her Speculations; and as she is *blind* to the Transactions of *Futurity*, so she receives a greater Lustre from the *Reflection* of Instances that are *past*, than from the *Rules of Wisdom*, or the *Determination* of the *Schools*: φιλοσοφία ἐκ παραδειγμάτων, *Philosophy* from *Example*, in the Opinion of the *Historian*, [Thucydides.] advances human Life beyond the Power of *Precept*, or the *Distinctions of Morality*, it opens a large Scene for *Observation*, it displays all the *Occurrences* and *Revolutions of Providence*, how far *Application* and *Industry* improve

the Abilities of the Soul, and offer us to the Notice of Mankind, and the Wonder of Posterity.

This Life of *GROTIUS* is not writ with a Design to enlarge upon his *Merit*, or to *adorn* his Character, who has left such *Illustrious* Testimonies of his *Learning*, *Zeal*, and *Piety*, that the Letter'd World submits to his *Authority*, and *reveres* his *Judgment* so much,[ii] that his *Name* will be venerable to *latest Ages*: Our present Aim is only to reduce the *Circumstances* of his *Life* into such a Method as will shew us by what *Steps* and *Degrees* he attained to so *high* an Esteem, as to derive an *Honour* upon the *Century* he lived in, and to recommend him as a *Pattern* to succeeding Ages.

[60]

*HUGO GROTIUS*, in *Dutch*, *de Groot*, one of the greatest Men in *Europe*, was born at *Delft* the 10th of *April*, 1583; where his *Family* had been *Illustrious* between *Four and Five Hundred Years*. He made so early a Progress in his *Studies*, that he writ some *Verses* before he was *nine Years* of Age; and at *Fifteen* he had a great Understanding in *Philosophy*, *Divinity* and the *Civil Law*; but he was still better skill'd in *Philology*, as he made it appear by the *Commentary* he writ at *that Age* upon *Martianus Capella*, a very difficult Author. So prodigious was his *Memory*, that being present at the *Muster* of some Regiments, he remembered the Names of every Soldier there. In the Year 1598 he accompanied the *Dutch* Ambassador, the famous *Barneveldt*, into *France*, where *Henry IV* gave him several Marks of his *Esteem*; he took there his Degree of *Doctor of Law*, and being returned into his Country, he applied himself to the *Bar*, and *pleaded* before he was *Seventeen Years* of Age; he was not *Twenty four Years* old when he was made *Advocate-General*; he settled at *Rotterdam* in 1613, and was *Pensionary* of that Town; he would not accept of that Employment, but upon Condition that he should not be deprived of it; for he foresaw that the Quarrels of *Divines* about the Doctrine of *Grace*, which formed already a thousand *Factions* in the *State*, would occasion many *Revolutions* in the chief Towns; he was sent into *England* in the same Year, by reason of the Misunderstanding between the *Merchants* of both Nations; he wrote a Treatise upon that Subject, and called it *Mare Liberum*, or a Treatise shewing the Right the *Dutch* have to the *Indian Trade*. He found himself so far engaged in the Affairs which undid *Barneveldt*, that he was arrested in *August* 1618, and condemned to *perpetual Imprisonment* the 18th Day of *May* 1619, and to *forfeit* his *Estate*; he was confined to the Castle of *Louvestein* the 6th of *June* in the same Year, where he was severely used for above 18 Months; from whence, by the Contrivance of *Mary de Regelsberg* his *Wife*, he made his Escape, who having observed that the *Guards*, being weary of searching a large *Trunk* full of Books and Linnen to be washed at *Gorcum*, a neighbouring Town, let it go without opening it as they used to do, advised her Husband to put himself into it, having made some Holes with a Wimble in the Place where the forepart of his *Head* was, that he might not be stifled. He followed her Advice, and was in that manner carried [61] to a *Friend* of his at *Gorcum*; from whence he went to *Antwerp* in the usual Waggon, after he had crossed the publick Place in the Disguise of a *Joyner*, with a Ruler in his Hand. That *good Woman* pretended all the while that her *Husband* was[iii] very *Sick*, to give him time to make his Escape into a *Foreign Country*: But when she thought he was safe, she told the *Guards*, laughing at them, that the *Birds were fled*. At first there was a Design to *Prosecute* her, and some *Judges* were of Opinion she should be kept in Prison instead of her *Husband*; but by a Majority of Votes she was released, and praised by every Body, for having by her Wit procured her Husband's *Liberty*. Such a Wife deserved not only to have a *Statue* erected to her in the *Commonwealth of Learning*, but also to be *canoniz'd*; for we are indebted to her for so many excellent Works published by her Husband, which had never come out of the Darkness of *Louvestein*, if he had remained there all his Lifetime, as some *Judges* appointed by his Enemies designed it.

He retir'd into *France*, where he met with a kind Reception at *Court*, and had a *Pension* assigned him; the *Dutch* Embassadors endeavoured to prepossess the *King* against him, but that Prince did not regard

their *Artifices*, and gave a glorious Testimony to the Virtue of that *Illustrious Refugee*, and *admired the Virtue of the Man, who being so ill used in his Country, never omitted an Opportunity to advance its Interest, and encrease its Grandeur*. He applied himself very closely to *Study*, and to compose *Books*. The *first* he published after he settled in *France*, was *An Apology for the Magistrates of Holland*, who had been turned out of their Places. The *contrary Party* was very much displeased with this *Treatise*, they thought *GROTIUS* made it appear that they had acted against the Laws, and therefore they endeavoured again to ruin and defame him, but the Protection of the *French Court* secured him against their Attempts.

He left *France* after he had been there *Eleven Years*, and returned into *Holland* full of Hopes, by reason of a kind Letter he received from Prince *Frederick Henry*, who succeeded his Brother in that *Republick*; but his Enemies prevented the good Effects of that Letter, and therefore he was forced once more to leave his Country; he resolved to go to *Hamburg*, where he stayed till he accepted the Offers he received from the Crown of *Sweden*, in the Year 1634. Queen *Christina* made him one of her *Counsellors*, [62] and sent him *Embassador* to *Lewis XIII*. Having discharged the Duties of that Employment about *Eleven Years*, he set out from *France* to give an Account of his Embassy to the Queen of *Sweden*; he went through *Holland*, and received many Honours at *Amsterdam*; he saw Queen *Christina* at *Stockholm*, and after he had discoursed with her about the Affairs he had been entrusted with, he most humbly begged of her, that she would grant him his Dismission. The *Queen* gave him no positive Answer when he asked leave to retire, which displeased some great Men, who were afraid that she would keep him in her *Council*: He perceived their Discontent, and was so pressing to obtain his Dismission, that it[iv] was granted him at last. The *Queen*, upon his Departure, gave him several Marks of her great Esteem for him. The *Ship* on Board which he embarked was violently toss'd by a Storm on the Coasts of *Pomerania*; *GROTIUS* being sick, and uneasy in Mind, continued to travel by Land, but his Illness forced him to stop at *Rostock*, where he *died* in a few Days, on the 28th of *August* 1645. His Body was carried to *Delft* to be buried among his Ancestors; he left behind him three *Sons*, and one *Daughter*. The *Daughter* was married to a *French Gentleman* called *Mombas*, who was very much talk'd of, on Occasion of a Trouble he was brought into soon after the *French* had passed the *Rhine* in the Year 1672. The *eldest Son* and the *youngest* pitched upon a *Military Life*, and died without being *married*. The *second*, whose Name was *Peter de Groot*, made himself *illustrious* by his *Embassies*. The *Elector Palatine* being restored to his Dominions by the *Treaty of Munster*, appointed him his *Resident in Holland*: He was made *Pensionary* of the City of *Amsterdam* in 1660, and discharged the Duties of that Place with great Ability for the Space of *Seven Years*. He was sent *Embassador* to the *Northern Crowns* in the Year 1668. At a Year's End he went into *France* with the same Character, and acquitted himself in that Employment with great Dexterity and *Wisdom*. When the *War* was kindled 1672, he returned into his Country, and was deprived of his Office of *Pensionary* at *Rotterdam*, which he had enjoyed ever since his Return from his Embassy into *Sweden*: He was deprived of it during the *Popular Tumults*, which occasioned so many Alterations in the Towns of *Holland*. He retired to *Antwerp*, and then to *Cologne*, whilst the *Peace* was treating there, and [63] acted for the *Good* of his *Country* as much as ever he could; and yet when he returned into *Holland* he was accused of a *State Crime*; the Cause was tried and he was acquitted: He retired into a *Country-House*, where he died at 70 Years of Age.

The Calumnies, maliciously dispersed by the *Enemies* of *GROTIUS*, about his *Death*, are irrefragably confuted by the Relation of the *Minister* who attended upon him when he was *dying*. The *Minister*, called *John Quistorpius*, was *Professor of Divinity* at *Rostock*. His Relation imports, "That he went to *GROTIUS* who had sent for him, and found him almost dying; that he exhorted him to prepare for *Death*, in order to enjoy a more happy *Life*, to *acknowledge* his *Sins*, and to *repent* of them; that having mentioned to him the *Publican*, who confessed himself a *Sinner*, and begged *God's Mercy*, the sick Man answered, *I am that Publican*; that he went on and told him he should have Recourse to

Jesus Christ, without whom there is no Salvation, and that *GROTIUS* replied, *I place all my Hopes in Jesus Christ alone*; that he repeated in a *loud* Voice a *Prayer* in *High-Dutch*, and that the sick Man said it softly after him with his Hands joined; that having ended, he asked him whether he understood[v] him, and his Answer was, *I understood you very well*; that he continued to repeat to him some Passages of the *Word of God*, which *dying* People are usually put in Mind of, and to ask him, *Do you understand me?* and that *GROTIUS* answered, *I hear your Voice, but I do not understand every thing that you say*; that with this Answer the sick Man lost his *Speech*, and *expired* soon after.” It were an absurd thing to call in Question the *Sincerity* of *Quistorpius*, nothing could move him to be false in his Account, and it is certain that the *Lutheran* Ministers were no less displeased than the *Calvinists* with the particular Opinions of *GROTIUS*, and therefore the Testimony of the Professor of *Rostock* is an authentick Proof; and if such Evidence is not sufficient in Matters of Fact, we make way for *Scepticism*, and it will be difficult to *prove* any thing. It is therefore an *undeniable* Case that *GROTIUS* being a *dying*, was affected like the *Publican* mentioned in the *Gospel*, he *confess'd* his Faults, he was *sorry* for them, and *implor'd* the *Mercy* of his *heavenly Father*; that he placed all his *Hopes* in *Jesus Christ* alone; that his *last Thoughts* were those that are contained in the *Prayer* of *dying* People, [64] according to the *Liturgy* of the *Lutheran* Churches. The Result of which is, that those who say *he died a Socinian*, would be too gently used if they were only told, that they are guilty of a rash Judgment; they are Persons *prejudiced* against the Character of this *Great Man*, and therefore very unworthy of our Belief. Several People have wondered that his *Grand-Children* did not ask Satisfaction for this *Injury* done to his *Memory*, and that they appeared less sensible in this Point, than *Jansenius's* Relations upon slighter Calumnies; but some Persons highly approve their waving all *Juridical* Proceedings. There is a solid Answer to that *Reflection* upon our Author made by a Book entitled *l'Esprit de Mr. Arnauld*; and since the *Accuser* made no *Reply* to it, it is a plain Sign he has been convicted of Calumny. The *Apologist* for the Character of *GROTIUS* begins thus, “*But, Sir, what that Author and Father Simon say of GROTIUS, is nothing, if compared to what the nameless Author of the scandalous Libel intitled l'Esprit de Mr. Arnauld says of him; it is true, he slanders every Body in that Book, and the manifest Lies that are in it, ought to make one disbelieve every thing else; but because some are so weak, as to be imposed upon by his bold way of speaking, because some of those to whom you shew my Letters, entertain an ill Opinion of GROTIUS upon that Account, you will give me leave to undeceive them. Perhaps they will not be displeased to find an Author, for whom they have so great an Esteem, guilty of the most horrid Calumny that ever was; this will teach them, that one ought to suspect those who appear so zealous for Truth, and that sometimes a prodigious Malice and Detraction are concealed under the zealous Pretence of defending the Church of God. Afterwards the Apologist examines the four Accusations one after another; I shall not dwell on what[vi] he says upon the first Head, viz. That GROTIUS was a violent Arminian. GROTIUS, says our Author, in the second Place, was a Socinian, as appears from his enervating the Proofs of Christ's Divinity. Sir, desire your Friends to read GROTIUS's Annotations upon the Passages of St. Mark and St. John which I have mentioned to you, and if they do not say that it is an abominable Calumny, I am willing to be accounted a most wicked Calumniator. See also the DXLVIIIth Letter among the Literae Ecclesiasticae & Theologicae.*” *I should be too long should I mention what he says upon the third Head, I shall only set down this Passage out of it*, “*When Mr. Arnauld says [65] something that is injurious to the Reformed, the Author of the Libel exclaims violently against him, and Mr. Arnauld is then an unsincere Man, an unfair Accuser, an Infamous Calumniator; but when he says something that may serve this Satirical Writer to inveigh against those whom he hates, every thing is then right, it serves him to fill up his Page, and to prevent his being placed among the little Authors.*”

I must not forget that Mr. Arnauld blames the *Lutheran* Minister for not asking *GROTIUS* in what *Communion* he would die, this is a material Thing, says Mr. Arnauld, “with respect to a *Man* who was known to have had no *Communion* a long time with any Protestant *Church*, and to have confuted in his last Books most of the *Doctrines* that are common to them. Whereupon the *Apologist* says, that Mr.

Arnauld and the Author of the *Libel* do wrongly fancy, that a Man has *no Religion* when he joins with none of the *Factions* that condemn *Mankind*, and each of which pretends to be the *only Church of Christ*. *GROTIUS* abstained from communicating with the *Protestants*, as well as with the *Papists*, because the *Communion*, which was appointed by *Christ* as a *Symbol of Peace and Concord* among his *Disciples*, is accounted in those Societies a *Sign of Discord and Division*.”—*Quistorpius* acted the Part of a wise Man in not asking him what Communion he would die in, since he saw him dying in the Communion of *Jesus Christ*, by Virtue of which we are saved, and not by Virtue of that of the Bishop of *Rome*, or of the several *Protestant Societies*.

Without enquiring whether *Quistorpius* was in the *Right* or the *Wrong* for not asking such a Question, we observe, that a Man who believes the *Fundamental Doctrines of Christianity*, but forbears receiving the *Communion*, because he looks upon that Action as a Sign that one *damns* the other *Christian Sects*, cannot be accounted an *Atheist*, but by one who has forgot the *Notions of Things* or *Definitions of Words*; nay, we go farther, and maintain it cannot be denied that such a Man is a *Christian*; we allow you to say, that his believing *all the Sects* that receive the *Gospel* to be in the *way to Salvation* is an *Heresy*; we allow you to assert, that it is a *pernicious and dangerous Doctrine*; notwithstanding which, can it be said that[vii] those who believe that *Jesus Christ is the Eternal Son of God, coessential and consubstantial with the Father*, that *he died for [66] us*, that *he sits at the right Hand of God his Father*; that *Men are saved by Faith in his Death and Intercession*; that *one ought to obey his Precepts, and repent of one's Sins, &c.* we say, can it be affirmed that *such People are not Christians*? No Man of Sense can affirm it; but none would be more unreasonable in affecting such a thing than the Author of *l' Esprit de Mr. Arnauld*, since he published another Book, wherein he shews that *all those who believe the Fundamental Points, belong to the true Church, whatever Sect they may be of*. We omit several other *Maxims* advanced by him, whereby it appears, that *one may be saved in all Religions*; we only mention such Doctrines as he cannot deny, and according to which he ought to acknowledge, that *GROTIUS*, who believed the *Fundamental Doctrines*, without approving *Calvinism* or *Popery, &c.* in every thing, was a *Member of the true Church*.

We suppose that what has been delivered may be of sufficient Force to overthrow the *Calumnies* that have been raised against our *Author*, in respect to his *Principles in Religion*; we shall now take a short Survey of the most eminent *Books* that were *published* from him.

During his Stay at *Paris*, before he was Ambassador of *Sweden*, “he translated into *Latin Prose* his Book *concerning the Truth of the Christian Religion*, which he had writ in *Dutch Verse*, for the Use of the *Seamen* who travelled into the *Indies*, that they might have some Diversion in singing such a pious Poem.” Thus *du Maurier* speaks of it; but he is very much to blame for giving such a *mean Notion* of the *Author's Design*, for *GROTIUS* aimed at a *nobler End*; he had a Mind to enable the *Dutch*, who travel to the *Indies*, to promote the *Conversion* of the *Infidels*; this is the Character he gives of it himself, *My Resolution was to do something of Advantage to all my Countrymen, but especially for Seamen, that in all their Leisure they have Aboard, they may use their Time with Profit to themselves, and not loiter away their Hours as some do. And therefore beginning with a Panegyrick upon my own Nation, which infinitely excels all others in this Art; I encouraged them, that they would improve their Art, not only for their Benefit and Gain, but that they would regard it as the Mercy of Heaven, and use it for the propagating of the Christian Religion*. It is an Excellent Work, and the Notes upon it are very learned. It was translated into *English, French, Dutch, German, Greek, Persian, and [67] Arabick*; but we do not know whether all those Translations have been published; the *Greek* was not printed in the Year 1637. In the Year following *GROTIUS* mentions the *Persian Translation* only, as a Book which the *Pope's Missionaries* had a Mind to publish. *My Book*, says he, *concerning the Truth of the Christian Religion, that is accounted Socinian by some, is so far from having that Character here, that it is to be turned by the Pope's Missionaries into the Persian[viii] Tongue, to convert, by the Favour of*

*God, the Mahometans who are in that Kingdom.* In the Year 1641, an *Englishman*, who had translated that Book into *Arabick*, was desirous his Translation should be printed in *England*. There came a very learned *Englishman* to me within these few Days, says he, who lived a long time in the *Turkish Dominions*, and translated my Book of the *Truth of the Christian Religion* into *Arabick*, and will endeavour, if he can, to have it published in *England*: He thinks no Book more profitable, either to instruct the *Christians* of those Parts, or to convert the *Mahometans* that are in the *Turkish, Persian, Tartarian, Punic, or Indian Empire*. That Translation made by the famous Dr. *Edward Pocock*, was printed at *London* in the Year 1660. There are three *German* Translations of that Work, two in Prose, and one in Verse, and two *French* Translations in Prose.

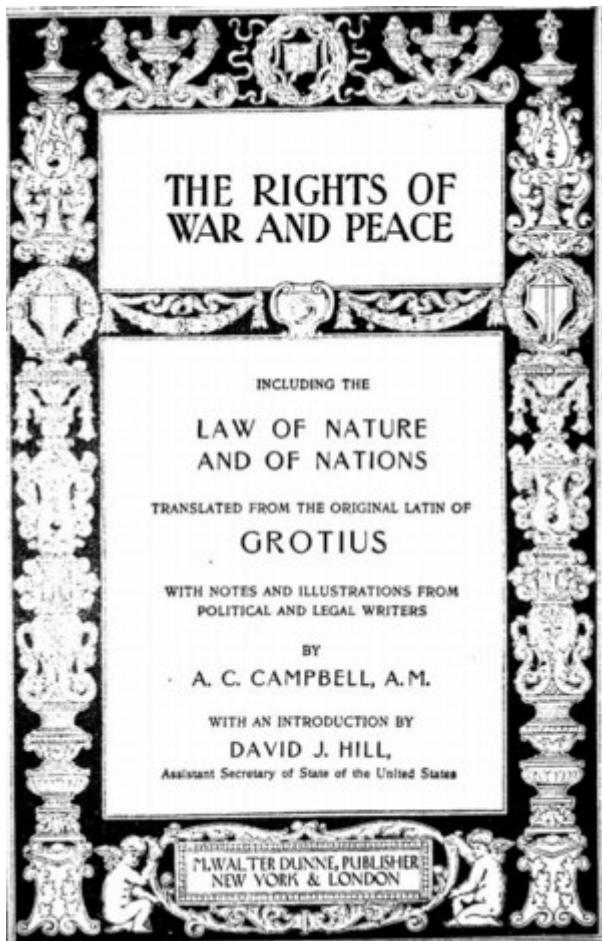
*GROTIUS* writ an *History of the Low-Countries*; it contains an Account of what happened in the *Netherlands* from the Departure of *Philip II*. It is divided into *Annals* and *History*, the *Annals* comprehend five Books; the *History* contains eighteen, and begins in the Year 1588. *Casaubon*, who had read something of it in the Year 1613, speaks well of it in a Letter written from *London* to *Thuanus*. The Judgment of the Author of the *Parrhasiana* runs thus, “ *We may add to Polybius, a famous Historian among the Moderns, who though he had been a Sufferer by the Injustice of a great Prince, relates his noble Actions as carefully as any other Historian, and speaks of him according to his Merit, without saying any thing, whereby it may appear that he had Reason to complain of him; I mean the incomparable HUGO GROTIUS, who speaks in his History of the Netherlands of Prince Maurice de Nassau, as if he had never been ill treated by him; this is a remarkable Instance of Impartiality, which shews that it is not impossible to overcome one’s Passion, and speak well of one’s Enemies, as several People fancy, who judge of others by themselves.* ” The [68] Author who observes this fine Passage in *GROTIUS*’s *History*, did it not out of Flattery, for he blames him afterwards for a thing that deserves to be blamed; he does not approve *GROTIUS*’s Style, and shews thereby that he is a Man of a good Taste. “None,” says he, “of those who spoke well at *Athens*, and at *Rome*, expressed himself so obscurely in Conversation, as *Thucydides* and *Tacitus* did in their Histories; doubtless they had a Mind to raise themselves above common Use, and thereby they fell into that Obscurity for which they are justly reproved. It cannot be denied they have an affected Style, and that they hoped to recommend their Histories as it were by a manly Eloquence, whereby it seems that many things are expressed in few Words, and raised above the Capacity of the Vulgar; I cannot apprehend why some learned Men undertook to imitate them, as *HUGO GROTIUS*, and *Dionysius Vossius* in his Translation of *Rheide*’s *History*, and [ix] how they could relish such a Style; for certainly good Thoughts need not be obscure to be approved by good Judges; and when a Reader is obliged to stop continually, in order to look for the Sense, he does not think himself in the least obliged to an Historian who gives him the Trouble; this is the Reason why some Histories, though excellent as to the Matter, are read by few People; whereas if those Historians designed to write for the Instruction of those who have a sufficient Knowledge of the *Latin Tongue* to read a History with Pleasure, they should endeavour to make themselves easily understood, and useful to as many People as ever they could. The more a History deserves to be read by reason of the Events contained in it, the more it deserves to be of a general Use; the Authority of the Ancients who neglected the Clearness of the Style, cannot justify the Moderns, who have imitated them contrary to the Reasons I have mentioned, or rather contrary to good Sense. There is nothing in *Tacitus* that less deserves to be imitated, than his too concise, and consequently obscure Style; I am sorry *GROTIUS* was one of those who did not avoid it, it makes the Translation of his Writings more difficult, and his Thoughts more obscure.”

But his Book *Of the Rights of War and Peace* was the *Masterpiece* of his Works, and therefore deserves a more particular Account; it was printed at *Paris* in 1625, and dedicated to *Lewis XIII*. “King *Gustavus* of [69] *Sweden* having read and admired it, resolved to make use of the Author, whom he took to be a great *Politician* by reason of that Work; but that Prince having been killed at the Battle of *Lutzen* in the Year 1632, Chancellor *Oxenstern*, according to his own Inclination, and the

Design of the late King *Gustavus*, nominated him to be sent Ambassador into *France*. ” *Colomies* says, “It is believed that *GROTIUS* exhausted his Parts upon that Book, and that he might have said of it what *Casaubon* said of his Commentary upon *Perseus*, in a Letter to Mr. *Perillan* his Kinsman, which is not printed, *in Perseo omnem ingenii conatum effudimus*; and indeed that Work of *GROTIUS* is an excellent Piece, and I do not wonder that it has been explained in some *German* Universities.”—Here follows the Judgment which M. *Bignon*, that unblamable Magistrate, makes of that Book in a Letter to *GROTIUS*, dated the 5th of *March*, 1633. “I had almost forgot,” says he, “to thank you for your Treatise *De Jure Belli*, which is as well printed as the Subject deserves it; I have been told that a great King had it always in his Hands, and I believe it is true, because a very great Advantage must accrue from it, since that Book shews, that there is Reason and Justice in a Subject, which is thought to consist only in Confusion and Injustice; those who read it will learn the true Maxims of the *Christian* Policy, which are the solid Foundations of all Governments; I have read it again with a wonderful Pleasure.” They did not make the[x] same Judgment of it at *Rome*, where it was placed among prohibited Books the 4th of *February* 1672. M. *Chauvin*’s Memorial concerning the Fate and Importance of that Work is so curious, that we cannot forbear transcribing some things out of it. It informs us that *GROTIUS* undertook to write that Book at the Solicitation of the famous *Peireskius*. *He himself says so*, in a Letter he writ to him, when he presented him with the Copy of that Work. “The Subject of it was thought to be so important and useful, that it gave Occasion to make a particular Science of it; for the Explication of which, some Professors have been appointed on purpose in the Universities. *Charles Lewis*, Elector *Palatine*, did so highly value that Book, that he thought fit it should serve as a Text to the Doctrine concerning the Right of Nature, and the Law of Nations, and in order to teach it he appointed M. *de Puffendorf* in the University of *Heidelberg*; and in Imitation of that Prince, the like Settlements [70] have been made in other Universities. It does not appear that any Body criticized upon this Work of *GROTIUS* during his Lifetime”; but when he was dead it occasioned many Disputes, and was published over all the World of Letters, and commented upon by the most *learned* of all Nations. It came out at last, *cum Notis Variorum*, by which means *our Author*, within 50 Years after his Death, obtained an Honour, which was not bestowed upon the *Ancients* till after many Ages.

Thus have we given the *History* of this *great Man*, taken from the best Accounts that have contributed to derive his Memory to our Times; but as an *Improvement* of his Character receive the Testimony of *Salmasius*, one of his Enemies, in a Letter to him, *You have laid but a small Obligation upon the Cardinals, and upon myself likewise, by bestowing a Title upon me, which is peculiar to the most eminent GROTIUS; for why should I not call him so, whom I had rather resemble, than enjoy the Wealth, the Purple, and Grandeur of the Sacred College?*[xi]

### 3. David J. Hill, "Introduction" (1901) ↵



#### Source

David J. Hill, "Introduction" to Hugo Grotius, *The Rights of War and Peace, including the Law of Nature and of Nations, translated from the Original Latin of Grotius, with Notes and Illustrations from Political and Legal Writers*, by A.C. Campbell, A.M. with an Introduction by David J. Hill (New York: M. Walter Dunne, 1901). <[http://oll.libertyfund.org/titles/553#lf0138\\_head\\_003](http://oll.libertyfund.org/titles/553#lf0138_head_003)>

#### INTRODUCTION BY DAVID J. HILL

##### The Work and Influence of Hugo Grotius.

The claims of the great work of Grotius, “*De Jure Belli ac Pacis*,” to be included in a list of Universal Classics, do not rest upon the felicity of style usually expected in a classic composition. His work is marked by frequent rhetorical deformities, tedious and involved forms of reasoning, and perplexing obscurities of phraseology which prevent its acceptance as an example of elegant writing. Notwithstanding these external defects, it is, nevertheless, one of the few notable works of genius which, among the labors of centuries, stand forth as illustrations of human progress and constitute the precious heritage of the human race.

If it is not literature in the technical sense, the masterpiece of Grotius is something higher and

nobler,—a triumph of intelligence over irrational impulses and barbarous propensities. Its publication marks an era in the history of nations, for out of the chaos of lawless and unreasoning strife it created a system of illuminating principles to light the way of sovereigns and peoples in the paths of peace and general concord.

## I. The Reign of War.

The idea of peaceful equity among nations, now accepted as a human ideal, though still far from realization, was for ages a difficult, if not an impossible, conception. All experience spoke against it, for war was the most familiar phenomenon of history.

Among the Greek city-states, a few temporary leagues and federations were attempted, but so feeble were the bonds of peace, so explosive were the passions which led to war, that even among the highly civilized Hellenic peoples, community of race, language, and religion was powerless to create a Greek nation. It was reserved for the military genius of Alexander the Great, at last, by irresistible conquest, to bring the Greek Empire into being, to be destroyed in turn by superior force.

The Roman Empire almost achieved the complete political unity of Europe, and bound parts of three continents under one rule, but the corruption of the military power which held it together led to its inevitable dismemberment.

After the conflicts of the barbaric kingdoms which followed the dissolution of the Western Empire were ended by the predominance of the Frankish monarchy, the world believed that the *Pax Romana* was to be restored in Europe by the hand of Charles the Great; but the disruptive forces were destined to prevail once more, and the Holy Roman Empire never succeeded in reviving the power of ancient Rome. And thus the dream of a universal monarchy, of a central authority able to preside over kings and princes, adjusting their difficulties, and preserving the peace between them, was at last proved futile.

In each of the great national monarchies that had already risen or were still rising on the ruins of imperial dominion, particularly in France, England, Holland, and the States of Germany, a continuous internal conflict over questions of religion complicated the bitterness and destructiveness of foreign wars until Europe was reorganized by the Peace of Westphalia, in 1648.

It was in the midst of these wars that Grotius was born. He saw his own country rising from a baptism of blood and all Europe rent and torn by the awful struggle of the Thirty Years' War, in the midst of which his great work was written and to whose conclusion it served as a guide and inspiration. The Empire, dismembered, had been reduced to almost complete impotence, the Church had been disrupted, and no international authority was anywhere visible. Amid the general wreck of institutions Grotius sought for light and guidance in great principles. Looking about him at the general havoc which war had made, the nations hostile, the faith of ages shattered, the passions of men destroying the commonwealths which nourished them, he saw that Europe possessed but one common bond, one vestige of its former unity,—*the human mind*. To this he made appeal and upon its deepest convictions he sought to plant the Law of Nations.

## II. The Predecessors of Grotius.

It is historically accurate to say, that, until formulated by Grotius, Europe possessed no system of international law. Others had preceded him in touching upon certain aspects of the rights and duties of nations, but none had produced a system comparable to his.

The earliest attempt to formulate recognized international customs was the formation of the early maritime codes, rendered necessary by the expansion of mediæval commerce from the end of the eleventh to the end of the sixteenth century, such as the “*Jugemens d' Oléron*,” adopted by the merchants of France, England, and Spain, and reissued under other names for the merchants of The Netherlands and the Baltic. “*The Consolato del Mare*,” a more elaborate compilation, was made, apparently at Barcelona, about the middle of the fourteenth century, and accepted generally by the traders of the chief maritime powers. It was in the cradle of commerce, therefore, that international law awoke to consciousness.

As the Church was often intrusted with the task of pacification, it is but natural to look among her representatives for the earliest writers on the laws of international relations. It is, in fact, among the theological moralists that we find the first students of this subject. As early as 1564, a Spanish theologian, Vasquez, conceived of a group of free states with reciprocal rights regulated by *jus naturale et gentium*, without regard to a world-power, either imperial or ecclesiastical. In 1612, Saurez pointed out that a kind of customary law had arisen from the usages of nations, and distinctly described a society of interdependent states bound by fundamental principles of justice.

At the close of the fifteenth and the beginning of the sixteenth centuries, a series of circumstances arose necessitating the extension of jurisprudence beyond its ancient boundaries, and thus tending to produce a group of international jurists. Among the juristic writers of this time are Balthazar Ayala, a Spanish jurisconsult, who died in 1584, having written in a historico-judicial spirit on the subject of war in his “*De Jure et Officiis Belli*”; Conrad Brunus, a German Jurist, who wrote of the rights and duties of ambassadors in his “*De Legationibus*,” published in 1548; and pre-eminent above all, Albericus Gentilis, an Italian professor of jurisprudence and lecturer at Oxford, a writer of force and originality, who published his “*De Legationibus*” in 1583 and his “*De Jure Belli*” in 1589.

### **III. The Life and Personality of Grotius.**

HUGO GROTIUS, to use the Latin form of his name by which he is best known, or Hugo de Groot as he is called in Holland, descended from a race of scholars and magistrates, was born at Delft, on April 10th, 1583. His family history has been related with much detail by De Burigny, in his “*Vic de Grotius*,” published in French at Amsterdam in 1754; and by Vorsterman van Oyen, in his “*Hugo de Groot en Zijn Geslacht*,” a complete genealogy in Dutch, published at Amsterdam in 1883, which gives the descendants of Grotius down to the present generation. His origin is traced from a Frenchgentleman, Jean Cornets, who took up his residence in The Netherlands in 1402. His descendant, Cornelius Cornets, married the daughter of a burgomaster of Delft on condition that the future children of this marriage should bear the name of their mother's family, in order to perpetuate the distinction which it had achieved. The maternal name imposed by Cornelius Cornets's Dutch father-in-law, Dirk van Kraayenburg de Groot, was de Groot, meaning the Great, and is said to have been bestowed for signal services rendered to his country by the first who had borne it four hundred years before. From this marriage sprung a Hugo de Groot, distinguished for his learning in Greek, Latin, and Hebrew and five times burgomaster of his native city. His eldest son, Cornelius, was a noted linguist and mathematician who studied law in France and received high office in his own country, afterward becoming a professor of law and many times rector of the University of Leyden. Another son, John de Groot, the father of Hugo Grotius, studied there under the famous Lipsius, who speaks of him with the highest commendation. Four times burgomaster of Delft, John de Groot became curator of the University of Leyden, a position which he filled with great dignity and honor.

In his earliest years the young Hugo gave evidence of marked and varied ability. At eight he wrote Latin verses which betrayed poetic talent; at twelve he entered the University where he became a pupil

of that prince of scholars, Joseph Scaliger, who directed his studies; and at fifteen he defended "with the greatest applause" Latin theses in philosophy and jurisprudence. His fame as a prodigy of diversified learning spread far and wide, and great scholars declared they had never seen his equal.

Grotius had won celebrity even in foreign lands when, in 1600, at the age of seventeen, he was admitted to the bar. The youthful prodigy had already accompanied the Grand Pensionary, John of Oldenbarneveld on a special embassy to France, where he was presented to Henry IV., who bestowed upon him his portrait together with a gold chain, and graciously called him "The Miracle of Holland." At Orleans he was made a Doctor of Laws.

Married in 1609 to Marie van Reigersberg, whose devotion was worthy of his deep affection, and loaded with public honors, having been named the official historian of the United Provinces and the advocate-general of two provinces, Holland and Zeeland, Grotius set his hand to a work entitled "*Mare Librum*," in which he defended the freedom of the sea and the maritime rights of his country against the arrogant pretensions of the Portuguese in suppressing the commerce of other nations in Eastern waters,—a treatise destined to become still more celebrated in the history of international law by Selden's reply, "*Mare Clausum*," written in 1635. Next, turning his attention to the history of The Netherlands, he devoted himself for a time to his "Annals of the War of Independence."

In 1613, Grotius added to his laurels as poet, jurist, and historian by entering the field of politics, and he was appointed Pensionary of Rotterdam upon the condition that he should continue in office during his own pleasure. It was during a visit to England upon a diplomatic mission in this same year that he met the great scholar Isaac Casaubon, who said in a letter to Daniel Heinsius: "I cannot say how happy I esteem myself in having seen so much of one so truly great as Grotius. A wonderful man! This I knew him to be before I had seen him; but the rare excellence of that divine genius no one can sufficiently feel who does not see his face and hear him speak. Probity is stamped on all his features."

Closely related by personal friendship as well as by his official duties to the Grand Pensionary, John of Oldenbarneveld, Grotius was destined to share with that unfortunate patriot the proscription and punishment which Maurice of Orange visited upon the two confederates in the defense of religious tolerance. Risking all as the apostles of peace, they were soon condemned to be its martyrs. Oldenbarneveld, having incurred the bitter hatred of the Stadholder, was condemned to death by decapitation on May 12th, 1619. Grotius, less offensive to Maurice on account of his youth and his gracious personality, was sentenced six days later to perpetual imprisonment. On the 6th of June, 1619, he was incarcerated in the fortress of Loevestein.

Rigorously treated at first, his docility and resignation soon won the respect and affection of his keepers. Writing materials and books were in time accorded him, and finally, on condition that she would continue to share his captivity, he was granted the presence of his wife. The studious prisoner and his devoted companion completely disarmed all suspicion of an intention to escape, and the ponderous chest in which books came and went continued to bring periodic consolation to the mind of the busy scholar. A treatise on the truth of the Christian religion, a catechism for the use of his children, a digest of Dutch law, and other compositions served to occupy and alleviate the weary months of confinement, until one day when the time seemed opportune Madame Grotius secretly inclosed her husband in the great chest and it was borne away by two soldiers. Descending the stone steps of the prison the bearers remarked that the trunk was heavy enough to contain an Arminian, but Madame Grotius's jest on the heaviness of Arminian books smoothed over the suspicion, if one was really entertained, and the great jurist was sent in the chest safe to Gorcum, attended by a faithful domestic, where in the house of a friend the prisoner emerged without injury and in the guise of a stone mason hastened to Antwerp. From Antwerp he took refuge in France, where he arrived in April,

1621, and was joined by his faithful wife at Paris in the following October.

The bitterness of exile was now to be added to the miseries of imprisonment, for Grotius was not only excluded from The Netherlands, but in extreme poverty. His letters reveal his anguish of spirit at this period, but a generous Frenchman, Henri de Même, placed his country house at Balagni at his disposition, and there, supported by a small pension, which Louis XIII had graciously accorded him, though irregularly and tardily paid, Grotius commenced his great work, "*De Jure Belli ac Pacis*," in the summer of 1623.

Much speculation has been indulged in regarding the causes which led to the composition of this masterpiece, but a recent discovery has rendered all this superfluous, as well as the ascription of special merit to the Counselor Peyres for suggesting the idea of the work. It is, indeed, to the pacific genius of Grotius more than to all other causes that the world owes the origin of his great work; for it sprang from his dominant thought, ever brooding on the horrors of war and the ways of peace, during more than twenty years, and never wholly satisfied till its full expression was completed.

In the winter of 1604, there had sprung out of his legal practice the idea of a treatise entitled "*De Jure Praedae*," fully written out, but never printed by its author. The manuscript remained unknown by all his biographers until it was brought to light and printed under the auspices of Professor Fruin at The Hague in 1868. This interesting document proves that not only the general conception but the entire plan and even the arrangement of the "*De Jure Belli ac Pacis*" were in the mind of Grotius when he was only twenty-one years of age. The difference between the earlier work and the later is chiefly one of detail and amplification, the difference which twenty years of reading, experience, meditation and maturity of faculty would inevitably create.

The curious may find in his letters the almost daily chronicle of his progress with his book to the time of its publication after excessive labors lasting more than a year. In March, 1625, the printing of the first edition, which had occupied four months, was completed and copies were sent to the fair at Frankfort. His honorarium as author consisted of two hundred copies, many of which he presented to his friends. From the sale of the remainder at a crown each, he was not able to reimburse his outlay. In the following August he wrote to his father and brother that if he had their approbation and that of a few friends, he would have no cause for complaint but would be satisfied. Louis XIII, to whom the work was dedicated, accepted the homage of the author and a handsomely bound copy, but failed to exercise the grace customary with monarchs by according a gratification. At Rome, the treatise was proscribed in the index in 1627. Almost penniless and suffering from his protracted toil, Grotius seemed destined to neglect and oblivion, yet from his exile he wrote to his brother: "It is not necessary to ask anything for me. If my country can do without me, I can do without her. The world is large enough...."

Invited to enter the service of France by Richelieu, Grotius would not accept the conditions which the Cardinal wished to impose,—such at least is the inevitable inference from his letters. His pension was not paid and his circumstances became so serious that one of his children had but a single coat. At length, pushed to the utmost extremity of want and instigated by his energetic wife, Grotius resolved to return to Holland. Driven from Rotterdam to Amsterdam, where he hoped to settle down as a lawyer, the States General twice ordered his arrest and named a price for his delivery to the authorities. The new Stadholder, Frederick Henry, who, before succeeding his brother Maurice, had written kindly to Grotius after his escape from imprisonment, now approved his proscription. Abandoned by his prince as well as by his countrymen, Grotius once more turned his face toward exile and set out for Hamburg.

#### **IV. The Work of Grotius.**

It may be of interest at this point in the career of Grotius to describe briefly the character of the great work which was soon to win for him a new celebrity, and materially change his prospects in life.

The inspiration of his "*De Jure Belli ac Pacis*" was the love of peace, yet he was far from being one of those visionaries who totally condemn the use of armed force and proscribe all war as wrong and unnecessary. On the contrary, he seeks to discover when, how, and by whom war may be justly conducted.

His plan of treatment is as follows:—

In the First Book, he considers whether any war is just, which leads to the distinction between public and private war, and this in turn to a discussion of the nature and embodiment of sovereignty.

In the Second Book, the causes from which wars arise, the nature of property and personal rights which furnish their occasions, the obligations that pertain to ownership, the rule of royal succession, the rights secured by compacts, the force and interpretation of treaties, and kindred subjects are examined.

In the Third Book, the question is asked, "What is lawful war?" which prepares for the consideration of military conventions and the methods by which peace is to be secured.

From the authority of the Empire and the Church, no longer effectual as an international agency, Grotius appeals to Humanity as furnishing the true law of nations. Beginning with the idea that there is a kinship among men established by nature, he sees in this bond a community of rights. The society of nations, including as it does the whole human race, needs the recognition of rights as much as mere local communities. As nations are but larger aggregations of individuals, each with its own corporate coherence, the accidents of geographic boundary do not obliterate that human demand for justice which springs from the nature of man as a moral being. There is, therefore, as a fundamental bond of human societies, a Natural Law, which, when properly apprehended, is perceived to be the expression and dictate of right reason. It is thus upon the nature of man as a rational intelligence that Grotius founds his system of universal law.

As this law of human nature is universally binding wherever men exist, it cannot be set aside by the mere circumstances of time and place, whence it results that there is a law of war as well as a law of peace. As this law applies to the commencement of armed conflicts, war is never to be undertaken except to assert rights, and when undertaken is never to be carried on except within the limits of rights. It is true that in the conflict of arms laws must be silent, but only civil laws, which govern in times of peace. Those laws which are perpetual, which spring from the nature of man as man, and not from his particular civil relations, continue even during strife and constitute the laws of war. To deny these, or to disobey them, implies a repudiation of human nature itself and of the divine authority which has invested it with rights and obligations. To disavow the imperative character of these perpetual laws, is to revert to barbarism.

It is necessary, however to distinguish between Natural Law, that principle of justice which springs from man's rational nature, and Conventional Law, which results from his agreements and compacts. Natural Law remains ever the same, but institutions change. While the study of abstract justice, apart from all that has its origin in the will or consent of men, would enable us to create a complete system of jurisprudence, there is another source which must not be neglected, since men have established the sanctity of certain rules of conduct by solemn convention.

The Law of Nations does not consist, therefore, of a mere body of deductions derived from general principles of justice, for there is also a body of doctrine based upon consent; and it is this system of voluntarily recognized obligations which distinguishes international jurisprudence from mere ethical speculation or moral theory. There are customs of nations as well as a universally accepted law of nature, and it is in this growth of practically recognized rules of procedure that we trace the evolution of law international—*jus inter gentes*—as a body of positive jurisprudence.

It is evident that the mind of Grotius is continually struggling to establish a science upon this positive basis, and it is this which gives a distinctive character to his effort. The great writers of all ages are cited with a superfluous lavishness, not so much to support his claims by an aggregation of individual opinions—still less to display his erudition, as his critics have sometimes complained—as to give a historic catholicity to his doctrine by showing that the laws he is endeavoring to formulate have, in fact, been accepted in all times and by all men. For this purpose also, he makes abundant use of the great authorities on Roman Law, whose doctrines and formulas were certain to carry conviction to the minds of those whom he desired to convince.

It is needless, perhaps, to point out that the work of Grotius is not and could not be a work of permanent authority as a digest of international law. His own wise appreciation of the positive and historical element—the authority derived from custom—should exempt him from the pretense of absolute finality. It is the Book of Genesis only that he has given us, but it is his indefeasible distinction to have recorded the creation of order out of chaos in the great sphere of international relationship, justly entitling him to the honor accorded to him by the spontaneous consent of future times as the Father of International Jurisprudence.

It is not difficult after more than three centuries of thought and experience to point out the defects in his doctrine. If he justifies slavery, it is not without ingenuity; for, he argues, if a man may sell his labor, why not his liberty? and if the conqueror may impose his will upon the property of the vanquished, why not also upon his person? If he identifies sovereignty with supreme power without any adequate conception of its ethical basis, he is at least as advanced in his thinking as the conceptions of his time, which had not yet grasped the idea of the state as a moral organism. If he has no adequate notion of neutrality, believing it to be the duty of a nation to enlist its energies for what it deems the right side, rather than to disavow all responsibility for actions foreign to its own interests, he is at least supported in this by the opinion of the multitude even at the present time; and even among jurists the modern conception of neutrality is hardly a century old. If the new schools of jurisprudence make light of Natural Law as a foundation of public and private rights, it is not certain that Grotius may not yet be vindicated as representing a doctrine at least as clear as any other which has been substituted for it. But, finally, to all these criticisms it may be answered, that no great thinker can be justly estimated except in relation to his predecessors and contemporaries. Measured by these, Grotius stands alone among the jurists of his century for originality of thought and power of exposition.

## V. The Influence of Grotius's Work.

It was during his sojourn in Hamburg in 1633, eight years after the publication of his “*De Jure*,” and while he was still suffering from painful pecuniary embarrassment, that Europe suddenly awoke to a sense of his importance; and, almost at one time, Poland, Denmark, Spain, England, and Sweden all extended friendly invitations urging him to enter into their public service. His fame as a jurist had become international and, rudely repelled by his native Holland, he became the center of European interest. Gustavus Adolphus had placed the work of Grotius along side his Bible under his soldier’s pillow, as he prosecuted his campaigns in the Thirty Years’ War. The first edition of that work, written

in Latin, the cosmopolitan language of learned Europe, had been quickly exhausted and widely scattered. Another had soon been called for at Paris, but the death of Buon, the publisher, created obstacles to its appearance. A second edition had appeared at Frankfort in 1626, another at Amsterdam in 1631, and still another with notes by the author in 1632. The book had aroused the thought of kings as well as of scholars, and in the circles of high influence everywhere in Europe the name of Grotius had become well known. His book had excited the most opposite sentiments and awakened the most contradictory judgments, but among lawyers and statesmen its reception was from the first generally marked by admiration. In spite of exile, poverty, and misfortune, Grotius had become a European celebrity and was about to enter into the reward of his labors. He had created a code for war and a programme of peace, and henceforth no statesman could afford to neglect him.

Gustavus Adolphus, the king of Sweden, before his death on the battlefield of Lützen, had commended Grotius to his great Chancellor, Oxenstiern. By the death of Gustavus the Chancellor had, in 1633, recently come into the regency of the kingdom at a critical moment when a retreat from the bitter contest with the Empire seemed to be foredoomed unless prevented by the support and friendship of France. Recalling the commendation of the late king, Oxenstiern sought and found in Grotius an ambassador of Sweden to negotiate a new Franco-Swedish alliance. Accepting this appointment in 1634, Grotius arrived at Paris on his diplomatic mission on March 2d, 1635.

Richelieu, having failed to draw the great jurist into the orbit of his influence as a satellite, resented his appearance in a character so influential and honorable as that of ambassador of Sweden, and Grotius made little progress in his negotiation. Preoccupied with literature, he took more interest in the composition of a sacred tragedy on "The Flight into Egypt" than in reminding France of the existing treaty of Heilbronn or consolidating the new Franco-Swedish alliance. Where Grotius the theorist failed, Oxenstiern, the practical statesman, by a few dexterous strokes of diplomacy during a brief visit to Paris, easily succeeded; and the ambassador's mission was simplified to the rôle of a mere observer and reporter of occurrences.

By taste, nature, and training, Grotius was a jurist and not a diplomatist, and he soon realized that the two vocations, if not diametrically opposed, are at least separated from each other by a vast interval. His diplomatic correspondence betrays the keen observer and the conscientious moralist rather than the accomplished negotiator. Among the observations recorded in his dispatches, one may be quoted as an example of his penetration and his humor. Speaking of the Dauphin, the future Louis XIV, he says: "His frightful and precocious avidity is a bad omen for neighboring peoples; for he is at present on his ninth nurse, whom he is rending and murdering as he has the others!"

It is painful to behold the great father of international jurisprudence descending in his dispatches to petty details of precedence and alienating from himself the sympathies of his colleagues by ridiculous ceremonial pathies of his colleagues by ridiculous ceremonial pretensions. He would no longer visit Mazarin, because the Cardinal insisted on calling him Eminence instead of Excellence; Grotius considering this distinction of terms a slight upon his rank as ambassador. So persistent was he in these follies and so rancorous were the feuds that the apostle of peace elicited that, in December, 1636, less than two years after his arrival at Paris, he advised Sweden to send to France a simple *Charge d'Affaires*, instead of an ambassador, in order to restore diplomatic relations.

His quarrels concerning precedence, which rendered him an object of ridicule at the French Court, were not the only griefs of the ambassador of Sweden. Inadequately recompensed, he was obliged to wait two years for his salary and finally, being reduced to a condition in which he could no longer maintain existence otherwise, he was compelled to demand of the royal treasury of France a part of the subsidies promised to the army of his adopted country. Weary of his importunities, the France

government repeatedly requested his recall. Disgusted with his mission, Grotius at last abandoned the duties of his office to the intriguing adventurer, Cerisante, who was sent to aid him, and buried himself in his books until his return to Sweden at his own request in 1645.

Queen Christina of Sweden, a patroness of scholars, desirous of aiding Grotius and of retaining him in the service of her kingdom, made many offers and promises, but their execution being deferred, he became impatient of his lot, refused a position as counselor of state, and resolved to leave the country. His plan to abandon Stockholm secretly was prevented by a messenger of the queen who followed him to the port where he intended to embark and induced him to return for a farewell audience. With a handsome present of money and silver plate he took passage on a vessel placed at his disposition to convey him to Lübeck. Off the coast near Dantzic a violent tempest arose. On the 17th of August, 1645, the vessel was driven ashore and Grotius, overcome by his trying experiences, was taken ill at Rostock, where a few days later he passed away.

The later years of his life had been chiefly devoted to plans for the establishment of peace in the religious world, whose dissensions gave him great distress of mind.

The country of his birth, which had so long denied him citizenship, received him at last to the silent hospitality of the tomb. His body was taken to Delft, his native town, where his name is now held in grateful reverence.

At the time when Grotius left Stockholm, the last of the plenipotentiaries had arrived at Münster and Osnabrück to attend the great European congress convoked to terminate the hostilities of the Thirty Years' War. It is a tradition, but incapable of satisfactory proof, that it was with the purpose of being present at the councils of this congress that the author of "*De Jure Belli ac Pacis*" left Sweden for Germany. However this may be, it is certain that the mediation of the king of Denmark at Osnabrück and of the papal legate at Münster, though unsuccessful, was in accordance with the idea of Grotius expressed in the words: "It would be useful, and indeed it is almost necessary, that certain congresses of Christian powers should be held, in which controversies that have arisen among some of them may be decided by others who are not interested." The immediate establishment of an international tribunal, evidently contemplated in this suggestion, was not in harmony with the temper of those times; but it cannot be doubted that the Peace of Westphalia, whose treaties were to form a code of public law for Europe, was to a great degree an embodiment of the principles which Grotius was the first to enunciate.

His "*De Jure Belli ac Pacis*" had already become a classic even before the author's death, and special professorships were soon founded in the universities to expound its principles. It would be tedious to name the numerous editions, translations, and commentaries which have given it an exceptional place in the literature of Europe. This task has been in part performed, however, by Dr. Rogge in his "*Bibliotheca Grotiana*," published at The Hague in 1883, and intended to be a full bibliography of Grotius's works. The whole number of titles included is 462, but they do not comprise the writings of the generations of jurists who have been inspired by the great master or of the critics and biographers who have discussed his life and work.

Tardily, but with full contrition for the bitter wrong done to one of her greatest and noblest sons, the memory of Grotius has received from his native land abundant recognition and commemoration. The appropriate tomb that marks his resting place in the Nieuwe Kerk at Delft, symbolical of his learning, genius, and renown, was erected in 1781. On the 17th of September, 1886, a noble statue of the great jurist was unveiled in the public square of his native town in front of the church which contains his tomb. Thus, more than a century after his death, and again still another century later, Holland has paid

her tribute of respect to her illustrious citizen.

The later years have also brought new honors to Grotius's feet. At the recent Peace Conference at The Hague was completed the great structure of international comity whose corner stone was laid by him in 1625. It was most fitting that an international congress called in the interest of peace should blend with the negotiation of conventions for the pacific settlement of disputes between nations by a permanent tribunal, and for the amelioration of the laws of war, a celebration of the distinguished writer whose great thought had at last borne such precious fruits. In pursuance of instructions received from the Secretary of State, the United States Commission invited their colleagues in the congress, the heads of the Dutch universities, and the high civic authorities to join with them in observing the 4th of July by celebrating the memory of the great jurist. With appropriate exercises in the apse of the old church, near the monument of Grotius and mausoleum of William the Silent, the representatives of twenty-six nations gathered to do him honor. A beautiful commemorative wreath of silver was laid upon Grotius's tomb bearing the inscription:

to THE MEMORY OF HUGO GROTIUS in Reverence and Gratitude from the United States of America on the Occasion of the International Peace Conference at The Hague July 4th, 1899.

An eloquent oration by the Honorable Andrew D. White, Ambassador of the United States to Germany, and the head of the Commission, followed by other appropriate addresses, recalled the debt of mankind to the author of "*De Jure Belli ac Pacis*" and thus the plenipotentiaries of the nineteenth century did homage to the exile of the sixteenth who had taught the world that even in the shock and storm of battle humanity cannot escape the dominion of its own essential laws, and that even independent states are answerable before the bar of human nature for obedience to principles imposed by a Power higher than the prerogatives of princes or the will of nations.

David J. Hill

## 4. "Grotius and the Natural Law Tradition" (1978) ↵



[Jacques Callot, "Plundering and Burning a Village" from *The Miseries and Misfortunes of War* (1633)]

### Source

This essay first appeared as an Editorial in the journal *Literature of Liberty: A Review of Contemporary Liberal Thought*, vol. 1, no. 4 October-December 1978 published by the Cato Institute (1978-1979) and the Institute for Humane Studies (1980-1982) under the editorial direction of Leonard P. Liggio. <[http://oll.libertyfund.org/titles/910#lf0353-04\\_1978v4\\_head\\_009](http://oll.libertyfund.org/titles/910#lf0353-04_1978v4_head_009)>.

### "Grotius and the Natural Law Tradition"

The uniqueness of Greek and Roman culture is important in accounting for the crucial difference between European and non-European civilizations. Whatever the status of the debate over "the Ancients and the Moderns" (the classicists claim the pygmy Moderns are standing on the shoulders of the giant Ancients), European civilization has been profoundly influenced by the perfections and faults of the classical world. The concept of natural law is the heritage from the Ancients which has had the most profound impact on the flowering of liberty.

Natural Law flourished in the Hellenistic period under the Stoics from the Greeks Zeno of Citium and Chrysippus to the Romans Cato the Younger, Seneca, and Marcus Aurelius. The Stoics posited an identification of *physis* and *nomos*, nature and law. The wise man lived in harmony with nature; he was not dragged in the train of events. The Stoics emphasized the "common. law" of all peoples, *jus gentium*, the law of nations against each state's civil or public law. Chrysippus, "a philosopher learned in history, delighted in collecting examples of historical relativism; but like all the Stoics he was undisturbed by the diversity of the phenomena, for behind all the variety there is agreement at least about the basic issues, the agreement of reasonable men of all times and countries".<sup>1</sup> Thus, although Chrysippus' historical knowledge caused him to regard all human laws as mistaken, this did not lead him to the disorder of government by man over man as it did with the Sophists. This knowledge led him instead to praise the order of the universality of natural law and each person's equality before that law.

The law of nations, which the Stoics viewed as the shadow of natural law, was derived from principles of private law as developed by Roman law-finders. Hayek has compared the persistence of private law, rooted in spontaneous social relations, to the ephemeral character of public law, based on political, imposed relations.<sup>2</sup> Hayek relates the achievement of some degree of individual liberty to societies

like ancient Rome and England, where private law was in the hands, not of the government (legislators and executives), but of private law-finders (jurists and judges). Hayek's and the Stoics' analyses are complimentary.

Stemming from the Stoics and Thomas Aquinas and reaching down to [Adam Smith](#) and [Thomas Paine](#), natural law has been the basis for the development of modern liberalism. However, the writings of [Hugo Grotius \(Huig van Groot, 1583-1645\)](#), especially *De jure belli et pacis* (1625), constitute a watershed in the history of ideas because Grotius completed the process of founding natural law in human nature. F. J. V Hernshaw<sup>3</sup> has emphasized that the origins of Grotius's exposition can be found in the then great debate over whether obedience should be paid to political authority. Juan de Mariana, S. J. (1536-1624), Spanish historian and theologian, argued in *De rege et regis institutione* (1599), that it was lawful to overthrow a tyrant.<sup>4</sup>

Grotius inherited his opposition to tyranny. His father was the curator of the University of Leyden, center both of commercial Holland's Republican opposition to the militarism of the Princes of Orange as well as of the anti-Calvinist and bourgeois Arminianism. Grotius devoted himself to expounding the Arminian view of tolerance; his religious writings emphasized that the truths of Christianity, which were held in common by Catholics, Calvinists, Lutherans, and Arminians, were fundamentally more important compared to the peripheral points on which they felt they differed.

Grotius's appetite for learning and his encyclopedic knowledge were recognized at age twenty when he was appointed Historiographer of his province, Holland. Historical research continually engaged Grotius's attention, and his historical writings included *De antiquitate reipublicae Batavae* and the *Annals of the Low Countries*, on which he worked until his death.

In 1609 Grotius published one of his most significant works, *Mare Liberum*. To the question of whether the seas could become state property, he answered a resounding no! No government had the right to exclude other nations' merchant ships from any seas. Soon England sought to claim the exclusive use of the North Sea and English Channel, and the master historian of English law, John Selden (1584-1654) in *Mare Clausum* (1632) vainly attempted to rebut *Mare Liberum*.

Grotius, as Pensionary of Rotterdam, wrote an edict of toleration which was issued by the States General of the United Provinces of the Netherlands. Religious toleration was opposed by the Prince of Orange, the military commander, who sided with the Calvinists against the Arminians. In part, the prince reacted to the Dutch bourgeoisie (the Arminians) who insisted upon acceptance of the favorable peace offered by Spain in order to concentrate on commercial activities. The prince, rural gentry, and Calvinist clergy saw peace as undermining discipline while introducing luxury based on commerce. In 1618, the privileged, military Calvinists struck at the capitalist Arminians. By a coup d'état, the prince's army disarmed the militias of the Dutch cities. The Republican leaders, Johan van Oldenbarneveldt and Grotius were arrested. The former was executed and Grotius condemned to life imprisonment. Rescued by his wife's efforts, Grotius escaped in a chest which was supposed to contain his Arminian books; he was given refuge in Paris (1621).

The beginning of the Thirty Years' War (1618-1648) with its pillaging, violation, and massacre of civilian populations horrified Grotius. Aided by the researches of his brother, William, and his own unrivaled memory, Grotius wrote *De jure belli et pacis* (1625) in one year. Basing himself on the Stoics, Roman jurists, and medieval scholastics, Grotius drew most heavily from the sixteenth century Spanish philosophers of law-Francisco de Vitoria (1483-1546), Luis de Molina (1536-1600), and Francisco Suarez (1548-1617).

Grotius, in his *Prolegomena to The Law of War and Peace*, states that man is characterized by a strong sociability, by a desire to spend his life together with his fellow men, "and not merely spent somehow, but spent tranquilly and in a manner corresponding to the character of his intellect. This desire the Stoics call the domestic instinct, or feeling of kindred." Grotius denied the universality of "the assertion that every animal is impelled by nature to seek only its own good" since some animals "restrain the appetency for that which is good for themselves alone, to the advantage now of their offspring, now of other animals of the same species." Sympathy for others develops spontaneously among children, and increases with maturity "together with an impelling desire for society, for the gratification of which he alone among animals possesses a special instrument, speech. He has also been endowed with the faculty of knowing and acting in accordance with general principles."

Grotius derived from this sociability the concept of law. "To this sphere of law belong the abstaining from that which is another's, the restoration to another of anything of his which we may have, together with any gain which we may have received from it; the obligation to fulfill promises, the making good of a loss incurred through our fault, and the inflicting of penalties upon men according to their deserts." Finally, Grotius emphasized the scholastic concept of time-horizon: man's power of discrimination between "what things are agreeable or harmful (as to both things present and things to come), and what can lead to either alternative, in such things it is meet for the nature of man, within the limitations of human intelligence, to follow the direction of a well-tempered judgment, being neither led astray by fear or the allurement of immediate pleasure, nor carried away by rash impulse. Whatever is clearly at variance with such judgment is understood to be contrary also to the law of nature, that is, to the nature of man."

The pressures of the Thirty Years' War created the conditions for revolutions throughout Europe. The most famous were the Republican movements in the English Civil War and the Fronde in France. But Grotius did not live to see his vindication in the restoration of Republican rule to the Netherlands. The Peace of Westphalia (1648), which ended the Thirty Years' War, was concluded by the pacific Dutch capitalists and was opposed by the Prince of Orange. Finally, the Republicans gained dominance and established a decentralized constitution with each province controlling the army and religion within its own borders.

This history was well-known to the fathers of the American Revolution. Likewise, the impact of Grotius's jurisprudence was transmitted to them via [Samuel Pufendorf \(1632-1694\)](#), through [Locke](#), [Rousseau](#), [Barbeyrac](#), Burlamaqui, Blackstone, and [Montesquieu](#).<sup>5</sup>

## Endnotes

[1] L. Edelstein, *The Meaning of Stoicism* (1966).

[2] F. A. Hayek, *The Confusion of Language in Political Thought* (1976).

[3] F. J. V Hernshaw, *The Social & Political Ideas of Some Great Thinkers of the Sixteenth and Seventeenth Centuries* (1926).

[4] Oscar Jaszi & John D. Lewis, *Against the Tyrant* (1957).

[5] Forrest McDonald, "A Founding Father's Library," *Literature of Liberty* 1 (January/March 1978].

# Liberty Matters: “Hugo Grotius on War and the State” (March 2014) ↵



**"LIBERTY  
MATTERS"**



A FORUM FOR THE DISCUSSION OF MATTERS PERTAINING TO LIBERTY

## Source

This was an online discussion which appeared in “Liberty Matters: A Forum for the Discussion of Matters pertaining to Liberty” on Liberty Fund’s Online Library of Liberty website during the month of March, 2014.

The online version of the discussion can be found at <<http://oll.libertyfund.org/pages/lm-grotius>> and ebook versions at <[oll.libertyfund.org/titles/2590](http://oll.libertyfund.org/titles/2590)>.

The place that Grotius holds in the history of international law and the laws which regulate war and peace is one that has been recognized at least since the 18th century, but more especially in the treaties and international agreements which emerged out of the major conflicts of the 20th century. In this discussion, Fernando R. Tesón, the Simon Eminent Scholar at Florida State University College of Law, explores what Grotius thought about the proper relationship between the laws of nature and the laws of nations, the limits (if any) which can be legitimately and rightly placed on the conduct of states engaged in war, and asks whether Grotius' insights have any relevance today. Tesón's essay is commented upon by Hans W. Blom, visiting professor in the history department of Potsdam University (Germany); Paul Carrese, professor of Political Science at the U.S. Air Force Academy; and Eric Mack, professor of philosophy at Tulane University and a faculty member of the University's Murphy Institute of Political Economy.

Other "Liberty Matters" discussions can be found at <<http://oll.libertyfund.org/pages/liberty-matters>>.

## Summary

The place that Grotius holds in the history of international law and the laws which regulate war and peace is one that has been recognized at least since the 18th century, but more especially in the treaties and international agreements which emerged out of the major conflicts of the 20th century. In this discussion we want to explore what Grotius thought about the proper relationship between the laws of nature and the laws of nations, what limits (if any) can be legitimately and rightly placed on the conduct of states engaged in war, and to ask ourselves whether his insights have any relevance today. Another issue which will be debated is where does Grotius sit in the history of the classical liberal tradition? Do his ideas reinforce the power of the monarch (or modern state) to do practically anything they wish, or do they place real and binding restraints on what is permissible when one enters a state of war? Is he merely a transitional figure, or does his theory of the Rights of Peace have a more radical libertarian interpretation?

## The Debate

The online discussion consists of the following parts:

1. Lead Essay: Fernando R. Tesón, "Hugo Grotius on War and the State"

2. Responses and Critiques:

- 1.Eric Mack, "Grotius on the Law of Nature, the Law of Nations, and the Rights of Peace versus the Rights of War"
- 2.Hans W. Blom, "Liberty and the Law"
- 3.Paul Carrese, "The Moderation of Grotius"

3. The Conversation:

- 1.Fernando R. Tesón, "Was Grotius Just an Advocate?"
- 2.Eric Mack, "Grotius on the Right of Resistance"
- 3.Paul Carrese, "Grotius and Philosophical Moderation"
- 4.Hans W. Blom, "Ius Gentium, the Law of Nations, and the Law of Nature at the Birth of Liberalism"
- 5.Paul Carrese, "The Radical Grotius Hypothesis: Why Not a Philosophical Middle Ground?"
- 6.Eric Mack, "Another Shot at the Law of Nations"
- 7.Paul Carrese, "Liberty and International Order: The Truth of the Law of Nature and the Primary Law of Nations"

## About the Authors

**Fernando R. Tesón** is the Simon Eminent Scholar at Florida State University College of Law. Known for his scholarship relating political philosophy to international law (in particular his defense of humanitarian intervention), and his work on political rhetoric, Professor Tesón is author of *Humanitarian Intervention: An Inquiry into Law and Morality* (3rd ed. fully revised and updated, Transnational Publishers 2005); *Rational Choice and Democratic Deliberation* (Cambridge University Press 2006; with Guido Pincione); *A Philosophy of International Law* (Westview Press 1998); and many articles in law, philosophy, and international relations journals and collections of essays. He has served as a professor of law and affiliate professor of philosophy at Arizona State University, where he taught for 17 years prior to joining Florida State University's faculty. Before entering academia, Professor Tesón was a career diplomat for the Argentina Foreign Ministry in Buenos Aires for four years. He resigned from the Argentine foreign service in 1981 to protest against the human rights abuses of the Argentine government. He has served as visiting professor at Cornell Law School, Indiana University School of Law, University of California Hastings College of Law, and the Oxford-George Washington International Human Rights Program, and is Permanent Visiting Professor, Universidad Torcuato Di Tella, Buenos Aires, Argentina.

**Hans W. Blom** is visiting professor in the history department of Potsdam University (Germany), in the section of intellectual history. He was previously at Erasmus University Rotterdam (The Netherlands), with visiting research positions at King's College, Cambridge, the RSSS-ANU in Canberra, the University of Buenos Aires, and the Institute for Research in the Humanities at the University of Wisconsin-Madison. His research focuses on the history of political thought with special attention to the interaction between the world of ideas and that of institutions. Professor Blom believes that economic thought and ideas are part and parcel of politics, and is particularly interested in tracing

the presence and handling of economic issues in the period before Adam Smith, and their significance for the construction of classical political economy. Hans Blom has published widely on this and related topics: *Causality and Morality in Politics* (1995) and edited volumes on *Monarchisms in the Age of Enlightenment: Liberty, Patriotism, and the Public Good* (2007), and *Property, Piracy and Punishment: Hugo Grotius on War and Booty in De iure praedae* (2009). Presently he is editing Pieter de la Court's *Interest of Holland* (1662) for Liberty Fund.

**Paul Carrese** is professor of Political Science at the U.S. Air Force Academy, and co-founder and former director of its great-books honors program. He holds a doctorate from Boston College in political science, and master's degrees from Oxford University in theology and in philosophy & politics. He has been a Rhodes Scholar, a research fellow at Harvard, a Fulbright Scholar at University of Delhi, and a Visiting Fellow in the James Madison Program, Politics Department Politics, Princeton University; he taught at Middlebury College before coming to the Academy in 1998. He teaches, researches, and publishes in political philosophy, constitutionalism, American political thought and constitutional law, and American foreign policy and grand strategy. He is the author of *The Cloaking of Power: Montesquieu, Blackstone, and the Rise of Judicial Activism* (Chicago, 2003; paperback, 2013), and his manuscript on the philosophy of moderation in constitutional democracies, *Democracy in Moderation: Montesquieu, Tocqueville, and Sustainable Liberalism*, is under review. He is co-editor of John Marshall's *The Life of George Washington: Special Edition* (2001); of *Constitutionalism, Executive Power, and Popular Enlightenment* (SUNY Press, forthcoming 2015); and, of *American Grand Strategy: War, Justice, and Peace in American Political Thought*, just contracted with Johns Hopkins University Press.

**Eric Mack** is professor of philosophy at Tulane University and a faculty member of the University's Murphy Institute of Political Economy. His many scholarly essays focus on moral individualism and the moral foundations of rights, the nature of natural and acquired rights, property rights and economic justice, the legitimate scope of coercive institutions, and the history of classical liberal and libertarian theory. He is the author of *John Locke* (Bloomsbury 2013). Eric has also written other essays and annotated bibliographies on 17th-century political theorists such as John Locke, James Tyrrell, Robert Filmer, and Thomas Hobbes for the Online Library of Liberty and was the lead author for the first installment of Liberty Matters, viz., "Locke on Property."

# 1. Lead Essay: Fernando R. Tesón, “Hugo Grotius on War and the State”

In his monumental treatise, *De Jure Belli ac Pacis* (*The Rights of War and Peace*) (1625), Dutch jurist and diplomat Hugo Grotius lays down not only the principles of international law, but also theories of property and punishment, and even a rudimentary sketch of social-contract theory. In this essay I examine Grotius’s views on war and the state, with a special emphasis on jurisprudential method. Many writers value Grotius because he was the first thinker to explore some of the themes of the Enlightenment. His work is located at the precise moment when the new ideas start to pull away from their medieval roots – a philosophical evolution that would culminate in the great works that cement the social-contract tradition. Grotius is, then, a transitional figure, and maybe for that reason it may seem unfair to compare him to the intellectual giants who came after him. Yet he deserves to be judged on his merits. I attempt to do so in this essay.

## I. The Question of Method

Like many of his contemporaries, Grotius was a natural-law thinker. But the natural law he endorsed differed from that of his great predecessor, St. Thomas Aquinas. The differences are many, but two are salient. First, while Aquinas thought rational creatures accede to natural law by participating in the divine will, Grotius believed that natural law is discovered by human reason alone. For Grotius, God’s commands are binding *because* they comport with the Law of Nature (PD, 89-90).<sup>[1]</sup> The second and more important difference is that Grotius’s version of natural law is less robust than Aquinas’s. To Grotius, natural law only commands us not to act contrary to Right; it does not command virtue, as in the Christian tradition. He divides the Law of Nature into two subsets. The first reflects our instincts (“First Impressions of Nature”), especially our impulse to survive. The second reflects our higher faculties of sociability and rationality (“Decorum”) (I.II. III, 188 ff.). Grotius thought that this second part of the Law of Nature was the more important because it urged us to restrain our instinctual behavior for the sake of sociability. Accordingly, natural-law rules are basic: we must refrain from behavior “repugnant to society.” More specifically, natural law enjoins us to abstain from that which is another’s, to restitute that which belongs to another, to fulfill our promises, to compensate damage we’ve caused, and to administer criminal punishment (PD, 86).

This brings us to the central methodological problem that Grotius faces throughout the book: the relationship between natural law and positive law. According to Grotius, the Law of Nations, i.e., the laws that are “common to many nations and rulers of nations,” has three components. The first one is derived from natural law; the second is decreed by divine will; and the third one is created by custom (PD, 75). As we saw, natural law consists of a few prohibitions. A straightforward natural-law account, then, would be that the Law of Nations harbors moral norms derived from reason and positive norms enacted by human beings. Grotius’s natural-law ancestors thought that human law could not overrule natural law; arguably, that is what it means to hold a natural-law view. But this is not Grotius’s view. He says, reasonably enough, that the Law of Nations may not command what the Law of Nature prohibits (II.II.V, 493). But the Law of Nations may *permit* what the Law of Nature prohibits (III.IV.XV, 1290). For example, the Law of Nations may permit killing noncombatants in war, an act presumably prohibited by the Law of Nature. But while this new customary permission is inconsistent with natural law, Grotius, contrary to his fellow natural lawyers, insists that it is binding. By this Grotius does not mean the tautology that the new permission is *legally* binding. He means that the permission (for example, to kill noncombatants) is *morally* binding, so that others may not validly interfere with the agent’s acting on the permission (killing noncombatants). This is because *pacta sunt servanda* (“agreements must be kept”) is a central principle of the Law of Nature. The Law of Nature

enjoins us not only to respect possessions but also to honor our agreements (PD, 86). Since the newly introduced permission is an agreement, it overrules the prior prohibition.

Grotius is correct that a mere *permission* that derogates from an antecedent prohibitory norm does not offend that norm as much as a command to do that which the norm prohibits. Again, assume the Law of Nature prohibits killing noncombatants. If custom subsequently *authorizes* such killing, then it logically contradicts the prohibitory norm, since the latter says that sparing noncombatants is obligatory. The new permission defeats the purpose of the antecedent prohibition, which made the *negation* of the behavior in question (sparing noncombatants) obligatory. But it would be even worse if the Law of Nations *commanded* such killing, because in that case sparing noncombatants would be prohibited. That the Law of Nations permits that which the Law of Nature prohibits means that people are *authorized* to comply with the Law of Nature if they so desire.

The Law of Nature, then, is a complicated moral system. It prohibits rights violations unless people agree to violate rights, because there is a meta-norm, *pacta sunt servanda*, that controls the other norms in the system. In the absence of agreement the Law of Nature provides *default* rules that enjoin rights violations. The resulting normative system (the new permissions plus whatever default rules remain) is itself obligatory by application of *pacta sunt servanda*. Only then can Grotius avoid the obvious implication that these permissions are morally invalid.

If this reading is correct, then Grotius's initial statement that the Law of Nations consists of divine commands, rationally accessible natural law, and human law, all coexisting peacefully, is inaccurate. Rather, Grotius's real view is that in the Law of Nations consent reigns supreme, and only in the absence of consent do natural-law norms govern by default, except that consent cannot validly command what the Law of Nature prohibits. One may perhaps offer a (kind of) libertarian interpretation of Grotius's claim, namely, that individuals can waive the rights that natural law accords them. The problem with this interpretation is that in Grotius's examples the right-holders do not alienate their rights; rather, the monarchs agree *among themselves* to violate the rights of *others*. If the Law of Nature prohibits killing civilians, then (on any plausible libertarian account) only those civilians have standing to waive their rights not to be killed. So Grotius's view cannot be read in this way. Rather, for him the derogations from the Law of Nature are agreed upon *by governments*. The Law of Nature, now via *pacta sunt servanda*, enjoins us to respect these agreements. This move saves Grotius from inconsistency, but it certainly undermines his natural-law credentials and his (presumed) commitment to individualism.

"The Law of Nature, then, is a complicated moral system. It prohibits rights violations unless people agree to violate rights, because there is a meta-norm, *pacta sunt servanda*, that controls the other norms in the system. In the absence of agreement the Law of Nature provides default rules that enjoin rights violations."

Aside from this problem, Grotius's method is quite messy because it does not allow us to tell when a rule belongs to the Law of Nature and when it belongs to the Law of Nations. The standard way to distinguish them is to make a *philosophical* argument in support of a moral rule and a *legal* argument in support of a legal rule. Grotius's uses neither. In fact, he uses the same method throughout: he appeals to the opinions of the wise, the more ancient the better. To prove that a rule exists (in either the Law of Nature or the Law of Nations) Grotius cites a multitude of ancient authors, philosophers, poets, playwrights, biblical texts, and opinions by old monarchs as referenced by ancient historians. (See Grotius's justification for this method at PD, 108-111.) For example, he sets out to prove the permissibility of war (against pacifists) by resorting to biblical account (I.II.185 ff.). Even conceding that this method may be suitable for ascertaining morality, it is unsuitable for ascertaining the law. The

Law of Nations, as Grotius correctly says, is *diplomatic practice*, that is, custom and treaty. Yet Grotius cites virtually zero diplomatic practice in support of international-law rules, notwithstanding the fact that there was plenty of practice *circa* 1625. In the end, Grotius's method is unsatisfying because he eschews philosophical argument to prove morality and eschews legal argument to prove international law.

## II. War

### a) Ius ad Bellum

Here we should distinguish between *international wars* and *civil wars* (revolutions). With respect to international wars, Grotius follows the just-war tradition both by rejecting pacifism and by requiring a just cause for waging war. At the beginning of the treatise, Grotius is concerned with establishing the *permissibility* of war against pacifists. Maybe for that reason, he initially formulates the just-cause requirement in negative terms: a war that does *not* infringe on the rights of other nations is permissible (I.II.I, 184). This may create the impression that the default rule is the permissibility of war. On closer examination, however, this is not so. Later in the treatise he accurately distinguishes between reasons and motives for war (II.I.I, 389). Reasons are proper justifications, moral reasons; motives are prudential reasons. Only the former can constitute just cause: all wars should be “founded on the substantial basis of truth and justice” (II.I.I, 391). While most sovereigns wage war for a mix of motives and reasons (II.XXII.III, 1099), a war is just only if it is a reaction against an *injury received* (II.I.I.393). (Luban 2011: 306) Contrary to initial appearances, the default rule is not that war is permissible. Wars for reasons other than righting wrongs are disallowed.

This reading is confirmed by Grotius's listing of just causes for war. There are only three: self-defense, the recovery of what is ours, and punishment (II.I.I, 395). Grotius not only disallows self-interested reasons, such as territorial aggrandizement or national glory, he likewise rejects the “security dilemma” as a just cause: fear of a neighbor's power is not enough. And he rejects paternalistic reasons: that possessors are “fools” is not enough reason to dispossess them (II.XXII, 1102-1113). His standard for national-self-defense is quite high: the force used must be necessary to defend ourselves against unjust attacks. And presciently, Grotius warns against self-delusion. A ruler may persuade himself too easily that he has a just cause and plunge into war on bad motives even if he has ostensibly good reasons (II.XXII, 1113). Grotius's views here are quite visionary and announce the international-law developments of the late 20th century. But it would be a mistake to equate Grotius's view with the current legal position: Grotius thinks that recovery of one's lawful possession is a just cause for war, whereas modern international law generally forbids this, at least when the unjust taking does not constitute an armed attack.

Grotius's views on humanitarian intervention deserve separate comment. (For a full treatment, see Tesón 2005.) The default rule is that humanitarian intervention is impermissible because established governments have a “certain” right to rule (II.XXV. VIII, 1159). But then Grotius writes, famously, that when princes abuse their authority in a way that “no Good Man living can approve,” then armed intervention can be justified (II.XXV. VIII, 1161). He warns against the dangers of abuse, and says that humanitarian intervention may not be undertaken if the intervener's own subjects are unduly burdened. (See Holzgrefe 2003: 25-27.)

The most remarkable feature of this view is that humanitarian intervention is permissible even where revolution is not. Grotius's view that even if the subjects themselves may not revolt “others might ... do it for them” runs against the modern view that the threshold for foreign intervention should be *higher* than the threshold for domestic revolution. (See Dobos 2012: 73-99.)

Grotius takes quite a restrictive view of the right to resist authority. To be sure, he says that if the sovereign commands something against natural law, the subjects need not obey (I.IV.I, 337). This statement must be qualified in view of Grotius's claim, already discussed, that law or custom may amend the Law of Nature by introducing enabling permissions. Suppose that the Law of Nature prohibits sovereigns from enslaving their subjects. If custom subsequently *allows* slavery, then the antecedent natural-law prohibition does not hold, and rulers are free to enslave. It is true that, strictly speaking, the law does not *command* slavery, but this is not much consolation to the slave.

But what if the sovereign *injures* the subjects? They, Grotius tells us, must patiently endure the injuries and not resist them by force (I.IV.I, 338). Civil disobedience is fine; violent revolution is not. An unlimited right to resistance would undermine the end of the state, which is to secure "peace and good order." He even says that if subjects had a right to resistance, there would be no state. (Compare with Kant 1996: 95-98.) And as a matter of practice, the right of resistance "is looked upon as unlawful, according to the Usage of all States" (I.IV.I, 340). So the argument is two-fold: as a matter of principle, the right to revolution is inconsistent with the end (and maybe the very idea) of a state, and as a matter of law, such right is unrecognized. Grotius veers dangerously close to upholding the divine right of kings as a justification of government. He quotes the scriptures for the view that God wanted us to endure iniquity at the hands of rulers. We must give to Caesar what is Caesar's, and in this way we will be rewarded for that patience in the afterlife by the greatest of all sovereigns (I.IV.I, 344-45).

Severe as Grotius's principle of nonresistance is, it is not absolute. He concedes that subjects may forcibly resist the sovereign in cases of extreme necessity, when their own survival is threatened. He gives a hypothetical-consent argument: subjects are deemed to have agreed to civil authority to secure order and peace, but they are not deemed to have consented to their own extermination (I.IV.VII, 356 ff.). We saw that the threshold for revolution is higher than the threshold for foreign intervention, yet it is unclear what the difference may be. For intervention, the standard is "visible injustice ... which no Good Man living can approve"; for revolution, the standard is survival. So in spite of what Grotius says, the two do not seem that different after all. And for Grotius this right to resist *in extremis* is not individually held. The historical examples he gives suggest that *groups*, not individuals, may legitimately revolt to prevent their own extermination – in modern words, to prevent genocide.

### b) Ius in Bello

Book III examines the laws of war. Grotius's treatment is important because at the time he wrote, these laws were in their formative period. He first vindicates the morality of war against the adage *inter arma enim silent leges* (for among [times of] arms, the laws fall mute). When undertaken, war ought not to be carried "beyond the Bounds of Justice and Fidelity" (PD, 101). But Grotius's approach is unusual. He first tells us what the Law of Nature requires. Simply put: we are allowed to kill the enemy because the enemy threatens us (III.I, 1185 ff.). We can also take his property, but only to the extent necessary to our security. These rights are independent of the enemy's culpability or innocence. This right to use force includes punishment, but only "within the bounds of Equity," so we are not entitled to kill or destroy in a manner disproportionate to the offense received (III.I, 1187). This approach to *ius in bello* (right conduct in war) is eminently reasonable, and it is generally followed in the modern literature and international conventions.

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But after laying down these reasonable natural-law principles, Grotius reports what the Law of Nations really says. The result is alarming. In rapid succession we are told that the subjects' goods and bodies are owed for the Prince's debts (III.II.II, 1232-34); that *all*, including women and children, who are found in the enemy's territories may be killed or hurt (thus there is no principle obligating armies to discriminate between combatants and noncombatants) (III.IV.VIII-IX, 1281-84); that it is permissible to kill those who surrender (III.IV.X-XI-XII, 1284-88); that it is fine to waste and plunder (III.V.I-IV, 1303-12); and that prisoners of war and their families may be enslaved (III.VII.I, 1360-65). These are dramatic instances of the principle, already discussed, that positive law may permit that which the natural law prohibits. But here the permissions are so many and so inhumane that they virtually overrule the moral principles that Grotius defends at the beginning of Book III. The law of war circa 1625 (if we are to believe Grotius) was deeply immoral.

Aware of this, Grotius invites his readers (sovereigns included) to set aside the horrible practices he just described and exercise moderation. In chapters XI to XXV Grotius essentially reverses many of the permissions introduced by the consent of states. He intends to "take away from those who make War almost all the Rights which I seem to have granted them; but which in Reality I have not" (III.X.I, 1411). Honor and conscience, he says, often forbid what the Law of Nations permits. Honor is not so much other-directed, but rather consists of the agent's own search for equity and justice (III.X.I, 1413). This turnaround is welcome, of course, but conceptually puzzling. Are these moderate rules grounded in honor and conscience the same as the Law of Nature? Are these recommendations mere exhortations or, to the contrary, true descriptions of moral duties? If the latter, how is this new position consistent with Grotius's view that custom may validly derogate from natural law? (See Forde 1993: 646-47.) It is hard to tell. What is clear is that Grotius believed that the practice of war fell far short of the standards of justice. If so, his recommendations are exhortations addressed to the powerful to humanize war, rather than a full-fledged philosophy of war.

### **III. The State and Property**

There is considerable scholarly disagreement about Grotius's theory of the state. But this much can be said: Grotius thought that human institutions derived ultimately from human nature. Human beings have an "exquisite desire for Society" (PD, 84). This sociability is the "fountain of all Right" (PD, 86) that leads people to establish political institutions. But these institutions are manmade; they are the result of human will, of an agreement (PD, 93; II.II.II, 426-27). This social contract is morally binding in an indirect way. The Law of Nature, via sociability, leads individuals to arrange their affairs by enacting civil laws. (See Rabkin 1997: 297-98.) These civil laws are then binding on subjects *because* they agreed to them, whether or not the laws contradict some precept of the Law of Nature. Nowhere is this clearer than in Grotius's discussion of private property. He thinks that God gave all men dominion in common of all things (II.II.II, 420-21). But over time, this idyllic state of affairs could not endure; for a variety of reasons, it was necessary to assign lands to families (II.II.II, 426-27). The institution of private property thus became the core of the civil laws, that is, the centerpiece of the state. The social contract determines mine and thine, and thus provides the substance for the operations of the Law of Nature itself. Recall that the Law of Nature enjoins us to respect rights. For Grotius, these rights are essentially property rights.

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It is worth noting that Grotius did not think that people would create political institutions only out of

self-interest. He thought that individuals were capable of acting out of altruistic motives, and this partially altruistic disposition made the social contract possible. (See de Araujo 2009: 355-56.) There is a tension also between Grotius's claim that things belonged originally to all men in common and his vindication of the right of original occupation (II.II.II, 421). Is this right also part of the Law of Nature, or is it a feature of the social contract? And does the right of occupation grant all the features of property or only the right to use? (See Salter 2001.) Finally, while Grotius is quite modern in his conception of the Law of Nature as resting on rights, he does not come close to endorsing a modern theory of constitutional rights – let alone endorsing any redistributive function of the state (understandably, given the period). Yet it is possible to formulate an updated liberal Grotian theory of the state. If the principle of self-ownership is accepted, then all rights invasions will constitute trespass and all modern constitutional rights may be conceived, in Grotian fashion, as property rights.

## IV. Conclusion

Almost a century ago, a British commentator opined that Grotius “imitated the brevity and terseness of style of Tacitus without exhibiting the insight and penetration of his model. His philosophy of history is of the simplest and crudest nature.” (MacDonnell 1919: 18) And Thomas De Quincey blasted *De Jure Belli ac Pacis*: “Take away the Greek and Latin seasoning, which (in conjunction with the laconic style) has kept the book from putrefying, all the rest is pretty equally divided between empty truisms, on one hand, and time-serving Dutch falsehoods, on the other.” (Cited in MacDonnell 1919: 19.) While certainly Grotius’s scholarly stature pales in comparison to Hobbes, Locke, Kant, or Rousseau, these judgments are too harsh. Grotius prefigured, albeit in an embryonic fashion, some of the themes that came later. And if his views on war were intended for princes, this should be commended, not criticized. His central message to the powerful was imbued with a humanist spirit: international law (then as today, I might add) had not yet caught up with the demands of justice.

## End Notes

- [1.] All references are to Hugo Grotius, *The Rights of War and Peace*, 3 vol., edited by Richard Tuck (Liberty Fund, 2005). Following custom, the references are to the *Preliminary Discourse* (PD) or Book, as the case may be, chapter, section, and page.

## 2. Responses and Critiques

### 1. Eric Mack, "Grotius on the Law of Nature, the Law of Nations, and the Rights of Peace versus the Rights of War"

Fernando Tesón makes a good case for each of his readings of Grotius's doctrine in *The Rights of War and Peace*. His readings may indeed be the best readings of the text. As an amateur reader of Grotius, I have no rational confidence that any of my alternative readings are better. Nevertheless, with that major caveat, I want to present very briefly a somewhat different vision of Grotius on the Law of Nature and the Law of Nations. In general I want to highlight features of Grotius's doctrine that make Grotius an important forerunner of classical-liberal thought. Here I address only some of the ways in which Grotius is a herald of liberal theory.

#### 1. The Law of Nature

Grotius begins *The Rights of War and Peace* by saying that, rather than wanting to discuss the Civil Law, which differs from one nation to another, he wants to provide an account of "that Law, which is common to many Nations or Rulers of Nations, whether derived from Nature, or instituted by Divine Commands, or introduced by Custom and Consent..." (I. PD. I). Tesón reads Grotius to be announcing that he wants to study the Law of Nations and that Grotius takes the Law of Nations to consist of "divine commands, rationally accessible natural law, and human laws." I disagree.

To begin with, the "instituted by Divine Commands" was inserted by Grotius into the 1631 edition – apparently to placate the conservative officials who Grotius hoped would allow him to return to Holland from exile. Also, there are two distinct bodies of Law that are "common to many Nations or Rulers of nations." There is the Law of Nature (which is "derived from Nature") and there is the Law of Nations (which is "introduced by Custom and Consent"). So, at the beginning of *The Rights of War and Peace*, Grotius is saying that he wants to study the Law of Nature and the Law of Nations; moreover, Grotius is not taking the Law of Nature to be a constituent of the Law of Nations.

In fact, the rest of the opening chapter, "The Preliminary Discourse," is almost entirely about the Law of Nature (and not the Law of Nations). For Grotius's immediate concern is to refute those – like Carneades – who reject the existence of the Law of Nature.[2] We cannot here attempt to go through the details of this refutation. We can only note that Grotius holds that the foundation of Carneades's challenge to the Law of Nature – i.e., to the idea of natural justice – is the proposition that the sole motive for all human action is the promotion of personal advantage. Grotius attacks this foundation by maintaining that there is a further important motive for human action, viz., "the Desire of Society," which is "a certain Inclination to live with those of his own Kind, not in any Manner whatsoever, but peaceably, and in a Community regulated according to the best of his Understanding..." (I. PD. VI).

The Desire of Society turns out not to be some generalized empathy but, rather, a disposition to live in accordance with rules, general compliance with which sustains mutually beneficial social order. We can discover through reason what the rules are that must generally be abided by if a mutually advantageous social order is to exist. Those rules, discovered by reason in light of the character of human beings and the circumstances of their existence, are the Laws of Nature. Or, somewhat more specifically, these rules are the Laws of Nature properly and strictly speaking. There are other rules that are guides to living well that are also part of the Law of Nature, though in an extended and less proper sense.

The Desire of Society does not displace but, rather, exists alongside of the desire for personal

advantage. The Laws of Nature do not displace the “first Duty” of nature which is for “every one to preserve himself in his natural State, to seek after those Things which are agreeable to Nature, and to avert those which are repugnant” (I. II. I.1). Rather, the Laws of Nature that arise through “the Knowledge of the Conformity of Things with Reason” (I. II. I.2) *constrain* the pursuit of personal advantage.

According to Grotius, “Right properly so called” requires,

the Abstaining from that which is another’s, and the Restitution of what we have of another’s or of the Profit we have made by it, the Obligation of fulfilling Promises, the Reparation of a Damage done through our own Default, and the Merit [i.e., justification] of Punishment among Men. [I. PD. VII]

Right, properly speaking ... consists in leaving others in quiet Possession of what is already their own, or in doing for them what in Strictness [by way of reparation or agreement] they may demand. [I. PD. X]

So, e.g., Grotius cites Cicero citing Chrysippus to the effect that “There is no Injustice in seeking ones [sic] own advantage; but it is contrary to Equity to take away from another” (I. I. X.4. note 8).

Although the Law of Nature constrains individuals in their pursuit of personal advantage, general compliance with those constraints makes mutually advantageous social interaction possible; moreover, one is admitted to that social interaction on the basis of one’s being compliant with the Law of Nature. Thus, according to Grotius, compliance with these constraints on how one pursues personal advantage is the key rational strategy for promoting one’s personal advantage. Thus, in a sense, Grotius seeks to hoist Carneades with his own petard.

Yet, intriguingly, Grotius seems to argue that individuals will only get the payoff of mutual personal gain if they abide by the Law of Nature constraints for their own sake and not merely for the sake of those personal gains. “Right has not Interest merely for its End....” and “the Moment we recede from Right, we can depend upon nothing” (I. PD. XXIII). If we did not have the alternative motivation supplied by the Desire of Society, we would never fulfill the desire for personal advantage.

## 2. *The Law of Nature vs. the Law of Nations*

The Law of Nations, like the Civil Law of particular nations, is the product of will rather than nature and reason. In ways that do not seem to me to fit very well with the traditional notion of the Law of Nations (*jus gentium*), Grotius writes as though the Law of Nations is a code of conduct that governs only the interactions of States or the rulers of States. It is said to be beneficial to States (or their rulers?) in some way that parallels the Civil Law of a given State being beneficial to that State (or the members of that State?).

But as the Laws of each State respect the Benefit of that State; so amongst all or most States there might be, and in Fact there are, some Laws agreed on by common Consent, which respect the Advantage not of one Body in particular, but of all in general. And this is what is called the Law of Nations, when used in Distinction to the Law of Nature. [I, PD. XVIII]

Rather than being a component or aspect of or handmaiden to *jus naturale*, the Law of Nations appears as an autonomous normative code that at most is slightly constrained by the Law of Nature.

As Tesón indicates, the Law of Nature specifies the moral default position. If the Law of Nations does not speak to a matter – e.g., whether prisoners in war may be killed – the Law of Nature stance that war prisoners may not be killed holds.[3] But if the Law of Nations speaks, its voice will sometimes override or displace the voice of the Law of Nature. As Tesón points out, according to Grotius, the Law of Nations can make permissible actions that are forbidden by the Law of Nature (III. IV. XV.1). So, e.g., the Law of Nations can (and does) make the killing of prisoners in war permissible. Indeed, the Law of Nations underwrites the whole of the doctrine of “Solemn War” that Grotius lays out in Book III of *The Rights of War and Peace*.

A State is engaged in Solemn War if (and only if) it publicly deliberates about and declares that war against a State or it becomes an “enemy” of another State through the other’s deliberation and declaration. There is a sense of “just” in which a war is just as long as it is Solemn. In this sense of “just,” all parties to a declared war are engaged in a just war. This stands in sharp contrast to the Law of Nature teaching that the only just wars are those conducted to defend against, to attain reparations for, or to punish natural injustices. Moreover, almost all the Law of Nature prohibitions on how war may be conducted, are overridden or displaced by permissions granted by the Law of Nations to engage in those naturally unjust modes of war-making. Also, these permissions concerning the conduct of war apply to all the States contesting in a Solemn War – even the State whose cause is unjust in the eyes of the Law of Nature.

...in this [Solemn War] Sense, it is lawful for one Enemy to hurt another, both in Person and Goods, not only for him that makes War on a just Account, and does it within those Bounds which are prescribed by the Law of Nature. . . but on both Sides and without Distinction. . . And in this Sense we are to take *Sallust, By the Laws of War all Things are lawful to the Conqueror*. [III. IV. III]

The result, as Tesón says, “is alarming.” Indeed, it seems that Grotius is eager to emphasize the barbarity of warfare in accordance with the Law of Nations. And, as Tesón also notes, we then get a remarkable reversal. For Grotius declares that on reflection, he must “take away from those that make War almost all the Rights, which I may seem to have granted them; which yet in Reality I have not” (III. X. I.1).

Tesón rightly notes that it is not clear where this leaves Grotius. In the name of what – honor, charity, virtue, reason – are we to turn away from the dictates of the Law of Nations? Does this turn involve a general repudiation of the Law of Nations? If it does, why does Grotius expend so much time and space laying out the dictates of the Law of Nations?

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I like the radical *hypothesis* that Grotius does want us to jettison the Law of Nations as having prescriptive power. On this hypothesis, Grotius's attention to the Law of Nations is attention to what he recognizes to be (part of) the positive law but not part of the prescriptively valid law. For there is a “double Meaning of the Word *lawful*, the one being taken for that which is really lawful in itself, the other for that which is only lawful externally” (III. X. I.3). The Law of Nations is to be denied prescriptive force primarily (at least) because it is or has come to be nothing but the Carneades-like sanctioning of unconstrained personal advantage. And that is precisely what Grotius has set out to rebut and cast aside in the name of the Law of Nature. (Note that Sallust's proposition quoted as a summation of the Solemn War doctrine could as readily appear at the outset of Grotius's treatise as an

expression of the Carneadesian view.) Moreover, the primary values that Grotius invokes in support of his reversal against the Solemn War doctrine are precisely the Law of Nature values of Equity, Justice, and Reason (III. X. I.2 & II.1 & III.1 & VI.1). So, my wild hypothesis is that in the end, the Rights of Peace (which include the rights of naturally just war and naturally just conduct in war) vanquish the Rights of War.

## Endnotes

[2.] The attack on Carneades must be entirely on behalf of the Law of Nature because, according to Grotius, Carneades does not discuss and, hence, does not challenge the Law of Nations (I. PD. XVIII).

[3.] Assuming the Law of Nature is not overridden or displaced within a particular State by the Civil Law (II. II. V).

## 2. Hans W. Blom, "Liberty and the Law"

Fernando Tesón reminds us of the crucial importance of the distinction between the law of nature and the law of nations when it comes to the cause of liberty in the modern world. I agree with most of what Fernando has written on Grotius's natural law, yet I would put some emphases different, and propose a divergent reading of Grotius. I believe that by constructing Grotius as a proponent of a deliberative theory of justice we can better understand both Grotius himself as well as the great impact he enjoyed in the 17th and 18th century.

Fernando has proposed four main theses: 1) the law of nations makes the law of nature impotent, partly through a mechanism provided by the law of nature itself: *pacta sunt servanda*; 2) the right of resistance against the government, which is denied citizens because resistance would dissolve the state, is only allowed in extreme necessity; 3) warfare is to be humanized, and the appeal is to monarchs (governments) to do what is morally recommendable (the decorum); 4) private property might be the foundation for constitutional rights.

Let us start with the right of resistance. In the chapter from *The Rights of War and Peace* (1625) that deals with war of citizens against their government, we find an intriguing sentence:

The praetor renders justice, even when he pronounces an unjust sentence [IPB I.4.3 (p. 344)].

The ambivalent use of "just" here suggests that the social function of rendering justice does not necessarily agree with everyone's idea of what is just. Yet it renders justice because this praetor was the Roman official to whom citizens would bring their complaints against fellow citizens in order to resolve their disagreements. Precisely in negotiating divergent ideas of what is just in a particular case the rendering of justice consists. Four *actiones*, or legal remedies, could be sought from the praetor: concerning property, debt, recompense for incurred injury, and punishment. For Grotius this represents justice in its core sense. And he then postulates what will be central in his law of war and peace:

Now, as many *Sources* as there are of *judicial Actions*, so many *Causes* may there be of *War*. For where the Methods of Justice cease, War begins. Now in Law there are Actions for Injuries *not yet done*, or for those *already committed*. For the *First*, When Securities are demanded against a Person that has threatened an Injury, or for the indemnifying of a Loss that is apprehended; and other Things included in the Decrees of the superior Judge, which prohibited any Violence. For the *Second*, that Reparation may be made, or

Punishment inflicted; two Sources of Obligation, which *Plato*, and before him *Homer*, have judiciously distinguished. As for Reparation, it belongs to what is or was properly *our own*, from whence *real* and some *personal* Actions do arise, or to what is properly *our due*, either by *Contract*, by *Default*, or by *Law*. To which also we may refer those Things which are said to be due by a *Sort of Contract*, or a *Sort of Default*: From which Heads all other *personal* Actions are derived. The *Punishment of the Injury* produces *Indictments* and *publick Judgments*. [*The Rights of War and Peace*, II.1.2.1 (p. 394-6).]

By property Grotius naturally meant: life, liberty, and estate:

The Right which a Man has to his own, which contains 1. Power over ourselves, which is termed Liberty. 2. Property, which is either compleat or imperfect. 3. The Faculty of demanding what is due. [ (I.1.5 (p. 138-9): *ius, sub quo continentur Potestas, tum in se (libertas), tum in alios, Dominium plenum sive minus pleno (usufructus, creditum)*). The English translation is rather free.]

Thus, justice is that which the praetor as the representative of the society provides, and war is the continuation of defending our claims in the absence of justice. But then what is a civil war? It is either a war among individuals, after the state has been dissolved, or it is a war between civil society and the political incumbents. The first case is well-known from Hobbes; the second case from Locke. Dutch followers of Grotius would argue that violent resistance against an incumbent who trespasses people's constitutional rights (and thus in older parlance becomes a tyrant) is allowed, because this incumbent has become an enemy of the citizens. That is to say: either the government provides justice (even if by an unjust sentence) and thus cannot be attacked, or it stops providing that justice and becomes a private enemy. One might say that Grotius distinguishes – like Albert Hirschmann – "voice" and "exit."

*The Rights of War and Peace* is mainly about war, and war is connected to justice by at least two strands: 1) the good of humanity and 2) the laws of war. Therefore both the law of nature and the law of nations apply to warfare. Hobbes and Pufendorf have famously argued that there is no law of nations in international law: each sovereign nation pursues its own interests on the authority of the law of nature. Grotius apparently doesn't share that point of view. He sees – like an anthropologist – customs, practices, and regulations among (most, or the most advanced) nations, partly in the form of treaties, partly in the form of agreement among jurists: the water in wells ought not to be poisoned, ambassadors should be granted safe-conduct, etc. It is true that some of these customs are hair-raising: killing, robbing, and destroying was already prominent in the Old Testament, and hasn't stopped since. Yet one might also try to find ways to escape the fate of war, by pursuing one's rightful claims by legal means, and attempting when warfare is unavoidable to promote the common values of humanity that are shared among the nations. This is the famous Grotian Quest that went into the founding ideology of the Peace Palace in The Hague.

Notwithstanding this, Grotius was a political realist, who agreed with Machiavelli that it is more important to describe politics as it is than to build a Utopia in the air. There is a strong element of reason of state in his writings in general, and in an intriguing way, in his natural law as well. The justice that is central to his concept of sociability and that of war is a *minimal* justice of property rights, but otherwise politics, including the civil laws that politicians legislate, is about utility.

So it might happen that a government decrees that landed property can only belong to the nobility, as it was in Poland and in Brandenburg in the times of Grotius. Such a ruling does not prevent justice from being applied, even while it is unfortunate for the merchant or the farmer in such a country. Grotius

would be the first to point out that such a ruling is also very disadvantageous to the well-being of the state, since it will lower agricultural production and chase away tradesmen and other commercial entrepreneurs. Since without a system of justice a state cannot exist, it is in the interest of that state to have a praetorial arrangement, with a concomitant interest in perfecting its system of justice as much as it can. The constitution of the state is the outcome of a historical process of adaptation, in which former agreements are replaced by new interpretations and arguments allow new agreements to arise. The great variety of constitutional forms in his days was ample proof of this historicity of the state. Consequently, Grotius makes the “more advanced nations” the benchmark for the contents of the law of nations, which in this respect is a kind of “secondary law of nature.” As such, this law of nations must be considered to be the “primary law of nations,” while the “secondary law of nations” is the purely volitional part of the law of nations. Pufendorf considered this distinction utterly unhelpful, for the good reason that if one considers all laws to express the will of their lawgiver (whether that is God or the sovereign), there is no place for intellectual exercises like the “consensus omnium.” the considered opinion of the wise. And that is precisely what a deliberative theory of justice would propose: institutions for public reasoning that allow agreements to appear. Agreements are the hallmark of truth, and to stand by one’s truth is an expression of character.

But in the end, for Grotius there is no objective value, and everyone is the interpreter of his own interests, values, and preferences. It is on that basis that the praetor/judge is essential in any social form as the point at which to negotiate these interests, values, and preferences. It is for this reason that man has ratio and oratio, reason and speech, the two instruments for social deliberation.

God created man autexousion, “free and *sui iuris*,” so that the actions of each individual and the use of his possessions were made subject not to another’s will but to his own.... For what is that well-known concept, “natural liberty,” other than the power of the individual to act in accordance with his own will? [*Commentary on the Law of Prize and Booty* (1604-5), II (p. 33-34)]

There has been something like an ideological war among natural law thinkers in the 17th and 18th centuries – to some extent replicated in present-day histories of natural law – and Grotius has been called as a witness on practically all of the contentious points. Consequently we have many different Grotiuses: Grotius the absolutist, according to Rousseau; the liberal (Adam Smith); the confused thinker (Pufendorf), and so on. Grotius’s natural law equally shows this capacity for multi-interpretability: the last of the Scholastics (Peter Haggenmacher), the first modern (Richard Tuck), or something in between (Annabel Brett). Grotius for sure is himself at least partly responsible since he likes to over argue his case by giving multiple arguments from different philosophical backgrounds (Aristotle, Plato, Stoics, Epicureans, and Skeptics) and from different literary sources (Bible, poets, classical philosophers , Scholastics). Look at how he describes the law of nature. It is “not those written laws, indeed, but the immutable laws of Heaven” (IPC, I, p. 16). “Baldus, who has wisely ruled that in any controversy arising between claimants of sovereign power the sole judge is natural reason, the arbiter of good and evil.” The laws of nature are ordained by God, but through his creation; they are discovered by the joint intelligence of mankind (the consent of all nations). Moreover, the distinction between the primary and secondary law of nature doesn’t help to clarify. And the law of nature can be known a priori and a posteriori. Grotius clearly misses an awareness of the issues that will become crucial for his successors in natural law.

Yet there is method in this madness. Grotius has a habit of using unlikely candidates to speak in his support. In the *Commentary*, e.g., Grotius quotes Aristotle to support his notion of subjective rights against the Aristotelian conception of objective value. This type of forensic rhetoric has irritated his more philosophically minded readers, yet it should not distract one from seeing how effective Grotius

was with this strategy. He inescapably introduced a legal and political individualism into the intellectual mindset of Protestant countries, together with a reworked cosmopolitanism meant to overcome the disastrous effects of reason-of-state politics. This legal and political individualism was considered to be central to the commercial success of the Dutch Republic, and thus permeated social and political thought all over Europe, sometimes in a more authoritarian fashion (Hobbes, Pufendorf, Rousseau), sometimes in a more libertarian fashion (Locke, Smith). Theologians wrestled with jurists, political thinkers with historians, and grand schemes of natural law took the place of Grotius's attempts in the early 17th century to salvage justice from European warfare. But his success was more solid as it had become almost invisible.

### **3. Paul Carrese, "The Moderation of Grotius"**

Fernando Tesón's fine essay on Grotius is provocative on several points. My response explores his criticisms of the great jurist's effort to propound a philosophy of international law. I will seek to question his verdict on Grotius through recourse to another jurist-turned-philosopher, Charles de Montesquieu. Grotius seems less confused, his philosophy of international right less perplexing and contradictory, if we read his *On The Rights of War and Peace* (1625) in the spirit of a jurist who seeks not abstract philosophical clarity, but an attractive argument likely to reduce the incidence of conflict – and ameliorate those wars that do occur – by bringing principles of law, thus restraint, into this prevalent mode of human affairs. Grotius's complex mode of jurisprudence and philosophy deeply influenced Montesquieu's efforts, a century later in *On the Spirit of Laws* (1748), to propound a philosophy of international right that declared principles of right to govern war, to promote peace and commerce, and thus to support the conditions for individual and political liberty. These jurists in turn deeply influenced the American founders in their effort, during the 1780s and 1790s, to construct a constitutional order and distinctive American grand strategy that would permit war only as part of a larger philosophy of peace, international order, protection of individual rights, and commerce. These are extraordinary achievements in human civilization, and it was this more complex or seeming paradoxical mode of philosophy that helped statesmen to promote liberty and civility.

We should praise the lawyers – Hugo De Groot (Grotius) and Montesquieu, not to mention Professor Tesón – for their contributions to reorienting politics away from glory and conquest toward peaceful pursuits of individual rights, individual and communal happiness, and peaceful prosperity. We tend to take this for granted in the 21st-century world, since many of us hardly remember a time without a global order of liberal commerce and great-power peace. Moreover, my fellow academics tend to favor the more radical voices in philosophy who announce bright-line doctrines and novel systems, overlooking more moderate intellects who propose complex and balanced philosophies that straddle schools and offer fewer doctrines. If one extends the Enlightenment to include Grotius, then he and certainly Montesquieu exemplify the moderate Enlightenment – keen to consider the claims of modern philosophers for propounding radically new understandings of reality, truth, and right, but just as keen to temper those claims through awareness of the insights of classical and medieval thought that could not be discarded without impairing our understanding of human nature and political reality.

Tesón gives credit to Grotius's effort to restrict the definition of justifiable war, as being “quite visionary” and as prefiguring “the international law developments of the late 20th century,” but insists nonetheless that these achievements rest on an “inaccurate” view of the law of nations. Indeed, the jurist's philosophical method is “messy” and “unsatisfying,” given its seemingly contradictory statements on the degree to which natural law governs the law of nations. At other moments, however, Tesón appreciates Grotius's achievement more in the spirit in which it was intended, understanding that for Grotius the natural law is (in Tesón's apt phrase) “a complicated moral system” in its relation to human practice, especially that of war and peace between nations. He notes that Grotius's work was

“intended for princes” rather than pure scholarly reflection, a decision that “should be commended, not criticized.” Indeed, Richard Tuck’s introduction to the splendid Liberty Fund edition of *The Rights of War and Peace* remarks on the work’s widespread influence, reaching beyond scholars to statesmen – noting that “General Washington, like most well-educated English gentlemen, possessed a copy” (Tuck, “Introduction,” xi). This is the better part of Tesón’s argument, suggesting that Grotius’s complicated, seemingly contradictory analyses of natural law and the law of nations accurately capture the reality of war, peace, and international affairs in a way likely to pull its leading actors toward moderating and ameliorating both thought and action, all with the aim of setting a more humane standard for political conduct.

Montesquieu does not often cite by name the great jurists of international law such as Pufendorf or Grotius in his own influential work, *The Spirit of Laws*, but his private notes (the *Pensées*, translated by Henry Clark in a Liberty Fund edition) reveal that he was inspired by the erudition of Grotius. While drafting *Spirit of Laws* he wrote: “I give thanks to Messrs. Grotius and Pufendorf for having so well executed what a part of this work demanded of me, with that loftiness of genius which I would not have been able to attain.”[4] Montesquieu in turn was the single most important influence on the drafting of the American Constitution and Bill of Rights, rivaled only by one of his protégés, Blackstone. Moreover, it is telling that voices of the moderate Enlightenment such as Grotius, Blackstone, and Montesquieu are cited throughout *The Federalist*, but more radical, analytically pure voices such as Hobbes and Locke are not invoked.[5] If Washington, in his *Farewell Address* (1796), argued that America’s strategy should be to balance consideration of its interests with the strict guidance of universal principles of justice – and therefore avoid being entangled in Europe’s great power politics while also engaging in international commerce and undertaking temporary alliances as needed – then both Washington and his advisers were echoing the balanced philosophy of international affairs propounded by Grotius and refined by Montesquieu.

Grotius announces a philosophical stance of moderation – of avoiding intellectual and practical extremes in search of a truer, higher, middle ground – from the beginning of *De Jure Belli ac Pacis*. He notes that the “monstrous barbarity” and “licentiousness” regarding war even among Christian nations induced some Christian thinkers to endorse pacifism; but this, he says, moves “too much to the opposite extreme.” His task is to find the golden mean, “as well to prevent believing that nothing, as that all things are lawful” in war (PD, secs. 29-30, 106-7; see Forde 1998, 639 and Zuckert 1994, 123, 343 n. 22).[6] In a similar vein, Grotius defines human nature as oriented to society, but notes that society serves individual interest; and the same complex, balanced relation holds in the society of nations. Just as an individual that violates domestic laws with a view to narrow self-interest “thereby saps the foundation of his own perpetual interest,” so a nation that violates the common “reason” inherent in “the laws common to all nations” – found in “the laws of nature and nations” – merely “break[s] down the bulwarks of their future happiness and tranquility” (PD, sec. 19, 94-95). This balance of self-interest and sociability, indicative of Grotius’s philosophical moderation, informs his entire approach to the law of nations and its grounding in the law of nature.

Grotius thus announces that a primary means to reducing conflict is to avoid giving grounds for conflict that might arise from strict claims about the linkage of the natural law and the law of nations. Allowing so many “permissions” by which the law of nations suspends adherence to the law of nature “cuts off infinite disputes” in international affairs (II.12.26, p. 766; see Forde 1998, 643). Making strict adherence to natural law the standard for the law of nations “would be dangerous,” for if a third state were to “pronounce on the justice” of a conflict between two other states, “that state might quickly be involved in a war with other people.” Because “even in a just war it is very hard to judge” what are the right means of *ius in bello*, “it is far better to leave it to the conscience of the persons engaged in war” to judge such matters and make their case (III.4.4, 1275-77; see also III.9.4, 1386;

Forde 1998, 645). This justification explains why Grotius turns in the last part of *De Jure Belli ac Pacis* to call for “moderation” regarding the grounds for war and its conduct. He has prepared for this turn all along. Beyond the effort to shame Christians in the broader arguments of the Preliminary Discourse and Book I, he invokes “the law of charity” repeatedly in the more detailed analyses of *ius ad bellum* and *ius in bello*. Thus the law of nature might permit us to risk the death of innocents to ensure self-preservation, but “the law of charity ... does not permit it” (II.1, p. 398; see also, e.g., III.2, p. 1243). These occasional references become a refrain once Grotius thematically emphasizes in Book III the importance of moderating, thus elevating, the conduct of states above the minimum standards permitted by the law of nations. Indeed, the law of love becomes the definition of “humane” conduct expected of civilized, dignified leaders and their peoples (e.g., III.13.4, 1478-79).

It is true that Montesquieu insists upon refining Grotius; the latter’s argument for civility and humanity becomes, in *The Spirit of Laws*, a requirement of the right of nations. A pillar of this right, or law, is “the law of natural enlightenment,” which, says Montesquieu, “wants us to do to others what we would want to have done to us” – even in, or especially in, matters of war, security, and conquest (Montesquieu 1989, 10.3, p. 139). Nonetheless, as Montesquieu noted, he could not have developed this argument – which taught America’s constitutional founders such great respect for the law of nations and high standards of justice in international affairs – but for the genius of Grotius.

## Endnotes

[4.] Montesquieu, *My Thoughts*, ed. and tr. Henry Clark (Liberty Fund, 2012); no. 1537, at pp. 441-42; see also no. 1863, at p. 556; both passages point to the closing remarks of the Preface to *Spirit of Laws*, as well as to the analysis of the right of nations in Book I, chapter 3 and Book X. See also Tuck 1999: 184-87.

[5.] Publius invokes Grotius in no. 20 (Madison) and no. 84 (Hamilton); see Hamilton, Madison, Jay, *The Federalist: The Gideon Edition*, ed. Carey and McClellan (Liberty Fund, 2001), pp. 96-97, 449. On Montesquieu’s influence, see Donald Lutz, “The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought,” *American Political Science Review* vol. 78 (1984): 189-97. Moderation is explicitly invoked as an intellectual and political virtue in the opening and closing essays of *The Federalist* (no. 1, p. 2; no. 85, p. 453).

[6.] All references are to Hugo Grotius, *The Rights of War and Peace*, 3 vol., edited by Richard Tuck (Liberty Fund, 2005). Following custom, the references are to the *Preliminary Discourse* (PD) or Book, as the case may be, chapter, section, and page.

### 3. The Conversation

#### 1. Fernando R. Tesón, "Was Grotius Just an Advocate?"

The excellent comments by Eric Mack, Hans Blom, and Paul Carrese have taught me a number of interesting things about Grotius and, in passing, have shown how little I know about this intriguing figure. I have no obvious counterpunch, and, like Eric, I suspect that the suggested readings are at least as good as mine, and probably better.

So I will confine myself to a few general remarks. I must confess from the outset that I am one of those who, in the words of Paul Carrese, prefer analytical purity to political moderation. This is in great part adaptive behavior, because I am a bad historian and not particularly good at contextual analyses of philosophical argument. I learned a lot from Hans Blom's skillful location of Grotius's in the contemporary and modern literature. I was likewise marveled at Paul Carrese's account of Grotius's influence on the founders of this republic. And I particularly liked Eric Mack's radical hypothesis that Grotius was inviting us to jettison the Law of Nations. The comments demonstrate conclusively, if there was any need, Grotius's *historical* influence on both the politics and the philosophy of the day.

Having said this, I'm afraid I'll stand by my criticism of Grotius's jurisprudential method. Put succinctly, his arguments are not very good. I mean his *arguments*, not his conclusions. I concur with Paul that *De Jure* is a manifesto for moderation, and I particularly like Eric's and Hans's suggestion that Grotius is, in different ways, a forerunner of modern liberal thought. But nothing I read from them has addressed to my satisfaction the conceptual problems that afflict *De Jure*.

The first and less serious problem, not to repeat myself, is the somewhat arbitrary presentation of the Law of Nations, of international custom. Grotius would not have passed my international law course by quoting Seneca, Tacitus, and Carneades. One would have expected a leading jurist and diplomat to enlighten us about the international practices of *his time*.

But the more serious problem is that his jurisprudential method fails to explain how moral truths bear on legal propositions. Being a natural lawyer is a tough way to make a living. Positivists have it easy: they simply point to social facts (laws, treaties, and custom) and say that they determine the content of legal propositions. But as soon as you summon the Law of Nature you must specify what exactly *is* a natural-law argument and how you think it treats the social facts of human law. St. Thomas Aquinas and Ronald Dworkin are two illustrious examples of efforts in that direction. But Grotius wavers between one and the other (sometimes, I fear, according to convenience) and in doing so he becomes vulnerable to the charge of arbitrariness. It is not a coincidence that writers see Grotius so differently, as Hans Blom reminds us. Positivists claim Grotius as one of their own because of his vindication of the Law of Nations as binding notwithstanding its demonstrable injustice. Natural lawyers also enlist him in their ranks because of his vindication of the Law of Nature in the Preliminary Discourse and elsewhere. But in my judgment Grotius did not present an intellectually satisfying *integrated* view, that is, a view that would calibrate the positivist and nonpositivist strands in his argument.

Paul Carrese is absolutely right: Grotius eschews intellectual purity in favor of what works, what can persuade people. I will be the last to deny the importance of advocacy, but an argument's historical importance or political success does not speak to its truth or quality. Advocacy, I would suggest, is a failure of political discourse, because its aim is to persuade and not to seek the truth. Was Grotius just an advocate? This is surely too harsh: keener minds than mine, including my commentators, have rendered a favorable verdict. But this does not relieve us from subjecting Grotius's arguments to

probing scrutiny. If we like his moderate views, we would want them to prevail in the realm of ideas, and not just in the messy arena of international politics.

## 2. Eric Mack, "Grotius on the Right of Resistance"

Both Fernando and Hans discuss briefly Grotius's doctrine concerning a subject's forcible resistance against his own sovereign. I want to return to this topic briefly because it provides another occasion on which Grotius seems to take a strongly illiberal and authoritarian stance and yet subsequently reverses that stance. Is this confusion on Grotius's part? Is it moderation? Is it the inherently anti-authoritarian logic of his normative premises reasserting themselves? I, of course, would like to believe it is the third of these.

The question that is initially at hand is whether subjects may act against their sovereign when "the civil Powers command any Thing contrary to the Law of Nature or the Commands of God..." (I. IV. I, 337). Grotius's immediate response is that subjects may decline to obey such commands. However, they may *not* forcibly resist any injury that the civil power sets out to inflict on them in response.

Rather than resist at this point, Grotius says that the subject who has declined to obey the command of the sovereign must patiently submit to the sovereign's injurious response. "But if for this, or any other cause, an Injury be done us by the Will of our Sovereign, we ought rather to bear it patiently than to resist by Force" (I. IV.I, 338). (It is significant that Grotius says "injury" here, for, since an "injury" is a wrongful or unjust harm, Grotius is saying that subjects may not resist even though the civil power's response is wrongful or unjust.)

Grotius proceeds to give a type of social-contract account for this obligation of nonresistance. All men begin with "... a Right to secure themselves from Injuries by Resistance...." But the establishment of the state requires that "the State has a Power to prohibit the unlimited Use of that Right...." Indeed, the state could not exist if "that promiscuous Right of Resistance" continued to exist (I. IV. II, 338). Grotius then solidifies the conclusion that resistance against even unjust harm by the sovereign is *always* unacceptable by assuming that even the limited use of a non promiscuous right of resistance must have been surrendered in the establishment of the state.

However, as we move forward in this chapter, we get a striking reversal. Grotius tells us that "A more difficult Question is, whether the Law of Non-resistance obliges us in the most extreme and inevitable Danger." After all, even "some of the Laws of GOD, however general they be, seem to admit of tacit Exceptions in Cases of extreme Necessity..." (I. IV. VII, 356). And now Grotius tells us that, although those who enter into civil society give up their unlimited (promiscuous) right to resist injuries at the hands of others, they are most plausibly understood as retaining a limited (discriminating) right to resist injuries.

Suppose [those entering society] had been asked, Whether they pretended to impose on all Citizens the hard Necessity of dying, rather than to take up Arms in any Case, to defend themselves against the higher Powers; I do not know whether they would have answered in the affirmative. It may be presumed, on the contrary, they would have declared that one ought not to bear with every Thing, unless the Resistance would infallibly occasion great Disturbance in the State, or prove the Destruction of many Innocents. [I. IV. VII, 358]

Grotius immediately considers the thought that, if not by contract, at least by "Divine Law," subjects have a "rigorous Obligation to suffer death rather than at any Time to resist an Injury offered by the Civil Powers" – and he rejects this thought as well. Moreover, if I read him correctly, he goes on to say that it is even permissible for a small number of individuals – a small part of society – to forcibly

resist such injuries. Wonderfully, Grotius invokes here the very Barclay – “the stoutest Assertor of Regal Power” -- whom Locke later describes as “that great assertor of the power and sacredness of kings” (*Second Treatise*, §232) and invokes on behalf of resistance.

... I dare not condemn indifferently all private Persons, or a small Part of the People, who finding themselves reduced to the last Extremity, have made use of the only Remedy left them, in such a Manner as they have not neglected in the mean Time to take care, as far as they were able, of the publick Good. [I. IV. VII, 358]

### **3. Paul Carrese, "Grotius and Philosophical Moderation" [Posted: March 18, 2014]**

Fernando Tesón’s response interprets my view of Grotius as suggesting that the project of *De Jure Belli ac Pacis* was practical advocacy – seeking to prevent war, or meliorate its horrors – *rather than a* search for the truth of human affairs. If I gave that impression, that Grotius had chosen efficacy in the messy political world against understanding the truth about politics, then the error is mine. I should clarify my view that Grotius saw himself as within the broad Aristotelian tradition of political and moral philosophy, and thus of jurisprudence, in which truth is defined as an understanding that discerns how to practically improve human affairs so that we can better achieve the aims of our nature. I do not mean to deny, in advancing this view, that Grotius is a liberal and a modern. Apart from my trepidation at the prospect that Eric Mack and Hans Blom would pounce upon any such suggestion, I tried in my first response to indicate that Grotius – like his progeny Montesquieu and Blackstone – was an intentionally moderate sort of modern, liberal mind. This strain in the moderate Enlightenment sought to retain or revive elements of classical and medieval thought that would achieve the humane aims of modernity and liberalism more adequately than had the radical philosophies that repudiated the philosophical tradition to a substantial degree. That repudiation was undertaken both in the name of human progress and in the name of analytical clarity.

When I averred that Grotius as a jurist and philosopher sought “not abstract philosophical clarity” but rather principles that would be likely to meliorate and humanize international affairs, I should have clarified immediately that Grotius did not see this as a binary choice between truth and efficacy. I did state, perhaps too late, that for Grotius a proper moral-political philosophy would balance the insights of several philosophical schools rather than adhering to strict doctrines of analytical clarity. This is because, for Grotius, the aim of such philosophy is to accurately capture the reality of war, peace, and international affairs. I did add that Grotius thought accuracy also would be likely to pull leading actors toward moderating and meliorating thought and action; but I should have clarified that this harmony of truth and humane efficacy is a product of Grotius’s kind of soft teleology about human affairs.

As Eric Mack noted in his first response essay, Grotius adopts those elements of classical and medieval philosophy that define human nature as both oriented to sociability and interested in individual advantage. (I had cited PD, sec. 19, 94-95; see also, e.g., I.I.III-IV, 136-38, and II.II.XIII, 443-44.) Unlike Aristotle or Aquinas (to pick two philosophers holding this balanced, complex view of our nature), Grotius seems more to emphasize elements of individual liberty and property rights, and he emphasizes that our natural aim is social harmony, not political order per se. It is no accident that Aristotle and Aquinas, given their view of a complex human nature, defend private property, but nonetheless each holds that we are oriented to political union. This view tends to place priority on the political over the social, and thus gives less scope for individual liberty (although, Aquinas might be said to be a bridge from Aristotle to the modern, liberal views of Grotius, given that Aquinas defines our nature as being both social and political).

My point was that Grotius's view of a complex or balanced or moderate human nature – avoiding the opposing extremes of an asocial nature or a fully political nature – fit with a larger jurisprudence that sought to avoid the opposing extremes of pacifism or Machiavellism about war, peace, and international affairs. A proper conception of natural law, and of how it guides any positive law (including the law of nations in all its senses), would see the truth as helping us to achieve the aims of our nature. Grotius thus perpetuates Aristotle's view that any science of human affairs (primarily ethics or political science, but also jurisprudence) should strive to attain only the clarity that accords with the subject matter, and therefore a philosopher should not seek the same level of precision in all arguments (*Nicomachean Ethics*, Book I, ch. 3, 1094b12-28). Indeed, Aristotle closes the *Ethics* by calling for a new discipline, political science, because in the practical human sciences it's not good enough to achieve philosophical clarity in the abstract; one's clarity has to be an achievable, practical standard both for individuals and political communities (*Ethics*, Book X, ch. 9, 1179a33ff).

Perhaps what is missing from Grotius is a theoretical or conceptual statement of this philosophical moderation, i.e., avoiding either skepticism or a false analytical clarity; also missing is a clearer conceptual statement (of the sort Tesón seeks) of how he integrates his accounts of positive law (customary law of nations) and natural law (with its normative requirements). My own view is that if we adopt the Aristotelian conception of appropriate philosophical clarity, we at least can find such statements in Grotius's work. (I had cited a few such moments.) His general project seeks a middle path between, on the one hand, a moralism that aims too high for human nature and human affairs and either is dismissed as impossible or unintentionally causes more harm than good, and on the other an immoral or amoral positivism regarding law and politics.

I had cited some passages from Michael Zuckert's analysis of Grotius, in which he finds moderation to be a central theme, but I close with a more specific conception of Grotius's philosophical moderation that captures my point: in Zuckert's view, "the deepest thrust of Grotius's thought" is to move toward "both a very determinate and specific standard of right, a standard beyond the vicissitudes of religious and political controversy, and an effective standard, one that can stand up to the sneers of the Machiavellis of the world, who say that the natural law is 'weak and unarmed'" (Zuckert 1994, p. 148, emphasis added). Grotius may not meet his own standard; it may be that another conception (more analytically pure) has a better standard of truth; still, it is important to discuss which standard we are using to judge Grotius's efforts.

#### **4. Hans W. Blom, "*Ius Gentium*, the Law of Nations, and the Law of Nature at the Birth of Liberalism"**

Fernando Tesón rightly insists on a distinction that is part and parcel of modern international law: that between positivism and natural jurisprudence. I say rightly, because it is on these dimensions that modern international law developed. The question is: what has it to do with Grotius? And another: what with liberalism?

The old distinction in Roman law was between *ius civile* and *ius gentium*, respectively, the law that applies to citizens of Rome and that which applies to all people indistinctively. For the practice of Roman imperialism, this was a useful distinction, no doubt, but it had nothing to do with international law: the normative cadre of Roman imperialism had its origins in the legal concepts of Roman *ius civile*. Thus part of the problem is the equivocal expression *ius gentium*, meaning both that law that is shared by all peoples and (yet only from somewhere around the 17th and 18th centuries) the law that holds between nations. For example, when in 1672 Samuel Pufendorf titled his magnum opus *De iure naturae et gentium* (*On the Law of Nature and Nations*) he made it a point of principle to identify the two, criticizing Grotius for failing to do so. About international law Pufendorf had preciously little to

say, i.e., because he strongly believed that nations were in a state of nature relative to each other, and thus considered the law of nature sufficient as a normative context. Whatever Grotius and Pufendorf were discussing, it was not the status of international law, but the law of nature.

Now if we agree with Hayek (*Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, vol. 2 *The Mirage of Social Justice* [University of Chicago Press, 1976], p. 59.) that the term natural law “ought to be avoided,” then we might want to know what other term to use: human rights? (global) justice? (international) law? The choice is somewhat arbitrary since each of these has good claims to being the heir of natural law. I will opt for the human-rights/global-justice pair, also because historians of international law are canvassing the effects in their field (e.g., Martti Koskenniemi). That Grotius is relevant to human rights seems obvious, and to the second concept as well, if we accept the following definition:

Global public reason is a standpoint “from which positions are to be justified by way of giving reasons people of different moral or political backgrounds could accept.” [Mathias Risse, *On Global Justice* (Princeton: Princeton University Press, 2012), p. 94.]

And this is in the spirit of Grotius, who understood natural law indeed to be a set of normative principles that are valid independent of religious or political preferences. Hayek for good reasons questions the very idea of immutable principles – both the immutability and the principledness, evidently – and I would suggest that it makes best sense of Grotius to see him lean in that direction too.

This issue of global public reason is best developed by drawing attention to a topic very central to Grotius, viz., *consensus*, that we might translate as agreement, shared judgment, or consent, depending on the precise context. The term is first introduced in his major conjuring trick, by which he removed God from the equation. Natural law, he says, are the moral principles pertinent to man, and naturally these depend on God the Creator of the world. In order to know these principles, however, Grotius does not point towards our religious understanding of God, but to our own understanding of our own nature, as created by God. Our moral principles are those that belong to our nature, and we have to study our own nature in order to find out. German theologians in the 17th and 18th centuries called this derogatorily “naturalism,” as if it was a way of handing over moral responsibility to naked nature. But that was not the case: in order to find out the nature of man and its moral implications, we need to study, and as Alexander Pope said so famously: ‘The proper study of mankind is man.’ And the hallmark of good results is that they can command agreement among the researchers: *consensus*. As we all know, such a *consensus* sometimes is a travesty, because based on “political correctness,” on brutal power even, or ideological bias, sometimes on ignorance of true causes. So in the end, “*consensus*” is a process concept; it has to be amended and corrected; *consensus* thrives by dissension and debate. Grotius, e.g., points at *consensus* when showing that his core notion of self-defense is recognized by all philosophical currents, including the Skeptics. (Part of his eclecticism has to do with the importance of *consensus* in natural-law argument.)

Why do we want to know the moral principles belonging to man? Grotius’s answer was that moral principles that mankind can universally agree on allow us to end and/or prevent wars, since wars are only justified in case of a lesion of these principles. This argument is circular, evidently, but the circle is sufficiently large to make it worthwhile.

It is different with other agreements. People(s) can agree on many things: on religious obligations, on political obligations, on manifest destinies or tax regimes, on international alliances or trade agreements. All these agreements have the force of law implied in their respective agreements, and it

is a separate intellectual and/or political game to sort out the precise implications of such arrangements.

The effort to find out what moral principles are inherent in man's nature is thus based on consensus, on reasons acceptable to all concerned. And here is the great difference with consent. When I consent to something, I am considered obligated because of the act of consenting. But when I agree to a reason, it is not the act of agreeing that has moral force on me, but the content of the reason.

If I agree to become a slave (because I have good grounds to fear that I otherwise might be killed), then I engage in a legal form that is dictated by the polity I live in. In the times of Hobbes (who elaborated on this example from Grotius), slavery was accepted in many parts of the world. (See the discussion between John Cairns and Gustaaf van Nifterik in *Grotiana* vol. 22/23, 2001-2002, pp. 197-244.) Although one may doubt whether slavery conforms to the moral principles inherent in mankind, there was at that time no consensus that it did not. Besides, in the Grotian example the voluntary slaves are those taken prisoner in a just war and who have forfeited their property and life by unjust warfare. It is the Nuremberg Tribunal version of natural law, not the war of all against all of Hobbes. But no doubt later, "more advanced" ages have seen new consensus on reasons grow, and the direction of these new developments are in interesting ways in line with Grotian ideas.

In John Rawls's *The Law of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), we find an important attempt to develop a consensus based universal set of moral principles. Mathias Risse's *On Global Justice* is a more recent elaboration of a similar set-up. Interestingly, Risse takes recourse to Grotius throughout the book, claiming that especially in the concept of the earth as the common property of mankind, and in the way in which Grotius developed private property out of it, we find ingredients for global public reason. And thus it is all about liberalism as well, especially as it turns out that the basic ingredients that go into the equation are property and trade.

## **5. Paul Carrese, "The Radical Grotius Hypothesis: Why Not a Philosophical Middle Ground?"**

Erick Mack's reply to Fernando Tesón's initial essay finds the two in agreement about a conflict in *De Jure Belli ac Pacis* – namely, that Grotius does not adequately explain how to harmonize his conceptions of natural law and the law of nations. They further agree that the better philosophical and jurisprudential element in Grotius is the natural law, the higher normative standards for war and peace. Mack then proposes a hypothesis, admittedly "radical" and "wild," that Grotius intended to heighten the tension between these two kinds of law so that we would be compelled to jettison the customary law of nations given the moral and philosophical superiority of the law of nature. I learned from, and agree with, nearly all of Mack's analysis of the Grotian conceptions of the laws of nature and of nations, and of the rights of peace and war. However, rather than finding in Grotius an irreconcilable conflict in these pairs – such that he ultimately seeks to discard the law of nations and rights of war in favor of the rights of peace that accord with the law of nature – I again suggest that the Grotian philosophy seeks a sound middle ground between extremes. It is possible that he seeks a balance or blend of views on the complicated relation between these kinds of law, especially given the analogous senses of "the law of nations" that he employs.

One issue is whether Grotius strictly defines the law of nations as only positive or customary law, as Mack contends, and therefore whether the law of nations exists only in contrast with, or contradiction to, the law of nature. I reply that for Grotius "the law of nations" is polyvalent. One sense is, as Mack argues, a positive law that is not derived from nature – the law of nations as "voluntary" or customary law. Mack cites the Preliminary Discourse defining the customary law that nations adopt "by common

consent.” Still, the phrasing is careful: this “is *called* the Law of Nations, *when* used in distinction to the Law of Nature” (PD XVIII, 94, emphasis added; see also II.VIII.I, 634). Grotius leaves room here for a secondary sense of the law of nations, one not so opposed to the law of nature. Indeed, the next section suggests that the law of nations reflects the law of nature, which aims at the happiness or fulfillment of our nature. States that violate the law of nations undermine their own good, since the law of nations manifests the natural law: “So that people which violate the Laws of Nature and Nations, break down the bulwarks of their future happiness and tranquility,” since violating these related, mutually reinforcing laws is acting contrary to “the impulse and direction of our own nature” (PD XIX, 94-95). Shortly thereafter Grotius insists that this intrinsic relation between the kinds of law entails that “the society of mankind, or of several nations” requires conduct according to principles of “right” and standards of “just or unjust” (PD, XXIV, 98-99, including note 3). He cites both Aristotle and Cicero, but emphatically endorses Cicero on moderation or modesty (*temperantia*) in human affairs. That “great orator and philosopher” insists that we must never forsake moderation and the higher requirements of natural law for its lowest requirement of self-preservation, since (quoting Cicero), “there are some things so shameful and criminal, that a wise man will not do them even for the preservation of his country.”

Mack admits that Grotius uses “laws of nature” as polyvalent, with a focal sense and then (as Mack writes) “an extended and less proper sense.” (Mack also cites III.X.1, 1414, on the polyvalence of “law.”) In Grotius’s deployment of “the law of nations,” some passages emphasize the distinction between the two kinds of law (e.g., PD XLI, 112) – with natural law meaning inferences drawn from nature, while the law of nations derives from universal consent. Elsewhere he discusses “the right of nations” as considered to be derived from the right of nature (I.I.XIV, 163). Still elsewhere the law of nations merges with the law of nature: “By the law of nature then, which may also be called the law of nations, it is plain, that every kind of war is not to be condemned” (I.II.IV, 189).

Upon this basis, I will recapitulate the *moderate* hypothesis by suggesting that Grotius’s emphasis in Book III of *De Jure Belli ac Pacis* on moderating and elevating the law of nations – so as to bring it up to the standards of the law of nature, justice, equity, and the Christian law of love (III.X and following) – is not so remarkable or extraordinary a turn. Throughout the three books he has noticed, and condemned, the gap between the customary law of nations and the law of nature regarding both *ius ad bellum* and *ius in bello*. This also is, for him, a gap between customary law of nations and the more legitimate law of nations grounded in or derived from nature (and thus from justice, equity, and the virtues both strictly rational and Christian). He seeks to close that gap. Mack argues that Grotius does so by jettisoning the law of nations with its rights of war, then building a new conception of “the rights of peace” on the proper law of nature. That would seem to turn Grotius in a pacifist, even Kantian direction that doesn’t comport with the complexity and balance of his philosophy.

That said, the complexity of Grotius’s analysis, and of his ultimate effort to push the law of nations in a truer and more natural direction, leads us to these interpretative difficulties. He seeks to persuade elites in the Christian nations, and in nations seeking to be considered civilized, that legitimate reasons and laws must reflect not the minimal sense of the law of nations but the higher standard that pulls together the two laws, of nature and nations. Perhaps he seeks to demonstrate his encyclopedic understanding of all the reasons – excuses – rulers have for following the lower path of war as injustice, in hopes that this provides him a credible basis for pulling them toward a higher conception of justified, and more limited, war. Recent events remind us that rulers and diplomats can claim to abide by international law, and principles of democratic consent, while merely citing such scripture for brutal purposes. Grotius alerts us to the distinction, but in a way that retains a credible or realistic awareness of the presence of brute power in international affairs.

## 6. Eric Mack, "Another Shot at the Law of Nations"

Paul discusses and critiques my radical and wild hypothesis – that Grotius's real message is that we should jettison the law of nations and place our hopes on the law of nature – with marvelous scholarly delicacy. Someday, when I grow up, I'd like to achieve a slither of that intellectual refinement. (But my hopes are very slim.) And, of course, Paul is correct to point out that Grotius gives different characterizations of the law of nations in different places; and that is a problem for my hypothesis.

Moreover, there are particular moments in Grotius's discussion of the morality of conduct in warfare that do not fit my suggestion that, if anything, Grotius seeks to exaggerate the brutality of law-of-nations norms and the non-brutality of the counterpart law-of-nature norms. For example, had Grotius been dead set on emphasizing the brutality of law-of-nation norms, he would not have paused to say that the law of nations precludes the ravishing of the enemy's women (III. IV. XIX.1). I also believe there is one instance in which the law of nations is said by Grotius to be more restrictive of conduct in war than the law of nature. But I have not been able to locate that instance in the text.

Still, the contrast between what Grotius says the law of nations allows in warfare and what he says the law of nature allows is very striking. In case after case – e.g., the killing of bystanders, the killing of prisoners, the killing of those who have asked for quarter, the seizure of the property of the enemy's subjects or the property of those who happen to be in the enemy's territory, and so on – the law of nations is said to permit the conduct and the law of nature is said to prohibit it. Equally striking is the fact that Grotius does not say, "Well, there is the law-of-nations teaching and there is the law-of-nature teaching. We should attend seriously to both and (somehow) come up with stances that give each their considerable due weight." Rather, at the beginning of his presentation of the law-of-nature teachings, he says that he must "take away from those that make War almost all the Rights, which I may seem to have granted them [under the law of nations]; which yet in Reality I have not" (III. X. I.1). So I think I at least want to stick by the claim that Grotius is on the verge of calling for the jettisoning of the law of nations – where this is understood as a body of norms quite distinct from the law of nature.

I did offer, and I re-offer here, a supplementary hypothesis about why we find Grotius giving both law-of-nations and law-of-nature answers to questions about what is lawful in war. That hypothesis is that he is engaged in both a positive account of the law and a normative account of the law. I supported that account by citing Grotius's remark that there is a "double Meaning of the Word *lawful*, the one being taken for that which is really lawful in itself, the other for that which is only lawful externally" (III. X. I.3). My thought is that Grotius is engaged in both this descriptive project and this normative project and that he is not clear enough in his own mind about the difference between these projects.

In his initial essay, Fernando criticizes Grotius for not presenting a report of the actually accepted norms of warfare of his time. Presumably, the real law of nations for his time consisted in those actually accepted norms. Were those actually generally accepted practices of Grotius's time less horrendous than what Grotius says is permissible under the law of nations? I certainly do not know – albeit, Shakespeare's *Henry V* suggests less contemporary acceptance of the killing of prisoners than is found in Grotius's recounting of the law of nations.

Why do I raise this historical question? My reason is that, if the actual accepted norms of warfare of Grotius's time were less horrendous than the law-of-nations norms that he recounts, one might take that as evidence that Grotius was going out of his way to give a horrifying picture of the law of nations.

## **7. Paul Carrese, "Liberty and International Order: The Truth of the Law of Nature and the Primary Law of Nations"**

Hans Blom's two essays in this conversation argue, as only a renowned Grotius scholar could do, that Grotius is a quite modern thinker about natural law, justice, and war. Blom also suggests that Grotius points toward postmodern conceptions of moral and political thought. That is, if postmodernism means the rejection of nature and immutable truth as the grounds for moral and political principles, then Blom seems to read Grotius as a proto-postmodernist. This interpretative issue has a direct bearing upon war, peace, and international security in our 21st-century world. This is especially so given the recent demonstration that a great-power state bordering Europe has little regard for international norms about settled international borders, or the illegitimacy of aggressive or revanchist military force. My practical claim is that if thinking about the law of nations is seen to rest only upon contemporary consensus, ever-revised – rather than resting upon the immutable ground of the law of nature – then international law loses much of its legitimacy and force. This practical claim in turn rests on an academic one – that, *pace* Blom, Grotius is not a proto-postmodern, but instead is a modern natural-law jurist who searches for the ground of immutable truth that should guide international conduct.

Having staked the latter claim, I immediately will soften it. In fact I think my view of Grotius is not diametrically opposed to Blom's. Still, if we do disagree, I avail myself of Grotius: when discussing the authority of Aristotle, Grotius echoes Aristotle's own view that we must respect great philosophical minds but depart from them if need be “for the sake of finding truth” (*De Jure Belli*, PD XLVI, 123). Having cloaked myself with *amicus Plato*, I proceed to recklessly query a Grotius expert who offers two instructive contributions to our conversation.

Blom argues that Grotius propounds a “deliberative theory of justice” as a constructivist conception of right and law. No individual or state has access to ground truth, so if we are to have peace and some kind of justice, we must work within institutions that establish “public reasoning.” These in turn allow peaceful arbitration and development of “agreements” on norms. (In his essay on the *ius gentium*, Blom emphasizes a contemporary “consensus” on “normative principles” as what Grotius means by natural law.) Blom declares: “in the end, for Grotius there is no objective value, and everyone is the interpreter of his own interests, values, and preferences.” Thus the Grotian appeals to “right” and “natural law” really endorse a process of debate, and recognition of institutions for arbitration and reconciliation of views, so as to construct norms for governing conduct.

I agree with this view to the extent that Grotius is not a Kantian in search of *a priori* truths known purely by reason, without the corruptions of experience or consequences. That said, is a postmodern constructivism Grotius's only alternative to this? If I were to invoke moderation here, I fear my partners in this dialogue will roll their eyes. Nonetheless I aver that Grotius held to a philosophical middle position between conventionalism (the opponent he confronts in opening the work) and philosophical absolutism, or *a priorism*. He does so as a jurist and theologian who was liberally educated in the Roman civil law as modified by Christian philosophy and jurisprudence. Central to that complex tradition is the balance between fixed but general principles of natural right on the one hand and, on the other, the individual's judgment in discerning how to adhere to right in particular or changing circumstances. Grotius invokes these conceptions of prudence and judgment early in the work, and relies upon them throughout.

For example, Grotius states that man is endowed by nature with “judgment” and must exercise “a right and sound judgment” in discerning what natural right requires; this in turn will guide a “prudent management” in exercising distributive justice with all its discriminations among competing elements

(PD IX-X, 87-88). In discussing punishments – which are both a domestic matter and provide a rationale for war against offenders – he insists that the virtue of prudence is needed for both civil and international cases of wrong to discern whether and what punishment is due (II.20.IV, 972-75; see also II.20.XLIII, 1026-27). Aristotle thus was correct to declare prudence as “a virtue peculiar to” rulers (II.26.IV, 1179).

I agree, therefore, that Grotius celebrates the jurist and statesman as arbiter, the embodiment of the distinction between peace and war. The capacity to reconcile disputes through mechanisms of law is indeed “the social function of rendering justice” (Blom) that we tend to take for granted, perhaps especially when we disagree with a particular verdict. Several early essays of *The Federalist* echo this Grotian view, applied to domestic and international contexts. The lack of courts or executive offices under the Articles of Confederation meant that disputes among states – or, failure of the Confederation to abide by international law for lack of offices to enforce it – exposed Americans to the dilemma of either permitting injustice or having recourse to violence. In no. 22, Publius (Hamilton) argues that the lack of such capacity is effectively a state of war (see also no. 3, no. 15, and no. 17 – by Jay and Hamilton).

The sticking point is that Grotius employs prudence, and institutions of domestic law and international convention, to mediate between high principle and concrete circumstances – but prudence is guided by the fixed truths discerned by right reason. In international affairs there are several institutions that statesmen, jurists, and educators use to close the gap between natural law and the practice of the law of nations, seeking to raise the latter toward the former. These include courts with jurisdiction under the law of nations, and jurists such as Grotius who educate statesmen and jurists about the laws of nature and nations. There is much “process” here, but I don’t see Grotius elevating process and consensus over the search for immutable truths that rest upon nature.

Liberty for individuals and states depends upon these immutable truths; and, the genius of constitutional regimes is to incorporate a Socratic openness to hear opposing views about what truth is and what it entails in particular circumstances. The defense of principles of liberty requires confidence that these are not just a product of contemporary construction, but are grounded in our nature. This is most especially true because we, or our fellow citizens, might be called upon to kill or be killed to defend these truths. The search for a Rawlsian “global public reason” may be one pillar upon which the Peace Palace in The Hague rests; but among the other pillars is the forcefulness of liberal states, leaders, and citizens to stand for these principles against actors who ignore or repudiate them. Grotius seeks to reduce war, but he also teaches that there come moments when the process of arbitration or deliberation can do no further good and actors must be confident that right reason and law endorse their actions to defend justice.

## 4. Additional Reading

### Online Resources

Hugo Grotius (1583-1645) - works by Grotius available online at the OLL: <oll.libertyfund.org/people/3775>

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Eric Mack, Locke on Toleration: Locke's A Letter Concerning Toleration

Eric Mack: Authority and Liberty in the Writings of Robert Filmer and Thomas Hobbes [old OLL]

Eric Mack: James Tyrrell on Authority and Liberty

Eric Mack: Liberty Matters: "John Locke on Property" (January 2013).

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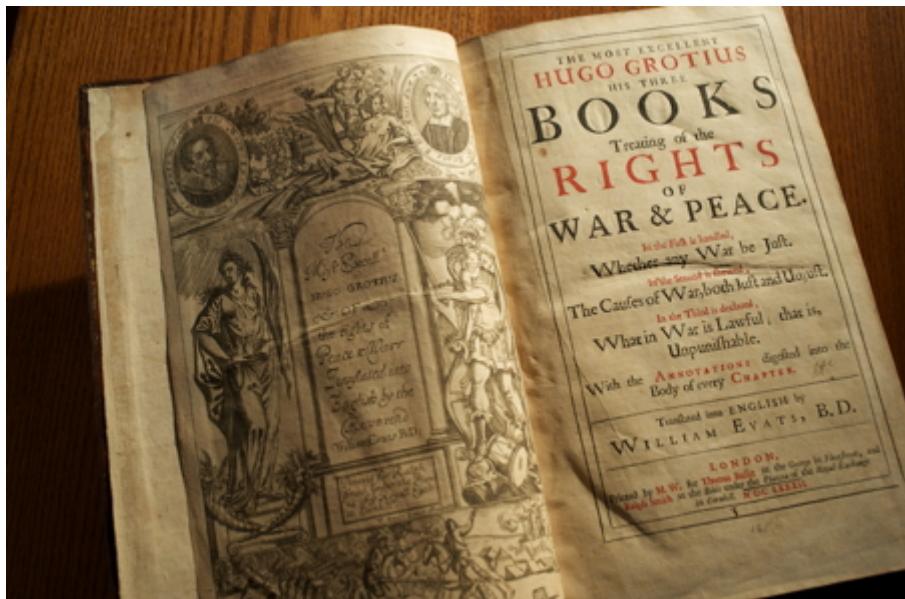
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# Grotius, "The Preliminary Discourse Concerning the Certainty of Right in general" ↵



## Source

Hugo Grotius, *The Rights of War and Peace*, edited and with an Introduction by Richard Tuck, from the Edition by Jean Barbeyrac (Indianapolis: Liberty Fund, 2005). 3 vols.

The "Prolegomena" or "Preliminary Discourse" comes from Vol. 1 <[http://oll.libertyfund.org/titles/1425#lf1032-01\\_head\\_009](http://oll.libertyfund.org/titles/1425#lf1032-01_head_009)>.

# THE PRELIMINARY DISCOURSE : *Concerning the Certainty of Right in general; and the Design of this Work in particular.* ↵

[Editor's Note: [Material in Bold] appears as marginalia in the original edition.]

**[I.The LAW of Nations.]** I. *The Civil Law, whether that of the Romans, or of any other People, many have undertaken, either to explain by Commentaries, or to draw up into short Abridgments: But that Law, which is common to many Nations or Rulers of Nations, whether derived from Nature, or instituted by Divine Commands, or introduced<sup>1</sup> by Custom and tacit Consent, few have touched upon, and none hitherto treated of universally and methodically; tho' it is the Interest of Mankind that it should be done.*

**[Of War and Peace.]** II. Cicero<sup>1</sup> rightly commended the Excellence of this Science, in the Business of Alliances, Treaties, Conventions between States, Princes, and foreign Nations, and in short, in all Affairs that regard the Rights of War and Peace. [76] And Euripides prefers this Science before the Knowledge of all other Things, whether Divine or Human, when he makes Helen say thus to Theonoe:

- <sup>2</sup>Twould be a base Reproach
- To you, who know th' Affairs present and future
- Of Men and Gods, not to know what Justice is.

**[Some think Interest alone the Rule of Justice.]** III. *And indeed this Work is the more necessary, since we find some, both in this and in former Ages, so far despising this Sort of Right, as if it were nothing but an empty Name. The Saying of Euphemus in Thucydides is almost in every ones Mouth,<sup>1</sup> To a King or Sovereign City, no-[xiv]thing is unjust that is profitable. Not unlike to which is this,<sup>2</sup> That amongst the [77] Great the stronger is the juster Side; and, That no State can be governed<sup>3</sup> without Injustice. Besides, the Disputes that happen between Nations or Princes, are commonly decided at the Point of the Sword. Now, it is not only the Opinion of the Vulgar, that War is a Stranger to all Justice, but many Sayings uttered by Men of Wisdom and Learning, give Strength to such an Opinion. And indeed, nothing is more frequent than the mentioning of Right and Arms, as opposite to one another. Thus Ennius,<sup>4</sup>*

- They have recourse to Force of Arms, not Law.

*And Horace<sup>5</sup> thus describes the Fierceness of Achilles:*

- Laws as not made for him he proudly scorns,
- And every Thing demands by Force of Arms.

*Another Latin Poet<sup>6</sup> introduces another Conqueror, who entering upon War, speaks in this Manner,*

- Now, Peace and Law, I bid you both farewell.

*Antigonus,<sup>7</sup> though old, laughed at the Man, who presented him with a Treatise concerning Justice, at the very Time he was besieging his Enemies [78] Cities. And Marius said<sup>8</sup> he could not hear the Voice of the Laws for the<sup>9</sup> clashing of Arms. Even the<sup>10</sup> modest bashful Pompey<sup>11</sup> could have the Face to say, Can I think of Laws, who am in Arms?*

*IV. Among Christian Writers we find many Sayings of the same kind; let that of Tertullian suffice for all;<sup>1</sup> Fraud, Cruelty, Injustice, are the proper Business of War. Now they that are of this Opinion, will*

*undoubtedly object against me that of the Comedian,*

- 2You that attempt to fix by certain Rules
- Things so uncertain, may with like Success
- Strive to run mad, and yet preserve your Reason.

[79]

**[The Existence of Right asserted against the Objections of Carneades.]** V. *But since it would be a vain Undertaking to treat of Right, if there is really no such thing; it will be necessary, in order to shew the Usefulness of our Work, and to establish it on solid Foundations, to confute here in a few Words so dangerous an Error. And that we may not engage with a Multitude at once, let us assign the man Advocate. And who more proper for this Purpose than Carneades, who arrived to such a Degree of Perfection, (the utmost his Sect aimed at,) that he could argue for or against Truth, with the same Force of Eloquence? This Man having undertaken to dispute against Justice, that kind of it, especially, which is the Subject of this Treatise, found no Argument stronger than this.*1 *Laws (says he) were instituted by Men[xv] for the sake of Interest; and hence it is that they are different, not only in different Countries, according to the Diversity of their Manners, but often in the same Country, according to the Times. As to that which is called Natural Right, it is a mere Chimera. Nature prompts all Men, and in general all Animals, to seek their own particular Advantage: So that either there is no Justice at all, or if there is any, it is extreme Folly, because it engages us to procure the Good of others, to our own Prejudice.*

VI. *But what is here said by the Philosopher, and by the Poet after him,*

- [1.Natural.] 1By naked Nature ne'er was understood
- What's Just and Right.
- Creech.

*must by no Means be admitted. For Man is indeed an Animal, but one of a very high Order, and that excells all the other Species of Animals much more than they differ from one another; as the many Actions proper only to Mankind sufficiently demonstrate. Now amongst the Things peculiar to Man, is his Desire of 2 Society, that is, a certain Inclination to live with [80] [81] those of his own Kind, not in any Manner whatever, but peaceably, and in a Community regulated according to the best of his Understanding; which Disposition the 3 Stoicks termed Ὀικείωσιν. 4 Therefore the[xvi] Saying, that every Creature is led by Nature to seek its own private Advantage, expressed thus universally, must not be granted.*

[82]

VII. *For even of the other Animals there are some that forget 1 a little the Care of their own Interest, in Favour 2 either of their young ones, or those of their own Kind. Which, in my Opinion, proceeds from 3 some extrinsick [83] intelligent Principle, because they do not shew the same Dispositions in other Matters, that are not more difficult than these. The same may be said of Infants, in whom is to be seen a Propensity to do Good to others, before they [84] are capable of Instruction, as Plutarch 4 well observes; and Compassion likewise discovers itself upon every Occasion in that tender Age. But it must be owned that a Man grown up, being capable of acting[xvii] in the same 5 Manner with respect to Things that are alike, has, besides an exquisite Desire 6 of Society, for the Satisfaction of which he alone of all Animals has received [85] from Nature a peculiar Instrument, viz. the Use of Speech; I say, that he has, besides that, a Faculty of knowing and acting, according to some general Principles; so that what relates to this Faculty is not common to all Animals, but properly and peculiarly agrees to*

Mankind.

[Peculiar to Man, properly and strictly called.] VIII. *This Sociability, which we have now described in general, or this Care of maintaining Society<sup>1</sup> in a Manner conformable to the Light of human [86] Understanding,<sup>2</sup> is the Fountain of Right, properly so called; to which belongs the Abstaining<sup>3</sup> from that which is another's, and[xviii] the Restitution of what we have of another's, or of the Profit we have made by it, the Obligation of fulfilling Promises, the Reparation of a Damage done through our own Default, and the Merit of Punishment among Men.*

[87]

IX. *From this Signification of Right arose another of larger Extent. For by reason that Man above all other Creatures is endued not only with this Social Faculty of which we have spoken, but likewise with Judgment to discern Things<sup>1</sup> pleasant or hurtful, and those not only present but future, and such as may prove to be so in their Consequences; it must therefore be agreeable to human Nature, that according to the Measure of our Understanding we should in these Things follow the Dictates of a right and sound Judgment, and not be corrupted either by Fear, or the Allurements of present Pleasure, nor be carried away violently by blind Passion. And whatsoever is contrary to such a Judgment<sup>2</sup> is likewise understood to be contrary to Natural Right, that is, the Laws of our Nature.*

[Improperly and more loosely.] X. *And to this belongs a<sup>1</sup> prudent Management in the gratuitous Distribution of Things that properly belong to each particular Person or<sup>2</sup> Society, [88] so as to prefer sometimes one of<sup>3</sup> greater before one of less Merit, a Relation<sup>4</sup> before a Stranger, a poor Man before one that is rich, and that according as each Man's Actions, and<sup>5</sup> the Nature of the Thing require; which many both of the Ancients and Moderns take to be<sup>6</sup> a part of Right properly and strictly so called; when notwithstanding that Right, properly speaking, has a quite different Nature, since it consists in leaving<sup>7</sup> others in quiet Possession [89] of what is already their own, or in doing for them what in Strictness they may demand.[xix]*

XI. *And indeed, all we have now said would take place,<sup>1</sup> though we should even grant, what without the greatest Wickedness cannot be granted, that there is no God, or that he takes no Care of human Affairs. The contrary of which appearing<sup>2</sup> to us, partly from Reason, partly from a perpetual Tradition, which many Arguments and Miracles, attested by all Ages, fully confirm; it hence follows, that God, as being our Creator, and to whom we owe our Being, and all that we have, ought to be obeyed by us in all Things [90] without Exception, especially since he has so many Ways shewn his infinite Goodness and Almighty Power; whence we have Room to conclude that he is able to bestow, upon those that obey him, the greatest Rewards, and those eternal too, since he himself is eternal; and that he is willing so to do ought even to be believed, especially if he has in express Words promised it; as we Christians, convinced by undoubted Testimonies, believe he has.*

[2. Voluntary. 1. Divine.] XII. *And this now is another Original of Right, besides that of Nature, being that which proceeds from the free Will<sup>1</sup> of God, to which our Understanding [91] infallibly assures us, we ought to be subject: And even the Law of Nature itself, whether it be that which consists in the Maintenance of Society, or that which in a looser Sense is so called, though it flows from the internal Principles of Man, may notwithstanding be justly ascribed<sup>2</sup> to God, because it was his Pleasure that these Principles should be in us. And in this Sense Chrysippus<sup>3</sup> and the Stoicks said, that the Original of Right is to be derived from no other than Jupiter himself; from which Word Jupiter it is probable<sup>4</sup> the Latins gave it the Name Jus.*

XIII. *There is yet this farther Reason for ascribing it to God, that God by the Laws which he has given, has made these very Principles more clear and evident, even to those who are less capable of*

*strict Reasoning, and has forbid us to give way to those impetuous<sup>1</sup> Passions, which,[xx] contrary<sup>2</sup> to our own Interest, and that of others, divert us from following the Rules of Reason [92] and Nature; for as they are exceeding unruly, it was necessary to keep a strict Hand over them, and to confine them within certain narrow Bounds.*

XIV. Add to this, that sacred History, besides the Precepts it contains to this Purpose, affords no inconsiderable Motive to social Affection, since it teaches us that all Men are descended from the same first Parents. So that in this Respect also may be truly affirmed, what Florentinus said in another Sense, That<sup>1</sup> Nature has made us all akin: Whence it follows, that it is a Crime for one Man to act to the Prejudice of another.

XV. Amongst Men, Parents<sup>1</sup> are as so many Gods<sup>2</sup> in regard to their Children: Therefore the latter owe them an Obedience, not indeed unlimited, [93] but as extensive<sup>3</sup> as that Relation requires, and as great as the Dependence of both upon a common Superior permits.

[2. Human.] XVI. Again, since the fulfilling of Covenants belongs to the Law of Nature, (for it was necessary there should be some Means of obliging Men among themselves, and we cannot conceive any other more conformable to Nature) from this very Foundation<sup>1</sup> Civil Laws were derived.[Civil of every State.] For those who had incorporated themselves into any Society, or subjected themselves to any one Man, or Number of Men, had either expressly, or from the Nature of the Thing must be understood to have tacitly promised, that they would submit to whatever either the greater part of the Society, or those on whom the Sovereign Power had been conferred, had ordained.

XVII. Therefore the Saying, not of Carneades only, but of others,

<sup>1</sup>Interest, that Spring of Just and Right.

Creech.

*if we speak accurately, is not true; for the Mother of Natural Law is human Nature itself, which, though even the Necessity of our Circumstances should not require it, would of itself create in us a mutual Desire of Society: And the Mother of Civil Law is that very Obligation which arises from Consent, which deriving its Force from the Law of Nature, Nature may be called as it were, the Great Grandmother of this Law also. But to the Law of Nature Profit is annexed: For the Author of Nature was pleased, that every Man in [94] particular<sup>2</sup> should be weak of himself, and in Want of many Things necessary for living commodiously, to the End we might more eagerly affect Society: Whereas of the Civil Law Profit was the Occasion; for that entering into Society, or that Subjection which we spoke of, began first for the Sake of some Advantage. And besides, those who prescribe Laws to others, usually have, or ought<sup>3</sup> to have, Regard to some Profit therein.*

XVIII. But as the Laws of each State respect the Benefit of that State; so amongst all or most States there might be, and in Fact there are, some Laws agreed on by common Consent, which respect the Advantage not of one Body in particular, but of all in general. And this is what is called the Law of Nations,<sup>1</sup>[Of Nations; of all or most States.] when used in Distinction to the<sup>2</sup> Law of Nature. This[xxi] Part of Law Carneades omitted, in the Division he made of all Law into Natural and Civil of each People or State; when notwithstanding, since he was to treat of the Law which is between Nations (for he added a Discourse concerning Wars and Things got by War) he ought by all means to have mentioned this Law.

[II. Objections confuted: Justice not Folly.] XIX. But it is absurd in him to traduce Justice with the Name of Folly.<sup>1</sup> For as, according to his own Confession, that Citizen is no Fool, who obeys the Law

of his Country, though out of Reverence to that Law he must and ought to pass by some Things that might be advantageous to himself in particular: So neither is that People or Nation foolish, who for the Sake of their own particular Advantage, will not break in upon the Laws common to all Nations; for the same Reason holds good in both. For<sup>2</sup> as he that violates [95] the Laws of his Country for the Sake of some present Advantage to himself, thereby saps the Foundation of his own perpetual Interest, and at the same Time that of his Posterity: So that People which violate the Laws of Nature and Nations, break down the Bulwarks of their future Happiness and Tranquillity. But besides, though there were no Profit to be expected from the Observation of Right, yet it would be a Point of Wisdom, not of Folly, to obey the Impulse and Direction of our own Nature.

XX. Therefore neither is this Saying universally true,

1'Twas Fear of Wrong that made us make our Laws.

Creech.

which one in Plato expresses thus,<sup>2</sup> The Fear of receiving Injury occasioned the Invention of Laws, and it was Force that obliged Men to practice Justice. For this Saying is applicable only to those Constitutions and Laws which were made for the better Execution of Justice: Thus many, finding themselves weak when taken singly and apart, did, for fear of being oppressed by those that were stronger, unite together to establish, and with their joint Forces to defend Courts of Judicature, to the End they might be an Overmatch for those whom singly they were unable to deal with. And now in this Sense only may be fitly taken what is said, That Law is that which the stronger pleases [96] to impose; by which we are to understand, that Right has not its Effect externally, unless it be supported by Force. Thus Solon did great Things, as he himself boasted,

3 By linking Force in the same Yoke with Law.

**[Justice brings Peace to the Conscience.]** XXI. Yet neither does Right lose all its Effect, by being destitute of the Assistance of Force. For Justice brings Peace to the Conscience; Injustice, Racks and Torments, such as Plato<sup>1</sup> describes in the Breasts of Tyrants. Justice is approved of, Injustice condemned by the Consent of all good Men. But that which is greatest of all, to this God is an Enemy, to the other a Patron, who does not so wholly reserve his Judgments for a future Life, but that he often makes the Rigour of them to be perceived in this, as Histories teach us by many Examples.[xxii]

[97]

**[Equally concerns private Persons, Nations, and Rulers of Nations.]** XXII. But whereas many that require Justice in private Citizens, make no Account of it in a whole Nation or its Ruler; the Cause of this Error is, first, that they regard nothing in Right but the Profit arising from the Practice of its Rules, a Thing which is visible with Respect to Citizens, who, taken singly, are unable to defend themselves. But great States, that seem to have within themselves all things necessary for their Defence and Wellbeing, do not seem to them to stand in need of that Virtue which respects the Benefit of<sup>1</sup> others, and is called Justice.

XXIII. But, not to repeat what has been already said, namely, that Right has not Interest merely for its End; there is no State so strong or well provided, but what may sometimes stand in need of Foreign Assistance, either in the Business of Commerce, or to repel the joint Forces of several Foreign Nations Confederate against it. For which Reason we see Alliances desired by the most powerful Nations and Princes, the whole Force of which is destroyed by those that confine Right within the Limits of each State. So true is it, that the Moment we recede from Right,<sup>1</sup> we can depend upon nothing.

[98]

XXIV. If there is no Community which can be preserved without some Sort of Right, as Aristotle<sup>1</sup> proved by that remarkable<sup>2</sup> Instance of Robbers, certainly the Society of Mankind, or of several Nations, cannot be without it; which was observed by him who said,<sup>3</sup> That a base Thing ought not to [99] be done, even for the Sake of ones Country. Aristotle<sup>4</sup> inveighs severely[xxiii] against those,<sup>5</sup> who, though they would not have any to govern amongst themselves, but he that has a Right to it, yet in regard to Foreigners are not concerned whether their Actions be just or unjust.

[100]

[Governs Peace;] XXV. A Spartan King having said,<sup>1</sup> That is the most happy Commonwealth, whose Bounds were determined by Spear and Sword; the same Pompey, whom we lately mentioned on the contrary Side, correcting that Maxim said, That is happy indeed, which has Justice for its Boundaries. For which he might have used the Authority of another Spartan King,<sup>2</sup> who preferred Justice before<sup>3</sup> military Fortitude, for this Reason, that Fortitude ought to be regulated by some sort of Justice: And that if all Men were Just, they would have no Occasion for that Fortitude. The Stoicks defined<sup>4</sup> Fortitude itself to be the Virtue that contends for Justice. Themistius, in his Oration to Valens, says very elegantly, that Kings, who conduct themselves by the Rules of Wisdom, take Care, not only of the Nation whose Government they are entrusted with, but of all Mankind; and are, as he expresses himself, not φιλομάχέδονες Friends to the Macedonians only, or φιλοόωμαίοι to the [101] Romans, but φιλάνθρωποι<sup>5</sup> to all Men without Exception. Nothing else made the Name of Minos odious to Posterity,<sup>6</sup> but his confining Equity within the Limits of his own Empire.

[and War; hence the Laws of War.] XXVI. But so far must we be from admitting the Conceit of some, that the Obligation of all Right ceases in War; that on the contrary, no War ought to be so much as undertaken but for the obtaining of Right; nor when undertaken, ought it to be carried on beyond the Bounds of Justice and Fidelity. Demosthenes<sup>1</sup> said well, that War is made against those who cannot be restrained in a judicial Way. For judicial Proceedings are of Force against those who are sensible of their Inability to oppose them; but against those who are or think themselves of equal Strength, Wars are undertaken; but yet [102] certainly, to render Wars just, they are to be waged with no less Care and Integrity, than judicial Proceedings are usually carried on.

XXVII. Let it be granted then, that<sup>1</sup> Laws must be silent in the midst of Arms, provided they are only those Laws that are Civil and Judicial, and proper for Times of Peace; but not[xxiv] those that are of perpetual Obligation, and are equally suited to all Times. For it was very well said of Dion Prusaeensis,<sup>2</sup> That between Enemies, Written, that is, Civil Laws, are of no Force, but Unwritten<sup>3</sup> are, that is, those which Nature dictates, or the Consent of Nations has instituted. This we are taught by that ancient Form of the Romans,<sup>4</sup> These Things I think must be recovered by a pure and just War. The same ancient Romans, as Varro observed,<sup>5</sup> were very slow and far from all Licentiousness in entring upon War, because they thought that no War but such as is lawful and accompanied with Moderation, ought to be carried on. It was the Saying of Camillus,<sup>6</sup> That Wars ought to be managed with as much Justice as Valour: And of Scipio Africanus,<sup>7</sup> [103] That the Romans both begin and finish their Wars with Justice. An Author<sup>8</sup> maintains, There are Laws of War, as there are of Peace. Another<sup>9</sup> admires Fabricius for a very great Man, and remarkable for a Virtue which is extremely difficult, Innocence in War, and who believed that there are some Things, which it would be unlawful to practise even against an Enemy.

XXVIII. Of how great Force in Wars is the Consciousness of the Justice of<sup>1</sup> the Cause, Historians every where shew, who often ascribe the Victory [104] chiefly to this Reason. Hence the[xxv]

*Proverbial Sayings,<sup>2</sup> A Soldier's Courage rises or falls according to the Merit of his Cause;<sup>3</sup> seldom does he return safely, who took up Arms unjustly; Hope is the<sup>4</sup> Companion of a good [105] Cause; and others to the same Purpose. Nor ought any one to be moved at the prosperous Successes of unjust Attempts; for it is sufficient that the Equity of the Cause has of itself a certain, and that very great Force towards Action, though that Force, as it happens in all human Affairs, is often hindered of its Effect, by the Opposition of other<sup>5</sup> Causes. The Opinion that a War is not rashly and unjustly begun, nor dishonourably carried on, is likewise very prevalent towards procuring Friendships; which Nations, as well as private Persons, stand in need of upon many Occasions. For no Man readily associates [106] ciates with those, who, he thinks, have Justice, Equity and Fidelity in Contempt.*

**[III.The Author's Reasons for writing this Book.]** XXIX. Now for my Part, being fully assured, by the Reasons I have already given, that there is some Right common to all Nations, which takes Place both in the Preparations and in the Course of War, I had many and weighty Reasons inducing me to write a Treatise upon it. I observed throughout the Christian World a Licentiousness in regard to War, which even barbarous Nations ought to be ashamed of:[**Restraining the Licentiousness in making War.**] a Running to Arms upon very frivolous or rather no Occasions; which being once taken up, there remained no longer any Reverence for Right, either Divine or Human, just as if from that Time Men were authorized and firmly resolved to commit all manner of Crimes without Restraint.

XXX. The Spectacle of which monstrous Barbarity worked many, and those in no wise bad Men, up into an Opinion, that a Christian, whose Duty consists principally in loving all Men without Exception, ought not at all<sup>1</sup> to bear Arms; with whom seem to agree sometimes Johannes Ferus<sup>2</sup> and our Countryman<sup>3</sup> Erasmus, Men that were great Lovers of Peace both Ecclesiastical and Civil; but, I suppose, they had the same View, as those have who in order to make Things that are crooked straight, usually<sup>4</sup> bend them as much the other Way. But this very Endeavour of inclining too much to the opposite Extreme, is so far from doing Good, that it often does Hurt, [107] because Men readily discovering Things that are urged too far by them, are apt to slight their Authority in other Matters, which perhaps are more reasonable. A Cure therefore was to be applied to both these, as well to prevent believing that Nothing, as that all Things are lawful.

**[An endeavour to promote the Knowledge of Law, by giving an Example of a Method for it.]** XXXI. At the same Time I was likewise willing to promote, by my private Studies, the Profession of Law, which I formerly practised in publick<sup>1</sup> Employments with all possible Integrity; this being the only Thing that was left for me to do, being unworthily<sup>2</sup> banished my Native Country, which I have honoured with so many of my Labours. Many have before this designed[xxvi] to reduce it into a System; but none has accomplished it; nor indeed can it be done, unless those things (which has not been yet sufficiently taken Care of,) that are established<sup>3</sup> by the Will of Men, be duly distinguished from those which are founded on Nature. For the Laws of Nature being always the same, may be easily collected into an Art; but those which proceed from Human Institution being often changed, and different in different Places, are no more susceptible of a methodical System, than other Ideas of particular Things are.

XXXII. But if the Professors of true Justice would undertake to treat of the several Parts of that Law which is perpetual and natural, setting aside every Thing which owes its Rise to Voluntary Institution, so that one for Instance would treat of Laws, another of Tributes, another of the Office of Judges, another of the Conjecture of Wills, another of the Evidence in Matters of Fact, there might at last from all the Parts collected together be a Body of Law composed.

**[IV.The Contents and Order of the Work.]** XXXIII. What Method we thought fit to use, we have shewn in Deed rather than in Words in this Treatise, which contains that Part of Law, which is by far

*the noblest.*

[108]

**[Book I.] XXXIV.** *For in the first Book, after premising some Things concerning the Origin of Right, we have examined the general Question, whether any War is just; afterwards to discover the Difference between a publick and private War, our Business was to explain the Extent of the Supreme Power, what People, what Kings have it in full, who in part, who with a Power of alienating it, and who have it without that Power. And then we were to speak of the Duty of Subjects to their Sovereigns.*

**[Book II.] XXXV.** *The second Book, undertaken to explain all the Causes from whence a War may arise, shews at large, what Things are common, what proper, what Right one Person may have over another, what Obligation arises from the Property of Goods, what is the Rule of Regal Succession, what Rightarises from Covenant or Contract, what the Force and Interpretation of Treaties and Alliances, what of an Oath both publick and private, what may be due for a Damage done, what the Privileges of Embassadors, what the Right of burying the Dead, what the Nature of Punishments.*

**[Book III.] XXXVI.** *The third Book treats first of what is lawful in War; and then, having distinguished that which is done with bare Impunity, or which is even defended as lawful among foreign Nations, from that which is really blameless, descends to the several Kinds of Peace, and all Agreements made in war.*

**[V.The Necessity of Writing.] XXXVII.** *But I thought this Undertaking still the more worth my Pains, because, as I said before, this Subject has not been fully handled by any Body; and those who have treated of the Parts of it, have done it so, that they have left a great deal for the Labour of others.*

**[Nothing of the ancient Authors extant on this Subject.]** *There is nothing of this Kind extant of the ancient Philosophers, whether those of the Pagan Greeks, (amongst whom Aristotle had composed a Book intitled, Δικαιώματα Πολέμων,<sup>1</sup> [109] The Rights of War,) or those of the Primitive Christians, which was very much to be wished for. Nay, of those Books of the ancient Romans concerning the<sup>2</sup> Fical Law, we have nothing transmitted to us but the bare Name: Those who have made Sums of Cases of Conscience, as they call them, have made only Chapters, as of other Things, so of War, of Promises, of an Oath, of Reprizals.*

**[The Defects of the Moderns.] XXXVIII.** *I have likewise seen some particular Treatises concerning the Rights of War, some of which were written by Divines, as<sup>1</sup> Franciscus Victoria, Henricus<sup>2</sup> Gorichemus,<sup>3</sup> Wilhelmus Matthei, Johannes<sup>4</sup> de Carthagena; some by Professors of Law, as<sup>5</sup> Johannes Lopus,<sup>6</sup> Franciscus Arius,<sup>7</sup> Johannes de Lignano,<sup>8</sup> Martinus Laudensis. But upon so copious a Subject, they have all of them said but very little, and most of them in such a Manner, that they have, without any Order, mixed and confounded together those Things that belong severally to the Law Natural, Divine, of Nations, Civil and Canon.*

[110]

**XXXIX.** *What was most wanting in all those, viz. Illustrations from History, the most Learned<sup>1</sup> Faber has undertaken to supply in some Chapters of his Semestria, but no farther than[xxvii] served his Purpose, and only by alledging some Authorities. The same has been done more largely, and that by applying a Multitude of Examples to some general Maxims laid down, by Balthazar<sup>2</sup> Ayala, and still more largely by Albericus<sup>3</sup> Gentilis, whose Labour, as I know it may be serviceable to others, and confess it has been to me, so what may be faulty in his Stile, in Method, in distinguishing of Questions, and the several Kinds of Right, I leave to the Reader's Judgment. I shall only say this, that in the Decision of Controversies, he is often wont to follow either a few Examples that are not always to be*

approved of, or even the Authority of modern Lawyers in their Answers, not a few of which are<sup>4</sup> accommodated to the Interest of those that consult them, and not formed by the invariable Rules of Equity and Justice. The Causes, from whence a War is denominated just or unjust, Ayala has not so much as touched upon: Gentilis has indeed described after his Manner some of the general Heads; but neither has he touched upon many famous Questions, which turn upon Cases that are very common.

[I.The Author's Case,] XL. We have been careful that nothing of this Kind be passed over in Silence, having likewise shewn the very Foundations upon which we build our Decisions, so that it might be easy to determine any Question that may happen to be omitted by us. It remains now, that I briefly declare with what Assistance, and with what Care I undertook this Work.[1.In proving the Law of Nature.] My first Care was, to refer the Proofs of those Things that belong to the Law of Nature to some [111] such certain Notions, as none can deny, without doing Violence to his Judgment. For the Principles of that Law, if you rightly consider, are manifest and self-evident, almost after the same Manner as those Things are that we perceive with our outward Senses, which do not deceive us, if the Organs are rightly disposed, and if other Things necessary are not wanting. Therefore Euripides in his Phoenissae makes Polynices, whose Cause he would have to be represented manifestly just, deliver himself thus:

- I speak not Things hard to be understood,
- But such as, founded on the Rules of Good
- And Just,2are known alike to Learn'd and Rude.

And he immediately adds the Judgment of the Chorus, (which consisted of Women and those too Barbarians) approving what he said.

XLI. I have likewise, towards the Proof of this Law, made Use of the Testimonies of<sup>1</sup> Philosophers, Historians, Poets, and in the last Place, Orators; [112] not as if they were to be implicitly believed; for it is usual with them to accommodate themselves to the<sup>2</sup> Prejudices of their Sect, the Nature of their<sup>3</sup> Subject, and<sup>4</sup> the Interest of their Cause: But that when many Men of different Times and Places unanimously affirm the same Thing for Truth, this ought to be ascribed to a general Cause; which in the Questions treated of by us, can be no other than either a just[xxviii] Inference drawn from the Principles of Nature, or an universal Consent.[Of Nations.] The former shews the Law of Nature, the other the<sup>5</sup> Law of Nations. The Difference between which is not to be understood from the Testimonies themselves (for the Law of Nature and of Nations are Words used every where<sup>6</sup> promiscuously by Writers) but from the Quality of the Subject.[2.In distinguishing both of them, and the Civil Law.] For that which cannot be deduced from certain Principles by just Consequences, and yet appears to be every where observed, must owe its rise to a free and arbitrary Will.

[113]

XLII. Therefore these two I have very carefully endeavoured always to distinguish no less from one another, than from the Civil Law: And even in the Law of Nations, I have made a Distinction between that which is truly and in every Respect lawful,[The Species of each.] and that which only produces a certain external Effect after the Manner of that primitive Law; so that, for Instance, it may be lawful to resist it, or that it even ought to be every where defended with the publick Force, for the Sake of some Advantage that attends it, or that some great Inconveniences may be avoided. Which Observation, how necessary it is in many Respects, will appear in the following<sup>1</sup> Treatise. We have been no less careful in distinguishing Things belonging to Right properly and strictly so called, whence arises the Obligation of making Restitution, from those which are only said to belong to it, because that the acting otherwise is repugnant to some other Dictate of right Reason: Which Distinction we have

already touched upon.

[**II. Assistance in the Work.**] XLIII. Among Philosophers Aristotle deservedly holds the chief Place, whether you consider his Method of treating Subjects, or the Acuteness of his Distinctions, or the Weight of his Reasons. I could only wish that the Authority of this great Man had not for some Ages past degenerated into Tyranny,[**1. Philosophers. Aristotle, his Praise.**] so that Truth, for the Discovery of which Aristotle took so great Pains, is now oppressed by nothing more than the very Name of Aristotle. I, for my Part, both in this and in all my other Writings, take to myself the Liberty of the ancient Christians, who espoused no Sect of Philosophers; not that they held with those who asserted that nothing can be known, than which there is nothing more foolish; but were of Opinion, that there was no one Sect that had discovered all Truth, nor any but what held something that was true. Therefore to collect into a Body the Truths that were dispersed in the Writings of each Philosopher and each Sect, they conceived to be nothing else, but<sup>1</sup> to deliver the true Christian Doctrine.

[114]

[**His Faults.**] XLIV. Among other Things, (that I may mention this by the by, as not being foreign to our Purpose,) it is not without Reason, that some of the Platonists and ancient<sup>1</sup> Christians seem to dissent from Aristotle in this, that he placed the very Nature of Virtue<sup>2</sup> in a Mediocrity of Passions and Actions; which being once laid down, drove him to this, that of Virtues of a different Kind, as for Instance,<sup>3</sup> Liberality and Frugality, he made but one; and[xxix] [115] assigned<sup>4</sup> to Veracity two Opposites between which there is not an equal Contrariety, viz. Boasting and false Modesty; and imposed the Name of Vice upon some Things, which either are not in Nature, or in themselves are not [116] Vices, as, the<sup>5</sup> Contempt of Pleasure and<sup>6</sup> Honours,[xxx] and an Insensibility to Injuries, which<sup>7</sup> hinders us from being angry against Men.

[117] [118]

[**All Virtue has not Vice in Excess.**] XLV. But that this Principle of Mediocrity, taken universally, is not rightly laid, appears from the Instance of Justice itself, whose Opposites, too much and too little, when he could not find in the Affections and their subsequent Actions,<sup>1</sup> he sought for Both in the Things themselves[xxxii] about which [119] [120] Justice is conversant. Which very thing is in the first Place to leap from one kind of Thing to another, which he deservedly blames in others; and in the next Place, to receive less<sup>2</sup> than one's Due may indeed happen to be a Vice, when the Circumstances of himself or his Family cannot allow of any Abatement; but certainly it cannot be repugnant to Justice, since it consists wholly in abstaining from that which is another Man's. Like to which Mistake is that of his not allowing<sup>3</sup> Adultery proceeding from Lust, and Murder from [121] Anger, to belong properly to Injustice: Whereas the very Nature of Injustice consists in nothing, else, but in the Violation of another's Rights; nor does it signify, whether it proceeds from Avarice, or Lust, or Anger, or imprudent Pity, or Ambition, which are usually the Sources of the greatest Injuries. For to resist all Temptations of what Kind soever, and that for this only Reason, viz. the preserving of Human Society inviolable, is indeed the proper Business of Justice.

XLVI. To return from this Digression, true indeed it is, that to some Virtues it happens, that they moderate the Affections, yet not for the Reason, that it [122] is the proper and perpetual Office of all Virtue to do so; but because right Reason, which Virtue always follows,<sup>1</sup> prescribes a Measure to be followed in some Things; in others it excites us to the utmost we are capable of.[**Consists often in the utmost we are capable of.**] We cannot, for instance,<sup>2</sup> serve God with too much Ardour; for the Crime of [123] Superstition consists[xxxiii] not in serving God with too much Ardour, but in serving him perversely. Neither can we too much desire eternal Happiness, nor too much dread eternal Misery, nor

*too much hate Sin. It is therefore truly said of Gellius,<sup>3</sup> there are some Things whose Extent has no Bounds, and which are so much more commendable as they are carried to a higher Pitch. Lactantius,<sup>4</sup> after having discoursed largely on the Passions, says, Wisdom does not consist in moderating them, but in regulating the Impressions of the Causes that produce them, for they are excited by external Objects. Neither ought a Restraint to be put principally upon them, because it is possible for them to be very weak in those who commit the greatest Crime, and to be very violent without leading to any Crime at all. Our Purpose is to set always a high Value upon Aristotle, but so as to reserve to ourselves the same Liberty which he himself took with his Masters, for the Sake of finding Truth.*

[**Histories.**] XLVII. *Histories have a double Use with respect to the Subject we are upon, for they supply us both with Examples<sup>1</sup> and Judgments. Examples, the better [124] <sup>2</sup> the Times and the wiser the People were, are of so much the greater Authority; for which Reason we have preferred those of the ancient Grecians and Romans before others. Nor are the Judgments we meet within Histories to be despised, especially when they agree: For the Law of Nature, as we have already said, is in some Measure proved from hence, but of the Law of Nations there is no other Proof but this.*

[**Poets, Orators.**] XLVIII. *The Opinions of Poets and Orators are not of so great Weight: And we often make use of them, not so much for the Sake of building any Thing upon them, as that their Expressions may add an Ornament to what we have a mind to say.*

[**II.Sacred Books.**] XLIX. *The Authority of those Books which Men inspired by God, either writ or approved of, I often use, but with a Difference of the Old and New Law.* [**1.The Old Testament.**] Some there are who<sup>1</sup> urge the Old Law for the very Law of Nature, but they are undoubtedly in the wrong: For many Things<sup>2</sup> in it proceed from the Free Will of God, which yet is never repugnant to the Law of Nature itself; and so far an Argument may be rightly drawn from it, provided we carefully distinguish the<sup>3</sup> Rights of God, which God sometimes exercises by the Ministry of Men, from the Rights of[xxxiii] Men among themselves. We have therefore avoided, as much as we could, both this Error, and also another [125] contrary to it, viz.<sup>4</sup> that since the Promulgation of the New Testament the Old one is of no Use. We are of a contrary Opinion, both upon Account of what we have said already, and also because the Nature of the New Testament is such, that whatever are the moral Precepts in the Old Testament, the same, or more perfect,<sup>5</sup> are enjoined by the New also: And in this Manner we see the Testimonies of the Old Testament made Use of by the Writers among the Primitive Christians.

[**The Hebrew Writers.**] L. *But to understand the Sense of the Books of the Old Testament, the Hebrew Writers may afford us no little Assistance, those<sup>1</sup> especially who were thoroughly acquainted with the Language and Manners of their Country.*

[126]

[**2.The New Testament.**] LI. *The New Testament I use for this Purpose, that I may shew, what cannot be elsewhere learned, what is lawful for Christians to do; which Thing itself, I have notwithstanding, contrary to what most do, distinguished from the Law of Nature; as being fully assured, that in that most holy Law a greater Sanctity is enjoined us, than the meer Law of Nature in itself requires. Nor have I for all that omitted observing, what Things in it are rather<sup>1</sup> recommended to us than commanded, to the Intent we may know, that as to transgress the Commands is a Crime that renders us liable to be punished; so to aim at the highest Perfection, in what is but barely recommended, is the Part of a generous Mind, and that will not fail of a proportionable Reward.*

[**3.The Canons of Councils.**] LII. *The Canons of Councils,<sup>1</sup> when they are just and reasonable, are Consequences drawn from the general Maxims of the Divine Law, fitted to particular Cases that happen: These likewise either shew what the Divine Law commands, or exhort us to what God*

recommends. And this is the Office of [127] the true Christian Church, to deliver to us those Things that are delivered to her of God, and in the same Manner as they are delivered. **[4.The Manners and Customs of the first Christians.]** But even the Customs<sup>2</sup> likewise that[xxxiv] were received or commended amongst those antient Christians, who maintained the Dignity of so high a Title, have deservedly the Force of Canons. **[5.Both the Writings and the Consent of the Fathers.]** The next in Authority to these, are the Decisions of those who<sup>3</sup> were famous in their Times for their Christian Piety and Learning, and were not charged with any gross Error: For even what these assert with great Positiveness, as if they were certain of it, ought to have no little Weight in interpreting the Places that seem obscure in Holy Scripture, and that the more, by how much the more there are that consent in the same Thing, and the nearer they are to the Times in which the Church was [128] most pure, when as yet neither Dominion, nor Faction, was able to corrupt the primitive Truth.

**[6.Schoolmen.]** LIII. The Schoolmen that succeeded these, give us many Proofs of their great Capacities; but their Misfortune was to live in unhappy Times, when good Learning was entirely neglected. The less Wonder then, that among many Things, in their Writings commendable, there are some that need Indulgence. And yet when they agree in Matters of Morality, they seldom err, as being quick in discerning those Things that are blameable in the Sayings of others; and even in this their prevailing Humour of contradicting, they set us a laudable Pattern of Modesty, as disputing against one another with Arguments, and not, as the Custom of late hath been, to the Dishonour of Learning, with Reproaches, the base Offspring of an impotent Mind.

**[III.Lawyers.]** LIV. Of those that profess the Knowledge of the Roman Laws, there are three Sorts. The first is of those whose Works appear in the Digest, the Codes of Theodosius and Justinian, and the Novels. The second is, of those who succeeded<sup>1</sup> Irnerius, as<sup>2</sup> Accursius, Bartolus,<sup>3</sup> and many others, that for [129] a long time reigned at the Bar. The third comprehends<sup>4</sup> those who joined[xxxv] the Knowledge of the Belles Lettres with the Study of Laws. **[1.Ancient.]** For the first I have a great Deference; for they both supply us with Reasons, and those often the very best, to demonstrate what belongs to the Law of Nature; and also often give Testimony to it, as well as to the Law of Nations; yet so as that they, as well as others, often<sup>5</sup> confound these Words, nay and often call that the Law of Nations, which prevails among some Nations only, and [130] that not by a sort of tacit Agreement, but by Imitation of one another, or even by a casual Consent. But again, those Things which really belong to the Law of Nations, they often handle promiscuously and indiscriminately with those that belong to the Roman Law, as appears from the<sup>6</sup> Title concerning Captives and Postliminy. Therefore we took Pains to have these distinguished.

**[2.Those of the middle Age.]** LV. The second Class, being regardless of the Divine Law and ancient Histories, studied to determine all Controversies between Kings and Nations from the Roman Laws, to which they sometimes joined the Canon Law. But these were likewise hindered, by the Infelicity of their Times, from discovering the true Sense of those Laws, though otherwise sagacious enough in searching into the Nature of Equity: From whence it comes, that they often make very good Overtures for new Laws, at the same Time that they are but bad Interpreters of Laws already made. But they are then chiefly to be attended to, when they give Testimony to such a Custom, as now in our Time passes for a Law of Nations.

**[3.Modern.]** LVI. The Professors of the third Class, confining themselves within the Limits of the Roman Law, and either never, or but lightly, meddling with this Law common to Princes and Nations, are scarce of any Use to us in our Subject. **[Spaniards.]** Amongst these, Covarruvias<sup>1</sup> and Vasquez,<sup>2</sup> two Spaniards, have joined Scholastick Subtilty with the Knowledge of Laws and Canons; so that they could not forbear treating of the Controversies between Nations and Kings; the one with a great deal of Freedom, the other more modestly, and not without some Exactness of Judgment. **[Frenchmen.]** The

French have with most Care attempted [131] to introduce History into the Study of Law, amongst whom Bodin,<sup>3</sup> and Hottoman<sup>4</sup> are in great Esteem, the one for a continued Treatise, the other for some scattered Questions. Their Decisions and Reasons will often furnish us with Matter for the Search of Truth.

[VII.The Design and Order observed through the whole Work explained.] LVII. In this whole Work there were three Things that I chiefly proposed to myself; to render the Reasons of my Decisions as evident as possible, to dispose the Matters to be treated of into a regular Method, and to distinguish clearly those Things which might appear to be the same, but were not.

LVIII. I have forbore meddling with those Things that are of a quite different Subject, as the giving Rules about what it may be profitable or advantageous for us to do: For they properly belong to the Art of Politicks,<sup>1</sup> which Aristotle rightly so handled by itself, that he mixed nothing foreign with it: Bodin on the contrary has confounded it with that which is the Subject of this Treatise. Yet in some Places I have made mention of the useful, but by the by, and to distinguish it more clearly from a Question of the just.

LIX. He will do me wrong whoever shall think that I had Regard to any Controversies of the present Age, either already risen, or that can be foreseen [132] to arise. For I profess truly, that as Mathematicians consider Figures abstracted from Bodies, so I, in treating of Right, have withdrawn my Mind from all particular Facts.

[A concise way of speaking.] LX. As to the Style, I was not willing, by joining a Multitude of Words with a Multitude of Things to be treated of, to create a Distaste in the Reader, whose Advantage I consulted. I have therefore followed, as much as I could, a concise way of speaking, as convenient for such as undertake to instruct; that so, they who are employed in publick Affairs, may, as at one View, see, both what Kinds of Controversies usually arise, and also the Principles by which they may be[xxxvi] decided; which being known, it will be easy to suit the Discourse to the Subject Matter, and enlarge upon it as much as they please.

[The very Words of Authors quoted.] LXI. I have sometimes quoted the very Words of the ancient Writers, when they were such as seemed to be expressed, either with a singular Force or Elegancy; which I have done sometimes in regard to Greek Authors, especially when either the Sentence was short, or the Beauty of it such as I could not hope to equal in a Translation; which notwithstanding I have always subjoined, for the Use of those who have not learned the Greek Language.

[The Liberty of judging left to the Reader.] LXII. And now, whatever Liberty I have taken in judging of the Opinions and Writings of others, I desire and beseech all those, into whose Hands this Treatise shall come, to take the same with me. They shall no sooner admonish me of my Mistakes, than I shall follow their Admonitions. And moreover, if I have said any thing contrary either to Piety, or to good Manners, or to Holy Scripture, or to the Consent of the Christian Church, or to any Kind of Truth, let it be unsaid again.[1]

## Endnotes

<sup>1</sup>

The Author here means what he calls *the Law of Nations*, which he distinguishes from the *the Law of Nature* as making a separate Class. But in this he is mistaken; as is acknowledged by most, who have

pursued this Study. See Note 3. on B. I. Chap. I. § 14.

## 1

This is not Cicero's Sense. The Words here quoted only signify that *Pompey*, of whom he is speaking, was very well versed in Alliances, Treaties, and Conventions made, concluded, and formed, between States, Princes, and foreign Nations, &c. *Evidem contrà existimo, Judices, quum in omni genere ac varietate Artium, etiam illarum, quae sine summo otio non facilè discuntur, Cn. Pompeius excellat, singularem quamdam laudem ejus et praestabile messe scientiam in foederibus, pactionibus, conditionibus Populorum, Regum, exterarum Nationum: in omni denique Belli Jure ac Pacis. Orat. pro L. Corn. Balbo, Cap. VI.*

## 2.

- Αισχρὸν τὰ μέν σε θεῖα πάντ' ἐξειδέναι,
- Τά τ' ὄντα, καὶ μὴ, τὰ δὲ δίκαια μὴ εἰδέναι.
- Helen. Ver. 928, 929.

This *Theonoe* was an *Egyptian* Priestess, who dealt in Divination. Helen does not here design to prefer the Knowledge of what is just and unjust, to that of all things human and divine, as our Author pretends. The Poet only intimates, that we ought to join the Study of Morality with the Study of Religion. In this Sense the Verses here quoted may very justly be understood as addressed to all employed in the publick Ministry of Religion, either to remind them of their Duty, or reprove them for the Faults committed in the Discharge of it, which has been but too often the Case at all Times. See what I have said on this Subject in my Preface to Pufendorf, §7, &c.

## 1

These Words occur in the sixth Book of that Historian. (*Chap. LXXXV. Edit. Oxon.*) We find the same Maxim in the fifth, where the *Athenians*, whose Power was then very considerable, speak thus to the *Melians*. *For you cannot but know that, according to the common Notions of Mankind, Justice is regulated by the equal Necessities of the Parties; and that those who are invested with a superior Power, do all they find possible, while the Weak are obliged to submit.* (*Chap. LXXXIX.*) Grotius.

The former of these Passages is not properly applied. It may be observed that the Word here used is ἀλογον, which signifies *unreasonable*, not *unjust*. Besides, it appears from the Sequel of the Discourse that the Question does not here turn on what is just, or unjust. *Hermocrates*, the *Syracusan* Ambassador, had remonstrated to the *Camarinians*, that there was not the least Probability, that the *Athenians* would, after the Reduction of *Chalcis*, grant the *Leontines* their Liberty, who were Inhabitants of the same Country. *Chap. LXXIX.* To which *Euphemus* replies, that the *Athenians* had an Interest in making that Distinction, and shews how they would find their Account in it. So that ἀλογον in this Place signifies, *what is not conformable to the Rules of good Policy*, and is the same as οὐκ εὐλογον in *Chap. LXXVI.*

## 2.

The Words here used by the Author, are taken from Tacitus. *Id in summâ fortunâ, aequius, quod validius.* Annal. Lib. XV. Cap. I.

## 3.

The Author alludes to a Fragment of the second Book of Cicero's Treatise *De Republicâ*, preserved by St. Augustin; where *Scipio*, on the contrary, maintains, that it is impossible to govern a State well, without observing the Rules of Justice with the utmost Exactness. *De Civit. Dei. Lib. II. Cap. XXI.*

4.

This Fragment, which may be seen in Cicero's Oration for *Muraena*, Cap. XIV. is more entire in Aulus Gellius, *Lib. XX. Cap. X.*

- *Non ex jure manu consertum, sed mage ferro*
- *Rem repetunt, regnumque petunt, vadunt solidâ vi.*

But the Poet speaks only of Civil Laws; and sets violent Measures, the distinguishing Characteristicks of War, in Opposition to the legal Proceedings, used for composing Differences in Times of Peace. The same is to be observed of some of the following Passages.

5.

*Art. Poet.* Ver. 122.

6.

Lucan puts this Speech into the Mouth of *Julius Caesar* on his passing the *Rubicon*.

7.

Plutarch *De fortuna Alexand.* Mag. p. 330. Tom. II. Edit. Wech.

8.

He spoke of the Civil Laws. The Words here referred to are that General's Answer on Occasion of his being blamed for conferring the Freedom of *Rome* on a thousand valiant Soldiers, who had signalized themselves in the War against the *Cimbri*, without the Authority of any Law. See the Passage at Length in Plutarch's *Apophthegms*, p. 202. Tom. II. See likewise the Life of *Marius* by the same Author; and Valerius Maximus, *Lib. V. Cap. II. Num. 8.*

9.

The Inhabitants of Argos being ingaged in a Dispute with the *Lacedemonians* about some Lands, and the former having supported their Claim with the best Reasons, *Lysander* drew his Sword, saying: *He, who is Master of this, reasons best about the Boundaries of Lands.* Plutarch's *Apophthegms*, p. 190. The same Author, in the Life of *Caesar*, p. 725. Tom. I. relates that *Metellus*, Tribune of the People, opposing that General for taking Money out of the publick Treasury, and alledging some Laws against that Practice, *Caesar* replied, that *the Laws must give Place to the Exigencies of War.*

Seneca in his fourth Book *De Beneficiis*, Cap. XXXVII. observes, that *Princes make many Grants, without enquiring into the Reasonableness of the Demand, especially during a War, when a just and equitable Man is not able to gratify so many Passions supported by Force.* He adds, that *it is not possible to be at the same Time an honest Man, and a good General.* Grotius.

10.

He was very apt to blush, especially when he was obliged to appear in the Assembly of the People. See Seneca's eleventh Epistle, and Gronovius's Note on it.

11.

Plutarch, in the Life of *Pompey*, relates the Matter thus, The *Mamertines* pretending to be independent on *Pompey*, by Virtue of an old *Roman Law*, that General broke out into the following Expression: *Will you still continue to alledge the Laws against us, while we have our Swords by our Sides?* Quintus Curtius observes that *War inverts even the Laws of Nature*. Lib. IX. (Cap. IV. Num. 7.) Grotius.

1

This Passage is taken from the ninth Book of his Treatise against the *Jews*.

2.

Terence in his *Eunuch*, Act I, Scene I, Ver. 16, &c.

1

In Lactantius, *Instit. Divin.* Lib. V. Cap. XVI. Num. 3. *Edit. Cellar.*

1

Horace, *Lib. I. Sat. III. Ver. 113*

2.

The natural Inclination of Mankind to live in Society is a Principle which has been admitted by the Wise and Learned of all Ages. Aristotle advances it in all his Books of Morality and Politics. *Man*, says he, *is a sociable Animal in regard to those, to whom he is related by Nature. There is therefore such a Thing as Society, and somewhat that is just, even independently of what we call Civil Society.* Eadem. Lib. VII. Cap. X. p. 280. *Edit. Paris.* The same Philosopher observes elsewhere, that Man is by Nature more strongly inclined to Society than Bees, or any other Animals, which are observed to flock or herd together. *Polit. Lib. I. Cap. II. p. 298.* And this he proves from the Consideration of Man alone being in Possession of the Use of Speech. See Note 3 on the 3 d Section of *Chap. I. Book VII.* of Pufendorf's *Law of Nature and Nations*. Cicero, reasoning on the Principles of the Stoicks, lays it down for a certain Fact, that *no Man would chuse to live in absolute Solitude, even though he might enjoy an Infinity of Pleasures.* From which he immediately infers, that *we were born for Society.* To this he adds, that *as we make Use of our Limbs, before we have learnt what was the Design of Nature in furnishing us with them; so we are naturally formed for civil Society; without which there would be no Room for the Exercise of Justice or Goodness.* De finib. Bon & Mal. Lib. III. Cap. XX. See also *Lib. V. Cap. XXIII.* and *De Officiis*, Lib. I. Cap. IV. VII, and XLIV. Seneca, *De Benef.* Lib. VII. Cap. I. and Epist. XCV. p. 470. Diogenes Laertius, *Lib. VII. § 123.* and the Passages quoted in Note (6) on the following Paragraph. And here I cannot conclude this Note without a beautiful Passage taken out of Epictetus's Discourses, collected by Arrian, in which we have an excellent Argument *ad hominem* against such as deny the natural Inclination of Men to Society. The Stoick Philosopher thus attacks his Antagonists. "Epicurus, while he is endeavouring to destroy the Principle of natural Society, reasons on the very same Principle. Suffer not yourselves to be imposed on, says he; beware of Illusion. Take my Word for it, there is naturally no such Thing as Society amongst reasonable Creatures; those, who

affirm there is, only abuse your Credulity. But, we may ask him, how does this concern you? Leave us in quiet Possession of our Error. What Damage will you suffer, if all but you and your Followers should be persuaded that there is a natural Society amongst Mankind, and that we ought to do all in our Power for its Support? Why so much Concern for us? What can induce you to light up your Lamp, and spend whole Nights in Study for our Sakes? Why are you at the Pains of composing so many Books? You will tell us, it is with a View of undeceiving us in this Particular, *That the Gods interest themselves in our Affairs; and that Happiness essentially consists in something else than Pleasure.*

—But what is it to you whether others form a right Judgment on these Points or not? What tie is there between you and us? What Interest have you in what regards us? Have you any Compassion for the Sheep, because they submit to be shorn, milked and slaughtered? Ought not you to wish, that Men, enchanted and lulled to sleep by the Stoicks, would as tamely deliver up themselves to the Direction of you and your Companions?—In short, what was it that deprived *Epicurus* of his Rest, and engaged him to write all he published? Nature, without doubt, that most powerful Principle of human Motions, which strongly influenced him, and forced his Obedience, in spite of all the Resistance he could make, such is the invincible Force of human Nature!—As it is neither possible nor conceivable that a Vine should shoot like an Olive-tree, and not according to the Impulse of its own Nature, and so *vice versa*; so neither is it possible for Men to be entirely free from human Motions. If you castrate a Man, you cannot extinguish all carnal Inclinations and Desires in him. Thus *Epicurus*, as much as in him lies, has cut off all the Relations of Husband, Master of a Family, Citizen and Friend, but the Inclinations of human Nature are still entire in him. It was no more in his Power to divest himself of those, than it was in that of the wretched *Academicks* to throw away or blind their Senses, though no Set of Men ever took so much Pains to do it.” *Dissert. Lib. II. Cap. XX. p. 201, &c. Edit. Colon. 1591.* The late Lord *Shaftesbury* has reasoned in the same manner, but with a lively Turn, which gives his Piece the Air of an Original, against *Hobbes*, who with still more Warmth than his Master *Epicurus*, undertook to persuade the World that all Men are by Nature so many Wolves one to another. See that Lord’s *Essay on the Use of Raillery, &c. p. 64, & seq.* printed at the *Hague* in the Year 1710.

### 3.

“We have,” says St. Chrysostom, *Hom. XXXII. ad Roman.* “a certain natural Affection one for another, which subsists even amongst Beasts.” See what the same Father says farther on the first Chapter to the *Ephesians*, where he affirms that Nature has furnished us with the Seeds of Virtue. To all this let us add the Words of that great Philosopher, the Emperor Antoninus. “It has long since been shewn that we are born for Society. Is it not evident that Things which are less perfect were made for the Use of the more perfect, and that those which have greater Degrees of Perfection were designed for the Service one of another?” *Lib. V. § 16. Grotius.*

### 4.

Οἰκείωσις. The Author, in the preceding Note, alledges no other Authority but that of St. Chrysostom; for the Word in question does not occur in the Passage quoted from Antoninus. In the following Passage of Porphyry the Term is used precisely in regard to the natural Sociability of Man. Τάχα μὲν καὶ φυσικῆς τινὸς οἰκειώσεως ὑπαρχούσης τοῖς ἀνθρώποις πρὸς ἀνθρώπους, &c. *De Abstin. Anim. Lib. I. p. 13. Edit. Lugd. 1620.* See also *Lib. II. p. 159. Lib. III. p. 294, 328.* and Plutarch, *De Stoicorum Repugn.* p. 1308. *Tom. II. Edit. Wech.* Antoninus uses the Adverb οἰκεῖος in the same Sense. *Lib. IX. § 1.* And Arrian has the Verb οἰκειοῦσθαι. *Dissert. Epict.* *Lib. III. Cap. XXIV.* They all seem to have copied Aristotle in this Particular, who says “Ιδοι δ’ ἂν τις, καὶ ἐν ταῖς πλάναις, ὡς ΟΙΚΕΙΟΝ ἄπας ἀνθρώπῳ καὶ φίλον. *Ethic. Nicom.* *Lib. VIII. Cap. I.*

### 1

It is an old Proverb that *a Dog will not eat Dog's Flesh*. Varro *De Ling. Lat.* Lib. VI. p. 71. Edit. H. Steph. See likewise Erasmus's *Adagia*. Juvenal remarks that Tigers live peaceably together, and that the wildest Beasts spare those of their own Species.

- ——— ——— *parcit*
- *Cognatis maculis similis fera* ——
- *Indica Tigris agit rabida cum Tigride pacem*
- *Perpetuam: saevis inter se convenit ursis.*
- Sat. XVI. Ver. 159, & seq.

Philo, the Jew, has a beautiful Passage to this Purpose. Addressing himself to Men in regard to the Duties of the fifth Commandment, "At least," says he, "imitate the Behaviour of some brute Beasts, which know how to make an affectionate Return for Favours received. Dogs keep the House, and even expose their Lives in Defence of their Masters, when in imminent Danger. It is said that Shepherds Dogs go before the Flocks and fight till they die, rather than suffer any of their Cattle to be lost. Is it not most shameful that Man should be outdone by a Dog in Point of Gratitude, the tamest and most civilized Creature, by the most brutal of Beasts? But if the Conduct of terrestrial Animals is not sufficient for our Instruction, let us pass on to the Consideration of the Birds of the Air, and learn our Duty from them. The Storks, when rendered incapable of flying by Age, stay in their Nests, whilst their Young traverse Sea and Land in quest of Food for them. The old ones, enjoying a Repose suitable to their Age, live in Plenty and Pleasure, whilst the young ones supporting the Fatigue of their Course cheerfully, with the Satisfaction they find in acquitting themselves of their Duty, and the comfortable Expectation of the same Assistance in their old Age, perform this necessary Office at a proper Time, in return for the Treatment they have received. Thus the same Birds feed their Young whilst unfledged, and their Parents when in the Decline of Life. Thus they are taught by Nature to provide with Pleasure for the Sustenance of those, from whom they received it, when not able to take Care of themselves. Is not this sufficient to confound such as shew no Concern for their Parents, and neglect those who alone, or at least preferably to all others, have a Right to their Assistance? especially when they consider that in this Case they only return what they have received. For all that Children call their own is received from their Parents, who either gave the Things themselves, or put their Children in a Condition of acquiring them." See concerning the particular Care of Pigeons about their Young, Porphyry *De non esu Animalium*, Lib. III. And as to certain Fishes, called *Scari* and *Sauri*, which shew a Concern for those of their own Species, Cassiodorus *Var. Lib. XI. Cap. XL. Grotius.*

In regard to the Fishes our Author mentions, they seem to express a Concern for their Species in the following Instances. When one *Saurus* sees another taken by a Hook, he gnaws the Line, in order to set him at Liberty, and sometimes succeeds in the Attempt. And it is no uncommon Thing to observe several of them unite in a Body to deliver a Captive; so that if it endeavours to escape by the Tail, as he usually does, they assist him to the utmost of their Power. If he puts out his Head, one of them presents his Tail, that he may fasten on it, and thus disengage himself, while the other throws himself forward and drags him along. In which, as Elian observes, "they act like Men, and practise the Laws of Friendship, which they learn only from Nature." *Hist. Animal. Lib. I. Cap. IV.* See also Pliny's *Nat. Hist. Lib. XXXII. Cap. II.* Ovid's *Halieutic. Fragm. Ver. 13. &c.* Plutarch, *De Solertiâ Animalium. Tom. II. p. 977. C.*

## 2.

Gronovius on this Place brings the Example of Hens which feed their Chickens, and Cocks which feed the Hens out of their own Mouths. Everyone has observed this Practice, as well as the Ardour, with which the wildest Beasts expose their own Lives in Defence of their Young; and the Abstinence of

Hounds, which bring the Game to their Masters. Nor are we less acquainted with the Fervour, with which Bees and Pismires unite their Labours for the Good of their respective Communities, as remarked by the same Annotator from Cicero and Quintilian. The Words of the former in the 19th Chapter of his 3d Book *De Finibus Bonorum & Malorum*, are; "Even Bees, Pismires and Storks, do some Things for the Sake of others. This Union is much stronger among Men; we are therefore formed by Nature for Society, mutual Assistance, and living in Community." The latter in his *Instit. Orat. Lib. V. Cap. XI. p. 303. Edit. Obrecht.* gives this Direction: "If you press a Concern for the Commonwealth, you may shew how those little dumb Creatures, the Bees and Pismires, labour for the common Good." Several of those who have undertaken to criticize, or comment on our Author, have given his Thoughts a wrong Turn in this, and many other Places. The Weakness of their Criticism sufficiently appears from this single Consideration; that our Author only affirms that the Principle of Sociability has so real a Foundation in the Nature of Man, that we find some faint Tracks of it even amongst irrational Animals, in regard to those of their own Species. He does by no means pretend either that there is any Right common to Men and Beasts, or that any certain Consequences can be drawn from the Actions of Brutes, for proving any one particular Thing conformable or contrary to the Law of Nature. See what he says *Book I. Chap. I. § II.* and my Remark in the Notes on Pufendorf's *Law of Nature and Nations*, Book II. Chap. III. § 2.

### 3.

See the Passage of Pufendorf, referred to in the preceding Note. By this intelligent and exterior Principle our Author means God himself; as appears from his Treatise *Of the Truth of the Christian Religion*; where he expresses himself more clearly; but still he does not give us a more just and philosophical Idea of the Thing. *Lib. I. § 7.* Consult Mr. Le Clerk's Note on that Piece, *p. 13.* of the last Edition of *Amsterdam*, 1717.

### 4.

I know of no other Place in Plutarch, where that Philosopher speaks of this natural Propensity or Inclination of Children, but in his Account of his little Daughter, who, he tells us, was so surprisingly sweet tempered and benevolent, that she expressed a Desire that her Nurse should give the Breast not only to other children, but even to her Puppets and Play-things, sharing with others, whatever was most agreeable to herself. *Consol. ad Uxorem. p. 608. Tom. II. Edit. Wech.* But he is not there speaking of the common Inclination of all Children: On the contrary, he seems to attribute something particular to his little Girl, as a Reason for being more sensibly affected by her Death. As to the Thing itself, I think it very probable that, though the Principles and Maxims of the Law of Nature cannot be deduced from the Behaviour of Children, at an Age when their Inclinations act with most Freedom, which our Author indeed does not insinuate, there is still great Room to believe, that notwithstanding the infinite Diversity of Tempers, such Dispositions as are contrary to Humanity, are rather the Result of a bad Education and Custom, than of a natural and invincible Inclination; so that it may be maintained that all Men, even before they arrive to Years of Discretion, have the Seeds of Sociability, which consequently are founded in human Nature, and have no Dependence on a View of Interest, which is all our Author designs to advance.

### 5.

Whereas Beasts act in a certain and uniform Manner only in regard to one Thing, to which they are impelled, or from which they are diverted by their natural Instinct.

### 6.

The Emperor *Marcus Antoninus* observes that “whenever Man, who is born with a Disposition to do good Offices, exerts an Act of Beneficence, he does no more than what he was formed for by Nature.” *Lib. IX. § 42.* He also asserts that “we may sooner find a terrestrial Body entirely separated from all that is terrestrial, than a Man divided from all other Men.” *Ibid. § 9.* Nicetas Choniates, one of the Writers of the *Byzantine History*, says, “Nature has engraved and planted in us a sort of Sympathy for one another as Members of the same Family.” See St. Augustine *De Doctrina Christiana*, *Lib. III. Cap. XIV.* Grotius.

The Earl of Shaftesbury proves the Existence of this natural and social Affection, from the Love of our Country, a Passion, which is found in some Degree in the Hearts of all Mankind. See *Tom. III.* of his *Characteristicks*, printed in 1727. *p. 141, &c.* The Arguments of that ingenious and penetrating Author are too long to be inserted here. But we have another Passage much shorter in the same Volume, *p. 220, 221.* which contains a remarkable Reflection. “Well it is for Mankind,” says he, “that, though there are so many Animals, who naturally herd *for Company’s Sake*, and *mutual Affection*, there are few, who *for Conveniency*, and *by Necessity*, are obliged to a strict Union, and kind of confederate State. The Creatures, who according to the Oeconomy of their Kind, are obliged to make themselves Habitations of Defence against the Seasons and other Incidents, they, who in some parts of the Year are deprived of all Subsistence, and are therefore necessitated to accumulate in another, and provide withal for the Safety of their collected Stores, are *by their Nature* indeed as strictly joined and endowed with as proper Affections towards their Community, as the looser Kind, of a more easy Subsistence and Support, are united in what relates merely to their Offspring, and the Propagation of their Species. Of these *thoroughly-associating* and confederate Animals, there are none, I have ever heard of, which in Bulk or Strength exceed the *Beaver*. The major Part of these *political* Animals and Creatures *of a joint Stock*, are as inconsiderable as the Race of Ants or Bees. But, had Nature assigned such an Oeconomy as this to so puissant an Animal, for Instance, as the *Elephant*, and made him withal as prolific as those smaller Creatures commonly are, it might have gone hard perhaps with Mankind; and a single Animal, who by his proper Might and Prowess has often decided the Fate of the greatest Battles, which have been fought by human Race, should he have grown up into a Society, with a Genius for Architecture and Mechanicks proportionable to what we observe in those smaller Creatures; we should with all our invented Machines, have found it hard to dispute with him the Dominion of the Continent.”

## 1

Hence it appears that our Author does not mean that bare natural Instinct in the Rule of the Law of Nature; but that he adds Reason for the Direction of such Instinct, without which it might misguide us, and induce us to consult only our private Interest. Hence it is also that he elsewhere makes what belongs to the Law of Nature consist in *a necessary Conformity to, or Difformity from* a reasonable and sociable Nature, *Book I. Chap. I. § 12. Num. I.* So that it is ridiculous to object, as Gaspar Ziegler has done, *that the Desire of Society, which Grotius lays down as the Foundation of the Law of Nature, might be gratified, though a Man were united in Society and Friendship with one Nation only, or even with one single Family: and that Highwaymen and Pyrates have also their Societies, &c.* For Reason, which is peculiar to Man, and which is more natural to him than the Desire of Society, of which we find some Traces in Beasts, clearly teaches us that it is not proper to confine Sociability and Affection to a small Number of Persons, or to one single Community; but that it ought, in some Manner or other, to extend to all Men, or to all of our own Species; on whom it is equally diffused by Virtue of the Design of Nature, and on the Account of their being naturally all alike and equal. I shall not here enlarge on this Subject, but refer the Reader to the Explication and Defence of the general Principle of *Sociability*, in my Notes on Pufendorf’s *Law of Nature and Nations*, *Book II. Chap. III.* So that, on the whole, a Man must be very wrong headed, who will hereafter expose himself by starting and

multiplying frivolous Difficulties against a Truth, which when well understood, leaves no room for any plausible Objection.

## 2.

Seneca makes an excellent Application of this Principle. "That a Sentiment of Gratitude," says he, "is a Thing valuable in its own Nature, appears from the odious Character which Ingratitude bears in the World, there being nothing so destructive of Concord and the Union of Mankind, as this shameful Vice. In reality, on what does our Security depend, but on the mutual Exchange of good Offices? Certainly nothing but this Commerce of Benefits can make Life commodious, and put us in a Condition of guarding against unforeseen Insults and Invasions. How miserable would Mankind be, if every one lived apart, and had no Resource, but in himself? So many Men, so many Persons exposed every Moment to be the Prey and Victims of other Animals: Blood continually ready to be spilt, in a Word, Weakness itself. Other Animals are strong enough to defend themselves. All such as are designed for a wandering Life, and whose natural Ferocity doth not allow them to go in Bodies, come into the World armed, as I may say. Whereas Man is defenceless on all Sides, having neither Claws nor Teeth to make him formidable. But in Society with his like he finds the wanted Succours. Nature to make him amends, has furnished him with two Things, which from weak and miserable as he would have been, render him very strong and powerful; I mean, Reason and a Disposition to Society. So that he, who when alone was not able to resist any other, by this Union becomes Master of all. The Disposition to Society gives him the Dominion over all the Animals, not even excepting those bred in the Sea, which live in another Element. It is Society also that furnishes him with Remedies against Distempers, Assistance in his old Age, Relief and Comfort in the midst of Sorrows and Afflictions. This is what puts him in a Condition of defying Fortune, if I may use the Expression. Take away the Disposition to Society, and you will at the same Time destroy the Union of Mankind, on which the Preservation and Happiness of Life depend. Now to maintain that Ingratitude is not a detestable Vice and what ought to be avoided for its own Sake, but only on the Account of its pernicious Consequences, is no better than destroying the Disposition to Society." *De Benefic.* Lib. IV. Cap. XVIII. Grotius.

## 3.

Porphyry, *Of Abstinence from Animals*, Book III. Justice consists in this, the Abstaining from what is another's, and the doing no Injury to those that do none to us. Grotius.

## 1

*Indicium ad aestimanda quae delectant aut nocent— & quae in utrumvis possunt ducere.* These Words Mr. Barbeyrac renders—*choses agréables & désagréables, &c.* On which Occasion he professes to follow the Author's Sense, rather than his Expression. The Word *delectant*, says he, is not directly opposed to *nocent*; and I suspect some Omission in the Text; though the Passage appears the same in all Editions of this Work. It is probable, continues our learned Commentator, that Grotius wrote, or designed to write, *Quae delectant aut dolorem creant, quae juvant, aut nocent, &c.* and that the Words here given in the *Roman* Character being left out, he did not observe the Omission in reading over this Place.

## 2.

It is evident that this includes those Duties of Man in regard to himself, which are enjoined him even by the Frame of his Nature, and which may be seen at large in Pufendorf's *Law of Nature and Nations*, Book II. Chap. IV.

1

St. Ambrose treats of this in his first Book *Of Offices*. Grotius.

Our Author probably had his Eye upon Chap. XXX, where that Father treats of *Beneficence*, and speaks, as usual, in a loose and confused manner of the Rules to be followed in the prudent Management of the Good we do to others.

2.

[[The footnote is wrongly included as part of the previous one in the original.]] Our Author speaks here of such Rewards as are given by the State, or those who represent it, to Persons distinguished by their Merit; as also of the Collation of publick Offices. For they who receive the former, or are placed in the latter, had no full Right to demand them, nor to claim considerable ones as their due, how great soever their Merit may be, or how glorious soever the Actions are, which recommended them. See *Book II. Chap. XVII. § 2.*

3.

This Maxim is always to be observed by those, whose Business it is to dispose of publick Employs. But it does not always take Place in private Liberalities and the Services we do one another; the Ties of Blood, a pressing Necessity, and other such Considerations, sometimes require the Preference of a Person, otherwise of less Merit. See a beautiful Passage of Cicero to this Purpose, quoted at large in my Pufendorf's *Law of Nature and Nations*, Book III. Chap. III. § 15.

4.

This takes Place, all Things else being equal. For it would be a mistaken piece of Charity to bestow a publick Employ on one who is in great Necessity, to the Prejudice of another, much more capable of discharging the Obligations of such a Post. In that Case, a Regard to the Poverty of the Candidate, would be a Respect of Persons as culpable as that of a Judge, who should on that Consideration pronounce Sentence in Favour of a poor Man, contrary to Law and Equity; which is expressly forbid by the Law of Moses, Exod. xxiii. 3. on which Place see the Note of Mr. Le Clerc.

5.

Much Judgment and Circumspection are to be used in this Particular; and it is difficult to lay down any general Rules in Relation to it, because the Practice of this Duty is diversified by an infinite Variety of Circumstances. Mr. Buddeus has written an useful Dissertation on that Subject, intitled, *De Comparatione Obligationum, quae ex diversis hominum statibus oriuntur*; it was printed in 1704, among the *Selecta Juris Naturae & Gentium*.

6.

The Author speaks of such as follow Aristotle, and make the Distribution in Question belong to *distributive Justice*, according to that Philosopher's Acceptation of the Term, who reckons it part of *private* or rigorous *Justice*, by Virtue of which a Man may make a rigorous Demand of what is his Due. See the following Note, and what the Author says, *Book I. Chap. I. § 7, 8.*

7.

*Since it consists in leaving others in quiet Possession of what is already their own, or in doing for*

*them what in Strictness they may demand.* This is the Sense of the Author's concise Expressions: *Ut quae jam sunt alterius, alteri permittantur, aut impleantur.* It is probable that he had written or designed to write, *aut quae altera debentur, impleantur*, as I have observed in my Edition of the Original. A few Examples will explain his Meaning. When we forbear striking, wounding, robbing, injuring or defaming any one, we only *leave him in quiet Possession of what was his own*; for the good Condition of his Limbs, his Goods, and Reputation, are actually his own, and no Man has a Right to dispossess him of them, while he has done nothing to deserve such Treatment. When we repair the Damage he has sustained in his Person, Goods, or Reputation, whether designedly or through Inadvertency, we restore what we had taken from him, and what was his own, *which he had a strict Right to demand*. When we keep our Word to him, when we perform our Promise, or make good an Engagement, we do not indeed restore, what he was once in actual Possession of; but we perform *what he might strictly require at our Hands*. All this relates to the *Law of Nature, taken in the strict and proper Sense of that Term*; not to mention the *Punishment of the Guilty*, of which our Author seems not to design to speak in this Place; though he ranks it in the same Class, as we have seen § 8, and as we shall shew in our last Note on *Book I. Chap. L. § 5*. When the Sovereign refuses to bestow an Employment on one of his Subjects, who is worthy of it, or prefers one less capable of discharging the Duty, or does not reward the Person according to his Merit, he does indeed offend against the *Law of Nature, taken in an improper, and less extensive Sense*, according to our Author's Ideas; but he does that Subject no *Wrong*, properly speaking, because he had no *full and rigorous Rights* to demand the Employment, or the Reward. The same is to be said of those, who refuse Relief or Assistance to the poor and miserable, not in extreme Necessity; for in that Case they have a strict Right to demand what they want, as we shall see in the proper Place. The learned Gronovius, prepossessed with Aristotle's Ideas, and not giving due Attention to the Matter, and the Sequel of our Author's Discourse, widely mistakes his Meaning, and perplexes the Question both here and elsewhere; in which he has been faithfully followed by Mr. De Courtin.

## 1.

This Assertion is to be admitted only in the following Sense: That the Maxims of the Law of Nature are not merely arbitrary Rules, but are founded on the Nature of Things; on the very Constitution of Man, from which certain Relations result, between such and such Actions, and the State of a reasonable and sociable Creature. But to speak exactly, *the Duty and Obligation*, or the indispensable Necessity of conforming to these Ideas, and Maxims, necessarily supposes a superior Power, a supreme Master of Mankind, who can be no other than the Creator, or the supreme Divinity. We shall treat of this Subject more largely in the fourth Note on *Book I. Chap. I. § 10*.

## 2.

The Reader may see on that Subject the excellent Treatise of our Author, *Concerning the Truth of the Christian Religion*.

## 1

For this Reason, according to the Sentiment of Marcus Antoninus, every Man, who commits an Act of Injustice, renders himself guilty of Impiety. Ο ἀδικῶν ἀσεβεῖ. *Lib. IX. § 1.* Grotius.

This Passage is beautiful, but ill applied. The Author ought to have placed it among those quoted in the following Note. In Reality, he is here talking of *Voluntary Divine Law*, as he himself calls it, *Book I. Chap. I. § 15.* or of that, which, being in its own Nature indifferent, becomes just or unjust, because God hath commanded or forbidden it. This is evident from the very Terms he employs, and the Sequel of the Discourse; for he calls the Will, which is the Source of this Right, a free or arbitrary *Will*; and

afterwards observes, as it were occasionally, that the *Law of Nature*, of which he has been laying the Foundation, may be also considered as flowing from the Divine Will, *because it was his Pleasure to establish such interior Principles in Men*; or that his Nature should be framed in the Manner it is. Our Author's Meaning therefore in this Place is, that even though there were no *Natural Right*, or though the Frame of our Nature did not of itself engage us to act in such or such a manner, yet upon the Acknowledgment of a Deity, of whose Existence we cannot reasonably be ignorant or doubtful, we must likewise own ourselves obliged to obey him, whatever he commands, even though his Laws had no other Foundation but his absolute and arbitrary Will. Thus we should always find a Source of Right there; for that God, who has so clearly revealed himself to Men in the Books, which we call the Holy Scriptures, has there prescribed them a Set of Laws entirely like those, which we say were imposed on them by the Frame of their own Nature. But it may be farther said that the Law of Nature, though sufficiently founded in itself, does likewise derive its Origin from God, independently of Revelation, *as it was his Pleasure, &c.* This I take to be the Meaning of our Author, and the Connexion of his Discourse, which does not appear at first Sight. The Impropriety of this Quotation will appear till more from the Words immediately following, which it is not amiss to produce. The Emperor gives a Reason for what he had advanced, *viz.* that every Injustice is a real Impiety. *For, says he, universal Nature having made reasonable Creatures for one another, that they may assist one another, according to the Merits of each Individual, and do no Hurt to others; he who disobeys her Will, is manifestly guilty of Impiety against the most antient Divinity.* Many Pagan Authors have also acknowledged that the Law of Nature is a divine Law. See some Passages alledged in my Remark on Pufendorf, *Book II. Chap. IV. § 3. Num. 4.*

## 2.

"When I speak of Nature," says St. Chrysostom, on 1 *Cor. xi. 3.* "I mean God; for he is the Author of Nature." And Chrysippus expresses himself thus. "For it is not possible to find any other Principle or Origin of Justice, than *Jupiter* and universal Nature; for there we must always begin, whenever we design to treat of Good and Evil." Book III. *Of the Gods.* Grotius.

This last Passage cited from a Stoick, whose Works are not extant, though he published a great Number, is preserved by Plutarch, in his Treatise *De Stoicorum repugnantiis*, p. 1035. Tom. II. *Edit. Wechel.*

## 3.

See the preceding Note. Cicero also maintains, that the wisest and most learned Men have been of Opinion that the Source of all Law and Justice is to be sought for in the Divinity. See his Treatise *de Legibus*, Lib. II. Cap. IV. and Lib. I. Cap. V, VII, X.

## 4.

Perhaps, it might be rather said that as *Ossum* has been converted into *Os*, so *Jussum* has been changed into *Jus*, Gen. *Jusis*, which was afterwards made *Juris*, as *Papisii* was turned into *Papirii*. See Cicero *Ep. ad Fam. Lib. IX. Ep. XXI.* Grotius.

## 1

Disorderly Passions are condemned through the whole Scripture, especially in the New Testament, which forbids us, under very severe Penalties, to allow ourselves to be hurried away by those blind Motions. The Apostle St. John includes them all under three Heads, *the Lust of the Flesh, the Lust of the Eyes, and the Pride of Life*, 1 Ep. Chap. II. Ver. 16. that is, in the Language of the Philosophers,

sensual *Pleasure, Covetousness, and Ambition.*

2.

In the Original it is quite the reverse: *Quae nobis ipsis, quique aliis consulunt*. But though all the Editions I have seen, and even that of 1632 read it so, it is evidently faulty. It should be read *malè consulunt*, as I have corrected it in my Edition of the Original, where the Reader may see the Reason why the Word supplied is here absolutely necessary. [[But see my introduction, p. xxiv n. 30, in support of the original reading.]]

1

*Digest.* Lib. I. Tit. I. *De Justitiâ & Jure.* Leg. III. The Ideas of the Stoicks, and such was this Lawyer, concerning the Origin of Mankind, were very confused; and though they introduced the Divinity, it was in a very different Manner from what Moses uses in his History of the Creation. See Justus Lipsius's *Physiolog. Stoic.* Lib. III. Dissert. IV. The *Kindred*, which they conceived as subsisting among Men, did not consist in their considering all Mankind as descended from the same Father and the same Mother; but only in the Conformity of their Nature, and the Principles or Materials of which they thought them composed. See Marcus Antoninus, *Book II.* § 1. and Gataker's learned Notes on that Place.

1

The Author here passes almost imperceptibly to another Species of *Voluntary Law*, which however is founded in Nature; it is what a Father and a Mother prescribe to their Children; for Children are obliged to obey their Parents, because they gave them Birth; in which Action, though the Husband and Wife are no more than blind Instruments, they in some Measure imitate God.

2.

Hierocles, in his Comment on Pythagoras's Golden Verses, says that a Father and a Mother are *terrestrial Gods*. Philo, on the Decalogue, calls them *visible Gods, who imitate the unoriginated God, in producing living Creatures.* Pag. 761. *Edit. Paris.* St. Jerom (Ep. XLVII. Tom. 1. p. 224. *Edit. Basil.*) says that the Relation between Parents and their Children is next to that between God and Men; *secunda post Deum foederatio.* Plato calls Fathers and Mothers *Images of the Divinity.* *De Legib. Lib. XI.* (p. 930, 931. Tom. II. *Edit. H. Steph.*) Parents are to be honoured like the Gods, according to Aristotle. *Ethic. Nicomach.* Lib. IX. Cap. II. Grotius.

The Passage here quoted out of Hierocles, is not in his Commentary on the *Golden Verses*. They occur in Stobaeus, *Serm. LXXVII.* where he says *a Man would not commit a Mistake, who should call them (Parents) Gods of a second Class, and terrestrial Deities.* Pag. 461. *Edit. Wechel.*

3.

See below *Book 1. Chap. IV. § 6. Num. 2.*

1

So that the *Civil Law*, though no kind of Law is in itself more arbitrary, is at the Bottom no more than an Extension of Natural Law, a Consequence of that inviolable Law of Nature, *that every one is obliged to a religious Performance of his Promise.*

1

*Atque ipsa Utilitas Justi propè mater, & Aequi.*

Horat. Lib. I. Sat. III. Ver. 98.

Upon which Place, an ancient Commentator on Horace, whether Acron or any other Grammarian, makes the following Remark. “The Poet here opposes the Tenets of the Stoicks; for his Design is to prove that Justice is not Natural, but derived from Interest.” See what St. Augustin says against this Opinion, *De Doctrina Christiana*, Lib. III. Cap. XIV. Grotius.

2.

*Ibid.* §8. Note 2.

3.

See Pufendorf, *Book VII. Chap. IX.* § 5.

1

See *Book I. Chap. I.* § 14.

2.

For these two Names are sometimes confounded. See what I have said on Pufendorf, *Book II. Chap. III.* § 23. Note 3.

1

Add to all this what Pufendorf says *Book II. Chap. III.* § 10.

2.

The Emperor Marcus Antoninus makes a judicious Use of this Comparison. *Every Action of yours, which has not a near or remote Relation to the Publick Good, as its End, destroys the Harmony and Uniformity of Life: It is seditious, like that of a Citizen, who by forming Cabals, breaks the Union of the State.* Book IX. § 23. And in another Place he says, *He who divides himself from another, cuts himself off from all human Society.* Book XI. § 8. In Reality, as the same Emperor elsewhere observes, what is useful to the whole Swarm, is useful to each particular Bee. Grotius.

The Author, who probably trusted his Memory on this Occasion, has misquoted the second of these Passages; for instead of ὅλης τῆς κοινωνίας ἀποπέπτωκε, he writes οὐ δύναται μὴ καὶ ὅλου φύλου ἀποκεκόφθαι, i.e. *must necessarily be cut off from the whole Body of Mankind.* The Mistake was occasioned by the last Words immediately preceding the former Sentence, and making part of a Comparison; which the Author forgetting, and confounding with what follows, has changed φυτοῦ, the Word in the Original, into φύλου. The whole Passage runs thus: *A Branch broken off from the Branch to which it grew, must necessarily be broken off from the whole Tree; so likewise a Man, &c.* The last Passage is in *Book VI.* § 54. and stands thus: *What is not good for the Swarm, is not good for the Bee.*

1

*Jura inventa metu injusti fateare necesse est.*

Horat. Sat. III. Ver. III.

2.

Book II. *Of the Common-Wealth*, Tom. II. p. 359. Edit. H. Steph. See likewise Gorgias, Tom. I. p. 483, and Pufendorf, Book I. Chap. VI. § 10.

3.

Ομοῦ βίην τε καὶ δίκην συναρμόσας. Plut. *in Solon*. Tom. I. p. 86. Edit. Wechel. To the same Purpose Ovid:

*In causaque valet, causamque tuentibus armis.*

That is, “ *He has a good Right, and his Right is supported by Arms.* ” Metam. Lib. VIII. Ver. 59. Grotius.

See Pufendorf, Book I. Chap. VI. § 12. In the Passage from Ovid, where *Scylla*, the Daughter of *Nisus*, speaks of *Minos*, King of *Crete*, the common Pointing, which our Author follows, is not just. The last Words of it are to be joined to the Beginning of the next Verse, and read thus:

- —— *causamque tuentibus armis:*
- *Ut puto, vincemur.* ——

That is, “ *And it is my Opinion we shall be overcome by the Superiority of his Arms, which favour the Justice of his Cause.* ” See Mr. Burman’s Edition, published in 1713.

1

See *Gorgias*. Tom. I p. 524, 525, and *Book IX.* of Plato’s *Republic*. Tom. II. p. 579. Tacitus produces that Philosopher’s Thought on Occasion of the Remorse of Conscience, with which *Tiberius* was tortured. *The wisest of Men had good Reason for affirming that if the Souls of Tyrants could be exposed to View, we should see them under violent Racks and Tortures; for as the Body is torn with Whips, so is the Mind with Cruelty, Lust, and Male-Administration. Neither the Splendor of the Imperial Dignity, nor Retirement, could secure Tiberius, or hinder him from confessing the Torments of his Soul, and interior Punishment of his Crimes.* Annals, Book VI. Chap. VI.

1

*Quae foras spectat.* Gronovius observes, that our Author here makes Use of an Expression of Apuleius, Book II. *Of Moral Philosophy*, (p. 15, 16. Edit. Elmenhorst.) where that Platonist, treating of the Virtues according to the Notions of his School, says, that *When Justice is advantageous to the Possessor of that Virtue, it is termed Benevolence; but when it extends to the Interest of others, it is properly called Justice.* The Commentator, who produces this Passage, might have gone higher, and discovered the Source from which both Apuleius and Grotius derived this Distinction. Cicero, in *Book II* of his *Republic*, says, *Justice regards what is without us; it is diffused and extensive.* And in this he only follows Aristotle, whose Words are these: *The Just Man acts for the Benefit of others; and it is for this Reason that we say Justice is a Good belonging to others.* Ethic. Nicom. Lib. V. Cap. X. p. 67. Ed. Paris.

1

The Words here used are taken from a Passage in one of Cicero's Epistles, which our Author quotes in his Note on the next Paragraph. They do not relate to Right in general, but to Civil Laws only. The same is to be observed of the Passage in the Oration for *Cecina*, to which Gronovius refers us in this Place, as if the Author had it in View, and it exactly expressed his Thought.

## 1

I am very much mistaken, if the Author has not put the Scholar's Name for that of the Master. I am induced to think so, not only because he has not specified the Place of Aristotle either in the Margin, or the following Note, where he has thrown together several Passages of other Authors to the same Purpose; but also because I never saw that Philosopher quoted for the Observation in Question; nor do I remember to have found this Thought in any of his Moral or Political Works. On the contrary, the Commentators have quoted Plato, on a wellknown Passage of Cicero, where the same Remark is very finely turned; so that it is surprizing that Grotius takes no Notice of either of those two great Writers. The *Grecian* Philosopher speaks thus: *Do you imagine that a City, an Army, a Gang of Thieves or Highwaymen, or any other Body of Men, united in an unjust Design, could ever succeed in their Enterprizes, if they dealt unjustly with one another. No certainly, replied the other Person in the Dialogue. De Rep. Lib. I. p. 351. Edit. Steph.*

*Such is the Force of Justice,* says Cicero, *that even they that live by their Crimes cannot subsist, without practising some Sort of Justice among themselves: For if any one of those, who rob in a Gang, defrauds or robs his Companion, he is no longer allowed a Place even in that infamous Society. A Chief of the Pyrates, who does not make an equal Distribution of the Booty, is either killed or abandoned by his Men. It is even said that Highwaymen have a Set of Laws, to which they submit, and which they observe.* De Offic. Lib. II. Cap. XI.

## 2.

St. Chrysostom has the same Observation. *But you will ask how Highwaymen live peaceably together; and when this is the Case? Certainly, when they do not act like Robbers; for if in the Distribution of what they get, they do not observe the Laws of Justice, and give every one his Share, you will then see them quarrel and fight with one another.* In Eph. IV. Plutarch having set down *Pyrrhus*'s Expression, that he would leave his Kingdom to that of his Sons, whose Sword should be sharpest, compares it with a Verse in the *Phenician Women* of Euripides. (Ver. 68.) *They divide my Estate with a sharp Sword.* To which he adds this Exclamation: *So unsociable and brutalis the Passion of Avarice!* In the Life of *Pyrrhus*, Tom. I. p. 388. *Edit. Wech.* Cicero says, *We can have no certain Dependence on any Thing, when Justice is disregarded.* Ep. ad Fam. Lib. IX. Ep. XVI. Polybius observes that *the Dissolution of the Society of Villains and Robbers, is chiefly owing to unjust Practices among themselves, and their not being true one to another.* Chap. XXIX. Grotius.

## 3.

The Author probably had his Eye upon a Passage of Cicero, where that great Orator and Philosopher proposes this Question: *Whether the Interest of a Community most conformable to the Law of Nature is always to be preferred to Moderation and Modesty;* he answers in the Negative; *For, says he, there are some Things so shameful and criminal, that a wise Man will not do them even for the Preservation of his Country.* De Offic. Lib. 1. Cap. XIV. He afterwards asserts, that by good luck it can never happen that the Interest of the State should require such Things to be done, which ought to be well observed. Grotius.

## 4.

The Passage here alledged is in the seventh Book of Aristotle's *Politicks*, Chap. II. p. 427. See also his *Rhetorick*, Book I. Chap. III. p. 519 Tom II. *Edit. Paris*, 1629. For the better understanding his Thought, it is to be observed that he is opposing the Opinion of such as maintain that good Policy requires making Conquests, and extending them as far as possible, at the Expence of the Liberty of the neighbouring People. The Philosopher, amongst other Reasons against this way of thinking, urges that “*It does not become an able Administrator of the State*, and a wise Legislator, to do any thing which is not lawful, or agreeable to the Rules of Civil Society. But, *says he*, it is unlawful, and contrary to the Rules of Civil Society, to desire to have the Command of others at any Rate, justly or unjustly; and Conquests may be unjust. This way of reasoning holds good in regard to other Sciences. For Example, it is not the Business of a Physician or a Pilot to use Persuasion or Force indifferently in their respective Professions. But,” adds Aristotle, “the Generality of Mankind give into this Mistake, that political and despotic Governments are but two Names for the same Thing: They make no Scruple of doing that to others, which they look on as unjust, and prejudicial in regard to themselves. They are willing to submit only to those who command them with Justice; but when it comes to their turn to command, they give themselves no Concern about the Justice of the Action.” On reading these Words, one would conclude that Aristotle entertained very just Ideas of the natural Quality of each Man in particular, and Nations in general. But it appears from the Sequel, that he was of Opinion that some Men, and even some People, were *naturally Slaves*, on whom he thought War might be made without any other Reason; and he makes use of the Comparison of a Hunter, who is not indeed allowed to *take or kill Men for Food or Sacrifice, but may lawfully pursue such Animals as are wild and proper for the Purposes designed*. See what I have said on this Philosopher's Notions in my *Preface* to Pufendorf, p. xcvi. § XXIV. Second Edition, *Of the Law of Nature and Nations*.

## 5.

Plutarch, in his Life of *Agesilaus*, blames the *Lacedemonians* for making *Virtue consist principally in the Interest of their Country, and being unacquainted with any other Justice, but what they thought might contribute to the aggrandizing of Sparta*. Thucydides gives us the Sentiments of the Athenians concerning the Humour of that People. *The Lacedemonians generally observe the Rules of Virtue among themselves, and in what relates to the Laws of their own Country; but several Examples might be given of their different Conduct in regard to others; in short, they esteem only that virtuous, which is agreeable to them, and only that just, which promotes their Interest*. Book V. Chap. CV. p. 344. *Edit. Oxon. Grotius*.

## 1

I know not whence this is taken. Plutarch says nothing like it, either in his Life of *Pompey*, or in his *Apophthegms*; and it is not probable he would have omitted so remarkable an Expression. Nor do I find the Saying of the Spartan King, as it stands here, in the *Apophthegms* of the *Lacedemonians*, or elsewhere. So that I much suspect our Author has depended too much on his Memory; and imagine the Mistake may be thus accounted for. Phraates, *King of the Parthians, having sent an Embassy to Pompey, desiring him to be content with bounding his Empire by the Euphrates; that great General replied, that the Romans chose rather to make Justice the Boundary of their Empire*. Plutarch, *Apophthegm*, p. 204. Tom. II. *Edit. Wech*. See also the *Life of Pompey*, Tom. I. p. 637. where the Story is told with some Difference. The same Philosopher ascribes the following Reply in one Place to *Agesilaus*, and in another to his Son *Archidamus*. One of these Kings *being asked how far the Lacedemonian Dominions extended, brandished his Spear, and answered, as far as this can be carried*. P. 210. See likewise p. 218, both of the second Volume. Out of these two Stories confusedly remembered, our Author has formed what he here relates, and which, as far as I know, is to be found no where as he gives it.

## 2.

It was *Agesilaus*; and Plutarch has preserved this Saying as an Answer to a Question proposed concerning the comparative Excellency of the two Virtues. *Apophthegm. Lacon.* p. 213. Tom. II.

## 3.

*Agesilaus* having observed that *the Inhabitants of Asia had a Custom of distinguishing the King of Persia by the Appellation of Great, asked: How is that Prince greater than I, unless he is more just and more wise?* Plutarch, *Apopht. Lacon.* p. 213. Grotius.

## 4.

This Definition is produced and commended by Cicero, *De Offic.* Lib. I. Cap. XIX.

## 5.

[[This footnote is wrongly included as part of the previous one in the original text. The Latin edition has it in the correct place.]] The Emperor *Marcus Antoninus declares, that, as Antoninus, he considered Rome was his City and native Country; but as a Man, the whole World.* (Book VI. § 44.) Porphyry says, *the Man, who is conducted by Reason, forbears injuring his Fellow-Citizens, and observes the same Rule still more rigorously in regard to Strangers and all Mankind; and thus keeping the irrational Part in due Subjection, becomes more rational, and consequently more like Divinity than those with whom he deals in this manner.* Of Abstinence, Book II. (p. 333.) Grotius.

## 6.

We have a Verse of an old Poet to this Purpose.

- Καὶ νῆσων δείραισι βαρὺν ζυγὸν ἔμβαλε Μίνως.
- *King Minos has laid a heavy Yoke on the Necks of the Islands.*

See St. Cyril's VIth Book against the Emperor *Julian*. Grotius.

The Father from whom our Author has taken this Verse, quotes it as belonging to *Callimachus*; and gives it with some small Difference in the Words, though to the same Sense.

- Καὶ νῆσων ἐπέτεινε βαρὺν ζυγὸν αὐχένι Μίνως.
- Pag. 191. *Edit. Spanh.*

## 1

The Passage, which our Author had in View, occurs in the Oration on *Chersonesus*, where *Demosthenes*, undertaking to dissuade the sending of a new General into the *Hellespont*, in the Room of *Diopithes*, who lay under an Accusation of Extortion and Piracy, shews that it would be *an extravagant Piece of Madness* to proceed to that Extremity against a Subject of the State, whom they might easily punish without so much Noise. *It is proper, says the Orator, and even necessary to pay Troops, employ Vessels, and erect publick Funds against an Enemy, who cannot be reduced by the Laws; a Decree, an Impeachment, and a single Galley are sufficient against our own Citizens, in the Opinion of all considerate Men.* P. 38. *Edit. Basil.* 1572.

## 1

See the Commentators on these Words of Cicero, in his Oration for *Milo*; *silent enim Leges inter Arma.* Cap. IV.

2.

*No written Law is of Force in Regard to Enemies; but there are certain Rules and Customs, which are observed by all, even when the Enmity is carried to the greatest Length.* Orat. περὶ ἔθους. This Passage is quoted by Peter du Faur, *Semestr. Lib. II. Cap. I. p. 8. Edit. Genev.* The Orator instances in the Permission of burying the Dead, the Security of Embassadors, &c.

3.

Upon this Principle it was, that King *Alphonsus*, being asked which of the two he had been most obliged to, Books or Arms; answered, that he had learned by Books, both the Art of War, and the Rights of War. Plutarch says, that *amongst good Men there are Laws of War; and that we ought not to push the Desire of conquering so far, as to make an Advantage of wicked and impious Actions.* Grotius.

Plutarch has put these Words into the Mouth of *Camillus*, when he generously declined making an Advantage of the Schoolmaster's Treachery, who betrayed the Children of the *Falisci* into his Hands. *Life of Camillus*, Tom. 1. p. 134.

4.

This Formulary is found in Livy, Book I. Chap. XXXII.

5.

This occurs in a Fragment of that learned Author, preserved by *Nonius*, and was taken from his second Book *De Vitâ Populi Romani*. See what is said on this Passage, *Book III. Chap. III. § 11. Note 2.*

6.

These are the Words of that great General, as related by Livy, on the Occasion of the perfidious School-Master; whence Plutarch has taken Occasion to ascribe to him a Speech very like this, which we have related above, *Note 3. There are Laws of War as well as of Peace; and we have learnt how to carry on a War with as much Justice as Bravery.* Book V. Chap. XXVII.

7.

Livy makes him speak thus, in his Answer to the Embassadors from *Carthage*, who came to sue for a Peace, *that, though he was almost secure of Victory, he does not refuse to make a Peace, that the whole World may know the Roman People have a strict Regard to Justice both in engaging in and finishing their Wars.* Book XXX. Chap. XVI. The thing itself, however, is far from being indisputable. On the contrary, if we look into the Conduct of the *Romans*, we shall find Injustice practised in several of their Wars, either in regard to the Subject, the Manner, or Conclusion of them; though Alberic Gentilis has taken upon him to justify that People in his Treatise *De Armis Romanis*. See Mr. Buddeus's Dissertation, intitled, *Juris prudentiae Historicae Specimen*, § 82, &c. among his *Selecta Juris Naturae & Gentium*; and what Grotius himself says in his Book *De Verit. Rel. Christ.* Lib. II. § 12. I remember a Passage in Cicero, where that celebrated Orator and Philosopher says, that *Equity and Fidelity are most commonly observed in entering on, pursuing, and ending a War.* *De Legib. Lib. II. Cap. XIV.*

8.

Livy, whose Words have been quoted Note 6.

9.

Seneca, *Ep. CXX*. *We admired that great Man, persevering in his Resolution of giving a good Example, and unmoved by all the King's Offers, or the Promises made him on the other Side; preserving his Innocence in War, which is extremely difficult, being persuaded that some Things were not allowable even in an Enemy*, P. 595. *Edit. Gronov.* 1672.

1

Appian makes *Pompey* speak thus to his Army: "We ought to rely upon the Gods and the Goodness of our Cause, since we are engaged in this War out of an honest and just Desire of maintaining the Government and Liberty of our Country." *De Bell. Civil. Lib. II.* p. 460. *Edit. H. Steph.* (p. 755. *Edit. Amstel.*) The same Historian introduces *Cassius* saying, that in War nothing gives so great Hopes as the Justice of the Cause (*De Bell. Civil. Lib. IV.* p. 645. *H. Steph.* 1034. *Edit. Amst.*) Josephus says that King *Herod* made use of this Consideration to animate his Soldiers, that God is with those, who have Justice on their Side. *Antiq. Jud. Lib. XV.* We find in Procopius many Thoughts to the same Purpose; as for Instance, what *Belisarius* says in the Speech he made, when he went into *Africa*. "Valour will not render us victorious, unless it be regulated and conducted by Justice." (*Vandalic. Lib. I.Cap. XII.*) See also another Speech of the same General's before an Engagement, near *Carthage* (*Ibid. Cap. XIX.*) In the Discourse of the *Lombards* to the *Herculi*, we have the following Passage, which I have a little corrected. "We call God to witness, whose Power is so great, that the least Particle of it infinitely surpasses all human Force. There is Reason to believe, that having a Regard to the Causes of the War, he will give to it an End answerable to the Deserts of both." (*Gothic. Lib. II. Cap. XIV.*) And it is remarkable, that this Prediction was soon accomplished by a wonderful Event, which the Historian afterwards recites. *Totilas*, in the same Author, says to the *Goths*: "It is not possible, no, it is not possible, that those who commit Acts of Injustice and Violence, should acquire Glory by Arms; but every one is fortunate or unfortunate, as he behaves himself well or ill." (*Ibid. Lib. III. Cap. VIII.*) After the taking of *Rome*, *Totilas* makes another Speech, tending to the same Purpose. (*Ibid. Cap. XXI.*) Agathias, another Historian of those Times, tells us, *Book II. Chap. I.* that Injustice and Irreligion ought always to be guarded against, and are very prejudicial, but especially when we are obliged to make War, and to come to an Engagement with the Enemy. He proves it elsewhere (*Cap. V.*) by the Examples of *Darius*, *Xerxes*, and the *Athenians* in their Expedition against *Sicily*. See also what *Crispinus* says to the Inhabitants of *Aquileia* in Herodian, *Lib. VIII.* (*Cap. VI. Edit.Oxon.* 1678.) Thucydides observes, that the *Lacedemonians* believed they had brought upon themselves, by their own Fault, the Disasters they met with at *Pylos* and other Places, because they had refused to submit to the Decision of Arbitrators, though summoned there to by the *Athenians*, according to their Treaty. But the *Athenians* having afterwards refused in their turn to give the same Satisfaction, after several Infringements and unjust Enterprizes, the *Lacedemonians* from thence conceived good Hope of success in their Affairs for the future. *Lib. VII. Grotius.*

The Passage of Thucydides, which our Author means, is in § 18. p. 421. of the *Oxford Edition*. Several States of *Peloponnesus* making Preparations for War against the *Athenians*, the *Lacedemonians* joined them with so much the more Resolution and Confidence, as they believed the Event would not be the same as in the preceding War; which, they themselves acknowledged, had been occasioned rather through their own Fault, than that of the *Athenians*. For, having sided with the *Thebans*, when the latter came to attack *Plataeae*, during a Truce (*Lib. II. § 1. & seq.*); and having moreover refused,

contrary to an express Clause of their Treaty, (*Lib. V. § 18. p. 302.*) to terminate some Difference in a judicial Way, though they had been summoned to it by the *Athenians*; they were fully persuaded they had been unsuccessful on that Account, and ingenuously ascribed to their Breach of Faith the Calamities that befel them at *Pylos*, and upon other Occasions. But after the *Athenians*, having equipped a Fleet, were gone to ravage the Lands of *Epidaurus*, *Prasia*, and other Places, and from *Pylos* made Incursions into their Country; after they refused, in their turn, to submit to a Decision in an amicable Manner, when any Dispute arose in relation to their Treaties: I say, after that time, the *Lacedemonians* believing they had made the Injustice to pass over to the other Side, eagerly sought an Opportunity of declaring War against them.

## 2.

The Author here makes use of the very Terms of Propertius, and not of Ovid, as Gronovius pretends. His Memory failed him on this Occasion, which was also the Case of the learned Mr. Menage. This Mistake has been corrected by the last Commentator on the Poet last mentioned.

- *Frangit & adtollit vires in milite causa:*
- *Quae nisi justa subest, excutit arma pudor.*
- Lib. IV. Eleg. VI. Ver. 51, 52. Edit. Brockhuis.

## 3.

This Thought is contained in the following Verse of Euripides, taken from one of his Tragedies, not now extant.

- Ὄνδεις στρατέυσας ἄδικα, σῶς ἡλθεν πάλιν.
- Erechthei Frigm. Ver. 44. *Edit. Barnes.*

## 4.

Lucan introduces *Pompey* employing this Reason for encouraging his Soldiers before the Battle of *Pharsalia*.

- *Causa jubet melior superos sperare secundos.*
- *Our better Cause bids us hope for the Favour of the Gods.*
- Lib. VII. Ver. 349.

But long before that Poet's Time, *Menander* had said in general:

- Ὄταν τι πράττεις ὅσιον, ἀγαθὴν ἐλπίδα
- Πρόβαλλε σαντῷ, τοῦτο γινώσκων, ὅτι
- Τόλμῃ δικαίᾳ καὶ Θεὸς συλλαμβάνει.
- *When you engage in any good Action, entertain Hopes of Success; being assured that God favours a just Enterprize.*
- Frigm. è Vulcanalib. p. 190. *Edit. Cleric.*

See also some Passages cited by our Author, *Book II. Chap. I. § 1.*

## 5.

Tacitus makes *Otho* say that *good and lawful Undertakings are frequently attended with very bad Success, for want of a judicious Manner of proceeding*, Hist. Book I. Chap. LXXXIII.

1

*Gladius bené de Bello cruentus, & melior homicida.* Tertul. *De Resurr. Carnis.* Cap. XVI. Grotius.

See below, *Book I. Chap. II. § 8.* and my *Preface* to Pufendorf, § 9; where I have inserted other Passages from the Fathers of the Church, who have condemned War as absolutely unlawful.

2.

He was a *Franciscan Preacher* at *Mentz*, who lived in the Reign of *Charles V.* Ziegler on this Place quotes *Sixtus of Sienna*, *Biblioth. Lib. VI. Annot. 115, 156*; where the Author produces and criticizes the Passages of those two Writers on this Subject.

3.

This great Author has a long Digression on the Proverb, *Dulce Bellum in expertis.*

4.

This has very often been the Practice of several Moralists, in all Ages. See a beautiful Passage of Seneca on this Subject, which I have given at Length, with a Translation in my Treatise *On Gaming*, Book I. Chap. III. § 12.

1

The Author had been Advocate-General, and Pensionary of *Rotterdam*.

2.

He wrote this at *Paris* in 1625.

3.

Laws merely positive.

1

The Author is misled here by a corrupted Passage of Ammonius the Grammarian, in his Treatise *Of like and different Words*, upon the Word Νῆες, where we read, Δικαιώματα πολέμων, *The Laws of War*, instead of πόλεων, *States*; as it is quoted by Eustathius on the seventh Book of the *Iliad*. See Menage on Diogenes Laertius, *Book V. § 26.* and Selden, *Of the Law of Nature and Nations*, Juxta Discipl. Hebr. *Lib. I. Cap. I. p. 4.*

2.

*The Justice of War is taught most strictly by Fecial Law of the Romans.* Cicero, *De Offic.* Lib. I. Cap. XI. See Book II. Chap. XXIII. § 4 and 8 of this Treatise.

1

He was a *Spanish Dominican*, who lived in the XVIth Century; and the Treatise here mentioned is intitled, *De Indis & Jure Belli*, and appears among his twelve Theological Lectures.

2.

A *Dutchman*, so named from the Place of his Birth, and Chancellor of *Cologn*. He lived about the Middle of the XVth Century, and wrote a Treatise *De Bello Justo*.

3.

I know not who, or what Countryman he was. Mr. De Courtin has translated his Name *Matthison*; and thus he appears to be an *Englishman*; but perhaps this is only done by guess.

4.

His Book was printed at *Rome*, in 1609. Grotius.

5.

A Native of *Segovia*. His Treatise *De Bello & Bellatoribus*, may be found in the large Collection, called *Tractatus Tractatum*, Tom. XVI.

6.

A *Spaniard*, his Name is *Arias*, and his Book is in the same Volume of the same Collection, under the Title of *De Bello & ejus Justitiâ*.

7.

A Native of *Bologna* in *Italy*. His Treatise *De Bello*, is inserted in the same Volume of the Collection already specified.

8.

His Name was *Garat*. His Treatise *De Bello* appears in the same Volume of that Collection. It was reprinted at *Louvain* in 1647, with the Treatise of *Ayala*, which our Author speaks of a little lower.

1

Peter Du Faur of *St. Jori*, Counsellor in the Grand Council, afterwards Master of Requests, and at last First President of the Parliament of *Toulouse*. He was Scholar to Cujas. His Work intitled *Semestrium Libritres*, is full of Erudition. It has born several Impressions at *Paris*, *Lyons*, and *Geneva*.

2.

He was a Native of *Antwerp* of *Spanish* Extraction. His Treatise, *De Jure & Officiis Bellicis*, was printed in that City in 1597, in 8 vo. The Edition I make use of is that of *Louvain*, 1648.

3.

This Author has written *De Jure Belli*: My Edition is printed at *Hanau*, 1612.

4.

This Reproach does not fall on the modern Lawyers alone; Mr. Noodt has plainly proved that the antient Professors of that Science have sometimes been guilty of the same Fault. See his *Probabilita*

1

- Τάντ' ἀνθέκαστα, μάτεο, οὐχὶ περιπλοκὰς
- Λόγων ἀθροίσας ἔπον, ἀλλὰ καὶ σοφοῖς
- Καὶ τοῖσι φαύλοις ἔνδιχ', ὡς ἐμοὶ δοκεῖ.
- Ver. 497, &c.

See my *Preface* to Pufendorf, §1,& c. Cassiodorus observes, that *to teach Men the Duties of Justice is indeed a Work of some Difficulty, but not impossible; because the Divinity has been so indulgent to all, that even they, who are unacquainted with the Principles of Law, are yet sensible of the consequential Truths derived from them.* Var. VII. 26.

2.

The same Poet introduces *Hermione* speaking thus to *Andromache*.

- ὃ βαρβάρων νόμοισιν οἰκοῦμεν πόλιν

“We do not govern our State by the Laws of Barbarians.” To which *Andromache* replies:

- Κἀκει τά γ' αἰσχρὰ κἀνθάδ' αἰσχύνην φέρει

“What is dishonourable or dishonest among them, bears the same Character also among us.”

*Androm.* Ver. 242, 243. Grotius.

1

Why should they not be thus employed? The Emperor *Alexander Severus* read every Day Cicero's Books *De Republicâ*, and his Treatise *Of Offices*. Grotius.

This Account is taken from the Life of that Prince, written by Aelius Lampridius, who says, *when he read Latin Books, he preferred none to Cicero's Pieces Of Offices, and On the Commonwealth, Cap. XXX.*

2.

The Philosophers, in Consequence of certain false Principles, with which they were infatuated, frequently advanced very false Maxims, and sometimes contradicted themselves. The *Academists* were particularly remarkable on this Account, valuing themselves on the Art of maintaining both Sides of all manner of Subjects. See Buddeus's Dissertations *Of Moral Sceptism*, and the *Errors of the Stoicks*, among his *Analecta Historiae Philosophicae*, and the Morality of the antient Philosophers, abridged in my *Preface* to Pufendorf's great Work.

3.

The Historians, as well as the Poets, with a View of keeping up the Character of the Persons introduced, often put Maxims into their Mouths, which are false and contrary to Natural Law. The Writers of both Classes entertained likewise some Ideas which were far from being just, and sometimes very gross, on several Subjects; but the Poets exceeded the Historians in this Particular. In regard to the former, see my *Preface* to Pufendorf, § 16; and as to what concerns the latter, Mr. Le

Clerc's *Parrhasiana*, Tom. I. p. 200, & c. Our Author, in the Course of this Work, produces a great Number of Passages, which may serve to prove beyond Dispute what he here advances. We have already seen some of them, at the Entrance of this *Preliminary Discourse*, § III. Notes 1, 2. which are taken from Thucydides and Tacitus, two of the greatest and most judicious Historians of Antiquity, the one *Greek*, and the other *Latin*.

4.

This relates to the Orators. See Pufendorf's *Law of Nature and Nations*, Book IV. Chap. I. § 21. Note 1.

5.

See what I say on *Book I. Chap. I. § 14.*

6.

See on Pufendorf, *Book III. Chap. III. § 23. Note 3.*

1

See, for Example, *Book III. Chap. VII. § 6, 7.*

1

This is what Lactantius says, *Would any one but collect what Truths are scattered through the Writings of each of them, and diffused through the several Sects, and reduce them into one Body, he would not differ from us.* Instit. Divin. Lib. VII. Cap. VII. (Num. 4. Edit. Cellar.) Justin Martyr speaks to the same Purpose in his first Apology: *Not, says he, because the Doctrines of Plato are entirely different from those of Christ; but because they are not conformable to them in every Particular. Which is also the Case in regard to the Tenets of the other Philosophers, as of the Stoicks, and of the Poets and Historians; for each of them, being directed by a Ray of the Light of innate Divine Reason, discovered something conformable to it, and spoke well so far* (p. 34. Edit. Oxon.) Tertullian frequently calls Seneca, *our Seneca*; but then he observes that, *none but Christ could give us a complete Body of Spiritual Virtues*, (Adv. Jud. Cap. IX.) St. Augustine lays it down as a Fact that *those Rules of Morality, which are so highly commended by Cicero, are taught and learnt in the Christian Churches, diffused through the whole World*, Ep. CCII. See what the same Father says in regard to the *Platonists*, whom he maintains to be almost Christians, *Ep. LVI*, in his Treatise *De Verâ Religione*, Cap. III. and *Confess.* Book VII. Chap. IX. and Book VIII. Chap. II. Grotius.

To these Authorities we may add that of Clement of Alexandria, who talks in the same manner, Strom. Lib. I. p. 338, 349. Edit. Oxon. See the Life of that Father, written by Mr. Le Clerc, in his *Bibliotheque Universelle*, Tom. X. p. 187, & c. and the Dissertation of the late Mr. Olearius, *De Philosophia Eclecticâ*, p. 1216, in the *Latin Version* of Mr. Stanley's *Philosophical History*, printed at Leipsick in 1712.

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Lactantius treats on this Point at large in his *Divine Institutes*, Books VI. Chap. XV, XVI, XVII. Let us add this Passage of Cassiodore: *Non adfectibus moveri, sed secundum eos moveri, utile vel noxiun.* Grotius.

2.

*Ethic. Nicom Lib. II. Cap. VI.*

3.

Whatever the learned Gronovius may say on the Subject, these are really two different Virtues. Aristotle might give the Greek Word Ἐλευθεριόστης a compound Idea, including both that Disposition, by which a Man is inclined to give freely, and that which directs him to a prudent Regulation of his Expences; but they are in Reality two different Dispositions, and two distinct Ideas. It is true, the more saving we are, the more we have to give away; but it does not therefore follow that *Frugality*, or a commendable Savingness, is only Part of *Liberality*. It is a very different Modification of the Soul, which indeed puts us in a Condition of performing more numerous and more considerable Acts of *Liberality*, on certain Occasions; but which is not therefore more a Part of *Liberality* itself, than Sobriety and a Love of Work are Parts of Chastity, because they are good Preservatives against Temptations to Impurity, and because those three Virtues, like most others, mutually assist one the other. Whoever takes a Delight in relieving the Indigent with his Substance, and actually does it on proper Occasions in a judicious manner, and as far as his present Circumstances permit, is so far truly liberal, even though for want of that Oeconomy, and Care of his Affairs, which compose the Character of a good Manager, he should be reduced to a Station, in which he is no longer able to give as much as would otherwise have been in his Power. We shall sometimes see Persons, who, in spite of all their Negligence, and after their superfluous Expences, have still something to give, and bestow it freely on all, whom they have an Opportunity of assisting; will any one deny such Men the Character of *Liberality*? In a Word, *Liberality*, and *Frugality*, are two different Virtues; but they are both to be equally acquired and cultivated, but the Want of the latter should hinder the Practice of the former, or at least confine the Exercise of it to too narrow a Compass. The Philosopher himself owns that *Liberality*, according to his Definition, consists more in giving and spending judiciously than in getting Debts in, and keeping one's Money. *The Use of Money seems to consist in Expences and Gifts; for receiving and keeping it are rather to be called Possession; so that it is the Business of a liberal Man rather to give to whom he ought to give, than to receive from those who are indebted to him, and not receive where it is not due.* Ethic. Nicomach. Lib. IV. Cap. I. Thus our Author rightly observes that Aristotle was obliged to reduce the two Virtues under Consideration to one, in order to find two opposite Vices, one by Defect, the other by Excess; for *Avarice* is indeed opposite to *Liberality*, according to the common Ideas; but *Prodigality* is so far from being in itself contrary to *Liberality*, that it bears some Resemblance to that Virtue, and may have some Tendency toward promoting the Practice of it, which at least is not incompatible with it. If some prodigal Persons become niggardly, when the Necessitous are to be relieved, there are others, who give freely, and take a Pleasure in doing good, though they often do it without much Judgment, or a sufficient Regard to all Circumstances.

4.

There are several Faults in this Distinction. 1. The Philosopher does not distinguish the Virtue in question by any particular Name, but only calls the Person endowed with it ἀληθέντικος and φίλαλήθης; and understands by it that Disposition which directs a Man to love Truth, and commit no violence on it by his Actions, in Things indifferent, *i.e.* in regard to which we were otherwise under no Obligation to speak and act sincerely from the Laws of Fidelity and Justice; *for*, says he, *Sincerity in Dealings, and every thing that regards Justice and Injustice, relates to another Virtue.* Ethic. Nicom. Lab. IV. Cap. XIII. Thus he makes a faulty Distinction of two Sorts of *Sincerity*, and *Veracity*, one relating to Things indifferent, the other to those, which are obligatory; as if the Diversity of the Objects on which one and the same Virtue is employed, would privilege the Multiplication of that

Virtue into as many different Species. 2. He no where treats of that other Sort of *Veracity* and *Sincerity*, which is only occasionally mentioned in this Place; and that which he here treats of is entirely reduced to indifferent Things; which relate only to the Person of him, who speaks or acts. But is it not possible for a Man to lie, feign, or dissemble in a thousand other indifferent things, on a Point of History, for Example, a Phaenomenon of Nature, an Event, on some Action or Quality of another Man, which does neither good nor harm to any one?: Strictly speaking, Boasting and Dissimulation, which Aristotle gives us for the two opposite Extremities, are both of them contrary to *Truth* and *Sincerity* by Defect, and not by Excess. Both he who attributes to himself Qualities, with which he either is not endowed at all, or not in so high a Degree, and he who refuses to acknowledge or extenuates those of which he is really possessed, are faulty in deviating from the Truth. If one says more than true and the other less, they only take two different Ways of saying things otherwise than they are. The opposite Extremity in the Excess would be to speak and act too sincerely, and with an excessive Simplicity, which discovers either by Words or Conduct what was not proper to be known. Besides, the End of Dissimulation, of which the Philosopher discourses, is commonly to acquire more Esteem than we deserve, while we either seem unwilling to acknowledge our Merit, or undervalue it; and he himself observes that *it sometimes seems to be a sort of Boasting in Disguise*; and concludes the Chapter, which treats of these two Vices, with saying that *Boasting is diametrically opposite to Veracity, and even worse*, that's Dissimulation. The same Inequality of Opposition is found between several other Vices; from which it appears how loose and useless his Principle of *Mediocrity* proves.

## 5.

Our Philosopher owns himself that *no Man is without a Relish for Pleasure*; and that *human Nature is a Stranger to such an Insensibility*; that *even Brutes make a Distinction in their Food, and are pleased with one Kind preferably to another*: If any one, says he, finds nothing delightful, or makes no Distinction between one thing and another, he is far from being a Man. As there is no such Person in the World, there is no Name assigned him. Ethic. Nicom. Lib. III. Cap. XIV. It appears from this passage that Aristotle had an Idea of a thing that has no Existence; for where is the Man, to whom every thing is indifferent, and who takes a Pleasure in nothing? If any one be found insensible to the natural Pleasures of the *Taste* and *Touch*, to which the Philosopher confines *Temperance*, and makes this Insensibility the Extremity by Defect, it must be the Result of a very singular Constitution, a deep Melancholy, or some other Indisposition of Body; and in this Case the Defect will not be moral, but purely physical. In regard to other Pleasures, as that of *Musick*, or what arises from a Contemplation of the Beauties of *Painting*, or *Architecture*, &c. an Insensibility to them is not a thing evil in itself. The Instance here alledged by Gronovius, of *Timon the Manhater*, and the Conduct of *Mark Anthony*, who copied his Example for a short Time, are nothing to the Purpose. That famous Humourist, notwithstanding his Enmity to Mankind, and his Aversion to Society, took a Pleasure in cultivating his Garden. Mr. Hemsterhuis has given us his Character, and all the Particulars to be found in History concerning him, in his beautiful Remarks on Lucian's *Timon*, published in 1708, in a new Edition of the *Select Dialogues*, and some other Pieces of *Grecian Antiquity*. One might with more Propriety here alledge the Example of Misers, who deprive themselves of the Comforts and Conveniences, and sometimes even of the Necessaries of Life. But, besides that it is no common thing to see the Matter carried to that Excess, if they deny themselves the Use of several Things, this does not commonly proceed from a stupid Insensibility to the most natural Pleasures, but from the Preference they give their Money; for when it is in their Power to taste those Pleasures, without being at any Expence, they indulge themselves without Reserve, and are more apt to exceed the Bounds of Moderation, than those who pay for the Use of what Nature offers them.

## 6.

Gronovius is of Opinion that the Philosopher would not be understood to speak of the Contempt of Honours, which is not Evil, but only of the Contempt of Reputation, by which a Man is induced to act ill, to get above the Consideration of *what will People say*, and sink into a base and sordid way of living. He instances in the famous *Dionysius*, Tyrant of *Syracuse*, who having left his Kingdom, retired to *Corinth*, where he wore dirty and ragged Cloaths, drank freely with all he met, frequented Taverns and Brothels, and amused himself with chattering about Trifles with the Refuse of Mankind, as Justin tells us, *Book XXI. Chap. V.* But we need only observe Aristotle's Description of the Contempt of Honours, in which he makes the Extremity opposite to *Magnanimity* in the Defect consist, to be convinced that the learned Gentleman, whose Explication I have given, disposes the Philosopher's Thought out of a too warm Concern for the Credit of the Antients. Aristotle says: Those who are subject to the Fault in Question *do not seem to be bad Men, because they are guilty of no Crime*: That *the pusillanimous are faulty only in depriving themselves of those Honours, which the Philosopher considers as real Goods, though they deserve them, and forego the Possession of some valuable Thing, for want of a due Sense of their own Merit*. — That such Persons seem rather chargeable with Laziness than Folly. *The Opinion, they entertain of themselves, makes them still worse.—they forbear engaging in good Actions and glorious Enterprizes, as unworthy of appearing in them, and decline the Enjoyment of exterior Goods.* Ethic. Nicom. Lib. IV. Cap. IX. Such a Disposition has nothing in it that is of itself vicious, and even comes near to Humility, of which the Pagans had some Idea, as I have shewn in my Treatise *On Play*, Book I. Chap. III. § 6. As long as a Man is ignorant of his own Merit, he is so far from being culpable for not aspiring at Honours, that require Qualifications, of which he believes himself not possessed, that he is to be commended for not aiming at them; and Ignorance in this Case is the more excusable, as we are much more inclined to the opposite Extreme, and to flatter ourselves with the Possession of good Qualities, of which we are entirely unprovided. It is good always to entertain a Diffidence of ourselves in that Point, in order to avoid the Illusion of Self-Love; and there is commonly great Reason for presuming, that the Man who declines Honours, does it rather on a Principle of Modesty, than out of Indolence, or Meanness of Soul. Aristotle, however, maintains that *Pusillanimity* (by which Term he means an In difference to Honours) *appears more frequently in Opposition to Magnanimity, than Ambition, and that it is the more culpable of the two*, Ibid. Experience shews the Falsity of the former of these Assertions; in regard to the latter, it must be allowed that the Philosopher speaks conformably enough to the Notions of the Vulgar, and the ambitious Part of Mankind. Hence it was that among the *Romans*, for Example, those who had a Right to aspire at the Consulship, and declined the Charge, were particularly careful to offer the Reasons for their Conduct in the strongest Terms, to avoid the Reproach of Pusillanimity. See Cicero's Epistles to *Atticus*, Book I. Ep. I. p. 8. Edit. Graev. But, consulting the Ideas of sound and right Reason, it will appear that there is more Greatness of Soul in refusing Honours than in pursuing and embracing them.

## 7.

According to our Philosopher, it is no less a Folly not to be angry on just Occasions, as to give a loose to Passion without Reason. *They, who are not angry, as Persons, Times, and Things require, are chargeable with Folly. They seem miserable, incapable of being affected, or revenging an Injury.* To which he adds that *to suffer patiently in such Cases, and neglect the Defence of our Friends, is a Mark of a mean and servile Mind.* Ethic. Nicom. Lib. IV. Cap. XI. Hence it appears that Aristotle considers the Disposition of all those in general, who command their Passion, when they have just Reason to be angry, as a Vice opposite to *Lenity* by Defect; and that he does not, as Gronovius pretends, confine that Censure to the stupid and mean Patience of Buffoons and Parasites, who tamely submit to the greatest Affronts and Indignities, in Consideration of some paultry Advantage. But if we consider the Matter in itself, the Tranquillity of a Mind, free from Anger, is not a moral Defect. For supposing, what is very seldom to be found, a Man either naturally or by the Force of long Custom so hard to be moved, that

he is seldom or never angry, he is thus very happy, as being secured from the Excesses of a blind Passion; nor will such a Man be less disposed, or less able to maintain his just Rights, and that of his Friends. On the contrary, by being Master of his Passions, and of a peaceable Disposition, he will be able to take more just Measures, and manage his Interest better than those, who are actuated by a Passion so hard to govern as Anger. Though Anger is not evil in its own Nature, and may be allowed to a certain Point, it is never absolutely necessary. We always may, and that with more Security, support our Dignity and maintain our Right, without being in a Passion. But it is evident that our Philosopher makes a Virtue of a moderate Degree of Anger, and a Desire of Revenge, the natural Effect of that Passion; which being in itself vicious, never allows Anger to be kept within due Bounds.

## 1

He speaks in the following Manner of *Justice*, properly so called, which he terms *particular* or *private*, to distinguish it from *universal* or *general Justice*, including the Practice of all the Virtues which relate to our Neighbour. *This Distinction being made, it is evident that a just Action consists in observing a Medium between doing an Injury and receiving one. He that does an Injury, has more, and he who is injured, less than his due. Justice is a Mediocrity; not in the same manner as the Virtues already spoken of; but as the Medium is its Object, and Injustice includes the two Extremes. Justice therefore is a Disposition to act what is right with Choice and Deliberation, and to render every one his Due, both in our Dealings with others, and those which others have with one another; so that we do not take to ourselves more of what is agreeable and advantageous, or less of what is disagreeable and prejudicial than is our Due, leaving others too small a Share of the former, and too much of the latter, but observe a just Proportion here, as well as in the Distribution to be made among others. Injustice, on the contrary, is a Disposition of doing Wrong designedly, that is of giving each Person too much or too little of what is advantageous or prejudicial, without any regard to exact Proportion. Thus there is both Excess and Defect in Injustice, because it consists in giving too much and too little, that is, in appropriating to ones self too large a Share of what is simply advantageous, and taking too little of what is prejudicial; and observing the same unequal Distribution in regard to other Men, deviating from the Rule of Proportion sometimes on one Side, and sometimes on the other. The Extreme in unjust Actions, by way of Defect, is to receive an Injury; that by way of Excess, to do one.* Ethic. Nicom.

Book V. Chap. IX. Gronovius thinks Aristotle sufficiently defended against our Author's Criticism, by saying, that whereas in other Virtues there is but one *Medium*, fixed by Geometrical Proportion, *Justice* observes sometimes the Medium of this *Geometrical Proportion*, and sometimes that of *Arithmetical Proportion*; so that here is only an Explication and Distinction of Terms, not a Transition from one kind of Thing to another. But the present Question does not turn on the Nature of the Medium, or the Proportion to be observed for determining it. The Subject, in which this Medium is placed, must be specified, so as to be found between two opposite Extremes of the same Thing, whatever Proportion is observed for determining it. According to Aristotle, the Medium, in which the Essence of Moral Virtue consists, is planted, as one may say, in certain Sorts of *Passions* and *Actions*, not vicious in themselves, but which become such, by deviating from that Medium, and thus form two opposite Vices, one by Excess, the other by Defect. *Fear*, for Example, is a Passion not evil in its own Nature; too much Fear is *Timidity*, or *Cowardice*; too little is *Audacity*, or a rash Boldness: The just Medium is *Fortitude*, or rational Courage. Speaking, laughing, a regular Composure of the Face and exterior walking, standing still, in short all we say or do in Conversation are in themselves indifferent. Behaving ourselves in these Particulars so as to endeavour at pleasing every one, or certain Persons on all Occasions, is *Flattery*: on the contrary, to act as if we had no Concern for pleasing any one, is *Clownishness* or *Incivility*; the just Medium is *Civility*, or a *reasonable Complaisance*. See *Ethic. Nicom.* Book II. Chap. VI, VII. To return to *Justice*, the Virtue under Consideration, according to our Philosopher, its Medium consists in a certain *Equality*, an equal Distribution of Advantages and Disadvantages; for this is what he means by that *Equality* to which the Actions, whereby we practice

Justice, relate. An exact Observation of this Equality, is the proper Employment of Justice, and what constitutes its Nature. A Disregard of this Equality, whether we take or give more or less than it requires, is a Vice opposite by Defect; the *more* or the *less* is not then in *Matter* of Justice, but in the Things about which it is employed: We do not observe this Equity too much or too little, we do not exceed the just Equality, but always fall short of it, even when we take or give too much, this is no more than a different manner of Inequality. Where then is the other opposite Extreme, which ought to consist in an excessive Concern for maintaining the Equality in question? It will not be the *Jus summum*, that rigorous Justice, which is called the Height of Injustice. (*Summum Jus, Summa Injuria*, Cicero *De Offic.* Lib. I. Cap. X. Terence *Heautont.* Act. IV. Scene V. Ver. 48.) For when a Man pushes his Demands as far as he may according to the Rigor of the Law, or presses the Terms of the Law too severely in pronouncing Sentence, it is a Defect of Equity: He offends against the Spirit of the Law, against that very Equality which the Law designs to establish, and introduces a real Inequality contrary to Equity, as Aristotle himself makes appear, *Book V. Chap. XIV.* In a Word, our Philosopher was very sensible of the Lameness of his Principle of *Mediocrity*, when applied to this Virtue, and shews it plainly enough in the Words already quoted. He owns that Justice is a Mediocrity, not in the same manner as other Virtues are, but as a Medium is its Object, and Injustice only is its opposite Vice, which alone includes the two Extremes. This abundantly shews the Uselessness and Insufficiency of Aristotle's Principle. Besides, it will appear, on a careful Examination of the Matter, that the Nature of all the Virtues may be accurately explained without having recourse to that Principle. See a Passage from Mr. Grew, an ingenious *Englishman*, quoted in my *Preface* to Pufendorf, p. xciv, xcv. of the second Edition.

## 2.

The learned Gronovius calls this Chicanry; because, says he, this *less*, according to Aristotle, relates to Hardships and Disadvantages, and not Profits and Advantages. But he is himself guilty of the Fault with which he charge sour Author. Grotius has his Eye on the Definition of an Unjust Action, which occurs in the Close of the Passage quoted in the foregoing Note; according to which *receiving an Injury, or having less than one's due* is comprehended in the Idea of *Injustice*, as well *doing an Injury, or taking more than one's Due*. The Philosopher explains himself clearly in another Place, where he says, *It is evident that both receiving and doing an Injury are evil; for by the former a Man has less, and by the latter more than the Medium requires—But doing an Injury is the more culpable of the two, because done maliciously; whereas a Man receives an Injury without Malice, or an Inclination to Injustice.—So that receiving an Injury is in itself the less evil, though it may by Accident become a greater.* Ethic. Nicom. Lib. V. Cap. XV. p. 73. On reading this last Sentence, we immediately perceive the tacit Allusion which Grotius makes to it, while he explains it, and refutes the Philosopher's Opinion.

## 3.

*Supposing one Man commits Adultery for Lucre's Sake, and receives his Reward; another is guilty of the same Crime out of a Motive of Lust, and pays for it. The latter seems rather sensual than covetous; whereas the former is unjust, but not sensual, because he acted with a View of Gain. Besides, every other unjust Action has always a Relation to some View. Thus Adultery relates to Intemperance; abandoning one's Comrade in an Engagement, to Cowardice: striking, to Anger. But when a Man gains by his Crime, it relates only to Injustice.* Ethic. Nicom. Lib. V. Cap. 4. We see here that the Philosopher does not sufficiently distinguish between the Principle or Motive, which induces a Man to commit an Injustice, and the unjust Action itself; for he pretends that one and the same Action, by which we invade another's Property, relates either to *universal Justice*, or to *particular Justice*, which is Justice properly so called, as the Agent is influenced by a Motion of Sensuality, Cowardice, Anger,

or by a formal Design of seizing on what belongs to another, and taking more than one's Due. Now besides that this formal Design is seldom found in Injustice, few Men doing an Injury merely for the Sake of doing it, and without being actuated by some Passion, without which they would rather choose to leave their Neighbour's Right untouched; besides this Consideration, I say, the Diversity of Principle may indeed make us offend at the same Time both against Justice, properly so called, and against some other Virtue, relating either to ourselves or others; but, this notwithstanding, every Action tending to the Prejudice of another's Right, such as Adultery and Murder, will always be a real Injustice in itself; and all that Gronovius has advanced in Defence of Aristotle, is nothing to the Purpose. He may, if he pleases, alledge the Example of *Mnester* the Comedian, who was proof against all the Solicitations of *Messalina*, till the Emperor *Claudius*, her Husband, commanded him to do whatever she should require of him. This Comedian, according to our Commentator, did indeed commit an unjust Action, and an Act of Intemperance; but if we judge of his Conduct in a moral Manner, he was neither chargeable with Injustice nor Intemperance. I own he was not so culpable, as if he had solicited *Messalina*; but even granting that a Husband can yield to another Man his Right to his Wife's Body, this was by no means the Emperor's Intention, whose general Order to obey the Empress did not extend to this Action. So that the Comedian ought still to have persisted in his Refusal, and by his Compliance he certainly became even more guilty of Injustice than Intemperance; though this single Action did not denominate him habitually unjust or intemperate, which is not the present Question. As to Murder committed by a Motion of Anger, it is sufficiently specified in the Passage here quoted, *striking*, relates to *Anger*. So that Gronovius had no Reason to say he knew not whence this was taken, and that it could only be from *Eth. Nicom. Lib. V. Cap. X. p. 68*, in which he pretends our Author contradicts himself; for he himself quotes and commends this very Passage, *Book III. Chap. XI. § 4*. But the Question there turns on a different Thing, *viz.* the Distinction between unjust Actions committed maliciously, and such as are done without any premeditated Design.

## 1

Agathias makes a famous General speak thus: *Those Motions of the Soul, which by Nature prompt us to what is pure, good, eligible and our Duty, are to be indulged without Restraint. Those, which have a contrary Tendency, are not to be followed on all Occasions, but only so far as is consistent. Thus Prudence is in the Opinion of all Mankind a pure Good, without the least Mixture of Evil; and Anger, so far as animates us to Action, is commendable; but an Excess of that Passion is to be avoided as prejudicial.* In *Belisarius's Speech, Book V. (Chap. VII.) Grotius.*

## 2.

Here Gronovius makes two Replies in Favour of Aristotle. *First*, that the Philosopher is to be excused for not ranking *Piety, Faith, Hope* and *Charity* among the Moral Virtues, as they are known only by Revelation delivered to *Christians*; for Aristotle, says he, as all the ancient Pagan Philosophers did, included the Worship of the Deity under *Magnificence*. *Ethic. Nicom. Lib. IV. Cap. V.* This Idea is followed by Sallust, *Bell. Catilin. Cap. IX. In suppliciis Deorum magnifici, &c.* and by Justin, *Book XXIV. Chap. VI.* speaking of the Presents offered in the Temple of *Delphos*. Now Excess in this Case is possible, as appears from that ancient Law: *Pietatem adhibento: opes amovento.* Cicero de Legib. Lib. II. Cap. VIII. and from the Reason assigned by Lycurgus for a Law he had made for regulating the Expence of the Sacrifices. Plut. *Apophthegm. Lacon.* p. 229. Tom. II. Edit. Wech. The other Answer is, that solid Piety indeed cannot be carried too far, and the same is to be said of all other Virtues, which, as such, are always found in the just Medium, to what Length soever they are carried; but that there may be Excess in exterior Actions, by which alone one Man can form a judgment of another's Sentiments. For how do we make it appear that we serve God? Is it not by frequenting Places of Worship; by praying on our Knees, bear-headed, and with our Hands joined and raised up to Heaven:

By giving Alms, by contributing to the necessary Expences of the publick Worship; by observing Festivals; by reading and meditating on the Holy Scriptures; by abstaining from every thing, which we think contains any Impiety, and hindering the Commission of it, as much as in us lies, &c ? Now who does not know that in each of these Particulars we may do more than God requires, and sound Reason allows? Thus, conformably to Aristotle's Principle, *Piety* will certainly hold the middle Way between *Superstition*, which makes its Excess, and *Impiety or Atheism*, which is its Defect. This is our learned Commentator's Reasoning; on which I have two observations to make. First, it is no very easy Matter entirely to justify Aristotle's Omission of so considerable a Virtue as *Piety*; and several judicious Authors have with good Reason blamed him for allowing Religion no Place in his System of Morality, as I have shown in my *Preface* to Pufendorf, § 24. In Reality, as soon as we acknowledge a Deity, as he did, if we reason with ever so little Exactness, we must necessarily discover certain Duties in which we stand engaged to that Being. Thus we see several of the Pagan Philosophers have spoken very finely on that Subject. In vain does Gronovius pretend that according to the Ideas of all the ancient Heathen Writers, the Worship of the Divinity is included in that Virtue, which Aristotle calls *Magnificence*. He had forgot that beautiful Passage of Cicero. *The best, the purest, most holy and most pious Worship of the Gods is always to honour them with Purity, Sincerity, and Integrity both of Mind and Words. For the Philosophers are not the only Persons, who have distinguished Piety from Superstition; our Ancestors have done the same.* De Nat. Deor. Lib. II. Cap. XXVIII. See also his Oration *Pro domo suâ, ad Pontifices*, Cap. XLI. with Graevius's Notes, and the Passages quoted from Seneca and Epictetus in my first Note on Pufendorf, *Book II. Chap. IV. § 3*. It is evident from those and several other Authorities, which might easily be produced, that many of the wise Pagans made *Piety*, and the Worship of the Divinity consist principally in the interior Sentiments, and not in the exterior Acts of Devotion. Secondly, we must then find out two vicious Extremes in the interior Sentiments: It must be possible for a Man to entertain too exalted an Idea of God, respect and love him too much, be too submissive to his Will, &c. in all which there never can be any Excess. So that whatever they may say who are resolved to reconcile Aristotle with Reason and good Sense at any Rate, it will still be certain that here, as in several other Virtues, there is no Medium, equally or almost equally removed from two opposite Extremes, in the same Kind of Things, which are the proper Object of Virtue.

3.

*Noct. Attic. Lib. IV. Cap. IX.* at the End.

4.

*Instit. Div. Lib. VI. Cap. XVI. Num. 7. Edit. Cellar.*

1

Which are to be used with much Caution. See the Author's Reflection on that Subject. *Book I. Chap. III. § 5. Num. 6.*

2.

Of this Sort, according to Gronovius, are these found in the *Roman History*, down to the six hundredth Year from the Foundation of *Rome*, or the third *Punick War*; and those in the *Grecian History* to the Peloponnesian War.

1

The same Gronovius, says our Author, had Bodin and other Judaizing Christians in View in this Place.

2.

The Ceremonial, and several Political Laws.

3.

From what God is pleased to do or command by Virtue of his supreme Authority over the Life and Goods of his Creatures, no Consequence can be drawn that the same Thing is ordered in Regard to Men, or allowed by the Law of Nature. On this Occasion are alledged the Example of *Abraham*, whom God commanded to sacrifice his Son: And that of the *Israelites* who received an express Order from him to carry off the *Egyptians* Gold and Silver Vessels, and utterly exterminate the seven Nations of *Canaanites*, after having seized on their Country, and all their Possessions. See what our Author says on this Subject, *Book I. Chap. I. § 10. Num. 6. Book II. Chap. XXI. § 14. and Book III. Chap. I. § 4. Num. 6.*

4.

This some Anabaptists maintain. Ziegler refers us to *Sixtus Senonensis's Bibliotheca Sanct. Book VIII. Haeres. I.*

5.

This is to be understood of the Letter, not of the Spirit of the Law, or the Intention of the Legislator. See what I have said in my Treatise *Of Play*, Book I. Chap. III. § 1, and my first Note on *Book I. Chap. I. § 17.* of this Work.

1

This is an Observation of Cassian in his *Divine Institutions*. Grotius. But the most judicious Part of the learned World have at present but little Value for the Rabbies, and are of Opinion that those Doctors are of very little Use for understanding the Old Testament. The most antient Rabbies, whose Writings are extant, are the Authors of the *Talmud*, who lived some Centuries after Jesus Christ. The *Hebrew* had then long been a dead Language; they had no Book in that Tongue but the Old Testament; they were very bad Criticks, and Men of little Judgment. They had no other antient Monuments of the History of their own Nation, than the Books of the Old Testament, and were unacquainted with Heathen Authors: Their Traditions must have undergone much Alteration and Corruption by Length of Time. To supply their Defect of Knowledge, and indulge their Inclination to Fables and Allegories, they have invented the most extravagant and chimerical Facts and Customs. So that they are on no Account comparable to Christian Interpreters, who, like Grotius, have studied the Languages methodically, and had recourse to all the Monuments of Antiquity. See Cunaeus, *De Repub. Hebr. Lib. II. Cap. XXIV.* Mr. Le Clerc's Thoughts on Father Simon's *Critical History*, p. 198, 199, and the Defence of that Book, *Letter VI*; the *Bibliotheque Universelle*, Vol. IV. p. 315, &c. Vol. VII. p. 247, &c. Vol. X. p. 117, 118. Vol. XXIV. p. 115, &c. *Bibliotheque Choisie*, Vol. VII. p. 83, 84. David le Clerc's *Quaestiones Sacrae*, p. 139, 285, &c. and John le Clerc's *Quaestiones Hieronymianae, Quaest. VI.* Ziegler here quotes a Passage of Isaac Casaubon's *Exercit. in Baron. XVI. Num. 15*; and another from Joseph Scaliger, *De Emendat. Temporum*, Lib. VII. But the Rabbies are least to be depended on in Matters of Morality and Law. Selden's Treatise *De Jure Nat. ac Gent. secundum Disciplinam Hebraeorum*, is a good Proof of what I advance, how advantageous an Opinion so ever that learned Gentleman may have entertained of the Jewish Doctors. See my *Preface* to Pufendorf, §7. Boecler

accuses Grotius of not reading the Books of the Rabbies with sufficient Care and Attention, and confining himself almost wholly to *Moses the Son of Maimon*. But others, perhaps, will think he allows them too much Weight, and lost too much of his Time in perusing them, though the Strength of his Judgment preserved him from the Contagion.

1

See my nineteenth Note on *Book I. Chap. II. § 9.*

1

These Canons can be of no great Use to our Author's Design. First, because we have very little remaining of the Councils of the two or three first Centuries, when, according to him, the Doctrine of the Church must have been in its greatest Purity; and several of those that have come to our Hands, are either supposititious, falsified, or corrupted in several Places. Secondly, because, generally speaking, the Decisions of Councils commonly run either on speculative Points, or on Ecclesiastical Discipline. Thirdly, because the Councils not only were subject to Error, but have very often actually erred, even in such Things as were very easy. Our Author gives us to understand as much, when he says, *Synodici Canones, quirectisunt*; i.e. *Those Synodical Canons which are just and reasonable*. So that, after all, Recourse must be had to the Scripture, which, when well interpreted, is the Touchstone for examining the Decisions of the Councils, in order to see whether they are just and reasonable. Lastly, it is well known that the Proceedings of most of the Councils were very irregular, and they were generally only so many Cabals of Men devoted to the Emperors, or some other prevailing Party; so that the least Concern on those Occasions was to furnish the Mind with necessary Knowledge, or bring an upright and Christian Heart to such Assemblies.

2.

It is a great Mistake to imagine the Generality of the primitive Christians Men of a Piety and Probity exactly conformable to the Rules of the Gospel. See Mr. Le Clerc's *Ecclesiastical History*, Saec. I. Anno LVII. § 6, &c. But how good soever they might have been, their Judgment and Conduct cannot be here admitted as a Rule, in Matters not otherwise clearly and expressly decided in Scripture. The Extent of their Knowledge, and the Justness of their Judgment were not always equal to the Warmth of their Zeal, and the Integrity of their Heart. Every one knows that several of them entertained too high a Notion of the Necessity of Martyrdom, and thus prepossessed run to it with some Rashness. The Generality of them seemed to think it unlawful to engage in a War, to go to Law, to bear publick Offices, to take an Oath, to carry on Trade, to marry a second Time, or receive Interest for Money; all which it is impossible to prove evil in themselves, either from Reason or Scripture. Thus too great a Veneration for the uninlightened Simplicity of those first Ages seems to have induced our Author to give into the Distinction of *Evangelical Councils*, and *Precepts*; as appears from *Book I. Chap. II. § 9.* where my Remarks on that Subject may be seen at Length.

3.

I have been pretty large in shewing, in my *Preface* on Pufendorf, § 9, and 10, that the Fathers of the Church, of whom our Author speaks in this Place, are but indifferent Masters, and even bad Guides in Law and Morality. I have not changed my Opinion since Father Cellier, a *Benedictin* Monk opposed me on that Head in a Book in 4 to, entitled, *An Apology for the Morality of the Fathers of the Church*, published at *Paris* in 1718. I could easily make it appear that I have been so far from dealing in false Accusations, that I have advanced nothing on the Subject in Question, but what may be demonstrated either by the Confession of my Antagonist himself, or the Weakness of the Reasons he offers in

Favour of these antient Doctors of the Church, whom he undertakes to justify at any Rate. Their Cause is not in very good Hands, since their Apologist, on one Side, does not understand the State of the Question; and on the other, distrusting the Force of his Proofs, calls in Invectives and abusive Language to his Assistance; not to mention an Infinity of trifling Things, nothing to the Purpose.

## 1

This Irnerius, or, as some call him, Wernerius, lived at the Beginning of the XIth Century; some make him a *Milanese*, others a *German*. The *Roman Law* had been for some Ages, if not absolutely unknown and out of Use in the West, at least but little known or followed. The Digest in particular seemed then quite buried in Oblivion. But the famous *Pandects of Florence* being found at *Amalphi*, in the Kingdom of *Naples*, when the Town was taken by the Emperor *Lotharius II*, in the War which he made, in Conjunction with Pope *Innocent II*, on *Roger King of Sicily*, the Inhabitants of *Pisa*, who had furnished the Emperor with some Ships, desired that Copy, as a Recompence of their Services, and obtained it. The Taste of Learning was then beginning to revive, and Professors in all Sciences had been lately settled at *Bologna*. Pepo, one of that Number, undertook to explain the *Roman Law*. But he did not succeed in that Post. Irnerius, who had been Professor of the Liberal Arts at *Ravenna*, took his Place. He was called *Lucerna Juris*, i.e. *The Light of the Law*, and introduced the *Roman Law* into the Schools, either of his own Head, or as the *Abbé D'Ursperg* says, at the Solicitation of *Matilda*, Countess of *Tuscany*. Soon after the *Roman Law* made its Way to the Bar, and *Lotharius* and his Successors gave it the Force of Law. Irnerius, who understood *Greek*, had studied the *Basilics*, and other *Greek Books* of the *Roman Law*, preserved in the East. He made short Scholia on the Body of the Civil Law, and thus gave Birth to the *Glosses*, which increased very much under his Successors. See *Delineatio Historiae Juris Romani & Germanici*, written by Mr. Thomasius, § 121, &c. published at *Leipsic*, in 1704, at the Head of Francis Hotman's *Antitribonianus*: and *Origines Juris Civilis*, by the late Mr. Gravina, Professor at *Rome*, Book I. § 143. p. 101. &c. the last Edition, printed in 1717.

## 2.

Francis Accursius, a Native of Florence, lived in the Close of the XIIth and the Beginning of the XIIIth Century. He made a Collection of all the Explications of the Lawyers before his Time, with considerable Additions of his own; so that though he was almost forty Years old, when he entered upon that Study, he has left us Glosses on the whole Civil Law, somewhat larger than the former, but still pretty short. The great Cujas places him above all the Expositors both *Greek* and *Latin*, with whom he was acquainted. See Gravina's Book quoted in the preceding Note, § 153. p. 108.

## 3.

He was born at *Sentinum*, a Town in *Umbria*, called at present *Sassoferrato*, and lived in the middle of the XIVth Century. He brought the Subtilties of Logick, and the barbarous Language of the Schools into the Law, so that he did not so much apply himself to the Explanation of the *Roman Law*, as to the Decision of an Infinity of Cases and Questions, of which the Laws take no Notice, but which he undertook to deduce from them, either by Consequences, and those often very remote, or without any Grounds. See Mr. Gravina's *Origines Juris Civilis*, § 164. p. 112, &c. where a Distinction is also made between the Disciples of Bartoli, as making a Class of Lawyers different from that of Accursius's Scholars.

## 4.

Andrew Alciati, a Lawyer of *Milan*, was the first who united these two Studies, which ought to be inseparable. He was Professor, first at *Bourges*, and afterwards at *Avignon*. Returning into his own

Country he taught publickly at *Bologna* and *Ferrara*; he then retired to *Pavia*, where he died in 1550, aged about 59. Francis Cujas went so far beyond him in this Point, that he is deservedly esteemed the chief Restorer of the *Roman Law*. That great Man was a Native of *Thoulouse*. He taught in the Universities of *Cahors* and *Bourges*, at *Valence* in *Dauphiny*, and *Turin*. Having appeared to great Advantage in all those Places, he returned to *Bourges*, where he died in 1590, about 70 Years of Age. We meet with the most considerable Particulars relating to the Life, Character, and Writings of those two celebrated Lawyers, and the chief of their Successors in Mr. Gravina's *Origines Juris Civilis*, Lib. I. § 170. p. 121, &c. to the End of the Book.

5.

See Note the third on Pufendorf, *Law of Nature and Nations*, Book II. Chap. III. § 23.

6.

See *Book III. Chap. IX.*

1

Diego Covarruvias was born at *Toledo*, and was the first Professor of Canon Law at *Salamanca*. He enjoyed several publick Employments, and died Bishop of *Segovia* in 1577. His Works have been printed several Times, in two Volumes in *Folio*.

2.

Fernando Vasquez, was Scholar to Covarruvias. His *Controversiae Illustres* is the chief Piece used in this Work. It is divided into six Books, and has born more than one Impression. Our Author has some Quotations from his Book *De Successionibus & ultimis voluntatibus*, which makes three Volumes in *Folio*.

3.

John Bodin, a Lawyer of *Anjou*, died in 1585. The Work here meant by our Author, is his famous Treatise of the *Commonwealth*, which is extant both in *Latin* and *French*; but the *Latin* Edition is the better and more compleat. That which I make use of is printed at *Francfort* in 1622.

4.

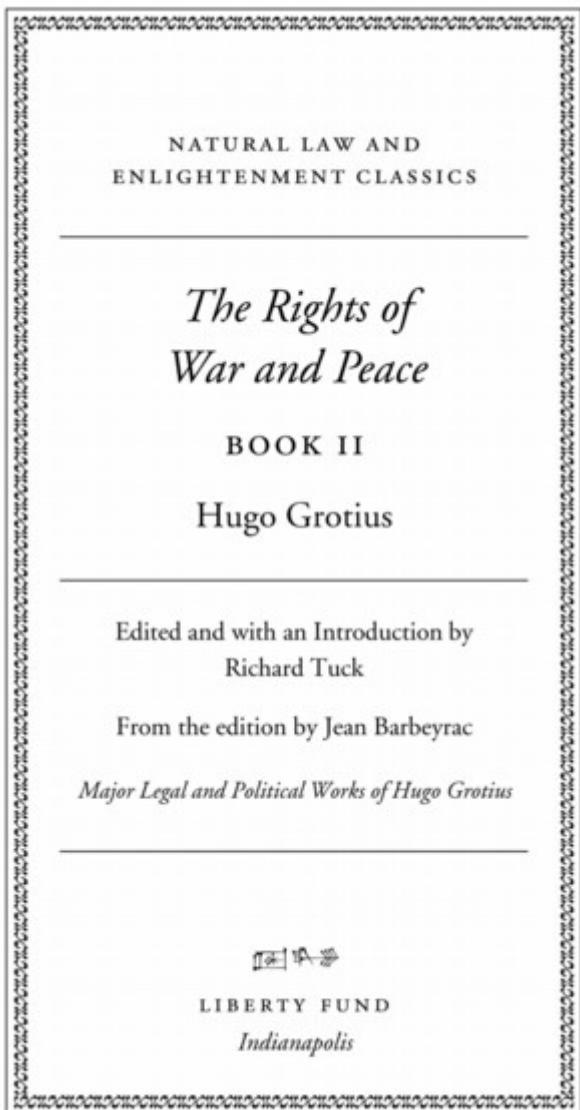
Francis Hotman, a Native of *Paris*, and descended from a *Silesian* Family, died at *Basil* in 1590, after having written a great Number of Books. His *Quaestiones Illustres*, the Treatise here meant, appeared in 1573.

1

Good Policy ought to authorize nothing against the invariable Rules of Justice; and that of the *Machiavellians*, which makes the Advantage of the State, or of those who rule it, the only Principle, is false and abominable. However, the *Just* and the *Useful* are really two different Things, even in Politicks; as will be easily comprehended by one single Example taken from the Matter of the Work before us. Before engaging in a War, it is above all Things necessary, that a just Cause should appear for so doing. But how good soever the Reasons for such a Step may be, if Circumstances do not allow of taking Arms, without acting to the Prejudice of the Publick Good, if there is Danger of losing as much as, or even more than will be gained, it would then be contrary to good Policy.



# Selected Chapters from *The Rights of War and Peace* (1625) ↵



## Source

Hugo Grotius, *The Rights of War and Peace*, edited and with an Introduction by Richard Tuck, from the Edition by Jean Barbeyrac (Indianapolis: Liberty Fund, 2005). 3 vols. <<http://oll.libertyfund.org/titles/1877>>.

## The Selected Chapters

### Book I

- CHAPTER I: What War is, and what Right is.
- CHAPTER II: Whether 'tis ever Lawful to make War.

### Book II

- CHAPTER I: Of the Causes of War; and first, of the Defence of Persons and Goods.
- CHAPTER XXII: Of the unjust Causes of War.
- CHAPTER XXIII: Of the dubious Causes of War.
- CHAPTER XXIV: Exhortations not to engage in a War rashly, tho' for just Reasons.

### Book III

- CHAPTER X: Advice concerning Things done in an unjust War.
- CHAPTER XI: Moderation concerning the Right of killing Men in a just War.
- CHAPTER XII: Concerning Moderation in regard to the spoiling the Country of our Enemies, and such other Things.
- CHAPTER XXV: The Conclusion, with Admonitions to preserve Faith and seek Peace.

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- THE PRELIMINARY DISCOURSE Concerning the Certainty of Right in general; and the Design of this Work in particular.
- Book I
  - CHAPTER I: What War is, and what Right is.
  - CHAPTER II: Whether 'tis ever Lawful to make War.
  - CHAPTER III: The Division of War into Publick and Private. An Explication of the supreme Power.
  - CHAPTER IV: Of a War made by Subjects against their Superiors.
  - CHAPTER V: Who may lawfully make War.

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### Book II

- CHAPTER I: Of the Causes of War; and first, of the Defence of Persons and Goods.
- CHAPTER II: Of Things which belong in common to all Men.
- CHAPTER III: Of the original Acquisition of Things; where also is treated of the Sea and Rivers.
- CHAPTER IV: Of a Thing presumed to be quitted, and of the Right of Possession that follows; and how such a Possession differs from Usucaption and Prescription.
- CHAPTER V: Of the Original Acquisition of a Right over Persons; where also is treated of the Right of Parents: Of Marriages: Of Societies: Of the Right over Subjects: Over Slaves.
- CHAPTER VI: Of an Acquisition (Possession or Purchase) derived from a Man's own Deed; where also of the Alienation of a Government, and of the Things and Revenues that belong to that Government.
- CHAPTER VII: Of an Acquisition derived to one by Virtue of some Law; where also of succeeding to the Effects and Estate of a Man who dies without a Will.
- CHAPTER VIII: Of Such Properties as are commonly called Acquisitions by the Right of Nations.
- CHAPTER IX: When Jurisdiction and Property Cease.
- CHAPTER X: Of the Obligation that arises from Property.
- CHAPTER XI: Of Promises.

- CHAPTER XII: Of Contracts.
- CHAPTER XIII: Of an Oath.
- CHAPTER XIV: Of the Promises, Contracts, and Oaths of those who have the Sovereign Power.
- CHAPTER XV: Of publick Treaties, as well those that are made by the Sovereign himself, as those that are concluded without his Order.
- CHAPTER XVI: Of Interpretation, or the Way of explaining the Sense of a Promise or Convention.
- CHAPTER XVII: Of the Damage done by an Injury, and of the Obligation thence arising.
- CHAPTER XVIII: Of the Rights of Embassies.
- CHAPTER XIX: Of the Right of Burial.
- CHAPTER XX: Of Punishments.
- CHAPTER XXI: Of the Communication of Punishments.
- CHAPTER XXII: Of the unjust Causes of War.
- CHAPTER XXIII: Of the dubious Causes of War.
- CHAPTER XXIV: Exhortations not to engage in a War rashly, tho' for just Reasons.
- CHAPTER XXV: Of the Causes for which War is to be undertaken on the Account of others.
- CHAPTER XXVI: Of the Reasons that justify those who under another's Command engage in War.

Vol. 3. <<http://oll.libertyfund.org/titles/1427>>

### Book III

- CHAPTER I: Certain General Rules, shewing what, by the Law of Nature, is allowable in War; where also the Author treats of Deceit and Lying.
- CHAPTER II: How Subjects Goods, by the Law of Nations, are obliged for their Prince's Debts: And of Reprisals.
- CHAPTER III: Of a just or solemn War, according to the Right of Nations, and of its Denunciation.
- CHAPTER IV: The Right of killing Enemies in a solemn War; and of other Hostilities committed against the Person of the Enemy.
- CHAPTER V: Of Spoil and Rapine in War.
- CHAPTER VI: Of the Right to the Things taken in War.
- CHAPTER VII: Of the Right over Prisoners.
- CHAPTER VIII: Of Empire over the Conquered.
- CHAPTER IX: Of the Right of Postliminy.
- CHAPTER X: Advice concerning Things done in an unjust War.
- CHAPTER XI: Moderation concerning the Right of killing Men in a just War.
- CHAPTER XII: Concerning Moderation in regard to the spoiling the Country of our Enemies, and such other Things.
- CHAPTER XIII: Moderation about Things taken in War.
- CHAPTER XIV: Of Moderation concerning Captives.
- CHAPTER XV: Moderation in obtaining Empire.
- CHAPTER XVI: Moderation concerning those Things which, by the Law of Nations, have not the Benefit of Postliminy.
- CHAPTER XVII: Of Neuters in War.
- CHAPTER XVIII: Concerning Things privately done in a publick War.
- CHAPTER XIX: Concerning Faith between Enemies.
- CHAPTER XX: Concerning the publick Faith whereby War is finished; of Treaties of Peace, Lots, set Combats, Arbitrations, Surrenders, Hostages, and Pledges.

- CHAPTER XXI: Of Faith during War, of Truces, of Safe-Conduct, and the Redemption of Prisoners.
- CHAPTER XXII: Concerning the Faith of inferior Powers in War.
- CHAPTER XXIII: Of Faith given by private Men in War.
- CHAPTER XXIV: Of Faith tacitly given.
- CHAPTER XXV: The Conclusion, with Admonitions to preserve Faith and seek Peace.
- PASSAGES OF SCRIPTURE, Illustrated, examined, or corrected in this Treatise.
- INDEX I: Of the AUTHORS whose Works are explained, censured, defended, or remarked upon, either in the Text or in the Notes.

# **BOOK I: CHAPTER I: What War is, and what Right is.** ↵

**[I.The Order of the Treatise.]** I. All<sup>1</sup> the Differences of those who do not acknowledge one common Civil Right, whereby they may and ought to be decided; such as are a multitude of People<sup>2</sup> that form no Community, or those that are Members of different Nations, whether<sup>3</sup> private Persons, or Kings, or other Powers invested with an Authority equal to that of Kings, as the Nobles of a State, or the Body of the People, in Republican Governments: All such Differences, I say, relate either to the Affairs of War, or Peace. But because War is undertaken for the Sake of Peace, and there is no Controversy [134] from whence War may not arise, all such Quarrels, as commonly happen, will properly be treated under the Head of the Right of War; and then War itself will lead us to Peace, as to its End and Purpose.

**[II.The Definition of War, and the Original of the Word (bellum).]** II. 1. Being then to treat of the Right of War, we must consider what that *War* is which we are to treat of, and what the *Right* is which we search for. Cicero<sup>4</sup> defines War *a Dispute by force*. But Custom has so prevailed, that<sup>5</sup> not the [2] Act of Hostility, but the State and Situation of the contending Parties, now goes by that Name; so that War is the State or Situation of those (considered<sup>6</sup> in that Respect) who dispute by Force of Arms. Which general Acceptation of the Word comprehends [135] all the kinds of War of which we shall hereafter treat, not even excluding single Combats, which being really ancienter than Publick Wars, and undoubtedly of the same Nature, may therefore well have one and the same Name. This agrees very well with the Etymology of the Word; for the Latin Word *Bellum (War)* comes from the old Word *Duellum (a Duel)* as *Bonus* from *Duonus*, and *Bis* from *Duis*. Now *Duellum* was derived from *Duo*, and thereby implied a Difference between *two* Persons, in the same Sense as we term Peace *Unity* (from *Unitas*) for a contrary Reason. So the<sup>7</sup> Greek Word Πόλεμος, commonly used to signify *War*, expresses in its Original an Idea of Multitude. The ancient Greeks likewise called it Λύη, which imports a *Disunion* of Minds; just as by the Term Δύη, they meant the *Dissolution* of the Parts of the Body.

2. Neither<sup>8</sup> does the Use of the Word (*War*) contradict this larger Acceptation. For tho' sometimes we only apply it to signify a Publick [136] Quarrel, this is no Objection at all, since 'tis certain, that the more eminent<sup>9</sup> Species does often peculiarly assume the Name of its Genus. We do not include *Justice* in the Definition of War, because it is the Design of this Treatise to examine, whether any War be just, and what War may be so called. But we must distinguish that which is in Question, from that concerning which the Question is proposed.

**[III.Right, as it is attributed to Action, described, and divided into that of Governors and governed, and that of Equals.]** III. 1. Since we intitle this Treatise *Of the Rights of War*, we design first to enquire (as I said before) whether any War be just; and then what is just in that War? For *Right* in this Place signifies meerly *that which is just*, and that too rather in a negative than a positive Sense. So that the *Right of War* is properly *that which may be done without Injustice* with Regard to an *Enemy*. Now that is unjust which is repugnant to the Nature of a Society of reasonable Creatures. So Cicero says, it is unnatural to take from another to enrich one's self; which he proves thus, because<sup>10</sup> if every one were to do so, all Human Society and Intercourse must necessarily be dis- [3] solved. Florentinus<sup>11</sup> declares, that it is a villainous Act for one Man to lay an Ambush for another, because Nature has founded a kind of Relation between us. And Seneca<sup>12</sup> observes, As all the Members of the Human Body agree among themselves, because on the Preservation of each depends the Welfare of the Whole, so should Men favour one another, since they are born for Society, which<sup>13</sup> cannot subsist but by a mutual Love and Defence of the Parts.

2. But as in Societies, some are equal, as those of *Brothers, Citizens, Friends and Allies*. And others

unequal, καθ' ὑπεροχὴν,<sup>14</sup> by Preeminence [137] as Aristotle terms it; as that of *Parents and Children, Masters and Servants, King and Subject*,<sup>15</sup> God and Man: So that which is just takes Place either among Equals, or amongst People where of some are Governors and others governed, considered<sup>16</sup> as such. The latter, in my Opinion, may be called the <sup>a</sup>*Right of Superiority*, and the former the <sup>b</sup>*Right of Equality*.

[138]

**[IV. Right taken for Quality divided into Faculty, and Aptitude or Fitness.]** IV. There is another Signification of the Word *Right* different from this, but yet arising from it, which relates directly to the *Person*: In which Sense *Right* is<sup>17</sup> a *moral Quality* annexed to the Person, *enabling him to have, or do, something justly*. I say, *annexed to the Person*, tho' this Quality sometimes follows the things, as<sup>18</sup> *Services of Lands*, which are called *real Rights*, *in Opposition to Rights*,<sup>19</sup> *merely personal*, not because the first are not annexed to the Person, as well as the last, but because they are annexed only to him<sup>20</sup> who possesses such or such a Thing. This moral Quality when<sup>21</sup> perfect, is called by us a *Faculty*; when imperfect, *an Aptitude*: The former answers to the *Act*, and the latter to the *Power*, when we speak of natural Things.

**[V. Faculty strictly taken divided into Power, Property, and Credit.]** V. Civilians call a *Faculty* that Right which a Man has to his<sup>22</sup> own; but we shall hereafter call it a *Right properly, and strictly taken*. Under which are contain- [4] ed, 1. A Power either over our selves, which is term'd<sup>23</sup> *Liberty*; or over others, such as that of a *Father over his Children*, or a [139] *Lord over his Slave*. 2.<sup>24</sup> *Property*, which is either *compleat*,<sup>25</sup> or *imperfect*. The last obtains in the Case<sup>26</sup> of *Farms*, for Instance, or *Pledges*. 3. The *Faculty of demanding what is due*, and to this<sup>27</sup> *answers the Obligation of rendering what is owing*.

[140]

**[VI. Another Division of Faculty into private and eminent.]** VI. *Right strictly taken* is again of two Sorts, either *private* and *inferior*,<sup>28</sup> which tends to the particular Advantage of each Individual: Or *eminent* and *superior*, such as a Community has over the Persons and Estates of all its Members for the common Benefit, and therefore it<sup>29</sup> excells the former. Thus a regal Power is above<sup>30</sup> that of a *Father and Master*; a King has a<sup>31</sup> greater Right in the Goods of his Subjects for the publick [141] Advantage, than the Proprietors themselves. And when [5] the Exigencies of the State require a Supply, every Man is more obliged to contribute towards it, than<sup>32</sup> to satisfy his Creditors.

**[VII. What Aptitude is.]** VII. Aristotle calls *Aptitude* or *Capacity*,<sup>1</sup> ἀξίαν<sup>2</sup> *Worth*, or *Merit*: And *Michael of Ephesus* terms that which is called *Equal* or *Right*, according to that Merit, τὸ προσάρμοσον καὶ τὸ πρέπον, *Fit and Decent*.

[142]

**[VIII. Of Expletive and Attributive Justice not properly distinguished by Geometrical and Arithmetical Proportions, nor is this conversant about Things common nor that about Things private.]** VIII. 1. 'Tis expletive Justice, Justice properly and strictly taken, which respects the *Faculty*, or *perfect Right*, and is called by Aristotle συναλλακτικὴ, *Justice of Contracts*, but this does not give us an adequate Idea of that Sort of Justice. For, if I have a Right to demand Restitution of my Goods, which are in the Possession of another, it is not by virtue of any *Contract*,<sup>1</sup> and yet it is the Justice in question that gives me such a [143] Right. Wherefore he also calls it more properly ἐπανορθωτικὴ, θωτικὴν,<sup>2</sup> *corrective Justice*. *Attributive Justice*, stiled by Aristotle διανεμητικὴ<sup>3</sup> *Distributive*, respects Aptitude or *imperfect Right*, the attendant of those Virtues<sup>4</sup> that are beneficial to others, as

Liberality, Mercy, and prudent Administration of<sup>5</sup> Government. But whereas the same Philosopher [144] says, that *Expletive Justice* follows<sup>6</sup> a simple Proportion, which he calls ἀριθμητικὴν *Arithmetical Justice*; but *Attributive*, which he terms γεωμετρικὴν<sup>7</sup> *Geometrical*, is regulated by a comparative Proportion, and which is the only Proportion<sup>8</sup> allowed by the Mathematicians, this may hold in some Cases, but not in all. Neither does *Expletive Justice* of itself differ from *Attributive* in such use of Proportions, but in the Matter, about which it is conversant, as we have said already. And therefore in a [145] Contract of Society,<sup>9</sup> the Shares are made by a Comparative Proportion, and if only one [7] <sup>10</sup> Person be found worthy of a Publick Office, a simple Proportion is all that is necessary in disposing of it.

[146]

2. Neither is that more true which some maintain, that *Attributive Justice* is exercised about Things belonging to the whole Community; and *Expletive* about Things belonging to private Persons. For on the contrary, if a Man would bequeath his Estate by Will, he does it commonly by *Attributive Justice*; and when the State repays out of the<sup>11</sup> publick Funds what some of the Citizens had advanced for the Service of the Publick, it only performs an Act of *Expletive Justice*. This Distinction Cyrus learnt of his Tutor: For when Cyrus had adjudged the lesser Coat to the lesser Boy, tho' it belonged to another Boy of a bigger size; and so on the other side gave his Coat, being the bigger, to that bigger Boy. His Tutor told him, ὅτι ὅπότε μὲν κατασταθείν τοῦ ἀρμόττοντος [147] κοιτήσ, &c. That<sup>12</sup> had he been appointed Judge of what fitted each of them best, he ought to have done as he did: But since he was to determine whose Coat it was, his Business was to have considered<sup>13</sup> which had a just Title to it, whether he who took it away by Force, or he who made it, or bought it. [8]

**[IX.Right taken for a Rule or Law defined and divided into Natural and Voluntary.]** IX. There is also a third Sense of the Word *Right*, according to which it signifies the same Thing<sup>1</sup> as *Law*, when taken in its largest Extent, as [148] being a *Rule of<sup>2</sup> Moral Actions, obliging<sup>3</sup> us to that which is good and commendable*. I say, *obliging*: for<sup>4</sup> Counsels, and such other Precepts, which, however honest and reasonable they be, lay us under no Obligation, come not under this Notion of *Law*, or *Right*. As to *Permission*, it is not<sup>5</sup> properly speaking an Action of the Law, but a meer Inaction, [9] [149] unless as it obliges every other Person not to hinder the doing of that, which the Law permits any one to do. I add moreover, that the Law obliges us to that which is good and commendable, not barely to that which is *just*: Because Right in this Sense does not belong to the Matter of Justice alone (such as I have before explained it) but also to that<sup>6</sup> of other [150] Virtues; tho' otherwise, whatever is conformable to this Right, may also, in a larger Acceptation, be termed<sup>7</sup> *Just*. Of this Right, thus taken, the best Division is that of<sup>8</sup> Aristotle, into *Natural* and *Voluntary*, which he commonly calls *Lawful Right*; the Word *Law* being taken in<sup>9</sup> its stricter Sense: Sometimes also<sup>10</sup> an *Instituted Right*. We find the same Difference among the *Hebrews*, who when they speak distinctly, call the Natural Right <sup>11</sup>תִּצְדָּקָה Precepts, and the Voluntary Right תִּזְבַּח Statutes; the former of which the *Septuagint* call δικαιώματα, and the latter ἐντολὰς.

**[X.The Law of Nature defined, divided, and distinguished from such as are not properly called so.]**  
X. 1. Natural Right is the Rule and Dictate of<sup>1</sup> Right Reason, shewing the Moral Deformity or Moral Necessity there is in any Act, according to its [151] Suitableness or Unsuitableness to a reasonable Nature,<sup>2</sup> and consequently, that such an Act is either forbid or commanded by GOD, the Author of Nature.

2. The Actions upon which such a Dictate is given, are in themselves either<sup>3</sup> Obligatory or Unlawful, and must, consequently, be understood [152] to be either com- [10] manded or forbid by God himself; and this makes the Law of Nature differ not only from Human Right, but from a Voluntary Divine

Right; for that does not command or forbid such Things [153] as are in themselves, or in their own Nature, Obligatory and Unlawful; but by forbidding, it renders the one Unlawful, and by commanding, the other Obligatory.

3. But that we may the better understand this Law of Nature, we must observe, that some Things are said to belong to it, not properly, but (as the Schoolmen love to speak) by way of Reduction or Accommodation, that is, to which the Law of [11] Nature is not<sup>4</sup> repugnant; as some Things, we have now said, are called Just, because they have no Injustice [154] in them; and sometimes by the wrong Use of the Word,<sup>5</sup> those Things which our Reason declares to be honest, or comparatively good, tho' they are not enjoined us, are said to belong to this Natural Law.

4. We must further observe, that this Natural Law does not only respect such Things as depend not upon Human Will, but also many<sup>6</sup> Things which are consequent to some Act of that Will. Thus, *Property* for Instance, as now in use, was introduced by Man's Will, and being once admitted, this Law of Nature informs us, that it is a wicked Thing to take away from any Man, against his Will, what is properly his own. Wherefore<sup>7</sup> *Paulus* the Civilian infers, that<sup>8</sup> *Theft is forbid by the Law of Nature: Ulpian*, that it is<sup>9</sup> *Dishonest by Nature: And*<sup>10</sup> *Euripides* calls it *Hateful to GOD*, as you may see in these Verses of *Helena*,

[155]

- Μισεῖ γὰρ ὁ θεὸς, &c.

5. As for the Rest, the Law of Nature is so unalterable, that<sup>11</sup> God himself cannot change it. For tho' the Power of God be infinite, yet we may say, that there are some<sup>12</sup> Things to which this infinite Power does not extend, because they cannot be expressed by Propositions that contain any Sense, but manifestly imply a Contradiction. For Instance then, as God himself cannot effect, that twice two should not be four; so neither can he, that what is intrinsically Evil<sup>13</sup> should [12] not be Evil. And this is Aristotle's Meaning, when he says, ἐνταῦθα ὅνομασται, &c. <sup>14</sup> *Some Things are no sooner mentioned than we discover Depravity in [156] them.* For as the Being and Essence of Things after they exist, depend not upon any other, so neither do the Properties which necessarily follow that Being and Essence. Now such is the Evil of some Actions, compared with a Nature guided by right Reason. Therefore God suffers himself to be judged of according to this Rule, as we may find, *Gen. xviii. 25. Isa. v. 3. Ezek. xviii. 25. Jer. ii. 9. Mich. vi. 2. Rom. ii. 6. iii. 6.*

6. Yet it sometimes happens, that in those Acts, concerning which the Law of Nature has determined something, some Sort of Change may deceive the Unthinking; tho' indeed the Law of Nature, which always remains the same, is not changed; but the Things concerning which the Law of Nature determines, and which may undergo a Change. As for Example: If my Creditor forgive me my Debt, I am not then obliged to pay it; not that the Law of Nature ceases to command me to pay what I owe, but because what I did owe ceases to be a Debt. For as Arrian rightly argues in *Epictetus*, Όντις ἀρχεῖ τὸ δανείσαθαι πρὸς τὸ ὄφείλειν, ἀλλὰ δεῖ προσεῖναι καὶ τὸ ἐπιμένειν ἐπὶ τοῦ δανείου καὶ μὴ διαλελύσθαι αὐτὸν. *Non sufficit, &c.*<sup>15</sup> *To make a just Debt, it is not enough that the Money was lent, but it is also requisite, that the Obligation continue undischarged.* So when God commands<sup>16</sup> any Man to be put to Death, or his Goods to be taken away, Murder and Theft do not thereby become lawful, which very Words always include a Crime; but that cannot be Murder or Theft, which is done by the express Command of him who is the Sovereign Lord of our Lives and Estates.

7. There are also some Things allowed by the Law of Nature, not absolutely, but according to a certain State of Affairs. Thus, before Property was introduced,<sup>17</sup> every Man had naturally a full Power to use what [157] ever came in his Way. And before Civil Laws were made, every one was at Liberty<sup>18</sup> to

right himself by Force.

[XI.*That Natural Instinct does not make another distinct Law.*] XI. 1. But that Distinction, which we find in the Books of the *Roman Laws*, of immutable Right into such as is<sup>1</sup> common to Men with Beasts, which they call in a strict Sense the *Law of Nature*; and that which is peculiar to Men, which they often style the *Law of Nations*, is of very little or no use; for nothing is properly susceptible of Right and Obligation, but a Being that is capable of forming<sup>2</sup> general Maxims, as *Hesiod* has well observed,

- Τόν δε γάρ ἀνθρώποισι νόμον, &c.

[13] <sup>3</sup> Jupiter has ordained that Fishes, wild Beasts, and Birds should devour each other, because Justice doth not take place amongst them: But to<sup>4</sup> Men he has prescribed the Law of Justice, which is the most excellent Thing in the World.

[158]

Cicero in his first Book of Offices<sup>5</sup> remarks, that we do not say *Horses and Lions have any Justice*. And Plutarch, in the Life of *Cato the Elder*, νόμῳ μὲν γὰρ, &c. We by Nature observe Law and Justice, only towards Men. And Lactantius, in his fifth Book,<sup>6</sup> We find that all Animals, destitute of Wisdom, follow the natural Biass of Self-Love. They injure others to procure themselves some Advantage; for they know not what it is to hurt with a View of hurting, and with a Sense of the Evil that is in it. But Man, having the Knowledge of Good and Evil, abstains from hurting others, tho' to his own Detriment.<sup>7</sup> Polybius having related in what Manner Men first engaged in Society, adds, when they saw any one offending his Parents or Benefactors, they could not but resent it, giving this Reason for it, Τοῦ γὰρ γένους τῶν ἀνθρώπων ταυτὴ διαφέροντος, &c. For since human Kind does in this differ from other Animals, that they alone enjoy Reason and Understanding, 'tis very unlikely that they should (as other Animals) pass by an Action so repugnant to their Nature, without reflecting on, and testifying their Displeasure at it.

2. If at any Time<sup>8</sup> Justice be attributed to brute Beasts, it is improperly, and only on the Account of some Shadow or Resemblance of Reason<sup>9</sup> [159] in them. But it is not material to the Nature of Right, whether the Act itself, on which the Law of Nature has decreed, be common to us with other Animals, as the bringing up of our Offspring, &c. or peculiar to us only, as the Worship of God.

[XII.*How the Law of Nature may be proved.*] XII. Now that any Thing is or is not by the Law of Nature, is generally proved either *à priori*, that is, by Arguments drawn from the very Nature of the Thing; or *à posteriori*, that is, by Reasons taken from something external. The former Way of Reasoning is more subtle and abstracted; the latter more popular. The Proof by the former is by shewing the necessary Fitness or Unfitness of any Thing, with a reasonable and sociable Nature. But the Proof by the latter is, when we cannot with absolute Certainty,<sup>1</sup> yet with very great Probability, con- [14] clude that to be by the Law of Nature, which is generally believed to be so by all, or at least, the most civilized, Nations. For, an universal Effect requires an universal Cause. And there cannot well be any other Cause assigned for this general Opinion, than what is called Common Sense.

There's a Passage in *Hesiod* to this Purpose, very much commended.

- Φήμῃ δ' οὔτις, &c.

<sup>2</sup> That which is generally reported amongst many Nations is not intirely vain.

Tà χοινή φαινόμενα πιστὰ.<sup>3</sup> That is certain, which universally appears to be so.<sup>4</sup> said Heraclitus, determining λόγον τὸν ἔννον.<sup>5</sup> Common Reason to be the surest Mark of Truth. And Aristotle,<sup>6</sup> κράτιστον πάντας, &c. 'Tis the strongest Proof, if all the World agree to what we say. Cicero,<sup>7</sup> The [161] Consent of all Nations is to be reputed the Law of Nature. So Seneca.<sup>8</sup> What all Men believe must be true. Likewise Quintilian, We allow<sup>9</sup> that to be certainly true which all Men agree in. I with some Reason said, By the most civilized Nations; for as<sup>10</sup> Porphyry well observes, τίνα τῶν ἐθνῶν, &c. Some People are savage and brutish,<sup>11</sup> whose Manners cannot, with Truth and Justice, be reckoned a Reproach to human Nature in general. And Andronicus Rhodius, παρ' ἀνθρώποις, &c. That Law<sup>12</sup> which is called the Law of Nature, is unchangeable, in the Opinion of all Men who are of a right and sound [15] Mind: But if it does not appear so to Men of weak and disturbed Judgments, it argues nothing to the Purpose; for we all allow Honey to be sweet, tho' it may taste otherwise to a sick Person. To which agrees that of Plutarch, in the Life of Pompey, Φύσει μὲν, &c.<sup>13</sup> No Man either was or is by Nature a wild and unsociable Creature, but some have grown so by addicting themselves to Vice, contrary to the Rules of Nature; and yet these, by contracting new Habits, and by changing their Method of living, and Place of abode, have returned to their natural Gentleness. Aristotle gives this Description of Man, as peculiar to him, ἄνθρωπος ζῶν ἥμερον φύσει,<sup>14</sup> Man is by<sup>15</sup> Nature a mild Creature. And [162] elsewhere, δεῖ δὲ σκοπεῖν, &c.<sup>16</sup> To judge of what is natural, we must consider those Subjects that are rightly disposed, according to their Nature, and not those that are corrupted.

**[XIII. Voluntary Right divided into Human and Divine.]** XIII. The other kind of Right, we told you, is the<sup>1</sup> Voluntary Right, as being derived from the Will, and is either *Human* or *Divine*.

**[XIV. Human Right divided into a Civil Right, a less extensive, and a more extensive Right than the Civil: This explained and proved.]** XIV. We will begin with the Human, as more generally known; and this is either a *Civil*, a *less extensive*, or a *more extensive Right than the Civil*. The *Civil Right* is that which results from the Civil Power. The Civil Power is that which governs the *State*. The State is a<sup>1</sup> compleat Body of free Persons, associated together to enjoy peaceably their Rights, and for their common Benefit. The *less extensive Right*, and which is not<sup>2</sup> derived from the Civil Power, though subject to it, is various, including in it the Commands of a Father to his Child, of a Master to his Servant, and the like. But the *more extensive Right*, is the *Right of Nations*, which [163] derives its Authority from<sup>3</sup> the Will of all, or at least of<sup>4</sup> many, Nations. I say of many, because there is scarce any Right found, except that of Nature, which is also called the Right of Nations, common to all Nations. Nay, that which is reputed the Right or Law of Nations in one Part of the World, is not so in another, as we shall shew<sup>5</sup> hereafter, when we come to treat of *Prisoners of War*, and *Postliminy* or the *Right of Returning*. Now the Proofs on which the Law of Nations is founded, [16] are the same with those of the unwritten Civil Law, viz. continual Use, and the Testimony of Men skilled in the Laws. For this Law is, as *Dio Chrysostom* well observes,<sup>6</sup> εὑρημα βίου καὶ χρόνου, the *Work of Time and Custom*. And to this purpose eminent Historians are of excellent Use to us.

**[XV. The Divine Law divided into that which is universal, and that which is peculiar to one Nation.]** XV. The *Divine voluntary Law* (as may be understood from the very Name) is that which is derived only from the<sup>1</sup> Will of GOD himself; whereby it is distinguished from the Natural Law, which in some Sense, as we have said above, may be called Divine also. And here may take Place that which Anaxarchus said, as Plutarch relates in the Life of *Alexander*, (but too generally) that<sup>2</sup> GOD does not will a Thing because it is just; but it is just, that is, it lays one under an indispensable Obligation,

because GOD *wills* it. And this Law was given either to all Mankind, or to one People only: We find that GOD gave it to all Mankind at three different Times. First, Immediately after<sup>3</sup> the Creation of Man. [165] [17] Secondly, Upon the Restoration of Mankind<sup>4</sup> after the Flood. And thirdly, Under the Gospel, in that more perfect reestablishment [166] by<sup>5</sup> CHRIST. These three Laws do certainly oblige all Mankind, as soon as they are sufficiently made known to them.

[XVI.*That the Law given to the Hebrews did not oblige Strangers.*] XVI. Of all the Nations of the Earth, there was but one, to whom GOD peculiarly vouchsafed to give Laws, which was that of the Jews, to whom Moses thus speaks, *Deut. iv. 7. What Nation is there so great who hath GOD so nigh unto them, as the LORD our GOD is in all Things that we call upon him for? And what Nation is there so great, who have Statutes and Judgments so righteous, as all this Law, which I set before you this Day.* And the Psalmist, cxlvii. 19, 20. *He shewed his Word unto Jacob, his Statutes and Ordinances unto Israel. He hath not dealt so with any Nation, and as for his Judgments they have not known them.* Neither is it to be doubted, but that those Jews (among whom Tryphon also in his Disputes with Justin) do egregiously err, who think that Strangers too, if they would be saved,<sup>1</sup> must submit to the Yoke of the Mosaick Law: For a Law [167] obliges only those, to whom it is given. And<sup>2</sup> to whom that Law is given, itself [18] declares, *Hear O Israel;* and we read every where that the *Covenant was made with them*, and that *they were chosen to be the peculiar People of GOD*, which Maimonides owns to be true, and proves it from *Deut. xxxiii. 4.*

[168]

But among the *Hebrews* themselves the real ways lived some Strangers, ἐνσεβεῖς καὶ σεβόμενοι τὸν θεὸν, <sup>3</sup> *Pious Persons, and such as feared GOD,* as the *Syrophenician Woman, Matt. xv. 22.* And *Cornelius, Acts x. 2.* one τῶν σεβομένων Ἐλλήνων *of the devout Greeks, Acts xvii. 4.* in the *Hebrew, חמיין אומות the Righteous amongst the Gentiles;* as it is read in the *Talmud, Title of the King:*<sup>4</sup> and he who is such a one is called in the Law כְּרָבָג a *Stranger*<sup>5</sup> simply, *Lev. xxii. 25.* or, <sup>6</sup>נַד וְחוֹשֵׁךְ a *Stranger, and a [169] Sojourner, Lev. xxv. 47.* Where the *Chaldee Paraphrast* calls him, *an Uncircumcised Inhabitant.* These, as the *Hebrew Rabbins* say, were obliged to keep the Precepts given to *Adam* and *Noah*, to abstain from Idols and Blood, and from other Things, which shall be mentioned hereafter in their proper Place; but not the Laws peculiar to the *Israelites.* And therefore, tho' it was not lawful for the *Israelites* to eat of any Beast that died of itself, yet it was allowed<sup>7</sup> to the Strangers that dwelt among them, *Deut. xiv. 21.* There are only [19] <sup>8</sup>some Laws, where it is expressly declared, that they were given for the Strangers as well as for the Natives. It was also allowed to Strangers who came from Abroad, and<sup>9</sup> never [170] submitted to the *Levitical Law*, to worship GOD in the Temple at *Jerusalem*, and to offer Sacrifices; but yet<sup>10</sup> they were obliged to stand in a particular Place, separate from that of the *Israelites, 1 Kings viii. 41. 2 Macc. iii. 35. John xii. 20. Acts viii. 27.* Nor do we find that<sup>11</sup> *Elisha [171] signified to Naaman the Syrian, nor Jonah to the Ninevites, nor Daniel to Nebuchadnezzar, nor the other Prophets to the Tyrians, Moabites, and Egyptians, to whom they wrote, that there was any Necessity for them to receive the Law of Moses.*

What I have here said of the whole Law of *Moses*, I would be understood to mean of Circumcision too, which was, as it were, the Introduction to the Law. There is only this Difference, that the Law of *Moses* obliged only the *Israelites*; but that of Circumcision obliged all the Posterity of *Abraham.* Whence we read in the *Jewish and Greek Histories*, that the<sup>12</sup> *Idumeans* (the *Edomites*) were compelled by the *Jews* to be circumcised: Wherefore those People who, besides the *Jews*, were circumcised, (as there were many, according to<sup>13</sup> *Herodotus*,<sup>14</sup> *Strabo*,<sup>15</sup> *Phi-* [20] *lo*,<sup>16</sup> *Justin*,<sup>17</sup> *Origen*,<sup>18</sup> *Clemens Alexandrinus*,<sup>19</sup> [172] *Epiphanius*,<sup>20</sup> *St. Jerom*, and<sup>21</sup> *Theodore*) were probably descended from *Ismael, Esau*, or<sup>22</sup> the Posterity of *Keturah.*

But of all other Nations that of St. *Paul* holds true, *Rom.* ii. 14, 15. Since the *Gentiles*, who have not the Law, do by Nature (that is by<sup>23</sup> following [173] in their Manners, the Rules which flow from the primitive Source, or from Nature, unless you had rather refer the Word *Nature* to what goes before, and so<sup>24</sup> oppose the Knowledge which the *Gentiles* acquired of themselves, and without Instruction, to that which the *Jews* had by means of the Law, which they were taught almost from the Cradle) *the Things contained in the Law; these having not the Law are a Law unto themselves, as shewing the Work of the Law written in their Hearts, their Consciences also bearing Witness, and their Thoughts the mean while accusing or [21] else excusing one another.* And again, in the 26th Verse, *If the Uncircumcision keep the Righteousness of the Law, shall not his Uncircumcision be counted for Circumcision?* And therefore, *Ananias the Jew*, in the History of *Josephus*, did very well instruct *Izates Adiabenus*, (<sup>25</sup> Tacitus [174] calls him *Ezates*) that GOD might be rightly worshipped, and<sup>26</sup> well pleased with us, tho' we were not circumcised. Now the Reason why so many Strangers were circumcised (*among the Jews*) and by that Circumcision obliged to keep the Law, (as St. *Paul* expounds it, *Gal.* v. 3.) was partly that they might be naturalized; for Proselytes (called by the *Hebrews* גָּרִי צְדָקָה *Proselytes of Righteousness*)<sup>27</sup> enjoyed the same Rights and Privileges with the *Israelites*, (*Numb.* xv.); and partly, that<sup>28</sup> they might be Partakers of those Promises which were not common to Mankind, but peculiar to the *Hebrews* only. Tho' I cannot deny, but that in latter Ages some entertained an erroneous Opinion, that there could be<sup>29</sup> no Salvation without the Pale of the Jewish Church. Hence we may conclude, that we (*who are not Jews*) are obliged to no Part of the *Levitical Law*, as a Law<sup>30</sup> properly so called, because all Obligation beyond that, arising from the Law of Nature, is derived from the Will of the Law-giver; but it cannot be made appear, that it was the Will of GOD, that any other People, beside the *Israelites*, should be bound by that Law; and therefore, as to us, it is by no Means necessary to prove the abrogating of that Law; for it cannot be said to be abrogated in respect to them whom it never bound. But the Obligation of it was abolished to the *Israelites*, as to the ceremonial Part, as soon as ever the Evangelical Law began to be published, which was manifestly revealed to St. *Peter*, *Acts* x. 15.; but as to the Rest, after that People ceased to be a People, by the Destruction of their City, and the utter Desolation of it, without any Hopes of Restoration. The Advantage which we who are Strangers have obtained by the Coming of CHRIST, does not then consist in being [175] freed from the Law of *Moses*; but, whereas before, we had only very weak Hopes in the Goodness of GOD, we are now, by an express Covenant, assured thereof; and we, together with the *Jews*, (the Children of the Patriarchs) are made one Church; their Law, which as a *Partition Wall* divided us, being quite taken away, *Eph.* ii. 14.

[XVII.] **What Arguments Christians may fetch from the Judaical Law, and how.** XVII. Since then the *Mosaick Law* cannot directly oblige us (as I have already shewed) let us see of what other Use it may be to us, as well in regard to the *Right of War*, which we are to treat of, as in other like Cases. For the Knowledge of it may be necessary in many Points.

First then, the Law of the antient *Hebrews* serves to assure us, that nothing is enjoined there contrary to the Law of Nature; for since the Law of Nature (as I said before) is perpetual and unchangeable, nothing could be commanded by GOD, who can never be unjust, contrary to this Law. Besides, the Law of *Moses* is called *pure and right*, *Psalm* xix. 8. and by the Apostle St. *Paul*, *holy, just, and good*, *Rom:* vii. 12.

I speak of its Precepts, for we must treat more distinctly of its Permissions. Now the *Permission*, positively granted by the Law, (for that which is of the<sup>1</sup> bare Fact, and signifies the Removal only of Hindrances, [176] on the Part of the [22] Law, is not to the present Purpose) is either *compleat*, and *without Reserve*, which gives us a Right to do something with an intire Liberty in all Respects; or *less compleat*, and *with Reserve*, which gives us only an Impunity with Men, and a Right to do a Thing, so as that no Man shall molest and hinder us. From the first of these Permissions, as well as from a

positive Precept, it follows, that what the Law allows, cannot be contrary to the Right of Nature. But as to the latter,<sup>2</sup> the Case is entirely different: But it seldom happens that there is Occasion to draw that Consequence with Certainty;<sup>3</sup> for the Terms [177] which express the Per- [23] mission being equivocal, it is better to have Recourse to the Principles of the Law of Nature, in order to discover what Kind the Permission is of, than to conclude from the Manner in [178] which the Permission is conceived, that the Thing permitted is conformable or not conformable to the Law of Nature.

The next Observation is not unlike this, *viz.* That Christian Princes may now make Laws of the same Import with those given by *Moses*, unless they be such Laws as wholly related either to the Time of the expected *Messias*, and the Gospel, not then published; or that CHRIST himself has either in<sup>4</sup> general, or in<sup>5</sup> particular commanded the contrary: For, excepting these three Reasons, no other can be imagined, why that which the Law of *Moses* formerly established, should now be unlawful.

The third Observation may be this; whatsoever was enjoined by the Law of *Moses*, which relates to those Virtues that CHRIST requires of his Disciples, ought now as much, if not more <sup>6</sup> to be observed by us Christians. The Ground of this Observation is, because what Virtues are required of Christians, as Humility, Patience, Charity, &c. are to be practised in a<sup>7</sup> more eminent Degree, than under the State of the *Hebrew* [179] Law, and that with good Reason too; because the Promises of Heaven are more clearly proposed to us in the Gospel. Wherefore the old Law, in comparison with the Gospel, is said to be neither perfect nor ἀμεμπτος faultless, *Heb.* vii. 19. viii. 7. And CHRIST is termed the *End* of the *Law*, *Rom.* x. 5. but the Law only *our Schoolmaster*, or Guide, *to bring us unto CHRIST*, *Gal.* iii. 24. Thus the old Law concerning the Sabbath, and<sup>8</sup> that relating to Tythes, shew, that Christians are obliged to set apart no less than the seventh Part of their Time for the Worship of GOD, nor no less than the tenth Part of their Income for the Maintenance of those who are employed in Holy Affairs, or for other Sacred and Pious Uses.

[180]

## Endnotes

1.

See Pufendorf, *Law of Nature and Nations*. B. I. Chap. I. § 8. Note I.

2.

Such were the antient *Patriarchs*, who lived in Tents, and travelled from Place to Place, without forming a Community or depending on any Government; though there were civil Societies already established in the World at that Time. The learned Gronovius on this Place, alledges the Example of the *Aborigines*, the first Inhabitants of *Italy*, and of several People in *Africa*; *The Aborigines, a savage People, free and independent, without Laws or Government*. Salust. Bell. Catil. Cap. VI. The *Getulians and Libyans, a rough and uncivilized Set of Men, were the first Inhabitants of Africa... they lived without any Government or Laws, or the least Measures of Discipline among them*. Idem Bell. Jugurth. Cap. XXI. Edit. Wass. *They (the remote Inhabitants of Cyrenaica) being scattered about the Country in Families, and living under the Direction of no Law, had no common Regulations*. Pomponius Mela, Lib.I.Cap. VIII. Num. II. Edit. Voss. We find even at this Day amongst the *Arabians*, and *Africans* several Nations of *Savages*, and *Vagrants*, without Laws, Magistrates or any Form of Government.

3.

See B. II. Chap. XI. § 1. Num. 5.

4.

II. *For since there are two Ways of disputing Things, one by Debate, the other by Force, &c.* De Offic. Lib. I. Cap. XI. See Pufendorf. B. V. Chap. XIII. where he treats of other Ways of deciding Differences in the independent State of Nature.

5.

Philo the Jew considers as Enemies *not only such as actually attack us by Sea or by Land, but also those who make Preparations for either, those who erect Batteries against our Ports, or Walls, though no Battle is given.* De Specialib. Lib. II. p. 790. Edit. Paris. Servius, on Verse 545, of the first Book of the *Eneid*.

- —— *Quo justior alter*
- *Nec pietate fuit, nec bello major & armis.*

Makes this Remark. *This is not an idle Repetition; for the Word Bellum, (War) includes Counsels, and Measures, taken against the Enemy; that is a Skill in Military Affairs. Whereas the Word Arma, (Arms) is used only to express the very Act of employing Forces: thus the former relates to the Mind, the latter to the Body.* The same Commentator, on Verse 547. of B. VIII. says: *Bellum is the whole Time employ'd in making the necessary Preparations for fighting or in Acts of Hostility: and Praelium denotes an actual Engagement.* Grotius.

6.

For not only those who are at War, stand in several different Relations to other Persons, who observe a Neutrality, by Vertue of which they do many Things that by no Means relate to a State of Hostility: but they also may and frequently do act towards each other, as if they were not Enemies; so that in such Cases the Use of Force, and the Laws of War are suspended. This takes Place when two Enemies enter into an Agreement, or Treaty; as the Author shews at large in the proper Place. Gronovius, in a Note on this Place, and Huber *De jure Civitatis*, Lib. III. Sect. IV. Cap. IV. §. 2. allow of no Difference in the Main between Cicero's Definition, and that given by our Author. It is sufficient however, if the latter is more clear and extensive than the former. Obrecht, in his Dissertation *De ratione Belli* (which is the eighth in the Collection published in 1704.) has defended our Author's Definition against the mistaken Criticisms of some Commentators.

7.

Our Author, giving the Etymology of πόλεμος, derives it from πολυς; while others search elsewhere for the Origin of that Word; nor are we to be surprised at this. The Country of Etymologies is of a very large Extent, and affords great Numbers of different Roads, where each Man may walk at his Ease. However, in Complaisance to those who delight in such Enquiries, and for the Sake of clearing up our Author's Meaning, we must say something on the last Words of this Paragraph, which stand thus in the Original: *Veteribus etiam λύη dissolutione, quomodo & corporis dissolutio δύη.* Here the Commentators are silent, not excepting Gronovius, a Critic by Profession; who only explains δύη by other Greek Words, signifying *any Sort of Unhappiness*. But this neither shews the Reason of our Author's Etymology, nor his Application of it. At first sight it might be imagined that the Text is faulty; and I know some have been of Opinion, that λύη ought to be repeated in this Place; but we find δύη in all the Editions of this Work; and I firmly believe I have found out what our Author Means, and

what induced him to propose the Etymology of this Word, which he tacitly derives from δύω. He took δύη in the Sense which some Lexicographers give to λύπη, *dolor*; and at the same Time was thinking of Plato's Etymology of λύπη, *Pain*, which he derives from λύω, *to dissolve; because*, says he, *when we suffer Pain, the Body suffers a Dissolution*; in Cratylo, p. 419. Vol. I. Edit. H. Steph. Our Author in Imitation of that ancient Philosopher, derives δύη from δύω for the same Reason; for on a Separation of the Parts of the Body, it follows that those which before appear'd only as one continued whole, by their Union, become *more than one*. The Principles of the old Philosophy, in which our Author was educated, helped him moreover to form this Etymology; for we know that according to those Principles, *Pain* is caused by a *Dissolution* of Continuity.

8.

See, for Example, Horace *B. I. Sat. III. v. 107.* and Terence *Eunuch. Act. I. Scen. I. v. 16.*

9.

The Author gives Instances of this *B. II. Chap. XVI. § 9.*

10.

*III. De Officiis. Lib. III. Cap. V.*

11.

I have quoted this Law in my first Note on § 14. of the Preliminary Discourse.

12.

*De Ira. Lib. II. Cap. XXXI.*

13.

In Ep. XLVIII. he says thus: *We ought to observe carefully and religiously the Laws of this Society, which unite us all together, and teach us that there is a Law common to all Mankind.* The Reader may likewise see what S. Chrysostom says on this Subject on *1 Cor. Chap. XI. v. I.* Grotius.

14.

Καθ' ὑπεροχὴν. But the Philosopher makes this Distinction with Regard to Friendship, which is the Bond of Societies. *The Friendships already mention'd therefore, are founded on Equality....But there is another Sort of Friendship, established on Preeminence, such as that between Father and Son, the Elder and the Younger, Husband and Wife, and between every Prince and his Subjects.* Ethic. Nicom. B. VIII. Chap. VI. VII.

15.

Concerning this Society, see Philo the Jew, on these Words ἐξένηψε Νῶε *Noah awaked (from his Wine)* p. 281, 282. Edit. Paris. Plutarch also has something on the same Subject in his Life of *Numa*. p. 62. Edit. Wech. Vol. I. Grotius.

I am surprised that our Author has not quoted the following remarkable Passage of Cicero, which is much more express, and more to his Purpose than those, to which he refers us. *Since therefore nothing*

*is more excellent than Reason, which is common to God and Man, the first rational Society is between God and Man. For where there is a Participation of Reason, there is also a mutual Participation of right Reason. Now this being a Law, we are to conclude a Society between the Gods and Men founded on Law. Farther, where there is one common Law, there is likewise a common Right; and those who hold these in common, are to be esteem'd, as it were, fellow-citizens.* De Legib. Lib. I. Cap. VII. But, properly speaking, there is no Law, or Right common to God and Man. See Pufendorf B. II. § 3. and Chap. III. § 5, 6. As also Mr. Thomasius's Dissertation call'd, *Philosophia Juris, de Obligat. & Action.* which is the third in the Collection printed at Leipsic. Cap. I. § 8, &c.

## 16.

This Restriction is to be carefully observed. For, as Ziegler very well remarks on this Place, in all Dealings between a Superior and an Inferior, independently of the Relation of Superiority, the *Right of Equality* takes Place, as amongst Equals; thus, for Example, Contracts between a Prince and one of his Subjects require no other Rules than those which ought to be observed between two private Persons. When a Merchant has sold his Goods to his King, the King is as much obliged to pay for them, on the Terms, and at the Time agreed on, as the meanest Purchaser. To which I add, that there are some Cases, wherein a Superior becomes in certain Respects the Inferior; and that then the Right of Superiority is changed in Regard to the same Persons, according to the Nature of the Things. Thus a Magistrate is bound to honour his Parents, and consequently to submit to their Will to a certain Degree, whenever the Administration of publick Affairs is not concern'd; but, in the Character of Magistrate, he is to have no Regard for the Will of his Parents, but may even command them. See B. II. Chap. V. § 6. Note I.

### a

*Jus Rectorium.*

### b

*Jus Equatorium.*

## 17.

IV. See Pufendorf, B. I. Chap. I. § 19, 20.

## 18.

See the same Author, B. IV. Chap. VIII.

## 19.

Such, for Example, is the Power of a Father over his Child, the Right of a Husband over his Wife, the *Usufructuary* Right and the Right of demanding the Performance of a Promise, by which a Man has personally engaged himself, &c.

## 20.

Thus the Right of *Passage*, belonging to the Proprietor of a Country House in the Neighbourhood, is inherent only in the Possessor of the said House, and is transmitted to all, who shall possess the same, till that Right is extinct.

21.

*Perfect Right*, is that which we may assert by Force, and the Violation of which is a *Wrong* properly so called. Whence it is easy to judge what is *Imperfect Right*. See Pufendorf, *B. I. Chap. I.* § 7. and our Author, *B. II. Chap. XXII.* § 16.

22.

V. As when we say, *Suum cuique tribuendum est*, we must give every Man his own.

23.

Hence the *Roman Lawyers* very well called this Liberty *Facultas*. Grotius. This Definition occurs twice in the Body of the Law: *Libertas est naturalis Facultas ejus, quod cuique facere libet, nisi quid Vi, aut Jure, prohibetur*. Digest. Lib. I. Tit. V. *De statu Hominum*. Leg. V. and Institut. Lib. I. Tit. III. *De Jure Personarum*, §1. In order to understand it thoroughly, it will be proper to read Mr. Noodt's excellent Commentary on the first Part of the *Pandects*, p. 29. See Pufendorf's Remark on the Manner, how this natural Power of Man over himself is to be understood. *B. I. Chap. I.* § 19.

24.

The Scholiast on Horace says the Word *Jus* is taken for *Property* or a *Right* to a Thing. *Jus pro Dominio*. Grotius.

Our Author probably had the following Passage in View:

*Permutet Dominos, & cedat in altera Jura.*

Lib. II. Ep. II. v. 174.

On which the Scholiast says: *In altera Jura, id est, in alterius Dominium.*

25.

See Pufendorf. B. IV. Ch. IV. § 2.

26.

*Ut Ususfructus, Jus Pignoris*, says our Author. As these Words stand, they insinuate that the *Usufructuary*, and the *Creditor* have a Sort of Right of Property, though imperfect, the former to the Goods in his Possession by virtue of his Tenure, the latter to the Thing pledged in his Hands for Security of the Debt. But, if we reason conformably to the Ideas of the Law of Nature, neither of them has any such Right, of Property, properly so call'd. The whole Matter is, that the Enjoyment of the Goods by the *Usufructuary*, till the Time of the Tenure is expired; and the Detention of the Pledge by the Creditor till he is pay'd, renders the Property imperfect, of which the Master of the said Things, who remains solely such, has not all the Profits, or full Exercise, during that Time. But our Author had the Niceties of the *Roman Law* in View, which allows an *Usufructuary* Creditor, &c. a real Action for recovering the Possession of another Man's Goods, in the same Manner as if they were the real Proprietors of them; and thus they are often considered as such, and the Right to them near to that of Property: *Jus dominio proximum*, say the Interpreters.

27.

*Creditum: Debitum.* Short, and very proper Expressions, taken from the *Roman Law*. See what I have said on Pufendorf *B. I. Chap. I. § 20. Note 3.* of the second Edition: and *B. V. Chap. XI. § I. Note 5.* The learned Gronovius, without Reason, restrains the Terms in Question to Contracts of Loan, properly so called. It is surprising, that he did not observe, that our Author here imitates the Language of the *Roman Lawyers*; and the more so, because some other Commentators, much less skill'd in Criticism, have perceived this Allusion. In my Opinion it may be affirm'd, without the least Hesitation, that by the Word *Creditum*, we are here to understand, not only the Right a Man hath to demand what is due to him by Vertue of some Contract, Bargain, Promise, or Law; but also the Right we have to require Satisfaction for any Damage or Injury received; all which is included in the Idea affix'd to that Word by the *Roman Lawyers*. *Creditorum Appellatione non hi tantum accipiuntur, qui pecuniam crediderunt, sed omnes, quibus ex qualibet causâ debetur, utsicuiexempto, vel ex locato, vel ex alio ullo debetur: Sed etsi ex delicto debeatur, mihi videtur Creditoris loco accipi.* Digest. Lib. I. Tit. XVI. *De verborum, & rerum signif.* Leg. XI, XII. See *B. II. Chap. I. § 2.* and *Chap. XVII. § I.* I believe our Author goes still farther, and extends the Word *Creditum* to the Right of punishing, and that of *Debitum* to the Obligation of submitting to condign Punishment. I am induced to think so, because first the *Perfect Right*, to which the *Debitum & Creditum* in Question relate, answers to the *Law of Nature*, or *Natural Right*, properly so called, of which the Author has spoken in his preliminary Discourse, § 8. Now one of the general Rules of that Law is, that *those who violate its Maxims, deserve to be punished*. See what I have said on § 10, *Note 7.* It is very probable therefore, that our Author, while he was enumerating the several Things which may be required in Rigour, would not forget the Punishment of Criminals. *Secondly*, because he elsewhere actually ranks *Debitum ex poena*, or *poenale* among those things, which we may demand of another in Rigour. *B. III. Chap. XIII. § 1, 2.* and makes a Right to punish belong to *Justitia expletrix*, which is the Matter of *Perfect Right*. *B. II. Chap. XX. § 12.*

## 28.

VI. This takes in all those Rights, natural or acquired, with which each Man is invested, independently of the Relation of a Citizen, or Member of the State. The Author produces Examples of this kind which are sufficient for making the Matter clear and intelligible. See what he says concerning Promises, *B. II. Chap. XI. § 8.* and *Chap. XIII. § 20.*

## 29.

Because the Design and Good of civil Society necessarily require, that the natural and acquired Rights of each Member should admit of Limitation several Ways and to a certain Degree by the Authority of him or them, in whose Hands the sovereign Authority is lodged.

## 30.

So that a Subject ought to obey his Prince preferably to his Father and his Master. And the Prince may allow a Father and a Master more or less Power over their Children, and Slaves, as he shall judge most conducive to the Public Good. See *B. II. Chap. V. § 7,* and 28.

## 31.

This is the Observation of Philo the Jew, who says: *Certainly Silver, Gold, and all other valuable Things, which Subjects treasure up, belong more to those who govern, than to those in Possession of them, περὶ φυτούγιας* (of Noah's Planting.) p. 222. Edit. Paris. Pliny the younger declares, that a Prince, *to whom the Possessions of every one of his Subjects belong, is as rich as all of them together.* Paneg. Cap. XVII. And a little after: *What does Cesar see, that is not his own?* See John of Salisbury

in his *Polycrat.* Lib. IV. Cap. I. p. 335. *Edit. Lugd.* 1639. Grotius.

The latter Passage of Pliny is not rightly quoted or applied, for the Panegyrist says the direct contrary, in commendation of *Trajan*, *Est quod Caesar non suum videat, &c.* *That Caesar sees something which is not his own; and that the Prince's Empire is now larger than his Patrimony.* Cap L. Num. 3. *Edit. Cellar.* Besides, there is some-what what extravagant, or at least too figurative, in the Expressions of the antient Writers, quoted by our Author, as well as in those of the Moderns, who imitate them. For, strictly speaking, the Goods of each Subject belong no more to his own Sovereign than to a foreign Prince. The whole Truth of the Matter is, that in case of a pressing Necessity, the Sovereign may, for the publick Advantage, dispose of the Goods of his Subjects, even against their Will, in the same Manner as if they were his own. But he then acts, not as Proprietor of such Goods, but as Head of the Society, in favour of which every one of its Members is engaged, either expressly or tacitly, to make such a Sacrifice. See what is said, *B. I. Chap. III. § 6. Num. 4. B. II. Chap. XIV. § 7* and *B. III. Chap. XX. § 7.*

## 32.

And consequently, the Sovereign may discharge a Debtor from the Obligation of paying, either for a certain Time, or forever, if the publick Good requires it. We have an Example of this in *Livy, Lib. XXIII. Cap. XIV. Num. 3.* which is here produced by Gronovius. After the fatal Battle of *Cannae*; *Marcus Junius Pera*, the Dictator ordered publick Notice to be given, that *he would pardon all who had been guilty of capital Crimes, and exempt from Payment all such as were in Chains for Debt, if they would list under him.*

### 1

Ἄξια. The Philosopher uses this Word when he treats of *Distributive Justice*, by Vertue of which we are to give every one what is due to him, according to his Merit. *Ethic. Nicom. B. V. Chap. VI.* But I find that Cicero uses the *Latin Word Dignitas*, which answers to the *Greek Αξία*, in a large Sense, including both *perfect* and *imperfect Right*: His Words are, *Justitia est habitus animi, communi utilitate conservata, suam cuique tribuens Dignitatem.* *De Invent. Lib. II. Cap. LIII.* And the Author of a Treatise on Rhetorick, ascribed to that great Orator and Philosopher, makes Justice consist in rendering to every one his *due*, (*Jus*) according to his *Merit*, (*pro dignitate cuiusque*) *Ad Heren. Lib. III. Cap. II.* Huber, in his Treatise *De Jure Civitatis*, and his *Praelect. in Institut. & in Pandect.* quotes these two Passages wrong, as if he had read *quae cuique jus suum & dignitatem tribuit*; and on the sole Authority of this false Quotation, he pretends that Cicero expresses *perfect Right* by the Term *Jus*, and *imperfect Right* by *Dignitas*.

### 2.

Cicero has given us an Example of several Degrees of *Merit* and *Fitness*, which confer more or less of this *imperfect Right*; which I shall here set down, translated from the Author's Note on this Place.

*But if there be any Dispute or Enquiry, to whom we are obliged to render most Service, let our Country and our Parents, to whom we stand most indebted, hold the first Rank. Next to these are our Children, and our whole Family, who depend on us alone, and can have no other Refuge. In the next Place we must think of our Relations, with whom we live in a good Understanding, and whose Fortune is most commonly united with our own. The necessary Supports of Life are therefore principally due to those whom I have already mentioned. But living in Society, giving Advice, Conversation, Exhortations, Consolations, and sometimes even Reproofs, take Place chiefly in Friendship.* *De Offic. Lib. I. Cap. XVIII.* See *B. II. Chap. VII. § 9, 10.* of this Treatise. Seneca, speaking of *Wills*, says, *We*

*look out for Persons of the greatest Worth, (or Merit, dignissimos) to whom we may leave our Estates.*  
De Benef. Lib. IV. Cap. XI. See St. Augustin, *De Doctr. Christ.* Lib. I. Cap. XXVIII. and XXIX.  
Grotius.

## 1

Our Author's Criticism in this Place, has been justly censured, for the Word συνάλλαγμα, according to Aristotle's Sense of it, expresses all Dealings Men may have one with another, and in which any Inequality appears that ought to be redressed by the Exercise of the Species of Justice in question. The Philosopher, (*Ethic. Nicom.* Lib. V. Cap. V.) distinguishes these συναλλάγματα into *voluntary*, by which he understands *Contracts* properly so called, as those of *Sale, Loans, Bail, Trusts, Hiring, &c.* and *Involuntary*, under which he comprehends all Sorts of Damage and Injuries done to another; either clandestinely, or by open Violence; in short, what the *Roman Lawyers* call *Delictum*, and which the learned Gronovius improperly compares to *Quasi contractus*, which, according to them, *Non ex maleficio substantiam capiunt Institut.* Lib. III. Tit. XXVIII. The same Commentator (in order to shew, that the Example of a Person in possession of another Man's Goods may relate to Aristotle's *Permutative Justice*) observes, that ever since the Establishment of Property, there has been a tacit Agreement among all Men, by which each of them is obliged to restore the Goods of another. This is a false Principle, laid down by our Author himself, *B. II. Chap. X. § I.* in which he has been followed by Pufendorf, *B. IV. Chap. XIII. § 3.* I have confuted them both, in my Note on the Passage of the latter, here referred to. I am not therefore surprized that Gronovius grounds his Argument on it; for besides that he had a better Talent at commenting on the Thoughts and Expressions of others, than at examining and considering Subjects of this Nature, he thus found an Argument *ad hominem*, against Grotius, in favour of his dear Aristotle. But it is very strange that he has not added a Remark, very proper for supporting his Criticism, and the more so, as it depends on a grammatical Nicety, viz. that the Word συνάλλαγμα does not signify the Foundation of the Obligation arising from the Justice under Consideration, but only the Object or Matter on which this Sort of Justice is employed, which Aristotle therefore calls, Δικαιοσύνη, or Δίκαιον, τὸ ἐν τοῖς συναλλάγμασι διορθώτικον, *Lib. V. Cap. V.* and ὃ γίνεται ἐν τοῖς συναλλάγμασι καὶ τοῖς ἔκουσίοις καὶ τοῖς ἀκουσίοις *Cap. VII.* that is, *corrective Justice in Mans Dealings one with another*, or barely *corrective Justice*, a Term which Interpreters would have done well to preserve, as much more expressive of the Philosopher's Sense than that of *commutative Justice*, which conveys a very different Idea. Thus when our Author says, it is not by Virtue of a *Contract*, (ἐκ συναλλάγματος) that the Possessor of another Man's Goods is obliged to restore them, it makes nothing against Aristotle, according to whose Principles, συνάλλαγμα is here a Detention of what belongs to another; but the Obligation of restoring, is founded on an Inequality subsisting to the Prejudice of the Proprietor, an Inequality which the Justice under Consideration requires to be redressed. To which it may be added, that Aristotle's *Corrective* or *Permutative Justice*, does no more answer exactly to our Author's *Expletive Justice*, than the *Distributive Justice* of the former does to the *Attributive Justice* of the latter, and that there is a wide Difference between those two Distinctions, both in regard to their Foundation, and the Extent of each particular Member. But all this is of little Consequence in the Main, and it would be better to leave the Philosopher with his Division, which besides that it is very defective, is useless at present, as several Authors have observed. See Pufendorf, *B. I. Chap. VII. § 12.* Mr. Thomasius's *Institutiones Juris Divini*, Lib. I. Cap. I. § 106: As also the *Principia Juris, secundum ordinem digestorum*; by Mr. Westenberg, Professor at *Franeker*, Lib. I. Tit. I. § 15, &c.

## 2.

Ἐπανορθωτική *Ethic. Nicom.* Lib. V. Cap. VII. p. 65. *Edit. Paris.* Vol. II. Or, as Aristotle more frequently calls it, Διορθωτική.

### 3.

It is not the same Thing. See *Note 1.* on this Paragraph.

### 4.

For the Justice in question regulates the Exercise of those Virtues, which consist in doing such Things in favour of others, as cannot in Rigour be demanded, and directs a proper Application of the Acts of those Virtues, by a prudent choice of Persons the most worthy, to feel the Effects of them. See the second *Note* on *Paragraph 7th*, and what has been said in the *Preliminary Discourse*, § 10, and the Notes of that Place; as also our Author, *B. II. Chap. I. § 9. Num. 1.*

### 5.

The Author has here in view, chiefly the Distribution of Rewards and publick Employments; for tho' the Prince on such Occasions ought to prefer Persons of most Merit, and greatest Abilities, no private Person can in Rigour demand this Preference. See Pufendorf, *B. I. Chap. VII. § 11.* So that *Catiline* made use of a very frivolous Pretence, in Justification of his Conspiracy, when he said, *Deprived of the Fruits of my Labour and Industry, I was not raised to a Post equal to my Merit.... I saw Men of no Worth promoted to Honours, and myself repulsed upon groundless Surmises.* Sallust, *Bell. Catilin.* Cap. XXXVI. *Edit. Wass.*

### 6.

*Simple Proportion*, or *Arithmetical*, is found, according to Aristotle, between three Quantities, the first of which exceeds, or is exceeded by the second, as much as the second surpasses, or is surpassed by the third; so that to reduce Things to a just Medium, in which Justice consists, we must take from or add to the first Quantity, as much as is added to or taken from the second. In this Place we are to add or take away what is agreeable or advantageous, and what is disagreeable or disadvantageous; which the Philosopher calls *κέρδος Gain*, and *ζημία Loss or Damage*; for we take away part of both from him who has too much of either, in order to give it to him who has too little of them. Thus supposing a Thing worth only six Crowns, has been fraudulently sold for nine, the Seller has three Crowns too much, and the Buyer three too little: Take away three Crowns from the former, and give them to the latter, and you come to an Arithmetical Proportion between 9, 6, and 3; because 9 exceeds 6 as much as 6 does 3. See *Ethic. Nicom.* Lib. V. Cap. VII.

### 7.

This *Geometrical Proportion* subsists between four Quantities, the first of which contains or is contained in the second, as often as the third contains or is contained in the fourth; as when we say, *Six is to three as twenty-four to twelve*; or *Three is to six as twelve to twenty-four*.

### 8.

Cassiodorus calls it *Habitudinis comparatio*. Homer gives a pretty good Description of this Sort of Proportion, which commonly belongs to *Attributive Justice*, when he says,

- Ἐσθλὰ μὲν σθλῷ ἔδωκε, χέρεια δὲ χείρονι δόκεν.

*He gave valuable Things to him who deserved most, and Things of less Value to him, who had less Merit.* Grotius.

The Passage of Cassiodorus is taken from his Treatise *De Dialectica*, p.408. Edit. Paris, 1589, where he says, *In proportione non est similitudo, sed quaedam habitudinis comparatio*. As for Homer's Verse, it is not well supported. It occurs in the fourteenth Book of the *Iliad*, where *Neptune* taking his Advantage of a profound Sleep, into which *Jupiter* had been thrown at *Juno*'s Entreaty, exhorts the *Grecians* to march against the *Trojans*; whereupon *Diomedes*, *Ulysses*, and *Agamemnon* ran from Rank to Rank, and made the Soldiers change their Arms, giving the best to the most valiant, and the worst to those that had less Courage. In *Barnes*'s Edition therefore we read ἔδυνε *he put on*, instead of ἔδωκε *he gave*.

## 9.

It has been justly remarked, that in *Geometrical Proportion*, by which *Distributive Justice* is regulated, according to Aristotle, the Merit of the Persons is compared with the Things themselves, so that the Quantity of what is given to one, is to the Quantity of what is given to another, as the Merit of one is to the Merit of the other. This evidently appears from *Ethic. Nicom. Lib. V. Chap. VI, & VII.* and particularly from a Passage where the Philosopher says, that in Affairs where *Corrective* or *Permutative Justice*, as opposed to *Distributive*, is concerned, (ἐν τοῖς συναλλάγμασι) an *Arithmetical Proportion* is to be observed; so that the Question is not whether a *Man of a good or bad Character cheats, is cheated, or commits Adultery; but that the Law considers no other Difference than that of the Damage sustained, looking on them as equal in other Respects*, Lib. V. Cap. VII. p. 63. Edit. Paris. An Opposition, which plainly insinuates, that in the other sort of Justice, a Regard is paid to the Quality of the Persons, as well asto the Advantage or Disadvantage arising to either of the Parties. So that in a Contract of *Society*, which belongs to Aristotle's *Corrective* or *Permutative Justice*, according to him, no Regard is to be had to the Quality of the Person; and as Gronovius observes, if the Prince of *Orange* puts 1000 Crowns, for Example, into the *India Company*'s Stock, he receives no more Dividend than a private Person, who deposits the same Sum. Nor does our Author pretend he does; though his Commentator insinuates as much. All he means is, that in the Administration of *Corrective* or *Permutative Justice*, Men do not always observe such an *Arithmetical Proportion*, as Aristotle describes; for upon dividing the Profits among several Proprietors, who have engaged in a Partnership in unequal Shares, it is certain, that *Geometrical Proportion* must be observed, and that the other is not sufficient. It is true, this is not a *Geometrical Proportion*, by which the Merit of the Persons is compared with Things; and that it is enough that the Things themselves are compared together, that is, each Person's Share with that of others, and with the Loss or Gain, of which each is to have his Part. It is also true, as Pufendorf observes, *B. I. Chap. VII. § 9.* the Shares of the Partners may be equal; in which Case, there will be a perfect Equality in the Division of the Profits. But as they may be, and very frequently are unequal, it may justly be affirmed, that the Use of *Arithmetical Proportion* is not sufficient in Contracts, which is all our Author contends for.

## 10.

Some reply, that the Case is not possible, but all that can be said with Certainty is, that it seldom happens. Others say, that *Geometrical Proportion* is observed even in that Case, because the Merit of that Person, who alone is capable of an Employment, is compared with the want of Merit in all the other Subjects. But then the Comparison is not made between Things of the same Kind, and consequently, *Geometrical Proportion* cannot take Place here. In reality, the whole Dispute is of very little Importance; and how faulty soever Aristotle's Division may be, our Author had better have proposed his own, than have given himself the Trouble of reconciling it with the other, as he has rectified it; for they are still very different at the bottom, as will easily appear on a careful perusal of that great Philosopher's Moral Treatises.

11.

I am inclined to think the Author here had in view a Passage of Aristotle, where he says, that *Distributive Justice always follows Geometrical Proportion. For, continues the Philosopher, upon a Distribution of the Publick Money, it must be made in Proportion to what each has contributed.* Ethic. Nicom. Lib. V. Cap. VII. p. 62. I suppose the Philosopher designed to speak of the following Case. Several private Persons have furnished the State with Money for the Demands of the Publick, and that in different Sums; the proper Officers are inclined to reimburse them, but the Sum destined for that End, is not sufficient for the Payment of all the Creditors; so each receives in Proportion to what he lent. But this very Example may serve to shew, how little Justness there is in Aristotle's Ideas. For, properly speaking, there is no Comparison between the Degree of the Merit of the Persons, and the Quantity of the Things, but only between what is advanced, and what is restored. If it be said that each Person deserves more or less to be reimbursed, as he had lent more or less, it may be easily shewn, that this Circumstance is but a very ambiguous Proof of more or less Merit; for it may, and often will happen, that those, who have furnished the largest Sums, have not lent so much in Proportion, as Persons of smaller Fortunes, who perhaps have very much streightened themselves to assist the Publick, whilst the former have suffered little or no Inconvenience, by depriving themselves for some Time of a Sum, very inconsiderable in comparison of what remained in their Hands. Now can it be doubted, that on this Supposition, they, who have expressed most Zeal for the publick Good, and have suffered most by promoting it, deserve to receive in Proportion to a larger Share of the Sum, which is not sufficient to discharge the whole Debt, than they whose Debt is in itself the most considerable? I reason here on the Principle established by our Lord Jesus Christ, in regard to Alms, in the Judgment he pronounces of a poor Widow's Charity, who gave only two small Pieces of Money for the Use of the Poor. Mark xii. 42, &c.

12.

*Cyropaed.* Lib. I. Cap. III. § 14. *Edit. Oxon.*

13.

See the same Writer, *Lib. II.* of the *Cyropaedia*. To the same Purpose God forbids the Judges of his People to *countenance a poor Man in his Cause, or respect the Person of the Poor*, in giving Judgment, Exod. xxiii. 3. Levit. xix. 15. In truth, as Philo the Jew observes, *the Merits of the Cause are to be considered in themselves, and abstractedly from any Regard to the contending Parties.* Lib. *De Jusice*, p. 720. *Edit. Paris.* Grotius.

I do not find in the second Book of Xenophon's *Cyropaedia*, to which our Author refers his Readers, any one Passage, that can relate to the Matter before us, but the following Reflection of *Cyrus*. One of that Prince's Favourites proposed to him, that all his Soldiers should not equally share the Booty taken from the Enemy, but that it should be divided according to each Man's respective Merit, and Behaviour in the Time of Action. *Cyrus* thought the Proposal reasonable, but was of Opinion, that the Consent of the whole Army should be first asked. "Where is the Necessity of such a Condescension?" said *Chrysantes*. "Is it not enough that you declare such is your Pleasure, and that the Distribution shall be made on that Foot? When you established Combats for the Prize, did not you at the same Time regulate each Person's Reward?" To which *Cyrus* replied, *The Case is not parallel; for I imagine the Soldiers will look on all the Plunder that shall be made, as their own Property; whereas they are persuaded that the general Command of the Army belongs to me, and perhaps is even my Birth-Right. So that I believe they think I commit no Injustice, to any one, when I dispose of the Charges in the Army.* Cap. II. §10, 11. *Edit. Oxon.*

1

In this Sense Horace says,

*Jura inventa metu injusti fateare necesse est.*

Lib. I. Sat. III. v. 3.

and

*Jura neget sibi nata.*

Art. Poet. v. 122.

On which Words the Scholiast says, *Legum sit contemptor.* Grotius.

2.

See Pufendorf, *B. I. Chap. V.* Where he explains the Nature and Foundation of moral Actions.

3.

The Author's Expression in this Place seems to insinuate, that the Law *obliges* by its self, and merely as it is a Rule; whereas, all Laws derive their Power of obliging from a *Superior*, who makes them; that is, from some Intelligent Being, who has a Right of imposing an indispensable Necessity of submitting to his Direction, on those whose Liberty he restrains. To which may be added, that the Author reduces the whole Effect of the Law to the *Obligation*; whereas *Permission* ought to be joined to it, which he without Reason excludes.

4.

See Pufendorf, *B. I. Chap. VI. § 1.*

5.

I cannot be of our Author's Opinion in this Point. *Permission* is as real an Effect of the Law, taken in its utmost Extent, as the strongest and most indispensable *Obligation*. The Superior, who gives Being to the Law, has a Right of positively directing either all the Actions of those who depend on him, or at least, all those of a certain kind: In regard of all those Actions, he has a Power of imposing a Necessity of acting or not acting in a certain manner. But no Superior exercises his Authority so extensively; there is always a considerable Number of Things subject to his Direction, in which he leaves every one the Liberty of doing as he pleases. This is not a mere Inaction, or *Negation of Action*, as our Author pretends, but a real positive Act, though commonly tacit, by which the Superior or Legislator makes an Abatement of his Right. So that, as the Actions commanded or prohibited, are regulated positively by the Law, so far as it imposes an indispensable Necessity of doing the former, and forbearing the latter, the Actions permitted, are likewise positively regulated by the Law in their own Way, and according to their own Nature, so far as the Law either originally gives a Power of doing or not doing them at Pleasure, or confirms and leaves Men in Possession of a Liberty, which it might have taken away either entirely, or in Part. There is no manner of Necessity of an express Permission, which seldom takes place in Divine or Human Laws: The Silence of the Legislator sufficiently infers a positive Permission of whatever is neither enjoined nor prohibited. Thus when God, who alone can regulate all the Actions of Men, of what Nature soever they be, forbade the *Jews* the Use of certain

Animals for Food, as he might, if he had pleased, [[have]] extended the Prohibition to several other Kinds, by his only forbidding some Particulars, he actually and positively allowed them the Liberty of eating or not eating all others. As to human Laws, either they turn on Things already commanded or prohibited in some manner by Divine Law, natural or revealed; and in that Case, they give as much as in them lies, a Permission of doing several other Things of that Kind, where they are silent; which is a necessary Consequence of Impunity: Or they relate to Things otherwise indifferent in themselves; and then they of course permit whatever they do not forbid; there being an Infinity of Actions of such a Nature, that a Man invested with Authority may lay a Restraint on the Liberty of others, which the Law of Nature allows only so far as a lawful Superior does not think proper to bound it. In one Word, whoever fixes certain Limits, and declares no one shall be allowed to exceed them, does by that very Action express how far he grants Men Liberty to go, if they please. This Way of Reasoning is the more just, because, as our Author owns, the Permission which a Law gives to any one, lays an Obligation on others not to form any Obstacle to his acting, when he is disposed to do what the Law permits. Now this Obligation arises, and ought necessarily to arise from a Right inherent in him, to whom the Law gives a Liberty of acting as he pleases; for in all Obligations in which we stand engaged to others, there is some correspondent Right; and we have not a Right to require a Thing, because another is obliged to do it, but on the contrary, he is obliged to do it, because we have a Right to require it. Whence then arises this Right? It can certainly arise only from the Permission granted by the Law, a Permission, by virtue of which we are also empowered to resist those, who disturb us in the Enjoyment of this Right, and employ either the common Means of Justice, when we are in a Condition of having Recourse to the Protection of a proper Judge, or Force, if we have no other Way left of righting ourselves. In short, every one knows, that the Laws grant an express Permission, either to all such as depend on the Legislator, or only to some in Particular. From all which it appears, in my Opinion, that the Author had no Reason for excluding *Permission* from the general Idea of the *Law*. To which may be added what I have said on this Subject against Pufendorf, who is of the same Opinion with Grotius, *B. I. Chap. VI. § 15. Note 2.* By way of Supplement for this Omission, and some others, I am of Opinion that *Law* should be defined as I have already defined it, in a Note on the Abridgment of *The Duties of a Man and a Citizen*. *B. I. Chap. II. § 2.* of the last Editions: *The Will of a Superior sufficiently notified in some manner or other, by which Will he directs either all the Actions in general of those who depend on him, or at least all those of a certain Kind, so that, in Regard to such Actions, he either imposes on them a Necessity of doing or not doing certain Things, or leaves them at Liberty to act or not act as they shall judge proper.*

## 6.

We have an Example of this in a Law made by *Zaleucus*, inflicting a Penalty on those, who should drink Wine against the Physician's Orders. Grotius.

This severe Law made the Offence capital, if we may believe Elian, *Var. Hist. Lib. II. Cap. XXXVII.* See Pufendorf, *B. I. Chap. VI. § 4* in the Text and Notes. To which we may add what Elian says of the *Lacedemonians* and *Romans*, *Lib. III. Cap. XXXIV.* with the Note of the late Mr. Perizonius.

## 7.

Thus we say: *It is just to acknowledge Favours, to have Compassion for the Poor, to be liberal to those who want our Assistance, to take a prudent Care of our Health and Fortune, &c.*

## 8.

In his *Ethic. Nicom.* *Lib. V. Cap. X.* where he makes a Distinction between Δίκαιον Φυσικὸν, and Δίκαιον νομικὸν, as making part of what he calls Δίκαιον πολιτικὸν *Civil Law*. So that his Division

is not exactly the same with that of our Author. See my Preface to Pufendorf, § 24. p. 97, 98. of the second Edition.

9.

That is, for a Constitution absolutely depending on the Will of the Legislator.

10.

Tὸ ἐν τάξει. The Philosopher makes use of this Expression, when speaking of Injustice. Ἀδικὸν μὲν γάρ ἔστι τῇ φύσει, οὐ τάξει. *Ethic. Nicom.* Lib. V. Cap. X. p. 68. Vol. II. *Edit. Paris.*

11.

Thus *Maimonides*, in his *Guide to the Doubtful*, Lib. III. Cap. XXVI. Grotius. See Selden, who also adopts this Rabbinical Remark, in his Treatise, *De Jure Nat. & Gent. secundum Disciplinam Hebraeorum*, Lib. I. Cap. X. p. 119, 120. But our Author here gives us to understand, that this Distinction is not always observed, as he expressly acknowledges in his Commentary on St. Luke i. 6. See Mr. Le Clerc, on *Genesis* xxvi. 5. and in his Additions to Dr. Hammond's Notes on *Rom.* viii. 4.

1

Philo the Jew, in his Treatise, where he undertakes to prove that every good Man is free, speaks thus, *Right Reason is an unerring Law, not corruptible or lifeless, written by this or that mortal Man, on Papers or inanimate Pillars, but incorruptible, and engraved by an immortal Nature on an immortal Mind*, p. 871. *Edit. Paris. Will you enquire where the Law of GOD is?* says Tertullian, *when you have a common Law exposed to every one's View, and written on the Tables of Nature?* *De Coronâ Militis*, Cap. VI. The Emperor Marcus Antoninus declares, *The End to be proposed by all rational Creatures, is to follow the Reason and Laws of the most antient Commonwealth*, Lib. II. § 16. See a Fragment of Cicero's Treatise *De Republicâ*, Lib. III. quoted by Lactantius, Lib. VI. Cap. VIII. St. Chrysostom has several fine Thoughts on this Subject, in his twelfth and thirteenth Homilies *On the Statues*. What Thomas Aquinas says, *Secunda Secundae*, I.VII. 2. and Scotus, III. *Dist. 37.* is not unworthy our Notice. Grotius.

2.

Our Annotator adds the Words *ac Sociali, & Sociable* in the Text of his *Latin Edition*, because his Author expresses himself in the same Manner, § 12. *Num. 1.* and in the following Chapter, § 1. *Num. 3.* He thinks it probable, that the Transcriber or Printer omitted those two Words; and that the Author overlooked the Omission, as he has done in several other Places.

3.

*Actus debiti, aut illiciti per se.* The Author here supposes we should be under an Obligation of doing or not doing certain Things, even tho' we were not answerable to any one for our Conduct. We are not to be surprized that his Notions on that Subject are not entirely just, since we see at this Day not only the Generality of Philosophers and Scholastick Divines, but also some Authors, otherwise very judicious, and far from being Slaves to the Schools, strenuously maintain, that the Rules of the Law of Nature and Morality do in themselves impose an indispensable Necessity of conforming to them, independently of the Will of GOD. Some however, reason so as to make it seem a mere Dispute about Words. I shall endeavour to put the Question in a clear Light in a few Words, and shew the Foundation

of the Negative, which I take against the Author. This Note may be joined to what I have said on the same Subject in my Preface to Pufendorf, § 6. p. 36. Second Edition. The Question here is not whether we can discover the Ideas and Relations, from which all the Rules of the Law of Nature and Morality are deduced, abstractedly from the Will of an intelligent Being. It must be acknowledged with the Patrons of the Opinion which I oppose, that these Rules are really founded on the Nature of Things; that they are agreeable to the Order conceived necessary for the Beauty of the Universe; that there is a certain Proportion or Disproportion, a certain Fitness or Unfitness between most Actions and their Objects, which give a Beauty to some, and a Deformity to others. But it does not follow from this Concession, that we are, properly speaking, *obliged* to do or not to do such a Thing. The Fitness or Unfitness, which may be termed the *natural Morality* of Actions, is indeed a Reason for acting, or not acting; but then it is not such a Reason as imposes an indispensable Necessity, which is implied in the Idea of an *Obligation*. This Necessity can come only from a *superior*, that is, from some intelligent Being existing without us, who has a Power of restraining our Liberty, and prescribing Rules for our Conduct. If there were any Obligation independently of the Will of a Superior, it must be laid on us either by the Nature of the Things themselves, or by our own Reason. Now the Nature of Things cannot impose any Obligation properly so called. The Relation of Fitness or Unfitness between our Ideas, can of itself only oblige us to acknowledge such a Relation; something more is necessary for obliging us to make our Actions conformable to it. Nor can Reason of itself lay us under an indispensable Necessity of following those Ideas of Fitness or Unfitness, which it places to our View, as grounded on the Nature of Things. For, first, the Passions oppose these abstracted and speculative Ideas with sensible and affecting Ideas, they shew us in several Actions contrary to the Maxims of Reason, a Relation of Pleasure, Content, and Satisfaction, which attend them, as soon as we resolve to perform them. If our Understanding diverts us from such Actions, the Inclination of our Heart carries us toward them with much more Force. Why then should we comply with the former, preferably to the latter, if there is no exterior Principle that obliges us so to do? On this Supposition, are not the Inclinations of our Heart as natural as the Ideas of our Mind? Do they not arise from a certain Disposition in our Nature? You will say, Reason evidently shews us that we shall act more conformably to our Interest, by observing the Rules which she prescribes, than in being guided by our Passions. But the Passions will dispute this Advantage, and even pretend it lies on their Side, because the Satisfaction which they offer is present and certain; whereas the Interest to which Reason would engage our Attention, is future and distant, and perhaps therefore to be looked on as uncertain. Even tho' we were convinced that, all Things well considered, it would be advantageous to us to listen to the Dictates of Reason, is not every one at full Liberty to renounce his Interest, while no other Person is concerned in his acting conformably to it, or invested with a Right of requiring he should consult it as much as is in his Power? How much so ever a Man acts in contradiction to his real Interest, he will, on this Supposition, be only imprudent: He will be guilty of no Violation of any *Duty* or *Obligation*, properly so called. But secondly, what ought to be particularly observed, and which alone is sufficient for proving the Thesis here advanced, is that our Reason, considered as independent on the Being who endowed us with it, is at the Bottom nothing but *Ourselves*. Now no Man can impose on himself an indispensable Necessity of acting or not acting in such a particular Manner. The very Notion of Necessity implies, that it cannot cease at the Pleasure of the Person subject to it; otherwise it would be ineffectual, and reduced to Nothing. If then the Person obliged, and the Person who lays the Obligation be one and the same, he may disengage himself from it, when, and as often as he pleases; or rather there will be no real Obligation; as, when a Debtor succeeds to the Estate and Rights of his Creditor, the Debt ceases. In a Word, as Seneca very well observes, properly speaking, *No Man owes any thing to himself.... The Word Owe takes Place only between two.* De Benef. Lib. V. Cap. VIII.

From all which I conclude, that how conformable soever the Maxims of Reason be to the Nature of Things, and the Constitution of our Being, they are by no Means obligatory, till this same Reason has discovered the Author of the Existence and Nature of Things, whose Will gives those Maxims the

Force of a Law, and imposes an indispensable Necessity on us of conforming to them, by Virtue of his Right to restrain our Liberty, as he judges proper, and prescribe what Bounds he pleases to the Faculties we received from him. It is true, GOD can command nothing contrary to the Ideas of Fitness and Unfitness, which Reason shews us in certain Actions, but still the Obligation of regulating our Conduct by those Ideas proceeds only from his Will. The Question is not, Whether that Will be arbitrary or not? It is still that alone which, properly speaking, imposes the Necessity. If, supposing an Impossibility, we could reasonably persuade ourselves that the Divinity is such as he is represented by the *Epicureans*, a Being who does not interest himself in the Actions of Men, requires nothing at their Hands, has no Concern for their living well or ill; whatever Ideas we might entertain of Order, Fitness, and natural Justice, the Consideration of such a Divinity would not be sufficient for imposing an indispensable Necessity of taking those Ideas for our Rule, even tho' we believed he himself acted conformably to them, as far as the Perfection of his Nature requires; for Example is not in itself a solid Foundation of Obligation. In short, that the Will of GOD is the Source of all Duties appears from this Consideration, that when they who are in Possession of a Religion, practise the Rules of Virtue, and the Maxims of the Law of Nature, they ought so to do, not principally and precisely because they acknowledge such Rules conformable to the natural and invariable Ideas of Order, Fitness, and Justice; but because GOD, their Sovereign Master, wills that they should follow them in their Conduct. And, in Reality, it would otherwise be unnecessary for GOD to give any Orders on that Head, because they would be already obliged to act in that Manner: The Will and Authority of GOD would, on this Supposition, be no more than a Sort of Accessory, which, at most, would only make the Obligation stronger. I have treated this Matter more at large in my Reflections on *The Judgment of an anonymous Author*; or the late Mr. Leibnitz, printed in 1718, at the End of the fourth Edition of my Translation of the Abridgment of Pufendorf's Book *Of the Duties of a Man and a Citizen*.

#### 4.

He speaks here of such Things as are neither commanded nor forbidden by the Law of Nature, in regard to which we are left to our Liberty to act as we judge proper, unless a lawful Superior makes some positive Law in that Point; as it is in his Power; which is agreeable to the Law of Nature only in the Manner here specified, not being immutable, as our Author observes elsewhere, *B. I. C. II. § 5. n. 1.* But it is evident from what I have said, *Note 5.* on the preceding Paragraph, that there is a *Natural Law of bare Permission*, as well as one which is *obligatory*; and thus the Things which the Author means, may very well be considered as belonging to *Natural Law*, in the former Acceptation of the Term.

#### 5.

Our Author, in another Part of this Work, mentions *Concubinage, Divorce, Polygamy, B. I. C. II. § 6. n. 2.* the Action of a Person, who discovers to another, what he is not by the Law of Contract obliged to discover: (*B. II. C. XII. § 9. n. 2.*) The Care of declaring War in certain Cases, where it may be omitted without any Violation of Natural Law: (*B. III. C. III. § 6 n. 6.*) The Vow of *Celibacy, Second Marriages*, and the like, (*B. III. C. IV. § 2. n. I.*) as so many Examples of Things belonging to this Class. What we shall say on those Places, and on *B. I. C. II. § 1. n. 3.* will help to explain the Principle here laid down by our Author, and shew wherein he has misapplied or extended it too far. See also Pufendorf, *B. II. C. III. § 22.*

#### 6.

See Pufendorf, *B. II. C. III. § 15. Note 5.* and *§ 22, 24.*

#### 7.

*Theft is a fraudulent taking of a Thing, for the Sake of making an Advantage either of the Thing itself, or of the Use or Possession of it: All which is forbidden by the Law of Nature.* Digest. B. XLVII. Fol. 2. De Furtis, Leg. I. §3.

8.

The Words of the Emperor Julian on that Subject are, *Besides that, by which we are all convinced, without Instruction, of the Existence of something Divine; there is a second Law, sacred and divine by Nature, which orders us entirely to abstain from another Man's Property, and allows us not to make any Attempt on it, either by Word or Action, or even in our secret Thoughts, &c.* Orat. VII. p. 209. Edit. Spanheim. The Philosopher Chrysippus, as represented by Cicero, said, *There is no Injustice in seeking ones own Advantage; but it is contrary to Equity to take away from another.* De Offic. Lib. III. Cap. X. Grotius.

9.

*Theft and Adultery are in their own Nature Evil and Infamous.* Digest. Lib. L. Tit. XVI. *De Verborum significatione*, Leg. XLII.

10.

*For the Deity abhors violence. It is his Will that all Men should remain in quiet Possession of their own Goods; but no Rapine is allowed. Riches unjustly acquired are to be renounced, for the Air and Earth are common to all Men, where, when they increase their Possessions, they are not to detain or take away what belongs to others.* Helen. V. 909, &c.

11.

Compare this with what Pufendorf says, B. II. C. III. § 5.

12.

See Mr. Le Clerc's *Ontology*, C. XIV.

13.

The Definition of moral Good and Evil, of Virtue and Vice, being established on the necessary Congruity or Incongruity, which we perceive between certain Ideas, founded on the very Nature of Things; to say the Good becomes Evil, and Evil Good, as long as the Things remain the same, implies a Contradiction. If therefore God should command a Thing in which we find a necessary Incongruity with the Nature of Things; and on the contrary, prohibit a Thing in which we discover a necessary Congruity with the Nature of Things; he would act in Contradiction to himself, because he is the Author of that Nature: Thus he would be wise and not wise at the same Time; he would have all Perfections, and yet want one of the greatest; which is such a manifest Contradiction as can never be the Object of the Divine Omnipotence. If it be said, that God can change the Nature of Things, the Proposition is unintelligible, and when closely examined, implies no less Contradiction. For either the Things would not be the same, tho' called by the same Names; as *Man*, for Example, would be no longer a rational and sociable Creature; or Things remaining still the same, they would no longer be endowed with the same Properties, and the same essential Relations, i.e. they would and would not be the same; for the Essence of a Thing, and the Thing itself, differ only in Name.

14.

Ethic. Nicom. B. II. C. VI. The Application of this Passage is not entirely just. *Aristotle* is not here speaking of the Mutability or Immutability of Moral Evil. He means no more than that some Passions and Actions are of such a Nature, that they can be innocent in no Case, nor in what Manner soever they are admitted. Of this Sort are a malicious Joy at our Neighbour's Misfortunes, Impudence, Envy, Adultery, Theft, and Murder; whereas some other Passions and Actions are Good or Evil, as a just Medium is observed, or as we depart from it, and give into either Extreme: Such are Fear, Confidence, Desire, Aversion, Anger, Compassion, Joy, Sorrow, the Actions of giving or receiving, of speaking or being silent, &c. But, whether the moral Evil, always inherent in the former Sort of Actions and Passions, and sometimes in the latter, is absolutely inseparable from them, even by the Will of God, is another Question, on which the Philosopher says nothing either directly or indirectly, which leaves us Room to suppose he had it in his Thoughts.

15.

This Example is employed, B. I. C. VII. by way of Comparison, in relation to a very different Subject.

16.

See *Preliminary Discourse*, § 49. n. 3. and B. I. C. II. § 2. num. 1. B. II. C. VII. §2. n. 3. and B. III. C. XI. § 9. num. 2.

17.

This is treated of in B. II. C. II. § 2.

18.

See B. I. C. III. § 1, 2. and B. II. C. XX. § 8.

1

See Pufendorf, B. II. C. III. § 2, 3.

2.

Brutes have not a Power of forming abstracted or general *Ideas*, as Mr. Locke has shewn in his *Essay on the Human Understanding*, B. II. C. XI. § 10, 11. See also Cicero, *De Officiis*, B. I. C. IV. and Seneca, *Ep.* 124. Or if it be imagined, that by allowing Brutes Knowledge, it will be hardly possible to deny them some universal *Ideas*; it must be granted, at least, that they are not very extensive, and, according to all Appearance, are raised only by the Impressions of some particular Object which is present.

3.

*Oper. & Dier.* V. 276, &c. *Edit. Cleric.*

4.

*Juvenal* makes the same Observation, *Sat.* XV. v. 142, &c. "It is that which distinguishes us from Brutes. And it is also upon that Account that we only, of all Animals, have obtained a wonderful Capacity of apprehending divine Things, of inventing and exercising divers Arts. This Understanding we derive from Heaven, which the other Animals, whose Bodies are formed to look towards the Earth,

are intirely deprived of. The common Creator of the Universe has given to them Souls endowed only with Sense; but to us he has moreover given Reason, that a mutual Affection might encline us to ask and give mutual Assistance, to unite together, and to form Notions, &c. "St. Chrysostom says, *We ought not to trans gress the Rules of Justice, even in regard to inanimate Beings, and such as are void of Sense.* On VII. C. of *Epist. to the Romans.* Grotius.

This Thought of St. Chrysostom seems, on the contrary, to suppose some Sort of Law common to Men and Brutes.

## 5.

*Nor does our Nature differ in any Thing more from that of Beasts, to which we attribute Strength, as a Horse and a Lion, but never Justice, Equity, or Beneficence; for they have neither the Use of Reason nor Speech.* De Off. B. I. C. XVI. Our Author might have added a Passage from Aristotle, where that Philosopher observes, that *We never say Beasts are temperate or intemperate*, but by a Metaphor, *tho' one Species of Animals differs widely from another, in the natural Desire of Generation, and Greediness in Eating.* Ethic. Nicom. Lib. VII. Cap. VII. p. 92.

## 6.

*Cap. XVII. Num. 30, 31. Edit. Cellar.*

## 7.

(Polyb.) *Lib. VI. Cap. IV.* In regard to what the Philosopher says of Offences committed against Parents, we have an Example of that Kind in *Ham*, and the Punishment of his Crime, Gen. ix. 22, &c. St. Chrysostom observes, that *We are naturally inclined to join in our Indignation with those who have been injured; for, says he, we immediately become Enemies to the Offenders, tho' we have no Share in the Injury.* Hom. XIII. *De Status.* The Scholiast on Horace, *Sat. III. Lib. I. v. 97.* remarks, that *Our Sentiments of Indignation upon hearing of a Murther, are different from those that arise in our Soul when we are inform'd of a Robbery.* Grotius.

## 8.

Pliny, in his *Natural History*, Lib. VIII. Cap. V. speaks of a Sort of Sense of Justice in Elephants, which he terms *divinatio quaedam Justitiae*. The same Writer, *Lib. X. Cap. LXXIV.* tells us, on the Credit of another Author, that in *Egypt*, an Asp was known to kill one of its own Young, for having killed the Man's Son who entertained and fed him. Grotius.

## 9.

Seneca says, that wild Beasts are not, properly speaking, *subject to Anger, but have a Sort of blind Impetuosity in its stead.* *Brutes*, says he, *are void of human Passions, but have certain Impulses resembling those Motions.* De Ira. Lib. I. Cap. III. Origen also observes, that Beasts are not susceptible of Vice, properly so called, but that we find in them something that resembles Vice. *Contra Celsum.* The Peripaticks said, *The Lion seems to be angry.* Porphyr, *De non esu Animalium*, Lib. III. p. 309. *Edit. Lugd.* 1620. Grotius.

## 1

This Way of proving the Existence of the Law of Nature is of little Use, because only the most general Maxims of that Law have been received by most Nations. Some Practices even contrary to the most

evident of them, were long considered as indifferent in the most civilized Countries, as appears from the horrible Custom of exposing Children. See Pufendorf, *B. II. Chap. III.* § 7, 8. and what I have said in my Preface to that Author, § 4.

2.

Opp. & Dier. *vers. penult.* But the Passage is not well applied in this Place; for the Poet means only that we ought to endeavour at securing a good Reputation in the World, because false Reports always make some Impression, and prejudice the Person to whose Disadvantage they are spread. Όν πάμπαν ἀπόλλυται, *Are not entirely without Effect.*

3.

This is taken from Sextus Emtricus, [[sic: Empiricus]], *Adv. Mathem. Lib. VII.* § 134. p. 399. *Edit. Fabric.*

4.

Aristotle maintains, that *What all Men conceive in a certain Manner, is really such as it appears*; and that, *Whoever attempts to discredit such a Belief, will advance nothing much more worthy of Credit.* Ethic. Nicom. *Lib. X. Cap. II.* p. 130. *Edit. Paris.* Seneca, undertaking to prove that no Duty is more evident than that of Gratitude, gives the following Reason for it: *How different so ever the Opinions of Men may be on other Subjects, they will all unite in declaring that a proper Return is to be made to those who have deserved well of us.* Epist. LXXXI. Quintilian says, *I will therefore call the Consent of the Learned, the Standard of Language, and the Consent of good Men, the Rule of Life.* *Lib. I. Cap. VI.* To the same Purpose, Josephus, the Jewish Historian, *There is no Nation in which the same Customs are generally established: One City frequently differs from another in this Point, but Justice is equally proper for all Men, being extremely useful both to the Greeks and Barbarians.* As our Laws have a strict Regard to that Virtue, they render us, if religiously observed, benevolent and friendly to all Men. This is what we are to require from Laws: Nor are others to profess an Aversion to them, on the Account of the Difference between their Institutions and ours, but rather to consider whether our Laws have a Tendency to promote Probity and Virtue; for this is the common Concern of all Mankind, and is of itself sufficient for maintaining human Society. *Antiq. Judaic. Lib. XVI. Cap. X.* Tertullian says, that *Whatever is equally received by great Numbers of People, is not an Error, but a real Tradition.* *De praescript. adv. Haeret. Cap. XXVIII.* Grotius.

None of these Quotations, except the two first, are to our Author's Purpose: That of Quintilian seems rather to insinuate the contrary of what he would prove; for it is well known, that good Men were never the Majority; and that great Master of Rhethoric had a little before declared, that *Custom, if it received its Name from the Practice of the Majority, will give most pernicious Precepts, not only for forming a Stile, but also for regulating our Lives.* The Passage of Josephus comes to no more than this: That the Practice of Justice is equally useful to all Men; but there is nothing in it that insinuates that all Men entertain the same Ideas of that Virtue.

5.

Sextus Empiric. *Adv. Mathem. Lib. VII.* § 131, 133.

6.

I know not whence this is taken; for I do not find it in any of those Books where it might be supposed

that Philosopher has said any Thing of this Nature.

7.

Tusculan Quaest. Lib. I. Cap. XIII.

8.

*Epist.* CXVII.

9.

*Instit. Orator.* Lib. V. Cap. X. p. 399. *Edit. Burman.* He instances in the Belief of a Divinity, and the Obligation under which Children lie of loving and obeying their Parents.

10.

*Of Abstinence*, Lib. IV. p. 428. *Edit. Lugd.* 1620.

11.

Justin Martyr makes this Exception, *Except such as being possessed with impure Spirits, and corrupted by a bad Education, evil Customs, and unjust Laws, have lost their natural Ideas.* Colloq. cum Tryphone. Philo the Jew observes, that *It is surprizing any Man should be so blind, as not to perceive certain Properties of Things, which are as clear as the Sun.* In his Treatise proving all good Men to be free, p. 871. *Edit. Paris.* St. Chrysostom cautions us against *forming a Judgment of Things from the Opinion of such as have a corrupt Mind.* In his Homily on the Divinity of Jesus Christ. Grotius.

12.

*Ethic. Nicom.* Lib. V. Cap. X. Num. 2. *Edit. Heins.*

13.

In the Life of *Pompey*, Vol. I. p. 633. *Edit. Wech.*

14.

*Topic.* Lib. V. Cap. II. p. 228. Vol. I. *Edit. Paris.*

15.

St. Chrysostom says the same in his eleventh Homily *On the Statues.* Philo the Jew is larger on this Point. *Nature*, says he, *when it produced the tamest of all living Creatures, made him sociable, and disposed to Concord. She also gave him the Use of Speech, for promoting an Harmony and a Conformity of Manners.* On the Decalogue, p. 763. *Edit. Paris.* And in another Place, *Man is the most tractable of Animals, being by Nature endowed with the Gift of Speech, by which the most savage Passions are charmed into Tameness.* Of the Immortality of the World, p. 945. Grotius.

16.

*Polit.* Lib. I. Cap. V.

## 1

This is usually called *Positive Law*. Its Objects are Things in themselves indifferent, or such as are not founded on the Constitution of our Nature, and consequently admit of different Regulations, as Time, Place, and other Circumstances require; all which depend on the Will of a Superior, which is the only Foundation of this Kind of Law, which is therefore called *Arbitrary*. See Pufendorf, *B. I. Chap. VI. § 18.*

## 1

The Author follows Aristotle in the Addition of this Epithet. That Philosopher considered Civil Society, as a *perfect* Society, ἀντάρχη, containing all that is necessary for living commodiously and happily. *Politic. Lib. I. Cap. I.* See also *Lib. III. Cap. VI. & Lib. VII. Cap. IV.* The Definition of a State may be seen in Pufendorf, *B. VII. Chap. II. § 13*; and the Note on that Place.

## 2.

For there were Parents and Children, Masters and Servants, &c. before there were Princes and Subjects. The Authority of a *Father* over his *Child*, that of a *Master* over his *Servant*, &c. is by no Means founded on the Will of the Civil Power, and the Obligations incumbent on Men as Members of a State; but has a different Origin, as shall be shewn in the proper Place. The Sovereign in this Case can only lay a Restraint on that Authority, as far as the Publick Good requires.

## 3.

This Positive *Law of Nations*, distinct from the *Law of Nature*, is a mere Chimera. See Pufendorf *B. II. Chap. III. § 23.* with the Notes. I grant there are some Laws common to all Nations, or certain Things which ought to be observed by all Nations, in Regard to one another; and this may very well be termed the *Law of Nations*. But, besides that the Obligation to obey those Laws, does not arise from the Consent of Nations, which cannot take Place here; the Principles and Rules of such a Law, are in Reality the same with those of the *Law of Nature*, properly so called: The whole Difference consists in the Application which may be made in another manner, on the Account of the different Ways taken by Communities for determining Disputes. This is evident from the Example of *Reprisals*, which are founded on that general Maxim of the Law of Nature and Nations, that *Damages ought to be repaired*; for a Man in the State of Nature, cannot demand Satisfaction, for any Injury received from one who lives out of all Civil Society, of any of his Relations or Friends, who are really not concerned in the Affair. As to Customs received by the Generality of Nations, and concerning which the Law of Nature has given no Directions, if we are obliged to submit to them, it is not because they are obligatory in themselves, but because as soon as we know a Thing is generally practised, we are, and may be supposed to conform to such a Custom, while we give no Proof of the contrary. Thus the whole Obligation arises from this tacit and private Agreement, without which the Customs in Question have no Force.

## 4.

See Vasquez, *II. Controv. Illustr. LIV. 4. Grotius.*

## 5.

*B. III. Chap. VII, IX.*

## 6.

Orat. LXXVI. *De Consuetudine.*

### 1.

We have the following Passage on this subject in one of our Author's Epistles. "Salmasius, in his Treatise *De Usuris*, frequently disputes about Words. Thus (p. 589, 685.) he spends much of his Time in opposing the Epithet *Voluntary*, which I have employed as a proper Term for characterizing and distinguishing non-natural divine Law. But he did not observe that Cicero calls a bad Action *Facinus voluntarium*, and opposes *voluntarius* to *necessarius*. God was at full Liberty not to create Man. The Moment he is determined to create Man, that is, a Nature endowed with Reason, and formed for a Society of an excellent Kind, he necessarily approves of such Actions as are suitable to that Nature, and as necessarily disapproves of those which are contrary to it. But there are several other Things which he commands or prohibits, because he thought fit so to do, and not because he could not act otherwise. I do not see what more proper Word could be found for expressing this Sort of Law, which is not invariably attached to the Nature of Man, and for establishing which the free Determination of the Divine Will intervenes." *Epist. Part II. Ep. 429.*

### 2.

I have produced and explained the Passage of Plutarch, to which our Author here alludes, in my Remarks on Pufendorf, *B. II. Chap. III. § 4. n. 1.*

### 3.

I do not understand what positive Laws the Author means, which God delivered at the beginning of the World, and which are still obligatory, as soon as they are known. It is probable he understands by those Terms the several Sorts of Incest in the Collateral Line relating to the fourth of the six Commandments, which he, with the Rabbies, supposes were given to *Adam* and *Noah*, though they are only distinguished by the Name of the latter, as is also the Seventh, concerning Abstinence from Blood, which we find prescribed to *Noah*, Gen. ix. 4. See *Num. 4.* of the following Paragraph, and *Chap. II.* of this Book, § 5. *Num. 5. B. II. Chap. V. § 13. num. 2, 5, 6*; as also Selden, *De Jure Nat. & Gent. juxta disciplinam Hebraeorum*, Lib. I. Cap. X. But all this is grounded only on a very uncertain Tradition, which can never have the Force of a general Law, duly promulgated; as will appear still more evidently from what I shall say on the Places here referred to. We shall shew in *Note 1.* on *B. II. Chap. V. § 13* that the Consequence drawn from Levit. XVIII. 24. &c. is not well founded. Others, (as Mr. Hochsteter, Professor at *Tubingen*, in his *Collegium Pufendorfianum*, Exercit. III. § 19.) with more Reason refer this to the Prohibition given to our first Parents in regard to the *Tree of Knowledge of Good and Evil*. Gen. ii. 16, 17 iii. 2, 3. But, tho' that positive Law would have been equally obligatory to their Posterity, had they remained in Paradise, yet as the Matter of the Prohibition was but of short Duration, and the Law could never take Place afterwards, it is to no Purpose to make it an Example of an universal positive Law. The same Author, and several others, after Mr. Thomasius, who first reduced this Sort of Laws to a System, but afterwards ruined his own Edifice; those Authors, I say, place the Prohibition of Polygamy and Divorces among the universal positive Laws given to *Adam*; and pretend to find it in Gen. ii. 24. as also the Observation of the Sabbath, *ibid. v. 3.* the Authority of a Husband over his Wife, iii. 16. the Use of Sacrifices, iv. 3. But, *first*, tho' Moses says, *A Man shall leave his Father and his Mother, and shall cleave unto his Wife; and they shall be one Flesh.* Nothing can hence be concluded either for or against Polygamy or Divorce. The Expression, *Shall be one Flesh*, in itself means no more than that there shall be the strictest Union between a Man and his Wife; but it does not imply that a like Tie cannot at the same Time subsist between a Husband and two or

more Wives. And all that can be inferred from the same Text, in regard to the Dissolution of Marriage, is, that it ought not to be admitted rashly, and without some good Reason. The Word *Flesh*, according to the *Hebrew Idiom*, signifies all Ties, both of Affinity and Consanguinity, as Mr. Le Clerc has observed. Thus *Laban* says to *Jacob*, *Thou art my Bone and my Flesh*, Gen. xxix. 14. that is, I own you for one of my Relations. As therefore all the Relations of a Man are *his Flesh*; so, in the same Way of Speaking, a Man may be said to be *one Flesh* with several Wives. *Secondly*, In regard to the Sabbath, it is owned by the most judicious Divines, that when Moses, after the History of the Creation, says, GOD blessed the Seventh Day, and sanctified it, he speaks by Anticipation, and only touches by the by on the Reason why GOD afterwards instituted the Feast of the Sabbath, so considerable among the *Jews*. *Thirdly*, When GOD says to *Eve*, *Thy Desire shall be to thy Husband, and he shall rule over thee*, the Penalty consists rather in the Necessity laid on Wives, in consequence of Sin, of obeying ill Husbands, than in any Right conferred on Husbands to command them in certain Cases, and to a certain Extent, that Right being grounded on the Law of Nature, and not barely on Divine Positive Law; as we shall see in the proper Place. *Fourthly*, The fourth Chapter of Genesis gives us only one Example of Sacrifices offered by two Sons of *Adam*; but there is not the least Insinuation, that GOD had commanded them to render him that Kind of exterior Worship. It is not probable indeed, that Men should so soon have thought of it, without some Direction, as Mr. Le Clerc very well observes; but it does not thence follow, that GOD had then prescribed that Practice, in the Form of an universal and perpetual Law for all Mankind.

#### 4.

Of this Sort are usually said to be the Prohibition of eating Blood, Gen. ix. 4. and the Punishment of Murther, v. 6. But, *First*, The Prohibition of eating the Flesh of Animals, with their *Blood* or *Life*, was a Sort of symbolical Law, for diverting Men from Cruelty towards one another, at a Time when a Tenderness in that Particular was of the greatest Importance for the Multiplication of Mankind. See Mr. Le Clerc's Comment on the Place. Besides, we have not the least Insinuation, that any but the moral Part of this Law was to be obligatory at all Times, and in all Places; and such as pretend it not allowable, even under the Gospel Dispensation, to eat the Blood of any Animal, have been sufficiently confuted. *Secondly*, When GOD says, *Whoso sheddeth Man's Blood, by Man shall his Blood be shed*. This is not a Law, properly so called, but a bare Declaration of the just Punishment which Murtherers are to fear, either from Man or from GOD, by an Effect of the Divine Providence and Vengeance. See the following Chapter, § 5. note 2. This is evident from the preceding Words, where God says, *At the Hand of every Beast will I require it: (the Life of Man) At the Hand of every Man's Brother will I require the Life of Man*. To which he adds, by way of Confirmation, *Whoso sheddeth, &c. For in the Image of GOD made he Man*. From this Passage mis understood, some Lawyers, as the late Mr. Cocceius, Professor of Law at *Francfort* on the *Oder*, (Dissert. *De Sacrosancto Talionis Jure* § 29, &c.) infer that even at this Day no human Power can pardon a Murtherer. See a Dissertation of Mr. Thomasius, printed at *Hall*, in 1707, and entitled, *De Jure aggratiandi Principis Evangelici in causis Homicidii*. in which he opposes this Error. See also the following Chapter, § 5. num. 3.

#### 5.

See the following Chapter, § 6 num. 2.

#### 1

Some Commentators, as well Lawyers or Criticks as Divines, inveigh strongly against this Assertion of our Author; but they only copy the common Places of Scholastick Divinity. They need not have given themselves so much Trouble, had they but considered, that the Question concerning the

Salvation of the *Pagans* ought not to be brought into this Dispute, as being nothing to the Purpose. For whether the Heathens could or could not be saved without some Knowledge of JESUS CHRIST, either distinct or typical, it is still certain, that the Law of *Moses*, as such, laid no Obligation on the Pagans. This Law was undoubtedly directed only to the *Israelites*, as our Author observes; and an infinite Number of *Pagans*, who neither did or could know that there was such a People in the World, to whom GOD had given particular Laws, being therefore in an absolute Impossibility of having any Acquaintance with them, it cannot be reasonably said, they were under an Obligation of observing them. Thus supposing that the Efficacy of the Sacrifice of JESUS CHRIST cannot be extended to such as have not had the Assistance of Revelation, though through no Fault of their own, how moral soever they may live; they will not be condemned for not submitting to Laws of which they neither had nor could have any Knowledge; but for a Multitude of other Sins. Their being deprived of such a Means of Salvation, which GOD was not obliged to allow them, will be their Misfortune, not their Crime. As to those *Pagans* who lived in the Neighbourhood of *Judea*, and thus had it in their Power to embrace *Judaism*, as GOD did not forbid their being received when they offered themselves, so neither did he command them to be circumcised, to qualify themselves for sharing the Advantages of the *Mosaick* Law. Gronovius was sensible of this, and even gives a Reason for it, which evidently shews the Laws of *Moses*, as such, did not oblige the *Pagans*. *The Prophets*, says he, *were not to encroach on the Functions of the Messiah, who alone was to unite the Nations, call all Men, and render the Church universal*. Eusebius, in his *Evang. Demonst.* says, *The Law of Moses was delivered only to the Jews, and that while they remained in their own Country*. Whence he infers, that *therefore there was a Necessity of another Prophet, and another Law*. Lib. I. Cap. I. See Mr. Le Clerc's *Prolegomena to the Eccl. Hist.* Sect. I. Cap. VIII. § 10.

## 2.

The learned Gronovius objects, that the Laws of the Decalogue are universally obligatory, tho' the short Preface which ushers them in is addressed to *Israel*, whom GOD had *brought out of Egypt*. But, beside that the fourth Commandment, relating to the Observation of the Sabbath, was only for the *Jews*, as appears from the whole Tenor of the Words in which it is drawn up; and that the Reason of the Fifth, *that thy Days, &c.* evidently proves the same in regard to that; if the *Pagans* lay under any Obligation to practise the moral Parts of the *Decalogue*, it was not as they were a Set of Laws delivered from Heaven on Mount *Sinai*, but as so many Precepts which all Men may learn from natural Reason. So that Ziegler's Criticism does not affect our Author, whom he impeaches of not distinguishing between the *Moral, Ceremonial, and Judiciary Laws*.

## 3.

'Ευσεβεῖς καὶ φοβούμενοι τὸν Θεὸν not σεβόμενοι, as our Author, who has taken this from the Epithet given to *Cornelius* the Centurion, Acts x. 2. This Sort of Strangers are likewise called simply, 'Οι σεβόμενοι Ἑλλῆνες, *Greeks who feared or adored (GOD)* Acts xvii. 4. For nothing is more groundless than the Assertion of Gronovius, who says, *They were so called in relation to their Conversion to Christianity, not in regard to their former State*. It is impossible to give into this Thought, if we read the Words of St. Luke with ever so little Attention.

## 4.

And Tit. *De Synedrio*, Cap. XI. Grotius. The Quotation of Tit. *De Rege* is false, as we are told by Boecler, on the Credit of Wagenseil, *Not.* p. 175.

## 5.

Of such Persons see also Exod. xii. 45. Grotius.

## 6.

Such a Stranger is distinguished from a *Proselyte*, or circumcised Stranger; as appears from Numb. ix. 14. Maimonides talks much of these pious uncircumcised Persons, in his Treatise *On Idolatry*, Cap. X. § 6. The same Writer, in his *Com. on Misnajoth*, and elsewhere, says, that such pious Gentiles will partake of the Happiness of the World to come. St. Chrysostom, in his Exposition of Romans ii. has these Words, *Of what Sort of Jews, and of what Sort of Greeks does he here discourse? Of those who lived before the Appearance of Christ; for he has not yet brought his Discourse down to the Times of Grace.* To which he adds, *He (the Apostle) here speaks not of the idolatrous Greeks, but of such of them as worshipped GOD, of Men who follow the Dictates of natural Reason, of Men, who except only that they do not observe the Jewish Ceremonies, practise all the Duties of Piety.* He instances in *Melchizedeck, Job, the Ninevites, and Cornelius the Centurion.* He afterwards repeats it, that by the Term *Greek*, the Apostle means not an *Idolater*, but a *pious and virtuous Man, not subject to the Ceremonies of the Law.* He pursues the same Ideas in explaining those Words of St. Paul, 1 Cor. ix. 21. *To them that are without Law, as without Law.* And in his XII. Homily *De Statuis*, he observes, that the Apostle using the Word *Greek*, *does not thereby mean an Idolater, but a Man who worships one GOD, without being tied down to the Observation of the Jewish Rites; such as Keeping of the Sabbath, Circumcision, and the several Sorts of Purifications; but yet makes the Study of Wisdom and Piety appear through his whole Conduct.* Grotius.

The Author, at his Entrance on this Note, seems to appropriate the Term *Proselyte* to those Pagans who had intirely embraced *Judaism*. But it is well known, that the other Strangers, settled among the *Jews*, were likewise called *Proselytes*; because, in Reality, tho' they were not subject to the Observation of the *Mosaick Ceremonies*, they were absolutely obliged to renounce Pagan Idolatry, and make a Profession of worshipping the one true GOD, the Creator, which was the great and fundamental Article of the *Jewish Religion*. These therefore were termed *Proselytes of the Gate*, to distinguish them from the *Proselytes of Justice*, or such as were naturalized. The learned Gronovius is mistaken, when he tells us that *Cornelius* forbore making an open Profession of *Judaism*, for Fear of losing his Post in the Army. Nor, says that Commentator, could he have retained the Title of a *Roman Citizen*, which was a requisite Qualification for bearing Arms in the *Roman Troops*; or at least, for enjoying an honourable Employment in them. For, beside that we find nothing in the whole Account given of him, Acts x. which gives us any Room to suspect he was not publickly a *Proselyte of the Gate*, is not the Example of St. Paul, who, tho' a *Jew* by Birth, was a *Roman Citizen*, of itself sufficient to defeat this Argument? And is it not surprising, that Gronovius should entirely forget, or take no Notice of so well known an Example? See *Orbis Romanus*, by the late Baron Spanheim, *Exerc. I. Cap. XVII.* which affords a great Number of Instances and Authorities to this Purpose. See also what our Author says in the following Chapter, § 7. num. 5.

## 7.

Here the learned Gronovius replies, that this proves only, that GOD allowed these Strangers Liberty of Conscience, but it does not thence follow, that they were exempt from all Obligation of submitting to the whole Law. But, since GOD absolutely required they should observe certain Laws, as that against Idolatry; so that without a Compliance with that Prohibition, they were not permitted even to live in the Country, he plainly discharged them from the Obligation of submitting to the rest. This is insinuated in the Reason given in the Passage under Consideration: *For, says GOD, thou art an holy People, unto the LORD thy GOD.* That is, You *Israelites* ought not to eat of what is forbidden by the Laws, established for you in particular; but these Strangers are dispensed with in that Point, because

those Laws were not given for them. So that it is surprising our Commentator should alledge those Words as a Proof of what he asserts, when they make directly against him.

8.

Such as the Prohibition of working on the Sabbath Day, Exod. xx. 10.

9.

To the Passages of Scripture produced by our Author, we may add the Testimony of Josephus, *De Bello Jud. Lib. II. Cap. XXX. p. 809, 810. Edit. Lips.* See Mr. Le Clerc on Esdras vi. 10. The learned Gronovius pretends that GOD allowed Strangers to pray and offer Sacrifices in the Temple of *Jerusalem*, only with a view of rendering them in some Manner tributary to the *Jews*; as he permitted that People to carry off the Spoils of the *Egyptians*, and *Hiram King of Tyre* to furnish *Solomon* with Materials for building the Temple. But this great Critick did not observe *Solomon's* Words at the Dedication of the Temple, 1 Kings viii. *Moreover, concerning a Stranger that is not of thy People Israel, but cometh out of a far Country for thy Name's sake.... Hear thou in Heaven, thy Dwelling-Place, and do according to all that the Stranger calleth to thee for; that all People of the Earth may know thy Name, to fear thee, as doth thy People Israel.* From which it is evident, that GOD accepted of the Homage of Strangers, when offered with pious Dispositions, as *Solomon* supposes they might be; so that GOD had a very different View on this Occasion from what our Commentator pretends: Nor is the Passage quoted from Tacitus, for proving that the *Jews* were enriched by the Offerings and Presents of the *Pagans*, well applied, *Every one of that detestable People sent their Tribute thither, in Contempt of the Religion of the respective Countries in which they lived; and thus the Jews grew rich. Pessimus quisque, spretis Religionibus patriis, Tributa & Stipes illuc congerebant; unde auctae Judaeorum res.* Histor. Lib. V. Cap. V. where Tacitus evidently speaks of the Money which the *Jews* themselves dispersed through several Parts of the World, transmitted every Year to *Jerusalem*; Money raised by the Sale of their First-Fruits. That this was their Practice, appears from the Passages of Philo and Josephus, quoted by Justus Lipsius in one of his Notes, which Gronovius himself has inserted in his Edition of the *Latin Historian*, from whom the Passage is taken.

10.

See Josephus, where he treats of *Solomon's* Temple. Grotius.

The Place allotted for Strangers, was called *The Court of the Gentiles*. The Jewish Historian, in several Parts of his History, speaks of a Prohibition against passing the Limits of it. See *Antiq. Jud. Lib. XII. Cap. III. Lib. XV. Cap. ult. De Bello Jud. Lib. VI. Cap. XIV. Contra Apion, Lib. II.* There is no Mention of this Court in the *Old Testament*; but from Ezekiel xliv. 7, &c. it may be inferred, that there was originally an Inclosure round the *Court of Israel*, where Strangers were allowed to enter, and perform their Devotions. See Selden, *De Jure Nat. & Gent. secund. Hebr. Lib. III. Cap. VI.*

11.

We have a Reflection to the same Purpose in St. Hilary, on Matt. xii. Grotius.

Our Author, in his Treatise of *The Truth of the Christian Religion*, B. V. § 7. joins to these the Example of *Moses*, who did not exhort *Jethro*, his Father-in Law, to embrace the Ceremonies of the Law, which he had delivered to the *Israelites* by Divine Direction. He likewise observes, in a Note on that Place, that some of the *Mosaic* Laws were impracticable to the Generality of other People; as those relating to the First-Fruits, Tents, and solemn Feasts; which were to be observed in only one

Place in *Judea*, where it was impossible for all the Nations of the World to convene.

12.

See Josephus, *Antiq. Jud.* Lib. XIII. Cap. XVII. Ptolom. Lib. I. *De Vita Herodis*, as quoted by Ammonius under the Word Ἰδουμαῖοι. Selden, *De Jure Nat. & Gent. secund. Hebr.* Lib. II. Cap. II. and my 19th Note on this Section.

13.

That Father of Historians speaks of the *Egyptians* and *Ethiopians*, and the People of *Colchis*, Lib. II. Cap. XCI, CIV. He asserts that the Use of Circumcision was derived from the *Egyptians* to the other two Nations, as also to the *Phenicians* and to the *Syrians*, who inhabited *Palestine*; by whom he understands the *Jews*, who, according to him, acknowledge the Truth of this Account, as far as it relates to them. See also Diodorus of *Sicily*, Lib. I. Cap. XXVIII. and Lib. III. Cap. XXXII. p. 17 and 115. *Edit. H. Steph.*

14.

See his *Geography*, Lib. XVI. p. 771. *Edit. Paris.* where he treats of the *Cacophagi*, a People of *Ethiopia*, and p. 776. in his Account of the *Troglodytes*, some of whom, he tells us, are circumcised after the Manner of the *Egyptians*, spoken of *Lib. XVII.* p. 824.

15.

See his little Piece *On Circumcision*, p. 810, 811. *Edit. Paris.*

16.

In his Dialogue with Tryphon, where he speaks of the Idumeans.

17.

In his Answer to Celsus, *Lib. V.* where he observes, that the *Egyptians*, and the People of *Colchis* had not the same Reason for Circumcision, that obliged the *Jews* to the Practice of that Ceremony; and that the *Jews* themselves made a Distinction between their Circumcision and that used by the *Ishmaelites* of *Arabia*, tho' the People last mentioned were Descendants of *Abraham*, and *Ishmael*, the Founder of their Nation, had been circumcised by the Hands of that Patriarch, *Pag. 263. Edit. Cantab.*

18.

That Father, in his *Stromata*, Lib. I. Cap. XV. p. 354. *Edit. Oxon.* says that *Pythagoras*, travelling into *Egypt*, was circumcised in that Country, in order to qualify himself for being initiated in the Mysteries of the *Egyptians*, and enabling him to learn the Philosophy of their Priests.

19.

He says, *Haeres. XXX. § 30.* that the *Egyptians*, the *Saracens*, or *Ishmaelites*, the *Samaritans*, the *Idumeans*, and the *Homerites*, were circumcised as well as the *Jews*; but that most of these People used that Ceremony out of Custom, without assigning any Reason for it, and by no Means with a View of obeying the Divine Law which prescribed it. Hence we may observe, that tho' the first Persons who neglected Circumcision, and thus occasioned its being abolished among the Nations descending from

*Abraham*, were to blame, yet the Law of Circumcision ceased to oblige their Posterity, who had no Knowledge of that Institution: So that the Action of *Hyrcanus*, who forced the *Idumeans* to be circumcised, must necessarily be considered as violent and unjust, and not authorized by him who is the sole Master of Men's Consciences. Besides, the same Wagenseil, mentioned in Note 4 of this Paragraph, observes, after Boecler, that Maimonides says the direct contrary of what our Author advances in this Place, *viz.* that all *Abraham*'s Posterity were obliged by the Law of Circumcision, and that the *Jews* forced the *Idumeans* to observe that Ceremony.

20.

In his Commentary on *Jerem.* IX. Vol. V. p. 287. *Edit. Bas.*

21.

In his third Question on *Exodus*.

22.

Those *Ethiopians* whom Herodotus ranks among the circumcised, seem to have descended from the Posterity of *Keturah*: St. Epiphanius calls them *Homerites*.

The *Homerites* were part of the *Idumeans*; and our Author does not remember that he himself said so, in his Notes on *The Truth of the Christian Religion*, Lib. I. § 16. p. 60. *Edit. Amsterd. Cleric.* He both there and here supposes the Truth of the common Opinion, in his Time concerning the Origin of Circumcision, *viz.* that it was derived from the *Hebrews* to all other Nations. But, could he have read what Sir John Marsham and Doctor Spencer have written on that Subject, I imagine he would have changed his Opinion, and acknowledged, that Circumcision was practised among the *Egyptians* before GOD made it a Sign of his Covenant with *Abraham*, and his Descendants, to whom he prescribed that Ceremony in a different Manner, and with a different View than those which induced the *Egyptians* to use it. See Mr. Le Clerc on *Genesis* xvii. 8, &c.

23.

St. Chrysostom understands this of *natural Inferences*, Τοῖς τῆς θύσεως λογισμοῖς. To which he adds, *They are therefore the Objects of our Wonder, because they stood not in need of a Law.... Conscience, and the Use of Reason, are sufficient, instead of a Law.* Tertullian asserts, that *Before the Law of Moses, written on Tables of Stone, there was an unwritten Law, which was understood naturally, and observed by the Patriarchs.* Adv. Jud. Cap. II. To these may be added, a Thought of Isocrates, *If Men would govern a State well, they ought not to fill the Portico's with Letters, but carve the Maxims of Justice on the Minds of the Citizens.* Areopag. p. 148. *Edit. H. Steph. Grotius.*

This Passage is a little too far fetched. For even positive Laws, and several other Things, not derived from natural Light common to all Men, may be carved on the Mind or Soul, by Force of Instruction and Practice: So that what the *Grecian* Orator says, rather supposes in itself that the Rules of Justice, tho' grounded on natural Reason, are but little known, and generally neglected.

24.

This is the Apostle's true Meaning, the Words *Nature* and *naturally* are often used by the *Greek* and *Latin* Authors, in Opposition to the Way of Instruction, which gives us the Knowledge of certain Things. We find St. Paul, speaking of a Custom established in his Time, says, *Doth not Nature itself*

*teach you, that if a Man hath long Hair it is a Shame unto him? But if a Woman hath long Hair it is a Glory unto her.* 1 Cor. x. 14, 15. This Exposition is justified by daily Observation; several Things are learnt without a Master, which are looked on as what we know naturally. Much more then may it be said, that the *Gentiles*, who were deprived of Revelation, did of themselves, and without that Assistance, know the Precepts of Morality, which the natural Light of Reason led them to discover, and which were the same with those prescribed by the Law of Moses to the *Jews*; so that when a Pagan acted according to those Precepts, *He did by Nature the Things contained in the Law*, Rom. xi. 14. *Which shewed the Work of the Law* (that is, the moral Precepts of the Law) *written in his Heart*, or in his Mind, v. 15. that is, he could easily form such Ideas, and retain them in his Memory. See, concerning this last Expression, Mr. Le Clerc's *Ars Critica*. Tom. I. p. 163, &c. Edit. 4.

## 25.

In the last Editions of this Historian, and in those which have the best Reputation among the Learned, we find *Tzates*, which was probably the true Name of that *Adiabenian Prince*, who was converted to *Judaism*, with his Mother *Helena*.

## 26.

*Tryphon the Jew*, making some Abatement in this Point, owns to Justin Martyr, that *If he persisted in that Manner of philosophizing, he had some Hopes left of a better State*. Grotius.

## 27.

Thus Justin Martyr, in his Dialogue with *Tryphon*, observes, that *A Proselyte, who receives Circumcision, and is ranked among the (Jewish) People, is considered as one of the same Country*.

## 28.

Such Proselytes were therefore admitted to the Celebration of the Passover. Grotius. See Exod. xii. 19, 47, 48.

## 29.

St. Paul frequently argues against this Opinion, particularly in his Epistles to the *Romans* and *Galatians*.

## 30.

See what I have said in my second Note on this Paragraph.

## 1

That is, which consists solely in the Silence of the Law. For Silence alone is not an incontestable Proof, that the Legislator approves of what he does not forbid. We can only infer from it, that he does not design to employ the Means in his Power for hindering Men from doing such Things. The only Case in which Silence can be taken for a Mark of Approbation, is when it clearly appears, that the Legislator designed to forbid whatever he judged to be evil. Now we have no Reason to believe that GOD designed to forbid, positively, by the Law of Moses, every Thing that is any way evil. On the contrary, it was even necessary, that he should not prohibit some such Things. In reality, when GOD gave written Laws to the *Jewish Nation*, he acted rather as the temporal Master and Sovereign of that People, than as the perfect Teacher of Mankind in general. For which Reason all the Punishments,

with which he threaten'd the Offenders, were of a temporal Nature. As therefore there is no Civil Society, whose Interest permits that every Thing contrary to some Virtue, or some Law of Nature, should be attended with some Penalty; GOD would have acted contrary to his own Wisdom, if, in Quality of Civil Legislator of the *Jews*, he had not left several Things in themselves evil unpunished, and consequently, been silent on such Articles, especially when he had to do with so gross and stubborn a People. Thus, for Example, Murder was punished with Death, *Levit.* xxiv. 21. *Numb.* xxxv. 16, 17, 30. And that with good Reason: A Civil Society, in which Men might kill one another with Impunity, could not subsist; but such Motions of Anger as tended only to do some Injury, were not prohibited; because if the Legislator had annexed a Punishment to a Thing so common among all People, and from which the *Jews*, in particular, would have much Difficulty to abstain, the Regulation would have produced more Harm than Good. See Matt. v 21, &c.

## 2.

See St. Chrysostom, on the Close of *Rom.* vii. Grotius.

## 3.

I should think that we ought to reason in a different Manner on *Divine* from what we use to do on *Human Laws*. The Permission granted by human Laws, however it may be given, never of itself implies any Approbation of the Legislator, but only supposes that he judges proper not to punish the Thing in Question. The Reason is, that the Design of Legislators, considered as such, is to make the best Provision in their Power, for the Regulation of each Man's exterior Actions, in order to secure the publick Safety and Tranquillity; and not, properly speaking, to make Men good. But the same Thing cannot be said of GOD. In what Manner soever he acts, he always proposes making Men virtuous; and consequently, all positive Permissions from him are certain Proofs of Approbation. He may indeed be silent in regard to certain Things which imply some Vice, and leave them unpunished in this World, for the Reason given in Note 1. on this Paragraph; and that the rather, because, on due Consideration, it will appear that the Evil of such Things may be easily discovered by Consequences drawn from their Conformity with what is expressly prohibited, or their Incompatibility with what is clearly commanded. But GOD cannot positively permit the least Thing evil in its own Nature, even when he acts as a temporal Monarch; for that Character does not divest him of his Sanctity, but he still may and ought to be thought to approve of every Thing, at least as innocent, which he permits either in express Terms, or by a necessary Consequence from some formal Law or Ordinance. These then, in my Opinion, are the Consequences which may be drawn from the Divine Permission, when the Reasons deduced from the Nature of Things, which must always be considered, appear doubtful. *First, When GOD permits a Thing in certain Cases, and to certain Persons, or in regard to certain Nations, it may be inferred, that the Thing permitted is not evil in its own Nature.* For he would act in Contradiction to himself, if he authorized any Thing evil, in any Circumstances, or in Favour of any Person. For Example, *Exod.* xxii. 2, 3. Permission is given to kill a Thief in the Night, but not in the Day: Whence we may safely conclude, against the Opinion of some Doctors, too rigid on that Point, that when we resist an unjust Aggressor so far as to kill him, tho' he attempts only our Goods, this Defence is not criminal in itself, or contrary to the Law of Nature. GOD forbid the *Jews* to lend Money to one another on Interest; but he permitted that Practice in regard to Strangers, without excepting the Proselytes of the Gate: Therefore lending on Interest is not evil or unlawful in its own Nature, whatever some Divines and Lawyers may pretend. The Consequence is demonstrative, and sufficient to justify such Contracts, when reduced to lawful Bounds. The Law of Moses, *Deut.* xvii. 17. forbids Kings to *multiply Wives to himself*, lest they should induce him to violate the Law: This Prohibition implies a tacit Permission, both for them and all other Men, to have more than one Wife, without which it would be superfluous: Polygamy therefore is not in its own Nature evil and unlawful. *Secondly, When GOD*

*regulates the Manner of a Thing, or makes some other Regulation in regard to that Thing, which necessarily supposes it permitted; we are to enquire whether this is one single occasional Action, or a Thing, either by itself or by its Consequences, reduced to a Habit, and a continual Practice.* In the last Case, a Permission always implies a real Approbation of the Thing in Question, as in its own Nature lawful. Thus it is impossible that GOD should permit the Practice of Robbery, Piracy, Assassination, Duelling, &c. under any Sort of Conditions. When therefore we find him directing the Manner of Divorces, and regulating certain Cases which suppose the Permission of Polygamy, as in *Deut. xxi. 15.* we may very reasonably conclude, that neither Divorces nor Polygamy are essentially contrary to the Law of Nature. See our Author's Application of this Principle in the following Chapter, §2. *num. 2.* in order to shew, that all Sorts of War are not in their own Nature unjust. But when it is one single Act, which does not intail a Series of Sins, the Permission may imply no more than Impunity, without any Prejudice to the Divine Sanctity. Of this Kind is the Permission granted by the Law of Moses to the *Revenger of Blood*, that is, to the nearest Relation or Heir of a Person killed without any Malice or premeditated Design; this *Revenger of Blood* was allowed to kill such an involuntary Murtherer, if he found him out of his Asylum, even tho' he had been declared innocent by the Judges; *He shall not be guilty of Blood*, Numb. xxxv. 27. But it does not follow, that GOD considered this Action as innocent before the Tribunal of Conscience, and conformable to the Law of Nature; but only, that he thought proper to grant an Impunity in that Case, before the Civil Judge, to a Man who had killed another through a Spirit of Revenge. This was one single Act, and the Person might be sensible of its Injustice, and repent of it, after the first Motion of his Passion was over: Besides, the Person thus killed was in fault, who might have been secure, had he not left his Asylum against the express Orders of GOD.

#### 4.

JESUS CHRIST, for Example, has abolished all the Laws in general, which related to the Distinction of Meats. If therefore any Civil or Ecclesiastical Power pretends to oblige Men to Abstinence from any Sort of Food, on a Principle of Religion, such an Attempt is an open Violation of the Christian Liberty, established by our Saviour. I suppose this done *on a Principle of Religion*; for the Case will be widely different, if the Use of certain Meats are prohibited for good Reasons, founded on the Interest of the State. The Sovereign has an undoubted Power to impose such Abstinence in that View; as he may be allowed to decline making the wisest political Regulations in the *Mosaick Law* his Model, when they are not suited to the Constitution of the State under his Government.

#### 5.

Thus JESUS CHRIST having repealed the Husband's unlimited Permission of putting away his Wife for any Cause whatever, and without any other Reason than his own Will; a Christian Prince cannot make a Law, permitting Divorces in that Manner, only obliging the Husband to testify in a Writing delivered to his Wife, that he will have no farther Commerce with her.

#### 6.

*Christian Liberty has done no Prejudice to Innocence; the Law of Piety, Sanctity, Humanity, Truth, Fidelity, Chastity, Justice, Mercy, Benevolence, and Modesty, remain intire.* Tertul. *De Pudicit.* Cap. VI. Grotius.

#### 7.

*We ought to shew greater Degrees of Virtue, because we have now a plentiful Effusion of the HOLY SPIRIT, and the Advantages resulting from the Coming of CHRIST are very great.* Chrysost. *De Virginitate.* XCIV. See the same Father, in his Discourse, tending to shew that *Vice is occasioned by*

*Negligence. De Jejuniis* III. And on *Rom.* vi. 14. vii. 5. As also St. Irenaeus, *Lib.* IV. *Cap.* XXVI. The Author of *Synopsis Sacrae Scripturae*, among the Works of St. Athanasius, writing of Matt. v. observes, that our *Lord enlarges the Extent of the Precepts of the Law.* Grotius.

8.

The same Use is made of this Law, in regard to *Christians*, by St. Irenaeus, *Lib.* IV. *Cap.* XXXIV. And St. Chrysostom, on the Close of the last Chapter of *1 Cor.* and on *Ephes.* ii. 10. Grotius.

## **BOOK I: CHAPTER II: Whether 'tis ever Lawful to make War.**

Having viewed the Sources of Right, let us proceed to the first and most general Question, which is, Whether any War be Just, or, Whether 'tis ever Lawful to make War? [24]

**[[[I.]] That to make War is not contrary to the Law of Nature, proved by Reason.]** I. 1. But this Question, as well as those which follow, is to be first examined by the Law of Nature. Cicero learnedly proves, both in the third Book of *His Bounds of Good and Evil*, and in other Places, from the Writings of the Stoicks, that there are two Sorts of *natural Principles*; some that go before, and are called by the Greeks Τὰ πρώτα κατὰ φύσιν, *The first Impressions of Nature*; and others that come after, but ought to be the Rule of our Actions, preferably to the former.<sup>1</sup>[*Gel. xii. c.5*] What he calls *The first Impressions of Nature*, is that Instinct whereby every Animal seeks its own Preservation, and loves its Condition, and whatever tends to maintain it; but on the other Hand, avoids its Destruction, and every Thing that seems to threaten it. Hence comes it, says he, that there's no Man left to his Choice, who had not rather have all the Members of his Body perfect and well shaped, than maimed and deformed. And that 'tis the first Duty of every one to preserve himself in his natural State, to seek after those Things which are agreeable to Nature, and to avert those which are repugnant.

[181]

2. After that follows, (*according to the same Author*)<sup>2</sup> the Knowledge of the Conformity of Things with Reason, which is a Faculty more excellent than the Body; and this Conformity, in which *Decorum* consists, ought (*says he*) to be preferred to those Things, which mere natural Desire at first prompts us to; because, tho' the first Impressions of Nature recommend us to Right Reason; yet Right Reason should still be dearer to us<sup>3</sup> than that natural Instinct. Since these Things are undoubtedly true, and easily allowed by Men of solid Judgment, without any farther Demonstration, we must then, in examining the Law of Nature, first consider<sup>4</sup> whether the Point in Question be conformable to the first Impressions of Nature, and afterwards, whether it agrees with the other natural Principle, which, tho' posterior, is more excellent, and ought not only to be embraced when it presents itself, but also by all Means to be sought after.

3. This last Principle, which we call *Decorum*, according to the Nature of the Things upon which it turns, sometimes consists (as I may say) in an indivisible Point; so that the least<sup>5</sup> Deviation from it is a Vice: And [182] sometimes it has<sup>6</sup> a large Extent; so that if one follows it, he does something commendable, and yet, without being guilty of any Crime, he may not follow it, or may even act quite otherwise: Just as in contradictory Things, one passes immediately from one Extreme to the other; a Thing either is or is not, there is no Medium: But be- [25] tween Things that are opposed after another Manner, as between Black and White, there is a Medium, which either partakes of both Extremes, or is equally removed from both. The last Sort of *Decorum* is most commonly the Subject of Laws both Divine and<sup>7</sup> Human, which by prescribing Things relating thereto, render them obligatory, whereas before they were only commendable. But the Matter in Question is concerning the first Sort of *Decorum*. For, as we have said above, when we enquire into what belongs to the Law of Nature, we would know whether such or such a Thing may be done without Injustice; and by *unjust* we mean that which has a necessary Repugnance to a reasonable and sociable Nature.

Among the first Impressions of Nature there is nothing repugnant to [183] War; nay, all Things rather favour it: For both the End of War (being the Preservation of Life or Limbs, and either the securing or getting Things useful to Life) is very agreeable to those first Motions of Nature; and to make use of

Force, in case of Necessity, is in no wise disagreeable thereunto; since Nature has given to every Animal Strength to defend and help itself. *All Sorts of Animals*, says Xenophon,<sup>8</sup> understand some Way of Fighting, which they learnt no where but from Nature. So, in a Fragment of Ovid's<sup>9</sup> *Halieuticon: Or, Art of Fishery*, All Animals naturally know their Enemy, and how to defend themselves: They are sensible of the Force and Quality of their Weapons, And in Horace, *The Wolves assault with Teeth, and the Bulls with Horns: Whence is it but from Instinct?* But Lucretius more fully, Every Animal knows its own Power: A Calf is sensible of its Horns, even before they are grown, and<sup>10</sup> will push with its Head, when provoked. Which Galen thus expresses, We see every living Creature employ his strongest Part in his own Defence: The Calf pushes with his Head, tho' his Horns be not yet grown; the Colt kicks with his Hoofs, tho' yet tender; and the Whelp bites with his Teeth, as yet but weak. And the same Author tells us, in his First Book *Of the Functions of the Members*, That Man is [184] an Animal by Nature fitted for Peace and<sup>11</sup> War; that he is not indeed born with Arms, but with Hands<sup>12</sup> proper to make and to use Arms, so that we see the very Infants defend themselves with their Hands, without being taught. So<sup>13</sup> Aristotle says, Man has a Hand, instead of a Spear, a Sword, and other such Weapons; as being capable of grasping and holding every Thing else.

But Right Reason, and the Nature of Society, which is to be examined in the second and chief Place, does not prohibit all Manner of Violence, but only that which is repugnant to Society,<sup>14</sup> that is, which invades another's Right: For the Design of Society is, that every one should quietly enjoy his own, with the Help, [26] and by the united Force of the whole Community. It may be easily conceived, that the Necessity of having Recourse to violent Means for Self-Defence, might have taken Place, even tho' what we call *Property* had never been introduced. For our Lives, Limbs, and Liberties, had still been properly our own, and could not have been, (without manifest Injustice) invaded. So also, to have made use of Things that were then in common, and to have consumed them, as far as Nature required, had been the Right of the first Possessor: And if any one had attempted to hinder him from so doing, he had been guilty of a real Injury. But since *Property* has been regulated, either by Law or Custom, this is more easily understood, which I shall express in the Words of<sup>15</sup> Tully, *If every Member of the Body was capable of Reflection, and did really think that it should enjoy a larger Share of Health, if it could attract to itself the Nourishment of the next Member, and should thereupon do it, the whole Body would of Necessity languish and decay: So if every Man were to seize on the Goods of another, and enrich himself by the Spoils [185] of his Neighbour, human Society and Commerce would necessarily be dissolved. Nature allows every Man to provide the Necessaries of Life, rather for himself than for another; but it does not suffer any one to add to his own Estate, by the Spoils and Plunders of another.*

It is not then against the Nature of Human Society, for every one to provide for, and take Care of himself, so it be not to the Prejudice of another's Right; and therefore the Use of Force, which does not invade the Right of another, is not unjust; which the same<sup>16</sup> Cicero has thus expressed, *Since there are but two Ways of Disputing, the one by Argument, the other by Force; and the former being peculiar to Man, and the other to Beasts, we must not have recourse unto the last, but when the first cannot be employed.* And<sup>17</sup> again, *What can be opposed to Force, but Force?* And in Ulpian,<sup>18</sup> *To repel Force by Force is naturally lawful.* So in Ovid,<sup>19</sup>

- *Armaque in armatos sumere jura sinunt.*

*The Laws permit us to take Arms against those who are armed to attack us.*

[II.**Proved by History.**] II. What I have said already, that every War is not repugnant to the Law of Nature, may be further proved from sacred History. For when Abraham, with the Assistance of his hired Servants and Confederates, had vanquished the four Kings which had plundered Sodom, GOD was pleased, by his Priest Melchisedech, to approve of his Action; for thus said Melchisedech to him,

*Blessed be the most high GOD, who hath delivered thine Enemies into thine Hand,* Gen. xiv. 20. Yet had Abraham, (as appears from the History) taken up Arms without any special Warrant from GOD, but moved thereunto by the Law of Nature, being a Man not only very holy, but also very wise, as is testified of him even by Strangers, [186] as<sup>1</sup> *Berosus* and<sup>2</sup> *Orpheus*. I shall not instance in the seven Nations, whom GOD delivered up to be destroyed by the *Israelites*, because they had a special Commission from GOD to execute this Judgment upon them, for their notorious *Abominations*. Wherefore those Wars in Holy Writ are called, in a literal Sense, *Battles of the<sup>3</sup> LORD*, as being undertaken by the Command of GOD, and not the Will of [27] Man. It is more to our Purpose to remark, that the *Israelites*, under the Conduct of *Moses* and *Joshua*, having by Force of Arms repelled the *Amalekites*, who attacked them, *Exod.* xvii. GOD approved the Conduct of his People, tho' he had given no Orders upon that Head before the Action.

And further, GOD himself prescribed to his People certain general and established Rules of making War, *Deut.* xx. 10, 15. thereby plainly shewing, that War might sometimes be just, even without a special Command from GOD; for there he makes a manifest Difference between the Cause of those seven Nations, and that of other People. And since he does not declare the just Reasons of making War, he thereby supposes that they may be easily discovered by the Light of Nature. Such was the Cause of the War made by *Jephtha* against the *Ammonites*, in defence of their Borders, *Judges* xi. and afterwards by *David* against the same People, for affronting his Ambassadors, *2 Sam.* x. And it is very remarkable, [187] what the Author of the Epistle to the *Hebrews* records, that *Gideon, Barack, Sampson, Jephtha, Samuel*, and others, *by Faith subdued Kingdoms, waxed valiant in Fight, put to flight whole Armies of the Aliens*, *Heb.* xi. 33, 34. in which Place, (as we may gather from the Context) under the Notion of Faith, is included their assured Confidence, that what they did was pleasing to GOD: And upon this Account *David* is said, by a Woman distinguished for her Wisdom, *To fight the LORD's Battles*; that is, to make just and lawful Wars, *1 Sam.* xxv. 28.

[III.] **Proved by Consent.** III. What we have here proved from Holy Writ, may be also confirmed, by the *Consent of all*, or at least the wisest *Nations*. Every Body knows that fine Passage of *Cicero*, where treating of the Right of recurring to Force, in defence of one's Life, he renders this Testimony to Nature,<sup>1</sup> *This (says he) is not a written, but a Law born with us, which we have not learned, received, or read, but taken and drawn from Nature itself; a Law to which we have not been formed, but for which we are made; in which we have not been instructed, but with which we are imbued; that if our Lives be brought into Danger by Force or Fraud, either by Robbers or Enemies, all Means that we can use for our Preservation, are<sup>2</sup> fair and honest.* And again, *This, Reason has taught the Intelligent, Necessity the Barbarians, Custom the Nations, and Nature herself the wild Beasts, at all Times to repel, by any Means whatsoever, all Force (or Violence) offered to our Bodies, our Members, or our Lives.* *Caius the Lawyer says,*<sup>3</sup> *Natural Reason allows us [188] to defend ourselves against Danger.* And *Florentinus the Lawyer, that*<sup>4</sup> *It is but just, that whatever any one does in defence of his Body, should be held lawfully done.*<sup>5</sup> *Josephus observes, That it is a Law of Nature, fixed in all living Creatures, to be desirous of Life; and that we therefore look on them as our Enemies, who would openly deprive us of it.*

This Principle is founded on Reasons of Equity, so evident, that even in Beasts, which (as I said<sup>6</sup> before) are not susceptible of Right, but have only some slight Resemblance of it, we distinguish between the Attack and the Defence. When *Ulpian*<sup>7</sup> had said, that *An Animal*<sup>8</sup> *without Knowledge*, that is, without the Use of Reason, *is incapable of doing Wrong*, he immediately adds, *When two Rams, or two Bulls fight, and one kills the other, it must be considered*, (according to *Q. Mu-* [28] *tius*) *whether that which is killed was the Aggressor, or not; in the last Case, the Owner has an Action of Damage against the Master of the other Beast; but in the first he has no Action against him.* Which may be explained by that of *Pliny*,<sup>9</sup> *Lions, as fierce as they are, do not fight with Lions, nor do*

*Serpents bite Serpents; but if Violence be offered them, there are none so tame but will exert their Anger, none so patient of Injury, but, upon receiving Hurt, will make an active and vigorous Defence.*

[189]

**[IV. That War is not contrary to the Law of Nations.]** IV. By the Law of Nature then, which may also be called the Law of Nations, it is plain, that every Kind of War is not to be condemned. History, and the Laws and Customs of all People, fully inform us, that War is not disallowed of by the Voluntary Law of Nations: Nay,<sup>1</sup> *Hermogenianus* declares, that Wars were<sup>2</sup> introduced by the Law of Nations, which I think ought to be interpreted somewhat different from what it generally is, *viz.* That the Law of Nations has established a certain Manner of making War; so that those Wars which are conformable to it, have, by the Rules of that Law, certain peculiar Effects: Whence arises that Distinction which we shall hereafter make use of, between a *solemn War*, which is also called Just, (that is, regular and compleat) and a *War not solemn*, which yet does not therefore cease to be just, that is, agreeable to Right. For tho' the Law of Nations does not authorize Wars *not solemn*, yet it does not condemn them, (provided the Cause be just) as shall hereafter be more<sup>3</sup> fully explained. *By the Law of Nations, ( says Livy)*<sup>4</sup> *it is allowed to repel Force by Force.* And *Florentinus*<sup>5</sup> declares it *to be allowed by the Law of Nations to repel Violence and Wrong, and to defend our Lives.*

[190]

**[V. That the Voluntary Divine Law before Christ was not against it, proved; and the Objections answered.]** V. There is a greater Difficulty concerning the Voluntary Divine Law: But let none here object, that the Law of Nature being unchangeable, GOD himself cannot decree any Thing against it; for it is true, as to those Things which the Law of Nature either positively forbids or commands, but not as to those that are barely permitted by the Law of Nature; for they, being properly<sup>1</sup> without the Bounds of the Law of Nature, may be either prohibited or commanded, as shall be thought proper. The first Objection then against War, brought by some, is that Law given to *Noah* and his Posterity, Gen. ix. 5, 6. where GOD thus speaks, *Surely the Blood of your Lives will I require; at the Hand of every Beast will I require it, and at the Hand of Man; at the Hand of every Man's Brother will I require the Life of Man. Whosoever sheds Man's Blood, by Man shall his Blood be shed; for in the Image of GOD made he Man.* And here some take the Phrase of *requiring Blood* in a general Sense, and the other, that *Blood shall be shed* in its turn, to be a bare Threatening, and not an Approbation; neither of which Explications can I agree to. For the forbidding to shed Blood, reaches no further than that in the Law, *Thou shalt not kill;* which neither disproves Capital Punishments inflicted on Criminals, nor Wars undertaken by publick Authority. Therefore, both the [29] Law of *Moses*, and the Law given to *Noah*, tend rather to explain and renew the Law of Nature, obscured, and, as it were, extinguished by wicked Customs, than to establish any Thing new: So that the *Shedding of Blood*, prohibited by the Law given to *Noah*, ought to be understood in that Sense which implies a Crime; as by Murder we understand not every Act whereby the Life of a Man is taken away, but the premeditated killing of an innocent Person. And that which follows, of *shedding Blood for Blood*, seems to me not so much to denote the bare Fact, or what shall happen,<sup>2</sup> as the Right that Men have to put Murderers to Death.

I thus explain the Case. It is not unjust by the Law of Nature, that a [191] Man should suffer himself as much Evil, as he has caused (to others); according to that which is called *The*<sup>3</sup> *Law of Rhadamanthus.*

- *To suffer what one has done, is Just and Right.*

And *Seneca* the Father expresses it thus,<sup>4</sup> *It often happens that one suffers, by a most just Retaliation, in the same Manner that one had designed to make another suffer.* From a Sense of this natural Equity, *Cain*, guilty of Parricide, says of himself, Gen. iv. 14. *Whosoever finds me shall kill me.* But GOD in

those early Days, either upon the Account of the Scarcity of Men, or because there being yet but few Examples of Murder, it was not so necessary to punish it, thought fit to prohibit what was naturally permitted; and ordered that all Intercourse with, and even the<sup>5</sup> Touching of Murderers should be avoided, but that their Lives should be spared. As<sup>6</sup> *Plato* also appointed in his Laws; and<sup>7</sup> *Euripides* informs us, that it was practised by the old *Greeks*, in these Verses,

- Καλῶς ἔθεντο, &c.

*Our Fathers, in antient Times, had wisely ordered, that whoever embrued his Hands in the Blood of another, should not appear in the Sight of any one in the Country: Banishment was the Punishment inflicted on him for the Murder; but it was not permitted to take away his Life, as he had taken away the Life of another.* To which we may refer that of *Thucydides*,<sup>\*</sup> It [192] is probable, that in former Days heinous Crimes were slightly punished, but when in Time these Punishments came to be despised, they were changed into Death. And *Lactantius*,<sup>\*</sup> As yet it was reputed a Sin to put even the greatest Offenders to Death.

Their Conjecture of the Divine Will, grounded on that remarkable Instance (of *Cain*) passed into a Law; so that *Lamech* having<sup>8</sup> committed the like Fact, from this Example promised himself Impunity, *Gen. iv. 24.* [30]

But as before the Flood, in the Times of the Giants, Murders were very frequent and common; that the same Licentiousness might not become customary, after the Restoration of Mankind, GOD was pleased [193] to restrain it by more rigorous and effectual Means. Having then abolished the Indulgence of former Ages, he put Men in Possession of their natural Right; he expressly permitted what Nature dictated not to be unjust, and declared every Person<sup>9</sup> innocent that killed a Murderer. When Civil Tribunals were erected, that Permission, for very strong Reasons, was transferred solely to the Judges; yet so, that some Track of that antient Custom was to be seen, in the Right granted to him that was next of Kin to the Person killed, even after the Law of *Moses*; of which<sup>10</sup> I shall treat more largely hereafter.

We have the great *Abraham* to justify this Interpretation, who not being ignorant of the Law given to *Noah*,[*Gen. vi. 9.*] took up Arms against the four Kings, which he believed not repugnant to that Law. So *Moses* commanded the People of *Israel* to fight against the *Amalekites* that came to attack them, without any other Reason than the Law of Nature; for it does not appear that he particularly consulted GOD in this Case.[*Ex. xvii. 9.*] Besides, capital Punishments were not only inflicted on Murderers, but also on other Sorts of Criminals, and that not only among the *Gentiles*,[*Gen. xxxviii. 24.*] but even among the Patriarchs themselves.

They concluded from the Light of natural Reason, that it was consonant to the Divine Will, that the Punishment appointed for Murderers might, without Injustice, be inflicted on other most heinous Offenders; for there are some Things which we prize equally with our Lives; as Reputation, Virgin-Chastity, conjugal Fidelity; and those Things without which our Lives cannot be safe, as Reverence to our Sovereigns; against which those who offend are to be accounted as bad as Murderers.

Hither we may refer that antient Tradition among the *Hebrews*, that GOD gave more Laws to the Sons of *Noah*, which were not all recorded by *Moses*, as thinking it enough to include them afterwards in the peculiar Laws of the *Hebrews*. Thus it is plain from *Levit. xviii.* that there [194] was an<sup>11</sup> antient Law against incestuous Marriages, tho' not mentioned by *Moses* in its proper Place. Among those Commands of GOD to the Sons of *Noah*, they say<sup>12</sup> this was one, that not only Murders, but also Adulteries, Incests, and Rapines should be punished with Death, which the Words of *Job* seem to confirm;[*Job xxxi. 11.*] and even the Law of *Moses* gives Reasons for these capital Punishments,<sup>13</sup>

which Reasons suit no less with other Nations, than with the *Hebrews* themselves; and particularly it is said of Murder,[**Lev. xviii. 24, 25, 27, 28. Ps. ci. 5. Prov. xx. 8. Numb. xxxv. 31, 33.**] that the Land cannot be cleansed but by the Blood of the Slayer. Besides, it would be absurd to think, that whilst the *Jews* were allowed to secure their publick and private Safety by capital Punishments, and to defend themselves by War, all other Nations and Powers should be denied the same Privilege; and yet that the Prophets should never have intimated to those Nations and Powers, that GOD condemned every Kind of War, and all Use of the Sword of Justice, as they frequently admonished them of other Sorts of Sins which they were guilty of. [31]

Nay on the contrary, is it not most evident, that since the Laws of *Moses*, with respect to criminal Matters, carry so visible a Character of the Divine Will, the other Nations would have done very well to take them for a Model? It is even probable, that the *Greeks* at least, and particularly<sup>14</sup> the *Athenians*, did so: Whence proceeds so great an Agreement of the old *Attick Law*, and from thence of the *Roman*<sup>15</sup> in the *Twelve Tables*, with the *Hebrew Laws*. This is enough to prove, that the Law given to *Noah* is not to be taken in that Sense which they imagine, who would thence conclude all Wars to be unlawful.

[195]

**[VI.Certain Cautions concerning the Question, whether War be contrary to the Law of the Gospel.]**  
VI. The Arguments brought out of the New Testament against War are more plausible; in examining which, I shall not suppose that, which others do, that there is nothing in the Gospel (except Points of Faith, and the Sacraments) but what is enjoyned by the Law of Nature; for that, in the Sense that most Divines take it, I cannot think true.

1. This I freely grant, that there is nothing commanded us in the Gospel, which is not agreeable to natural Decorum; but I see no Reason to allow, that the Laws of CHRIST do not oblige us to any Thing but what the Law of Nature already required of itself.
2. And those, who are of that Opinion, are strangely embarrassed to prove, that certain Things which are forbid by the Gospel,<sup>1</sup> as *Concubinage, Divorce, Polygamy*, are likewise condemned by the Law of Nature. Indeed these are such that Reason itself inform susitis more Decent to refrain from them, but yet not such, as (*without* the Divine Law) would be criminal. The Christian Religion commands, that we should lay down our Lives one for another; but who will pretend to say,[**1John iii. 16.**] that we are obliged to this by<sup>2</sup> the Law of Nature. *Justin Martyr* says,<sup>3</sup> *To live only according to the Law of Nature, is to live like an Infidel.*
3. Neither shall I follow them, who supposing another Principle very considerable, if it were true, pretend that CHRIST, in the Precepts he gives in the fifth and following Chapters of St. *Matthew*, only interprets [196] the Law of *Moses*. For those Words so often repeated, imply something else, (*You have heard it has been said to them of old: But I say unto you*) which Opposition, as also the *Syriack*, and the other Translations, plainly declare, that the Word *Veteribus* must be render'd *to*, and not by *them of old*; as *Vobis* is *to*, and not by *you*. Now *those of old* are certainly the Contemporaries of *Moses*;<[**Ex. xx. 13. Lev. xxiv. 21. Numb. xxxv. 16, 17, 30. Ex. xx. 14. Deut. xxiv. 1. Ex. xx. 7. Numb. xxx. 2. Lev. xxiv. 20. Deut. xix. 21. Lev. xix. 18. Ex. xxxiv. 11, 12. Deut. vii. 1. Ex. xvii. 19. Deut. xxv. 19.**] for what is there mentioned to be said *to them of old*, was not spoken by the Doctors of the Law, but by *Moses* himself, either in those very Words, or the same Sense, as *Thou shalt not kill. Whosoever killeth shall be in Danger of Judgment. Thou shalt not commit Adultery. Whosoever shall put away his Wife, let him give her a Writing of Divorcement. Thou shalt not forswear thyself, but shall perform unto the Lord thine Oaths. An Eye for an Eye, and a Tooth for a Tooth*, (that is, you may

demand it in Justice). *Thou shalt love thy Neighbour* (that is, an *Israelite*) and hate thine *Enemy*, (4) that is, the seven Nations with whom they were forbid to make any League, or shew them any Mercy. To these are to be added the *Amalekites*, with whom the *Hebrews* are commanded to have an implacable War). [32]

4. But to understand the Words of CHRIST, we must carefully observe, that the Law delivered by *Moses* may be considered two Ways; either as to what it has in common with Laws merely human, that is,[**Heb. ii. 2.**] as it restrained the most heinous Crimes by the Fear of visible Punishments, and so maintained the Order of Civil Society amongst the antient *Hebrews*; in which Sense it is called *The Law of a carnal Commandment*, and *The Law of Works*.[**Heb. vii. 16. Rom. iii. 27.**] Or it may be considered as to what it has peculiar to Divine Laws, that is, as it also requires the Purity of the Mind, and some Acts, which may be omitted without the Fear of temporal Punishment;[**Rom. vii. 14.**] in which Sense it is termed *A spiritual Law rejoicing the Soul*, Psal. xix. 8. (which the *Latins* call the xviiith). The Doctors of the Law and *Pharisees* contenting themselves with that first Part of it, (*the Carnal*) despised the other, (*the Spiritual*) which yet is the more excellent, and neglected to teach it the People; which appears plainly, not only from the Books of the New Testament, but also from *Josephus* and the *Rabbies*.

[197]

5. But even as to what relates to this second (*spiritual*) Part, we must know, that tho' the Virtues which are required of Christians, were recommended and enjoined to the *Hebrews*, yet it was not<sup>5</sup> in so high a Degree, nor with so great an Extension; and in both these Respects CHRIST opposes his Precepts to those of the Antients: Whence it is plain, that his Words imply more than a bare Interpretation. These Remarks not only serve to the Matter in Hand, but also to many other Subjects, wherein the Authority of the antient Law might be misemployed.

**[VII.Arguments for the negative Opinion out of Holy Writ.] VII.** 1. Therefore, omitting those Arguments of less Weight, the first and chief Testimony, whereby we may prove that the Right of making War is not absolutely taken away by the Law of the Gospel, is that of St. *Paul* to *Timothy*, *I exhort you, that above all Things, Prayers and Supplications*,[**1Epist. ii. 1, 2, 3.**] *Intercessions and giving Thanks, be made for all Men; for Kings, and such as are in Authority*,<sup>1</sup> *that we may lead a quiet and peaceable Life, in all [198] Godliness and Honesty; for this is good and acceptable in the Sight of GOD our Saviour, who would have all Men to be saved, and to come to the Knowledge of the Truth*. Hence we are taught three Things, First, That it is pleasing to GOD that Kings should become Christians. Secondly, That being converted to Christianity they still continue Kings; which *Justin Martyr* thus expressed,<sup>2</sup> *We pray, that Kings and Princes may, together with their Royal Power, be found to have wise and reasonable Sentiments*. And in the Book intitled, *The Constitutions of Clement*, the Church prays,\* *χριστιανὰ τὰ τέλη*, for Christian Magistrates. And Thirdly, That it is acceptable to GOD, that Christian Kings should contribute their utmost to the Quiet of others.

**[Rom. xiii. 4.]** But how? He explains This in another Place: *He is the Minister of GOD to thee for Good; if thou do ill, be afraid, for he beareth not the Sword in vain; for he is GOD's Minister, an Avenger to execute Wrath upon them that do Evil*. Under the Right of the Sword, is figuratively comprehended every Sort of Punish- [33] ment, as that Expression is<sup>3</sup> also taken, sometimes among the Lawyers; but yet so, that the true<sup>4</sup> and effective Use of the Sword, which is the principal<sup>5</sup> Part, be not excluded. The second [199] *Psalm* may not a little help to explain this Place; which *Psalm*, tho' it was really verified in the Person of *David*, yet does it more fully and perfectly relate to CHRIST, as we may learn from *Acts* iv. 25. xiii. 33. and *Heb.* v. 5. Now that *Psalm* advises all Kings to kiss the Son with Reverence, that is, to shew themselves his Servants as Kings, as St. *Austin* rightly expounds it,

whose Words relating to this Subject I shall here set down.[6](#) *In this Kings serve GOD, according to the Divine Command, as they are Kings, when they promote Virtue, and discourage Wickedness in their Kingdom, not only in Things that have Relation to human Society, but also in what regards Religion.* And in another Place.[7](#) *How then do Kings serve the LORD in Fear, unless by prohibiting, and punishing with a religious Severity, all Transgressions of the Commandments of the LORD? For he serves GOD one Way as a Man, and another as a King.* And a little after, *Herein Kings serve GOD as Kings, when they do for his Service what they could not perform unless they were Kings.*

[**(2.)Arg.]** 2. That Place which I have before quoted in the thirteenth to the *Romans*, affords us a second Argument, where the *higher Powers*, such as Kings, are said *to be of GOD*; and the Apostle calls them likewise, *the Ordinance of GOD*: Whence he infers, that we ought *to be subject to them, to respect and honour them*, and that *for Conscience sake*; so that *to resist them is to resist GOD himself*. If by *Ordinance* we only understand what GOD only permits, as he does Acts that are sinful, then no Obligation would follow of Honour or Obedience, especially in regard to Conscience, and the Apostle had said nothing, when he so highly magnified and exalted this Power, but what he might have said of Thefts and Robbery. We must therefore understand this Power, as established with the Approbation of GOD: Whence it follows, (since GOD cannot *will* Things that are inconsistent) that this Power is not<sup>8</sup> repugnant to the Will of GOD revealed in the Gospel, and obligatory on all Men.

[200]

Neither does it prejudice our Argument, that the Sovereign Powers, at the Time when St. *Paul* wrote this, were not Christians.**[Acts xiii. 12.]** For first, this is not universally true; since *Sergius Paulus*, Vice-Praetor of *Cyprus*, had long before professed the Christian Faith; to say nothing of what is reported of the<sup>9</sup> King of *Edessa*, perhaps intermixt with some Falsities, but which seems to be founded on some Truth. Besides, the Question is not about the Persons, whether they were Christians or Infidels; but whether that Function, exercised by Infidels, contained in it any Thing contrary to Piety; which we say the Apostle denies, where he says it is or- [34] dained of GOD, even at that Time, and therefore to be honoured and respected, with regard to Conscience itself, which, properly speaking, is under the Dominion of GOD only: And therefore, the Emperor *Nero*,**[Acts xvi.]** and King *Agrippa*, whom St. *Paul* so earnestly exhorted to turn Christians, might have become the Subjects of JESUS CHRIST, without being obliged to renounce, the one his Empire, or the other his Royalty; which two Sorts of Sovereignty cannot be conceived without the Right of the Sword, and the Power of making War. As then the antient Sacrifices were nevertheless holy, according to the Law, tho' offered by wicked Priests;<sup>10</sup> so Civil Government is holy and sacred, tho' administred by a wicked Person.

[**(3.)Arg.]** 3. The third Argument is taken from<sup>11</sup> the Words of St. *John* the Baptist, who being asked by the *Jewish Soldiers*, (many thousands of [201] whom served the *Romans*, as appears from *Josephus*, and other Writers) *What they should do to flee from the Wrath to come*, he did not bid them quit their Military Employment, which he ought to have done, if it had been GOD's Will, but only *to abstain from Extortion and Falshood*,**[Luke iii. 14.]** *and to be content with their Pay*. But to these Words of the Baptist, which plainly allow of a Military Life, many object, that what the Baptist prescribed, did differ so much from what our Saviour commanded, that he seemed to preach one Doctrine and CHRIST another. But this I cannot agree to, for both *John* and our Saviour declare the Sum of their Doctrine in the same Terms, *Repent ye, for the Kingdom of Heaven is at hand*.**[Matt. iii. 2, 4, 17.]** And CHRIST himself says, the Kingdom of Heaven, (that is, the new Law, for the *Hebrews* used to call their Law by the Name of Kingdom) begun to suffer Violence from the Days of *John* the Baptist.**[Matt. xi. 12. Mark i. 4. Acts xi. 38. Matt. iii. 8, 10. Luke iii. 11. Matt. xi. 13. Mark i. 1. Luke i. 77. Matt. xi. 9. Luke vii. 26. — ii. 77. — iii. 18. Acts xix. 4. John i. 29. Matt. iii. 11. Mark i. 8. Luke iii. 16.]** *John* is said to preach the Baptism of Repentance for the Remission of Sins; so are

the Apostles said to do in the Name of CHRIST. *John* required Fruits meet for Repentance, and threatens Destruction to those that did not bring them forth. He also requires Works of Charity above the Law. The Law is said to continue unto *John*; that is, from him a more perfect Law did begin. And the Beginning of the Gospel is reckoned from *John*. *John* is called greater than the Prophets, because he was sent to give Knowledge of Salvation to the People, and to preach the Gospel: Neither does *John* ever distinguish JESUS from himself by any Difference of Doctrine, (tho' what *John* declared more generally and indefinitely, and by Way of Elements, CHRIST, the true Light, delivered clearly and distinctly) but only by this, that JESUS was the promised Messias, that is, a spiritual and heavenly King, who should give the Power of the HOLY GHOST to those that believed on him.

[**(4.)Arg.**] 4. The fourth Argument is this, which seems to me of no small Weight. If it were not permitted to punish certain Criminals with Death, [202] nor to defend the Subject by Arms against Highwaymen and Pyrates, there would of Necessity follow a terrible Inundation of Crimes, and a Deluge of Evils,<sup>12</sup> since even now that Tribunals are erected, it is very difficult to restrain the Boldness of profligate Persons. Wherefore if it had been the Design of CHRIST to have introduced a new Kind of Regulation, as was never heard of before, he would certainly have declared in most distinct and plain Words, that none should pronounce Sentence of Death against a Malefactor, or carry Arms in Defence of one's Country, which we no where read that he did; for what is brought to this Purpose, is either very general or obscure. But Equity itself, and common Sense, teaches us to restrain Words that are general, and favourably to explain those that are ambiguous, and even to recede somewhat from the Propriety and common Acceptation of the Words, in [35] order to avoid that Sense which may bring along with it the greatest Inconveniences.<sup>13</sup>

[**(5.)Arg.**] 5. The fifth Argument may be this, that it cannot by any good Reason be proved, that the Laws of *Moses*, which regarded the Punishments of Crimes, were abolished, 'till the City of *Jerusalem* was destroyed, and with it the Form of the State, without any Hope of reestablishment. For neither is there in the Law of *Moses* any Term fixt to that Law; neither does CHRIST or his Apostles ever speak of the abolishing of that Law, unless so far as it may seem comprehended (as I said) in the Destruction of the *Jewish* Government. Nay, on the contrary, St. *Paul* says, that the High Priest (*at that Time*) was appointed to judge according to the Law of *Moses*. [*Acts xxiii. 3. Matt. v. 17.*] And CHRIST himself in the Preface to his Precepts, said, that he came not to destroy the Law, but to fulfil it; which is easily understood to refer to the ceremonial Part; for the Lines of a rough Draught are compleated, when the Picture appears in all its Perfection. But as to the [203] *Judaical* Law, how can it be true, if CHRIST, as some imagine, abolished it at his Coming? And if the Obligation of that Law continued as long as the *Jewish* State subsisted, it follows, that the *Jews*, even such as turned Christians, if<sup>14</sup> they were called to the Magistracy, could not avoid it, nor judge<sup>15</sup> otherwise than *Moses* had prescribed.

Having thoroughly consider'd all Things, I cannot indeed find the least Reason, why any pious Man, that heard our Saviour pronounce those Words, should take them in any other Sense. I own, that before the Time of the Gospel, some Things were tolerated (either as to outward Impunity, or even in regard to Conscience, which I have not now Occasion or Leisure strictly to examine) which CHRIST did not allow to his Followers; as, for Instance, to put away a Wife for every Offence, and a Person injured to seek Reparation by Course of Law: But tho' between CHRIST's Precepts and those Permissions, there is a certain Difference, yet there is no Contradiction: For he that keeps his Wife, and he that parts with his Right of taking Vengeance, does nothing contrary to the [204] Law, but acts most agreeably to<sup>16</sup> the Intention of the Law. It is quite otherwise in a Judge, whom the Law does not allow, but command, to punish a Murderer with Death; and if he neglect it, he shall be guilty before GOD. If CHRIST had forbid such a [36] Person to put a Murderer to Death, he would have ordered something directly contrary to the Law, he would have *abolished the Law*.

**[(6.)Arg.]** 6. The sixth Argument is taken from the Example of *Cornelius*, the *Centurion*, who received the HOLY GHOST (an infallible Sign of Justification) from CHRIST, and was baptized into the Name of CHRIST, by the Apostle St. *Peter*, yet we no where find that he laid down his Commission, or was ever advised to it by St. *Peter*. But some may answer, that being instructed in the Christian Religion by St. *Peter*, he may be supposed at the same Time to have been exhorted to quit his Employment. Indeed if it were certain, and could be proved, that War was forbid among the Precepts of CHRIST, they would say something to the Purpose; but since that appears no where else, it would have been proper to have said something of it, at least in this Place, that future Ages might not be ignorant of the Rules of their Duty. Neither does St. *Luke* use (where the Quality of the Persons required a special Change of Life) to pass such a Thing over in Silence, as we may see in several Places, particularly *Acts* xix. 19.

**[(7.)Arg.]** 7. The seventh Argument like to this, is taken from the Example of *Sergius Paulus*, which I have already alledged; for in the Account of his Conversion, there is no Mention made of his quitting his Government, [205] or of his being advised to do it. Now Silence, in regard to Things which it was natural for one to mention, and very necessary not to omit, implies, as I have just said, that they never were.

**[(8.)Arg.]** 8. The eighth Argument is drawn from the Conduct<sup>17</sup> of St. *Paul*, when he understood that the *Jews* lay in Wait for him; he immediately acquainted the Commander of the *Roman Garrison* with it, and when the Commander had sent Soldiers to convoy him safe to *Caesarea*, he did not refuse it, neither did he in the least insinuate, either to the commanding Officer or the Soldiers, that it was displeasing to GOD to repel Force with Force; and yet this is that St. *Paul*, who neglected no Opportunity himself, of warning Men of their Duty, or to blame the Neglect in others, *2 Tim.* iv. 2.

**[(9.)Arg.]** 9. The ninth Argument is, because the proper End of any Thing that is honest and obligatory, must also be honest and obligatory: To pay Tribute is honest; and also a Precept obliging the Conscience,<sup>[Rom. xiii. 3, 4, 5, 6.]</sup> as St. *Paul* expresses it; and the End of Tribute is,<sup>18</sup> to enable the Sovereign Powers [206] to protect the Good, and restrain the Wicked.<sup>19</sup> Tacitus speaks appositely to this Purpose, *Nations can have no Peace without Arms, no Arms without Pay, and no Pay without Taxes*. To which agrees that of St. *Austin*,<sup>20</sup> *For this Cause we pay Tribute, that Soldiers may have Money to buy them Necessaries.* [37]

**[(10.)Arg.]** 10. The tenth Argument is taken from that Place of the *Acts*, where St. *Paul* pleads thus, *If I have wronged any Man, or done any Thing worthy of Death, I refuse*<sup>21</sup> *not to die*. Whence I conclude, that St. *Paul* did believe, that even after the publishing of the Evangelical Law,<sup>[Acts xxv. 11.]</sup> there were some Crimes which Equity allowed, and even required, to be punished with Death: Which also St. *Peter* teaches.<sup>[1 Pet. ii. 19, 20.]</sup> But if it had then been GOD's Will, that capital Punishments should be no longer used, St. *Paul* might indeed have cleared himself; but he ought not to leave such an Opinion in the Minds of Men, as if to punish Offenders with Death had been now no less lawful than formerly. But having proved that capital Punishments were justly inflicted after the Coming of CHRIST, I think it also proved, that some Wars may be lawfully made, as against a Multitude of armed Offenders, who are to be overcome by Arms,<sup>22</sup> before they can be brought to a Trial. Indeed the Forces of Criminals, and the [207] Boldness wherewith they resist, may have some Weight, in considering whether it be proper to pursue them with the utmost Rigour; but still that lessens nothing of the Right itself.

**[(11.)Arg.]** 11. The eleventh Argument is, that<sup>23</sup> in the *Revelation* of St. *John*, some Wars of the Righteous are foretold, with manifest Approbation, *Chap. xviii. 6.* and elsewhere.

**[(12.)Arg.]** 12. The twelfth Argument may be this, that the Law of CHRIST did only abolish the Law

of *Moses*, in regard to those Things which separated the *Jews* from the *Gentiles*; but what Things were accounted honest by the Law of Nature, or by the tacit Consent of civilized Nations,[**Eph. ii. 14.**] it was so far from abrogating, that it comprehends them under the general Precept to *think on every Thing that is honest and vertuous*. Now the Punishment of Crimes, and repelling Injuries by Arms, are by Nature reputed laudable, and referred to the Virtues of Justice and Beneficence.[**Phil. iv. 8. 1 Cor. xi. 14.**] And here, by the by, we may observe the Error of them, who pretend that the *Israelites* had a Right to make War, only because GOD had given them the Land of *Canaan*. Indeed this is a just Cause, but not the only one. For even before those Times, holy Men did make War by following the Light of Reason; and also the *Israelites* themselves afterwards, upon other Occasions, as *David*, for the affronting of his Ambassadors. Besides, what every man possesses, by Virtue of human Laws, is not less his own, than if GOD had (immediately) given it to him; and that Right is not taken away by the Gospel.

[208]

[**VIII. The Arguments out of Scripture for the Affirmative answered.**] VIII. Let us now see the Reasons for the contrary Opinion, that the pious Reader may more easily judge which are the most weighty.

1. First they alledge the Prophecy of **1 Isaiah**, who foretold, *That the Nations should beat their Swords into Plow-Shares, and their Spears into Pruning Hooks.*[(1.)**Arg. Isa. ii. 4.**] *Nation shall not lift up Sword against Nation, neither shall they learn War any more.* But this Prophecy is to be understood, either conditionally, as many others are, as that should be the State of Affairs, if all Nations would **2** submit to the Law of [38] CHRIST, and live up to it, whereunto there should nothing be wanting on GOD's Part; for it is certain, if all were Christians, and lived like Christians, there would be no Wars: Which **3** Arnobius expresses thus, *If all Persons who look upon themselves as Men, not so much from the Shape of their Bodies, as because they are endowed with Reason, would lend an Ear to his salutary and peaceable Lessons, and not presumptuously follow their own Fancies rather than his Exhortations, the whole World would long since have enjoyed profound Peace, and lived in perfect and indissoluble Union. Iron would have been employed for gentler Purposes, and converted into less dangerous Instruments* [209] *than what it has hitherto served for.* And **4** Lactantius thus, *What would be the Consequence, if all Men would unite in Concord? Which certainly might be done, if banishing their deadly and impious Rage, they would resolve to live innocently and justly.* Or this Place is to be understood literally; and then, it is plain that this Prophecy is not yet fulfilled; but that the Accomplishment of it, and of the general Conversion of the *Jews*, is yet to be expected. But take it which Way you will, there can be nothing hence inferred against the Lawfulness of War, as long as there are those who will not suffer others to live in Quiet, and who insult such as love Peace.

Several Arguments are drawn from the fifth of St. *Matthew*, to judge of which it is necessary, that we remember what was said a little before, *viz.* If CHRIST had intended to have abolished all capital Punishments, and the Right of (*making*) War, he would have done it in most plain and exact Terms, on Account of the great Importance and Novelty of the Thing; and so much the more, because none of the *Jews* could imagine but that the Laws of *Moses*, concerning Judgments and other political Affairs, ought to preserve their Force in regard to the *Jews*, as long as their Government subsisted. After this general Remark, let us examine these Places in order.

[**(2.)Arg.]** 2. The second Argument brought to defend their Opinion is out of those Words. *You have heard it has been said, an Eye for an Eye, and a Tooth for a Tooth; but I say unto you, resist not Evil,* [**Ex. xi. 13. Matt. v. 38, 39. Acts vii. 27.**] (עֲשֵׂה לְךָ רַעַנָּן which answers to the Greek Word τῷ ἀδικοῦντι him that injures thee); *but if any Man strike thee on the one Cheek, turn to him the other also.* From

hence some infer, that no Injury is to be repelled or revenged, either publickly or privately; but this the Words do not imply; for CHRIST does not here speak to Magistrates, but to those that are injured; nor of all Injuries [210] neither, but of slight ones, as a Box on the Ear, for the Words following limit those that go before, however general they may at first appear. So in the following Precept, *If any Man will sue thee at the Law, and take away thy Coat, let him have thy Cloak also.*<sup>5</sup> Our Saviour does not forbid absolutely to have Recourse to Law, or to take Arbitrators in order to decide a Difference.

[1Cor. vi. 4.] This is evident from the Interpretation of St. Paul, who does not prohibit every Kind of Law-Suit, but only would have Christians not go to Law with one another before the Heathen, [39] and that from the Example of the Jews, amongst whom it was a received Maxim, that *He that brings the Cause of an Israelite before Strangers, profanes the Name of GOD*; but CHRIST, to exercise our Patience, would not have us dispute for Things that may be easily recovered, as a Coat, or a Cloak with a Coat, if one run a Risque of being deprived of both; nor prosecute our Right according to Law, however well founded it may be. *Apollonius Tyanaeus*<sup>6</sup> said, *It was not like a Philosopher to sue for a little Money. The Praetor (said Ulpian)*<sup>7</sup> *does not disapprove the Action of [211] a Man, who had rather lose his Substance than be engaged in a Multiplicity of Law-Suits, for the Recovery of it; for this Aversion to Suits of Law is not to be condemned.* What *Ulpian* here says to be approved of by good Men, is what CHRIST himself commands, chusing the Subject of his Precepts from Things most honest and commendable: But we cannot justly infer from hence, that a Parent or Tutor ought not to defend by Law, when he is forced to it, what his Child or Pupil cannot subsist without. For a Coat or Cloak is one Thing, and one's whole Maintenance another. In *Clement's Constitutions*, it is said of a Christian, if<sup>8</sup> he have a Suit depending, *Let him endeavour to make it up, tho' it be somewhat to his Loss.* What therefore uses to be said of moral Things in general, may be applied here, that they do not consist in an indivisible Point, but have in their way a certain Extension.

So in that which follows, *If any Man shall compel thee to go with him one Mile, go with him two:* Our Lord did not say a hundred Miles, which might draw one too far from his necessary Business, but *one*, and if occasion be, *two*, which is only a kind of a Walk, and the Trouble and Hindrance occasioned by it almost nothing at all. The Meaning then is, that in Things which will not incommod us much we must not insist with Rigour upon our Right; but rather<sup>9</sup> yield more than is desired, that our<sup>10</sup> Patience and good Nature may be known unto all.

Our Saviour adds, *Give unto him that asks of thee,*<sup>11</sup> *and from him that would borrow of thee, turn not away.* If these Words were understood [212] without any Restriction, it would indeed be very hard. He that takes not care of his own Family is worse than an Infidel, says St. Paul. Let us then follow the Explication of St. Paul, the best Interpreter of his Master's Law,[1Tim. v. 8.] who exhorting the *Corinthians* to Charity towards the Poor at *Jerusalem*, says, *Not that others should be eased and you be burthened; but that by an Equality,*<sup>12</sup> *your Abundance should supply their Wants;* that is, (to use *Livy's* Words on a like Occasion)<sup>13</sup> *That out of your Plenty,*[2 Cor. viii. 13.] *you may relieve the Necessities of others.* As<sup>14</sup> *Cyrus* did towards his Friends, according to *Xenophon*. Let us use then the same Equity in explaining the Precept we have just now mentioned, *viz. Resist not Evil; but if any Man, &c.*

As the Law of *Moses* allowed the Liberty of a Divorce, to prevent the Cruelty of Husbands towards their Wives; so also to obviate all private Revenge, to which the *Israelites* were extremely inclined, it allowed the injured Person to avenge him [40] self, not indeed by his own Hand, but by the Law of<sup>15</sup> Retaliation before the Judge; which<sup>16</sup> the Law of the Twelve Tables afterwards established, *He that breaks a Limb, let him suffer the like.* As CHRIST required of his Disciples an higher Degree of Patience, he was so far from approving this Demand of Revenge in the Person injured, that he does not allow some Injuries to be repelled [213] by Force, or *Law*. But what Sort of Injuries? Such as might be easily born;<sup>17</sup> not but that it is praise-worthy to suffer even grievous Injuries without demanding

Satisfaction; but that he is contented with a more limited Patience: Therefore he proposes the Example in a Box on the Ear, which does not in danger Life, nor maim the Body, but only declares a certain Contempt of us, which diminishes nothing of our Merit. *Seneca*,<sup>18</sup> in his Book of the Constancy of a wise Man, distinguishes an Injury from an Affront, *The former* (said he) *is by Nature more grievous, the other more light, and is hard to digest only for those that are very delicate; it offends, but does no hurt. Such is the Weakness and Vanity of our Minds, that some Men think nothing more insupportable; thus you will find a Slave, who had rather be scourged than take a Box of the Ear.* And the same\* Author in another Place, *An Affront is less than an Injury, which we may complain of, rather than revenge; and which the Laws have not judged worthy of any Punishment.* So one in *Pacuvius*,<sup>19</sup> *I easily bear an Injury, so it be without an Affront.* So another in *Caecilius*,<sup>20</sup> *I can easily bear Misfortune, if not the Result of an Injury done me; and even an Injury, unless accompanied with an Affront.* And in *Demosthenes*,<sup>21</sup> *Blows, tho' a Grievance to a free Man, are so chiefly when given as a Mark of Contempt.* And the same *Seneca* a little lower says,<sup>22</sup> *That Grief (arising) from an Affront, is a Passion moved by a Meanness and Narrowness of Mind, affected by some disobliging Action or Word.*

Therefore in such a Case, CHRIST enjoins Patience; and lest any one [214] should object the trite Proverb,<sup>23</sup> *By bearing an old Injury you invite a new one;* he adds, we should also rather<sup>24</sup> bear a second Injury than repel the first: Because from thence no Hurt comes to us, but what consists<sup>25</sup> in a false Imagination. *To turn the Cheek*, is a *Hebraism* for to bear a Thing patiently, as appears from *Is. 1. 6.* and *Jer. iii. 3.* *To turn the Face*, is used by<sup>26</sup> *Tacitus* and<sup>27</sup> *Terence* in the same Sense.

[**(3.)Arg.**] 3. The third Argument is usually taken from the following Words in St. *Matthew*, *You have heard it has been said, thou shalt love thy Neighbour, and hate thine [41] Enemy; but I say unto you, love your Enemies, bless them that curse you, and pray for them that despitefully use you, and persecute you.* [**Matt. v. 43, 44**] There are some who think both capital Punishments and Wars repugnant to this Love and Kindness (to be shewn) to our Enemies and Persecutors. But that is easily answered, if we consider well the Words of the Law of *Moses*, to which our Lord opposes this Precept. The *Hebrews* were commanded to love their Neighbour; that is, those<sup>28</sup> of their own Nation; for so is the Word Neighbour to be understood, as appears from *Lev. xix.* by comparing the 17th Verse with the 18th. Nevertheless, [215] the Magistrates were commanded to put to Death Murderers, and other notorious Offenders: Notwithstanding this likewise, [**Judges xx. 21**] the eleven Tribes justly made War upon the Tribe of *Benjamin* for their horrid Crime. So also *David*, who fought the<sup>29</sup> *LORD's Battles*, did recover by Arms the Kingdom promised him from *Ishbosheth*.

But let the Word *Neighbour* more largely extend to all Men whatsoever; for all are received into common Grace; no People are now condemned by GOD to utter Destruction; yet what was formerly lawful against the *Israelites*, will still be as lawful against all Men: Since it was then commanded to love them, as it is now to love all Men. But if you urge, that under the Evangelical Law there is required a greater Degree of Love; this may also be granted; provided also it be allowed, that all are not to be<sup>30</sup> equally loved, but a Parent (for Instance) more than a Stranger: Thus also we are to prefer the Good of the Innocent to that of the Guilty, and a publick Good before a private one, by the Law of a well regulated Charity. Now out of Love to the Innocent, arise capital Punishments and pious Wars. See the moral Sentence which is in *Prov. xxiv. 11.* CHRIST's Precepts then of loving and promoting the Good of every one, are to be *obeyed*, unless a greater and juster Love interpose: It is a known old Saying,<sup>31</sup> that *To spare all is as cruel as to spare none.* [216] Besides, we are commanded to love our Enemies from the Example of GOD himself, who makes his Sun to *rise* upon the Wicked; but the same GOD does even in this Life punish some wicked Persons, and will do it very severely in the next. By which at the same Time are solved all the Arguments that use to be drawn from the Meekness that is prescribed to Christians: [**Ex. xxxiv. 6. Jonah iv. 2.**] For tho' GOD is called gentle, merciful,

long-suffering, yet Holy Writ does every where declare his Wrath against<sup>32</sup> obstinate Sinners, that is, his Design to punish them; and the Magistrate is appointed to be the Minister of this Wrath. *Moses* is famed for his extraordinary Meekness, yet he punished Offenders, and that capitally.**[Numb. xiv. 18. Rom. ii. 8. — xiii. 4. Matt. xxii. 7. 1 Cor. iv. 21. — v. 5. 1 Tim. i. 20.]** We are frequently commanded to imitate the Mildness and Patience of CHRIST; but yet it was CHRIST who<sup>33</sup> grievously punished the rebellious *Jews*, and will condemn the Wicked at the Day of Judgment for their Crimes. The Apostles imitated their Master's Gentleness,<sup>34</sup> yet they used the Power given them from GOD in the Punishment of heinous Sinners. [42]

The fourth Objection is taken from *Rom. xii. 17. Render to no Man Evil for Evil: Provide Things honest in the Sight of all Men: If it be possible, as much as lies in you, live peaceably with all Men: Dearly beloved,*<sup>35</sup> avenge [217] not yourselves, but rather give Place unto Wrath; for it is written, *Vengeance is mine, I will repay, saith the LORD: Therefore, if thine Enemy hunger, feed him; if he be athirst, give him Drink; for in so doing thou shalt heap Coals of Fire upon his Head. Be not overcome of Evil, but overcome Evil with Good.* But here also we may give the same Answer as to the former Passage; for when<sup>36</sup> GOD said, *Vengeance is mine, I will repay*, at the very same Time capital Punishments were in Use, and there were written Laws touching Wars. We find likewise an express Command to do Service to one's Enemies, that is, to those who were of the same Nation;**[Ex. xxiii. 4, 5.]** without Prejudice however to the Right of inflicting capital Punishments, even on the *Israelites* themselves, and taking up Arms against them for just Reasons, as we have said above. Wherefore neither can the same Words now, or the like Precepts, tho' taken more largely, be wrested to such a Sense; and the less, because the Division of Chapters was not made by the Apostles, or in their Time, but<sup>37</sup> much later, for the Convenience of Readers; and for the more easy quoting of the Places: And therefore, what now begins the thirteenth Chapter, *Let every Soul be subject to the higher Powers*, and what follows, was formerly joined to those Precepts of not taking Revenge.

But in this Discourse St. *Paul* says, that the publick Powers are GOD's Ministers, and *Revengers to execute Wrath* (that is, Punishment) upon those that do Evil: Most plainly distinguishing thereby, between the Revenge that is exercised in GOD's Stead, for the publick Good, and that ought to be referred to the Vengeance which GOD has reserved to himself; and that *private Revenge* which is intended only to satisfy the Resentment of an Injury, and which the A postle had a little before forbid. For if we would comprehend even that Revenge which is required for the Sake of the publick Good in that Prohibition, What would be more [218] absurd than, when he had bid them abstain from capital Punishments, to add immediately, that the publick Powers were ordained by GOD to this End, to execute Punishment in GOD's Stead?

**[(5.)Arg.]** 5. The fifth Place, which some alledge is, *Tho' we walk in the Flesh, we do not war after the Flesh;***[2 Cor. x. 3.]** for the Weapons of our Warfare are not<sup>38</sup> carnal, but mighty, through GOD, to the pulling down of strong Holds, &c. But this Place makes nothing to the Purpose; for both what goes before, and what follows, shews that by the Word *Flesh* St. *Paul* there meant the weak State of his Body, as to outward Appearance, upon which Account he was contemned. To this St. *Paul* opposes his own Weapons, that is, the Power given to him as an Apostle, to punish the Refractory, which he used to *Elymas* the Sorcerer, the incestuous *Corinthian*, *Hymenaeus*, and *Alexander*. He therefore denies this Power to be carnal, that is, weak; nay, on the contrary, he affirms it to be most strong. What is this to the Right of capital Punishments, or of War? Nay, on the contrary, because the Church at that Time was destitute of the Assistance of the publick Powers, GOD raised up that miraculous Power for its Defence; which began to cease almost as soon as the Church had Christian Emperors; as the Manna ceased as soon as the *Israelites* were come into a fruitful Country. [43]

**[(6.)Arg.]** 6. The sixth Place produced is, *Put on the whole Armour of GOD, that ye may be able to*

*stand against the Wiles of the Devil; [Eph. vi. 11, 12.] for we wrestle not against Flesh and Blood, (add only, after the Manner of the Hebrews) but against Principalities, &c.* He speaks of that Warfare which Christians have, as Christians, not of that which they may have in common with other Men upon certain Occasions.

[**(7.) Arg.**] 7. The seventh Place that is brought is, *From whence come Wars and Fightings among you? [James iv. 1, 2, 3.] Come they not hence, even from your Lusts, that war in your Members? Ye lust, and have not: Ye envy, and desire to have, and cannot obtain: Ye fight and war, and yet ye have not, because ye ask not; ye ask and receive not, because ye ask amiss, that ye may consume it upon your [219] Lusts.* This contains no general Maxim, which absolutely condemns the Use of Arms; it only says, that those Wars and Fights with which the dispersed Jews were at that Time miserably harassed among themselves (part of which History we meet with in *Josephus*) did arise from wicked Causes; and that the Case is the same still, we know, and lament. That of *Tibullus* has a Meaning not unlike this Passage of St. James.<sup>39</sup> *Gold is the Cause of so many Quarrels: There were no Wars whilst People drank out of wooden Goblets.*

And we find it remarked<sup>40</sup> often in *Strabo*, that those Nations<sup>41</sup> lived [220] most innocently, whose Diet was most simple. What<sup>42</sup> *Lucan* says is agreeable to this, — *O profuse Luxury, that is never satisfied with small Provision! Ambitious desire of Dishes, every where searched for, by Sea and by Land! Vain Pomp of splendid Tables! Learn, how little is sufficient for Life; how small a Portion Nature is contented with. Rich and old Wines cannot raise the Sick; it is not necessary for them to drink out of Gold or Porcelain Cups. It is fair Water that restores Health. A good Fountain, together with Bread, is enough for Men. Wretched Mortals! Why then do they go to War?* To which we may add that of<sup>43</sup> *Plutarch*, in *The Contradictions of the [221] Stoicks*, *There is no War among Men, but what arises from Vice; one from the Desire of [44] Pleasures, another from Covetousness, and a third from Ambition.*<sup>44</sup> *Justin* commanding the Manners of the *Scythians*, says, *It were to be wished that the rest of Mankind practised the like Moderation, and were as scrupulous of grasping at other Men's Goods and Possessions. We should not then see so many continual Wars carried on in all Ages, and in all Countries; nor would the Sword carry off greater Numbers than die of a [222] natural Death.*<sup>45</sup> *Cicero* says, *Disorderly Passions give Birth to Hatred, Dissentions, Discord, Seditions, and Wars.*<sup>46</sup> *Maximus Tyrius*, *All Places are now full of War and Injustice; for irregular Passions are every where let loose, and inspire all Mankind with a Desire of adding to their Possessions.* And<sup>47</sup> *Jamblichus*, *For nothing but an excessive Concern for the Body, and the Passions which direct making an extravagant Provision for it, are the Causes of Wars,* [**Matt. xxvi. 52**] *Seditions, and Quarrels; for Men engage in War, for the sake of procuring what is pleasant and advantageous to them.* But what was said to St. Peter, *All they that take the Sword, shall perish with the Sword;* not belonging to War, in its common Acceptation, but properly to the Use of Arms between private Persons, (for CHRIST himself gives this Reason of his forbidding or neglecting his Defence, [**John xviii. 36.**] because *His Kingdom was not of this World*) shall be treated of in its<sup>48</sup> proper Place.

**[IX. The Opinion of the primitive Christians concerning this, examined.]** IX. Whosoever there is any Dispute about the Sense of what is written, the Practice afterwards established, and the Authority of the Judicious, uses to be of great Weight; which is also to be observed in Holy Scripture. For it is not probable, that the Churches, which were founded by the Apostles, should suddenly, or all at once, fall off from the Maxims which the Apostles had briefly given them in Writing, and more largely explained by Word of Mouth, or had even reduced into Practice. But they who condemn all Kind of War without Exception, use [45] to alledge some Passages of the primitive Christians; against which I have three Things to say.

First, That from those Passages nothing else can be gathered, than the private Sentiment of some

Persons, not the common Opinion of the Churches. Besides, most of them who are cited, affected to be singular, and to teach something more sublime; such as, for Example, *Origen* and *Tertullian*, who are not always consistent with themselves. For the same [223] *Origen* says, that Bees were given as a *Pattern by GOD, of<sup>1</sup> the just and regular Method that Men ought to take in making War, when there is a Necessity for it.* And the very same *Tertullian*, who in another Place seems to disapprove of capital Punishments, said,<sup>2</sup> *No Body denies but it is<sup>3</sup> good to punish the Guilty.* And he is at a Stand about Wars; for in his Book *Of Idolatry*, he<sup>4</sup> says, *The Query is, Whether the Faithful may be allowed to take up Arms; and whether military Persons may be admitted into the Christian Church?* And in that Place, he seems to incline to that Opinion which is against War. But in his Book *Of the Soldier's Crown*, after he had made some Reflections against War, he presently distinguishes between them who were Soldiers before their Baptism, and those who list themselves after Baptism.<sup>5</sup> *Their Condition* (says he) *is plainly different, who were Soldiers before their Conversion to the Faith; as those whom John admitted to Baptism, or as those most pious Centurions, [Matt. viii. 9. Acts x.] one of whom CHRIST approved of, and another St. Peter instructed:*<sup>6</sup> *Provided that having embraced the Faith, and being sealed (by Baptism) they either presently quit their Employment, as many have done; or be particularly careful that they do nothing to offend GOD.* He then was sensible that they continued Soldiers after Baptism, which certainly they would not have done, [224] if they had understood War to have been forbidden by CHRIST; no more than Soothsayers, Magicians, and<sup>7</sup> other Professors of unlawful Arts, were allowed after Baptism to practise their Art. In the same Book, commanding a certain Soldier, and him a Christian, he cries out,<sup>8</sup> *O Soldier, glorious in GOD!*

The second Observation is, That Christians did often disapprove or avoid War, on account of the Circumstances of the Times, which would scarce permit the bearing of Arms, without committing some Actions contrary to the Laws of Christianity. In *Dolabella's Letter to the Ephesians*, which is extant in *Josephus*, we find the *Jews<sup>9</sup>* desire to be exempted from all military Expeditions, because mixt with Strangers, they could not well perform the Rites of their own Law; and because they were forced on the Sabbaths to bear Arms, and make long Marches; and the same Historian tells us, that for the same Reasons the *Jews* got Leave<sup>10</sup> of *Lentulus* to [46] be discharged; and in another Place he relates, when the *Jews* were commanded to depart from the City of *Rome*,<sup>11</sup> some listed themselves Soldiers, others were punished for refusing to do it in Reverence to the Laws of their Country; namely for the Reasons mentioned before; to which there was sometimes added a third, because they would be obliged to fight against their own Countrymen, *but to bear [225] Arms against their Nation was unlawful;* that is, when their Countrymen were in danger for observing the Laws of their own Country. But as often as the *Jews* could avoid these Inconveniences, they served in the Wars, even under foreign Kings, but yet<sup>12</sup> *continuing to observe the Laws of their Country, and to live according to them,* which they first stipulated, as *Josephus* testifies. Very like to these Dangers were those, which *Tertullian* objects to the Men of the Sword in his Times; as in his Book of Idolatry,<sup>13</sup> *The Oath of Fidelity to GOD, and that to Man, the Banners of CHRIST, and those of the Devil, are things inconsistent with one another:* Because the Soldiers were obliged to swear by the *Pagan Gods, Jupiter, Mars, and others.* In his Book of the *Crown of a Soldier*, he says,<sup>14</sup> *Shall he (a Christian) stand Centry before the Temples which he has renounced; and shall he sup where he is forbid by the Apostle? Shall he guard those (Demons) by Night, which he has exorcised in the Day?* And afterwards,<sup>15</sup> *How many other Military Functions are there, which ought to be looked on as Sins?*

The third Observation is this, that the Christians of the Primitive Times aspired with so much Ardor to the highest degree of Perfection, that they often took the divine Counsels for Precepts of an indispensible Obligation. *Christians* (says<sup>16</sup> *Athenagoras*) *do not sue at Law those that rob them.* *Salvian<sup>17</sup>* said it was commanded by CHRIST that we should rather abandon those things that are contested than engage in a Law Suit. But this taken so generally,<sup>18</sup> seems to be design'd rather [skips to p. 48] [226] [227] [228] [229] [230] as good Counsel,<sup>19</sup> and tending to a more sublime Life, but not

as an absolute Precept. Thus many of the Primitive Fathers condemn'd<sup>20</sup> all Oaths, without any Exception; whereas<sup>21</sup> St. Paul himself did swear in Matters of Consequence. A Christian in *Tatian* said, *I refuse the Pretorship.* In *Tertullian*, *A Christian is not<sup>22</sup> ambitious of the Aedile's Office.* *Lactantius* maintains, that a just Man (such he would have a Christian to be) should not make War;<sup>23</sup> but at the same time says, that he should not go to Sea. How many of the Primitive Fathers dissuade Christians from second Marriages? All which, as they are commendable, excellent, and highly pleasing to GOD, so they are not required of us by the Necessity of any Law. These Remarks will suffice to answer all Objections founded on Ecclesiastical Antiquity.

X.<sup>1</sup> Now to confirm our own Opinion, first we want not Writers, and even more ancient ones than those that are opposed to us, who believed that the Practice of inflicting capital Punishment, and that of making War, the Innocence of which depends on the Justice of the former, are not inconsistent with Christianity: *Clemens Alexandrinus* says, that a Christian, if he be called to the Government, should be [49] (as *Moses*) a living Law to the Subjects, reward the Good, and punish the Bad. And [231] in another Place,<sup>2</sup> describing the Habit of a Christian, he says, it would become him to go *barefoot*, unless he should happen to be a Soldier. In the Constitutions, intitled, *The Constitutions of Clemens Romanus*, we<sup>3</sup> read, *Not that all Killing is unlawful, but only that of the Innocent; provided that this Right of putting to Death be reserved to the Magistrate alone.*

But setting aside private Opinion, let us come to the publick Authority of the Church, which ought to be of the greatest Weight. I say then, that Soldiers were never denied Baptism, or Excommunicated by the Church, (*because they were Soldiers*) which yet ought to have been done, and would have been done, if the military Profession had been repugnant to the Conditions of the new Covenant. In the aforesaid Constitutions, the same Writer treats of those who formerly used to be admitted to Baptism, and those who used to be rejected.<sup>4</sup> *Let a Soldier that desires to be baptized, be exhorted to abstain from Wrongs and Oppressions, to be content with his Pay: If he complies with these, let him be admitted.* *Tertullian* in his Apology, speaking in the Person of Christians, says,<sup>5</sup> *We go to Sea, and fight together with you.* He had said a little before,<sup>6</sup> *We are but of a few Days standing, and yet we have filled all your Empire, Islands, Castles, Towns, Councils, and your very Armies.* In the same Book he had<sup>7</sup> told that Rain had been obtained in favour of the Emperor *Marcus Aurelius*, by the Prayers of his Christian Soldiers. In his Book *Of a Crown*, he says, that the Soldier who had thrown away the Garland, was more brave than the rest of his Fellows; and he<sup>8</sup> informs us, that he had many Christian fellow Soldiers.

We may add, that some Soldiers that had suffered Torments and [232] Death for the Sake of CHRIST, received from the Church the same Honour with other Martyrs; among whom are recorded<sup>9</sup> three of St. Paul's Companions: *Cerialis*, who suffered Martyrdom under *Decius*; *Marinus*, under *Valerian*; fifty under *Aurelian*; *Victor*, *Maurus*, and *Valentinus*, a Lieutenant-General under *Maximian*: About the same Time, *Marcellus* the Centurion, *Severian* under *Licinius*. *Cyprian* concerning *Laurentius* and *Ignatius*, both *Africans*, says,<sup>10</sup> *They also were once Soldiers in the Armies of this World, but were truly the Soldiers of GOD in the spiritual Warfare, whilst they vanquished the Devil by the Confession of CHRIST, and obtained by their Martyrdom, the Palms, and glorious Crowns of the LORD.* Hence it is plain, what the common Opinion of the primitive Christians was concerning War, even before the Emperors were Christians.

If the Christians in those Times did not willingly appear at<sup>11</sup> Trials for Life, it ought not to be thought strange, since for the most part Christians themselves were to be tried. Besides, the *Roman Laws* in other Things, were more severe than Christian Lenity could allow of; which sufficiently appears in the single Instance of the<sup>12</sup> *Silanian Decree* of the [233] Senate. But yet, after that *Constantine* embraced, [50] and begun to promote, the Christian Religion, capital Punishments did not there upon cease. Nay,

*Constantine* himself, among other Laws, made also this<sup>13</sup> of sowing up Parricides in a Leather Sack; tho' otherwise he was so very mild towards Criminals, that he is<sup>14</sup> blamed by many Historians, for too much Indulgence. He had also a great many Christians in his Army, (as History informs us) and caused the Name of CHRIST to be put<sup>15</sup> on his Standard: From that Time also the military Oath was changed to that Form extant in *Vegetius*,<sup>16</sup> *By GOD, and CHRIST, and the HOLY GHOST, and the Majesty of the Emperor, which, next to GOD, ought to be loved and reverenced by Mankind.* Neither at that Time, among so many Bishops, some of whom had suffered very severely for Religion, do we read of so much as one, that exhorted *Constantine* not to put any Criminal to Death, or to engage in any War, or that dissuaded the Christians from serving in Wars, out of Fear of GOD's Wrath; tho' most of those Bishops were very strict Observers of Discipline, and far from dissembling [234] those Things, which related either to the Duty of the Emperors, or other Persons: Such was St. *Ambrose*, in the Time of *Theodosius*, who in his seventh Sermon speaks thus,<sup>17</sup> *To go to War is no Fault; but to do it purely for Plunder is a Sin.* And in his Offices,<sup>18</sup> *Valour, which either defends our Country by Arms from Barbarians, or protects the Weak at Home, or our Companions from Robbers, is compleat Justice.* This Argument seems to me of so great Weight, that I will seek for no other.

I am not ignorant, that Bishops, and other Christian People, have<sup>19</sup> often interceded in favour of Criminals, especially such as were condemned to Death, and that Custom was introduced, that they who<sup>20</sup> took Sanctuary in a Church, should not be delivered up, but upon *promise* to save their Lives; and that about *Easter*,<sup>21</sup> those who were committed to Prison should be released. But he that carefully considers all these and such like Things, will find that they are only the Effects of [235] Christian Goodness, which eagerly embraces all Opportunities of Mercy; and not [51] the Consequences of a fixed and settled Opinion, which condemns in general all capital Punishments; and therefore, those Favours were not universal, but limited to certain Times and Places, and even the Intercessions themselves were moderated<sup>22</sup> with certain Exceptions.

Here some object against us, the 12th Canon of the Council of *Nice*, which runs thus,<sup>23</sup> *Whoever being called by Grace, have at first shewed their Zeal and Faith, and quitted their military Employment; but have afterwards returned like Dogs to their Vomit; so that some shall give Money, and make Interest, to be taken into the Service: They shall lye prostrate (in the Church) for ten Years, after having been for three Years bare Hearers (of the Word). But in regard to all these, it must be observed what Disposition they are in, and in what Manner they do Penance. For whoever, by Fear, by Tears, by Patience, and by good Works, testify the Sincerity of their Conversion, these fulfilling the appointed Time of Hearing, shall at Length assist at publick Prayers, and afterwards it shall be lawful for the Bishop to treat them somewhat more favourably. But whosoever shall look on their Punishment with Indifference, and shall think the Form of their entering into the Church to be sufficient for their Conversion, these shall fulfil the whole appointed Time.* The very Term of thirteen Years Penance, sufficiently declares, that the Matter in Question is not about a small or doubtful Sin, but a heinous and incontestable Crime. The Crime here meant, was undoubtedly<sup>24</sup> Idolatry; for the Mention which was made of the Times of *Licinius*, in the 11th Canon immediately preceding, ought to be supposed tacitly repeated here, as the Sense of the following Canon often [236] depends on the former. See for an Instance the 11th Canon of the *Eliberan Council*. *But Licinius, (as Eusebius<sup>25</sup> informs us) dismissed those Soldiers from the Service, who would not*<sup>26</sup> *sacrifice to their Gods:* And the Emperor<sup>27</sup> *Julian* afterwards did the same; for which Reason we read *Victricius*, and others, quitted the military Profession for the Sake of CHRIST. And formerly 1104 Soldiers had done so in *Armenia*, under *Dioclesian*, of whom there is Mention made in the *Martyrologies*: And *Menna* and *Hesychius*, in *Egypt*. In the Time then of *Licinius*, many left the Service; of whom was *Arsaceus*, mentioned among the Confessors, and *Auxentius*, afterwards made Bishop of *Mopsuestia*. Wherefore those, who had resigned their military Employments from a Motive of Conscience, could not be admitted again under *Licinius*, but by renouncing the Christian Faith: Which Crime was by so much the greater, by how

much their former Act had shewn them to have a superior Knowledge of the Divine Laws; therefore these Apostates were punished more grievously than those mentioned in the former Canon, who abjured Christianity, without any Danger of losing Life or Goods.

But to interpret this Canon generally of all War without Restriction, is absolutely against Reason. For<sup>28</sup> History plainly testifies, that they who had quitted their Posts under *Licinius*, and had not, during his Reign, returned to them again, because they would not violate their Christian Faith, were left to their Choice by *Constantine*, whether they would continue still discharged, or *return* to a military Life: Which doubtless many did. [52]

[237]

There are also some who object the Epistle of<sup>29</sup> *Leo*, which says, *That it is against the Rules of Ecclesiastical Discipline, after having done Penance, to return to the Profession of Arms*. But we must know, that in Penitents, no less than in Clergymen and Monks, there was required an eminent Degree of Sanctity, far above that of the Generality of Christians; that the extraordinary Purity of their Lives might serve as much to Edification,<sup>30</sup> as their bad Examples had before given Offence. Likewise in the most antient Customs of the Church, which, that they might be the more reverenced for their venerable Name, are generally called the *Apostolical Canons*: Canon the 82d it is decreed, *That no Bishop, Priest, or Deacon, should follow the War, and retain at the same Time a Roman Employment, and the sacerdotal Function: For those Things that are Caesar's, should be given to Caesar, and those that are GOD's should be given to GOD*. By which it appears, that those Christians who did not aspire to Ecclesiastical Offices were not forbid to follow Arms.

Moreover, they who after Baptism had served any Office, Civil or Military, could not be ordained Clergymen, as you may see in the Epistles of *Syricius* and *Innocentius*, and by the Council of *Toledo*. For Clergymen were not chosen<sup>31</sup> out of Christians of any Sort, but of them who had given Proof of a most strict Life. Besides, Ecclesiastics ought not to have been diverted from their Functions by<sup>32</sup> any other Care or Work, [238] that required continual Application, such as the Service in War, and the Exercise of certain Civil Employments; for which Reason the first Canon provided, that no Bishop, Priest, or Deacon, should meddle in secular Affairs; and the 80th, that he should not be concerned in the administration of publick Affairs. And the sixth of the *African Councils*, that he should not act either as an<sup>33</sup> Attorney or an Advocate. So St. *Cyprian* holds it<sup>34</sup> unlawful for them to be appointed Tutors or Guardians.

But we have the express Judgment of the Church for our Opinion, in the first Council of *Arles*, which was held under *Constantine*; for the third Canon of that Council runs thus, *As to those who throw away their Arms in Time of Peace, we have thought fit to exclude them from the Communion*; that is, they who quit their military Employment, when there was no Persecution. For the Christians by the Word<sup>35</sup> *Peace* meant so, as appears from *Cyprian* and others. Let us add the [53] Example of the Soldiers under *Julian*, who had made so great Progress in Christianity, [239] that they were ready to seal the Truth of the Gospel with their Blood; of whom St. *Ambrose* speaks thus,<sup>36</sup> *The Emperor Julian, tho' an Apostate, yet had under him Christian Soldiers, to whom when he said, March (against the Enemy) in defence of the State, they obeyed him; but when he said, March against the Christians, then they acknowledged the Emperor of Heaven*. Such was the *The bean Legion* long before, which in the Reign of *Dioclesian* the Emperor were instructed in the Christian Religion, by *Zabda*, the thirtieth Bishop of *Jerusalem*, and afterwards left a memorable Example of Christian Constancy and Patience to all Ages, which I shall speak of hereafter.

Let it suffice, in this Place, to mention that Speech of theirs, which expresses accurately, and in few

Words, the whole Duty of a Christian Soldier,<sup>37</sup> We offer you our Service against any Enemy whatever, yet hold it a most heinous Crime to embrue our Hands in the Blood of Innocents: They can act vigorously against the Impious, and the Enemies of the State; but have no longer Force, when the Business is to massacre the Pious, and our fellow Citizens. We remember that we took up Arms for the Defence of our Countrymen, and not against them. We have always fought for Justice, for Piety, for the Preservation of the Innocent; these have been hitherto the Recompence of our Dangers. We have fought with Fidelity. How should we present it to you, (the Speech is made to the Emperor) if we neglect it towards GOD? And St. Basil speaks thus of the antient Christians.<sup>38</sup> Our Ancestors never accounted Slaughters committed in War, as Murders, excusing them who fought for Virtue and Piety.

[240] [336] [384]

## Endnotes

1.

Cicero gives this as the Opinion of the Stoicks, which he approves of, and confirms, *De Finib.* Lib. III. Cap. V. VI. VII. See also *Lib. V. Cap. VII.* and Pufendorf, *B. II. Chap. III.* § 14.

2.

*As every other Nature only then shews what is its real Good, when it is arrived to Perfection; so what makes the real Good of Man is not to be found in Man, till Reason is perfect in him.* Senec. Ep. CXXIV. Grotius.

3.

*That is most valuable in every Being, to which it is destined by Nature, and which makes its Excellence. What is most valuable in Man? Reason.* Seneca, *Epist. LXXVI.* See also *Epist. CXXI.* and *CXX. V.* Juvenal says, that, according to the Doctrine of Zeno, there are some Things which we ought never to do, even tho' our Life was at stake.

- —— *Melius nos*
- *Zenonis praecepta monent: Nec enim omnia, quaedam*
- *Pro vitâ facienda putat ——*
- Sat. XV. v. 106, &c. Grotius.

Aulus Gellius, quoted by our Author in his Margin, says, When we are reduced to that Strait, we are obliged to expose ourselves to suffer some exterior Inconveniency or Damage, rather than be wanting to the inviolable Rules of *Decorum*, *Lib. XII Cap. V.*

4.

See our Author's Application of this Principle to the natural Motions of Revenge, *B. II. Chap. XX.* § 5. num. 1.

5.

Thus, for Example, it is never decent (*honestum*) nor, consequently, allowable by the Law of Nature, to fail in Point of Gratitude to a Benefactor; to take another Man's Goods, to which we have no Right; to break a valid Promise or Agreement; to prejudice any one's Honour; to deprive the Innocent of Life,

&c. In all which there may be different Degrees of Turpitude, according to the Variety of Circumstances; and as the Ingratitude, the Robbery, the Failure, the Affront, or the Murder, are more or less heinous; but in regard to the Quality of the Actions themselves, the least Fraud, for Example, is not less contrary to the Rules of *Decorum*, and the Law of Nature, than the greatest.

6.

The Author does not here speak of the Application of the general Maxims of *Decorum*, and the Law of Nature to particular Cases, as the Commentators on this Work have imagined, who instance in the several Manners of discharging the Duties of Beneficence, Liberality, Friendship, &c. referring to *B. II. Chap. I. § 5.* where he treats of the Extent of Time allowed for a just Defence of one's self. The Question in this Place turns on the Nature of Actions in general, as it appears from the Examples to which our Author himself applies his Principle. Thus, independently of any positive Law against Polygamy, it is commendable and decent, according to our Author, to be content with one Wife; but the Man who takes two, commits no Fault: That Action is not contrary to the first Sort of *Decorum*, to which the *Law of Nature*, properly so called, bears a Relation.

7.

The Emperor Justinian congratulates himself, on having given the Force of a Law to a Thing of this Nature, which the antient Lawyers had only advised, *viz.* That neither the Heir, nor any one under his Jurisdiction, should be admitted Witness to a Will. *Institut. Lib. II. Tit. X. De Test. ordinandis*, § 10. See the Theodosian Code, *Lib. III. Tit. VIII. De secundis Nuptiis*, Leg. II. With Godfrey's Comment on that Law, *Vol. I. p. 285.*

8.

*De Cyri Institut. Lib. II. Cap. III. § 5. Edit. Oxon.*

9.

This is very well explained by a Passage in Pliny. *For all Animals have this Understanding, and are sensible, not only of their own Advantages, but also of their Enemies Power to hurt them: They know the Use of their own Weapons, the proper Opportunities for an Attack, and the weak Side of their Adversaries.* Hist. Nat. Lib. VIII. Cap. XXV.

10.

The same Observation is made by Martial, *III. Epigr. 58. v. 2.*

- *Vitulusque inermi fronte prurit ad pugnam.*

Porphyry says, that *Every Animal knows which Part of him is weak, and which strong: That he takes Care of the former, and makes use of the latter; as the Panther of his Teeth, the Lion of his Claws and Teeth, the Horse of his Hoofs, and the Ox of his Horns.* *De Abst. Animal. Lib. III. p. 268. Edit. Lugd. 1620.* *Irrational Animals*, says St. Chrysostom, *carry their Arms on their Bodies; thus the Ox has his Horns, the wild Boar his Tusks, the Lion his Claws: But GOD has given me Arms distinct from my Body, to shew that Man is a tame and sociable Creature, and that I am not to employ those Arms at all Times; for sometimes I quit my Dart, and at others I handle it: That I might therefore be free from Incumbrance, and not be obliged to carry my Arms always with me, he has made them separate from my Nature.* *De Statuis, Hom. XI.* This passage agrees with that quoted from Galen in the Text. Grotius.

11.

But so that he is designed by Nature rather for Peace than War. See Pufendorf, *B. VIII. Chap. VI.* § 2.

12.

*As the Body of Man is formed in such a Manner, that he cannot, like other Animals, provide for his own Defence and Security, by Horns, Teeth, or Flight; Nature has given him a strong Breast, and Arms, that he might defend himself with his Hands, and by presenting his Body as a Shield.*  
Cassiodore, *De Animâ*, p. 296. *Edit. Paris.* Grotius.

13.

*De Partib. Anim.* Lib. IV. Cap. X. p. 1034. *Edit. Paris.*

14.

See Pufendorf, *B. II. Chap. V.* § 1.

15.

*De Offic.* Lib. III. Cap. V.

16.

*De Offic.* Lib. I. Cap. XI.

17.

*Epist. ad Famil.* Lib. XII. Ep. III.

18.

Digest. *Lib. XLIII. Tit. XVI. De vi & de vi armatâ.* Leg. 1. § 27.

19.

*De Arte amandi*, Lab. III. v. 492.

1

See Josephus *Antiq. Jud.* Lib. I. Cap. VIII. where he quotes the Passage of that profane Historian.

2.

Or rather an antient Poet, who assumed the Name of Orpheus Clement of *Alexandria*, Stromat. *Lib. V.* p. 723. *Edit. Potter. Oxon.* And Euseb. *Praep. Evang.* Lib. XIII. Cap. XII. have preserved this Fragment, to which our Author here alludes, and which he himself has quoted in a Note on his Treatise *Of the Truths of the Christian Religion*, Lib. I. § 16. p. 66. *Edit. 1717.* And in his Comment on Matt. v. 31.

3.

Our Author found the Expression in this Sense, in 1 Sam. xvii, 47. where *David* says to *Goliath*, *All this Assembly shall know that the LORD saveth not with Sword and Spear; for the War (Battle, E. B.) is the LORD's, and he will give you into our Hands*. But it is more natural to understand by these Words, *The War is the LORD's*, that the Success of the War depends on GOD; as Mr. Le Clerc explains them. Nor does our Author produce any other Passage to the same Purpose; he even gives a different Exposition, at the Close of this Paragraph, to a Text which at first Sight might seem proper to be alledged in this Place. He was thinking of the Rabbinical Distinction between *commanded* and *voluntary* Wars. On which see Cuneus, *De Rep. Hebr. Lib. II. Chap. XIX.* Schickard, *De Jure Regio*, Cap. V. and Selden, *De Jure Nat. & Gent. &c. Lib. VI. Cap. XII.*

1

*Orat. pro Milone*, Cap. IV. *Ibid.* Cap. XI.

2.

Seneca says, *The most secure Means of Defence is always at hand; every Man being charged with the Care of his own Person.* Ep. CXXI. p. 604. Edit. Gronov. Var. Quintilian lays it down as a Rule for an Orator, *To speak in his Client's defence, before he attempts to retort the Crime on the Accuser; because our own Safety is naturally preferable to the Destruction of our Adversary.* Inst. Orat. Lib. VIII. Cap. II. p. 403. Edit. Obrecht. Sophocles therefore, speaking of Hercules, justly observes, that *Had he defended himself fairly and openly, (against Iphitus) Jupiter would have pardoned his killing him.* Trachin. v. 281, 282. p. 341. Edit. Steph. See also the Laws of the Wisigoths, Lib. VI. Tit. I. Cap. VI. Grotius. The Quotation from Seneca is not directly to the Purpose.

3.

*Therefore if I kill your Servant, who is a Highwayman, and lays Wait for me, I shall be innocent; for natural Reason, &c.* Digest. Lib. IX. Tit. II. *Ad Leg. Aquil. Leg. IV.*

4.

Digest. Lib. I. Tit. I. *De Just. & Jure*, Leg. III.

5.

*De Bell. Jud.* Lib. III. Cap. XXV. p. 852. Edit. Lips.

6.

See § 11. of Chap. I.

7.

Digest. Lib. IX. Tit. I. *Leg. I.* § 3, 11.

8.

Seneca reasoning in the same Manner on another Occasion, says, that *Beasts, which are not supposed to understand what a Benefit is, or have any Notion of its Value, are gained by constant good Usage.* De Benef. Lib. I. Cap. III. See the whole Passage, and compare it with that of Philo the Jew, quoted in a Note on § 7. of the *Preliminary Discourse*. Grotius.

9.

The first Clause only occurs in Pliny, *Hist. Nat.* Lib. VII. but I do not find the following Words in that Author: They probably belong to some antient Author, as far as I can judge by the Stile. This Mixture was occasioned by our Author's taking the Quotation at second hand; for I believe I have discovered whence it was taken. Marcus Lycklama, in his *Membranae*, a Book published some Years before this, explaining Law III. of the Title in the Digest. *De Just. & Jure*, and taking occasion to treat of the natural Right of Self-Defence, *Lib. VII. Eclog. 42.* quotes this Passage of Pliny, without specifying the Place, and subjoins what here follows in the Text of Grotius.

1

Digest. Lib. I. Tit. I. *De Justitia & Jure*, Leg. V.

2.

Cornelius Nepos, in his Life of *The mistocles*, says, that General *freely owned to the Lacedemonians, that the Athenians had, by his Advice, secured their Temples and Houses with Walls, in order to defend them more effectually against the Enemy; an Action allowable by the common Law of Nations.* Vita Them. *Cap. VII. num 4. Edit. Cellar.* Grotius.

3.

See our Author, *B. III. Chap. VI. § 27.*

4.

*Lib. XLII. Cap. XLI.*

5.

Digest. Lib. I. Tit. I. *De Just. & Jure*. Leg. III. See what I have said on Pufendorf, *B. II. Chap. III. § 3. Note 11.* and *§ 23. Note 3.* from which it appears, that Florentin, in this Law, spoke of what our Author terms the *Law of Nature*, whether the Question concerns the *Law of Nature* or the *Law of Nations*, in the Manner used by the antient Lawyers in explaining that Distinction. The same is to be said of Law V. of the same Title, quoted by our Author, as the first, *Note 1.* for when the Lawyers refer War to the *Law of Nations*, they only mean, that whereas the *natural Instinct*, common to all living Creatures, prompts Man to defend himself in the best Manner he can; Reason, which is the Principle and Rule of the *Law of Nations*, forbids them to make War, even in their own Defence, without a just Cause, and directs them to keep within certain Bounds. See Cujas on the Laws in Question. Vol. VII. p. 23, 29, &c. *Edit. Fabrot.*

1

See *Chap. I. § 9. Note 5.*

2.

See my 4th *Note* on § 15. of the same Chapter.

3.

Quoted by Aristotle, *Ethic. Nicom.* Lib. V. Cap. VIII. Apollodorus gives the Law of *Rhadamanthus* in this Manner, *Let him who takes his Revenge on an unjust Aggressor escape with Impunity.* Biblioth. Lib. II. Cap. IV. § 9. Edit. Th. Gale. Grotius.

4.

Controvers. Lib. V. Praefat. p. 350. Edit. Gronov. 1672.

5.

*Contactum ac commercium.* The Author here alludes to the Defilement or Uncleanness, which the Antients thought was contracted by touching a Man who had killed another, even innocently or lawfully. See Pufendorf, B. II. Chap. V. §. 16. Note 2. And Elian, *Var. Hist.* Lib. VIII. Cap. V. with the late Mr. Perizonius's 4th Note; as also Everhard Feith, *Antiq. Homeric.* Lib. 1. Cap. VI. But these confused and obscure Ideas were not in Being in *Cain's* Time.

6.

*De Legib.* Lib. IX. p. 864, &c. Vol. II. Ed. H. Steph.

7.

Orestes, v. 511, &c.

\*

In Lib. III. *De Bell. Pelopon.* § 45. Edit. Oxon. Servius, on 1 B. of Virgil's *Aeneid.* v. 136, 140, observes that *All the Punishments inflicted by the Antients were pecuniary;* which he concludes from the Phrase *Lucre commissa*, used in that Place. The same Inference is drawn from those of *Scelus expendere*, which occurs II. Lib. v. 229. and *Pendere poenas*, B. VI. v. 20. alluding to the Practice of those early Times, when Money was delivered by Weight. Pliny tells us, that *The first capital Sentence was passed in the Areopagus,* Hist. Nat. Lib. VII. Cap. LVI. p. 478. Edit. Hack.

\*

This Passage is taken from his *Instit. Div.* Lib. II. Cap. X. Num. 23. Edit. Cellar. and is immediately preceded by these Words, *They (the antient Romans) used to forbid their Exiles the Use of Fire and Water; for as yet, &c.* For it was not their Custom to put a Citizen to Death, or even banish them in Form; they only laid a strict Prohibition against furnishing the Criminal with any of the Conveniences or Necessaries of Life, and thus reduced him to a Necessity of quitting the Country.

8.

Or rather, he had not then been guilty of such a Crime; but promised himself Impunity, on the Supposition of his committing it hereafter: For the Words of Moses will admit of that Sense. Grotius.

It does not fully appear that *Lamech* promised himself Impunity, by Virtue of GOD's Prohibition in relation to *Cain*, when he said, *Gen. iv. 23, 24. I shall slay, (I have slain) a Man to my wounding, and a young Man to my hurt. If Cain shall be avenged sevenfold, truly Lamech seventy and sevenfold.* I think it much more probable, that this Speech of *Lamech* is a mere Rodomontado, and a Boast of his Strength, by which he imagined himself able to take a Revenge for the least Injuries done to him, more extensive than the Punishment with which those who should kill *Cain* were threaten'd. On consulting

Mr. Le Clerc's Comment on the Place, this will appear the most natural Explication of the Words, so that they are of no Use towards establishing the Consequence our Author would draw from them. It is sufficient for his Purpose, that nothing can be inferred from them in favour of the Opinion he opposes, concerning GOD's Prohibition in relation to *Cain*; for even supposing that Prohibition extended to all other Cases of the like Nature, it was founded on a manifest Reason, on the Cessation of which, that is, on the Multiplication of Mankind, the Prohibition vanished of itself.

9.

Josephus expresses it thus, *I command that Men abstain from Murder, and preserve themselves undefiled with Blood, and that those who kill be punished.* Antiq. Jud. Lib. I. Cap. IV. p. 10. Edit. Leips. Grotius.

10.

See *B. II. Chap. XX. § 8. Num. 8.*

11.

See *B. II. Chap. V. § 13.*

12.

See Selden, *De Jure Nat. & Gent. secund. Hebr. Disciplinam.*

13.

I find nothing in or near these two Texts, relating to the Subject in Hand.

14.

See our Author's Treatise, *On the Truth of the Christian Religion*, Lib. I. § 15. with Mr. Le Clerc's Note, p. 28. Edit. 1717.

15.

An antient Lawyer has drawn a Comparison between the Laws of *Moses* and the *Roman Law*, under this Title, *Collatio Mosaicarum & Romanarum Legum*. Peter Pithou published that Work for the first Time, at *Paris*, in 1572; of which we have lately been presented with a beautiful Edition, in the *Jurisprudentia Ante-Justinianea*, by Mr. Schulting, a learned Professor of Law at *Leiden*.

1

The Author, in a Note on this Place, quotes a Passage from St. Jerom, which I at present omit, because he gives it more at large on *B. II. Chap. V. § 9. Num. 4.*

2.

This Instance is not altogether just. The Law of Nature, rightly understood, requires us in certain Cases to sacrifice our Lives for others, when a considerable Advantage may result from such an Action to the Publick. Thus we find the wise Pagans thought it their Duty to die for their Country. The Christian Religion therefore, only furnishes us with much more powerful Motives for the Practice of this Duty,

by proposing the certain Hope of a Life to come, which will make us ample Amends for the Loss of the present. It is the Will of JESUS CHRIST, that we suffer Death for the Gospel; but this is no more than an Extension or Application of the Law of Nature, because nothing is more advantageous to Society, than a sincere and judicious Profession of the Christian Religion, and consequently, than the courageous Resolution of such as sacrifice their Lives for the Interest of its holy Doctrines.

3.

*Epist. ad Zenam.* We meet with a like Thought in Origen's *Philocalia*. Grotius.

4.

The famous Rabbi Abarbanel, on *Deut.* xxiii. 21. says, the Law allowed the *Jews* to hate those People. Grotius.

5.

See to this Purpose what has been said in the Close of the preceding Chapter. St. Chrysostom has a beautiful Passage on this Subject, *Formerly*, says he, *so great a Degree of Virtue was not enjoined. It was then allowable to take Revenge for Injuries received, and return Reproach for Reproach, and be solicitous for a massing Riches; to swear, provided it was done with a good Conscience; to take an Eye for an Eye, and hate an Enemy: Nor was there any Prohibition against living luxuriously, being angry, or putting away a Wife and taking another. Nay more, the Law permitted a Man to have two Wives at the same Time; in short, great Indulgence was granted in those and other Particulars. But since the Coming of CHRIST, the Way is become much narrower.* De Virgin. Cap. XLIV. In the same Work he says, *The same Degree of Virtue was not required from them (the Jews) that is expected from us.* Cap. LXXXIII. And in his Discourse on the *Coequality of the Son to the Father*, he affirms, that the Gospel *contains a greater Number of Precepts, and those carried to a higher Degree of Perfection.* Vol. VI. *Edit. Savill.* Grotius.

Several of the Examples alleged by that Father, ought to be understood according to our Author's Distinction between the *Spirit* and the *Letter* of the Law.

1

Seneca, making an Apology for the true Philosophers, who were falsely accused of despising Kings and Magistrates, asserts that, *on the contrary, no Men are more faithfully obedient to Persons in publick Authority; because none have greater Obligations to them, than those who enjoy Ease and Tranquillity under their Protection.* Epist. LXXIII. The whole Epistle is well worth reading; in which we have likewise this Observation, *Tho' all enjoy the Benefit of this Tranquillity, those who make a good Use of it, have a greater Share in the Blessing.*

2.

*Apol.* I. p. 32 *Edit. Oxon.*

\*

These Words may be interpreted a *Christian End*, or a *Death worthy of a Christian*. Grotius.

3.

See Mr. Noodt's Treatise, *De Jurisdictione & Imperio*, Lib. I. Cap. IV.

4.

The Lawyers usually make this Distinction between the *Right of the Sword*, and the Power of punishing Criminals without putting them to Death: Thus, for Example, they say, *No Man can transfer to another the Power of the Sword which is given him, or that of inflicting any other Punishment.* Digest. Lib. L. Tit. XVII. *De Diversis Reg. Juris. Leg.* LXX.

5.

Though this Proof, and several others which follow it, have a direct Tendency to shew only that Princes and Magistrates, even under the Gospel Dispensation, may, and ought to punish certain Crimes with Death; yet they are to his Purpose, not only for the Reason given at the End of *Num. 10.* of this Paragraph; but also for another more strong and direct, which he ought not to have omitted, *viz.* Because there can be no plausible Foundation for condemning War absolutely, but on a Supposition, that the Right of taking away a Man's Life, especially on the Account of some temporal Advantage, is incompatible with Christian Clemency. Now, if a Prince may and ought to put any of his Subjects to Death, when guilty of certain Crimes, which are sometimes prejudicial only in regard to some temporal Interest, Why may he not innocently take Arms against Strangers? Why should he be more tender of the Lives of Strangers than of those of his own Subjects? See what our Author says farther on capital Punishments, *B. II. Chap. XX.* § 12, 13.

6.

*Contra Crescon. Grammatic.* Lib. III. Cap. LI.

7.

*Ad Bonis.* Ep. L.

8.

In order to compleat our Author's Argument, we must add what he himself says afterwards, that the Sovereign Power in itself, and according to the Practice of all Nations, includes the Right of making War, and that of punishing certain Crimes with Death. See my 5th Note on this Paragraph.

9.

*Edessa* is a City in *Osroëne*; and the Name of *Abgarus* is very common in that Country, as appears from several Medals, from Tacitus, Appian, and from the Fragments of Dio Capitolinus, lately published, (*Excerpt. Vales.* p. 476.) as well as from Pieces which have been long extant. Grotius.

This Story of *Abgarus*'s Epistle to JESUS CHRIST, and our Lord's Answer, both produced by Eusebius, *Hist. Eccl.* Lib. I. Cap. XIII. is no better than a mere Fable. See Mr. Du Pin's *Preliminary Dissertation on the Bible*, B. II. Chap. VI. § 2.

10.

St. Chrysostom makes this very plain in his Observations on this Text. Grotius.

11.

Tesmar, in his Notes, quotes two Passages from St. Augustin, where he employs this Example to shew that War is not absolutely condemned by the Gospel. In the first he reasons thus, *If all Wars were condemned by the Christian Doctrine, the Soldiers in the Gospel, when they asked Advice, for the Security of their Salvation, would rather have been commanded to lay down their Arms, and entirely renounce their Profession; whereas it is only said, Do Violence to no Man, neither accuse any falsely, and be content with your Pay. Now when they are commanded to be content with their Pay, they are not forbid to continue in the military Profession.* Epist. V. The other Passage is taken from his CV. Epistle, where that Father reasons from the Example of David, and the two Centurions.

12.

St. Chrysostom says, that *To this End Tribunals were erected, Laws made, Punishments appointed, and various Kinds of Penalties enjoined.* Serm. ad Patremfidel. Grotius.

13.

To which add, that if the Gospel absolutely condemned War and capital Punishments, such Christians as observed the Precepts of their Religion with the greatest Exactness, would thereby be inevitably exposed to become a Prey to Villains and Usurpers; which is not agreeable to the Goodness and Wisdom of GOD.

14.

Either there is some Omission in this Place, (tho' all the Editions agree) or our Author expresses himself improperly. If the Political Law continued in force, it follows indeed, that the *Jews*, when converted to Christianity, ought, if Magistrates, to judge according to those Laws; but it by no Means follows, that they could not on any Account, or for any Reason, decline the Magistracy. The Author probably means, that they cannot decline it merely because the Exercise of it was attended with the Obligation of passing Sentence of Death for certain Crimes. I find nothing, at least in the Books of the Old Testament, from whence it can be inferred, that every one called to the Magistracy was obliged to accept of that Charge. The *Jews* acknowledged no such Obligation, as appears from a Passage of the *Talmud*, quoted by Buxtorf, in his *Florileg. Hebraic.* p. 183. where it is said, that the antient Sages declined publick Offices, and excused themselves from undertaking the Function of a Judge, 'till they saw none else would accept of it; and that even then they did not take Place in the Council, but at the earnest Intreaty of the People and Elders.

15.

The *Jews* however in our Saviour's Time, had not the Power of Life and Death, but were under a Necessity of obtaining the *Roman Governor's* Permission for executing a Criminal. See our Author's Commentary on Matt. v. 22. and on John xviii. 31. So that they only declared, according to their Law, such or such a Person guilty of a capital Crime; which supposes, however, that JESUS CHRIST had not abolished the political Laws, and, consequently, is sufficient for our Author's Purpose, whatever that passionate and injudicious Divine Osiander may say.

16.

For, besides that every one may renounce the Benefit of a Law, without doing any Thing contrary to that Law; the Design of that Law which allowed of Divorces, was not to put Men on dismissing their Wives, but to provide for the Security of the Wife, who would have been exposed to very bad Treatment, among such a People as the *Jews* were, if a Husband had not been at Liberty to dismiss her

when she became disagreeable to him. So that the Intent of the Legislator was to prevent the greater Inconveniency; and nothing would have been more pleasing to him than to see Husbands keep their Wives, while they gave no just Cause for a Separation. This is what the Spirit or nobler Part of the Law required, tho' that Part was least studied by the Generality of the *Jews*. The same is to be said of the Law of the Satisfaction allowed to the Injured, for hindering private Persons from doing themselves Justice by violent Means, to which the *Jews* were strongly inclined.

17.

The Council of *Africa* makes use of this Passage, to justify the Resolution of imploring the Assistance of the temporal Power against the Factious; *Against whose Fury we may call for such Defence as is not unusual, or disallowed by the Scripture; since the Apostle Paul, as we read in the Book of Acts, secured himself against a Conspiracy of factious Men by a military Force.* And St. Augustin frequently urges this Example, as in his Lth. Epistle to *Boniface*, and in CLIVth. to *Publicola*, where he says, that *If the Soldiers, who guarded St. Paul, had fallen on his factious Enemies, the Apostle would not have thought himself guilty of the Effusion of their Blood.* And *Epist. CLXIV.* he observes, that *St. Paul took care to provide himself with a strong Guard for his Defence.* Grotius.

The second of these Passages of St. Augustin may be found in the *Canon Law, Caus. XXIII. Quaest. V. Can. VIII.*

18.

*Tributorum autem finis est, &c. The Design of raising Taxes is, &c.* Here some Commentators charge our Author with advancing an inconclusive Reason; for, say they, Taxes are raised, not only for supporting War, but also for defraying several other necessary Expences in Time of Peace. This is certain, nor does our Author himself deny it, or say it is the *only* Design of imposing Taxes. It is sufficient that this is one, and even one of the most considerable Ends proposed. Mr. Barbeyrac therefore translates the Words thus, *Mais quel est le but de ces sortes de charges imposées aux Sujets? N'est ce pas, entr' autres, que les Puissances ayent de quoi fournir aux Dépenses, &c. But with what View are such Burthens laid on the Subject? Is it not, among other Considerations, that the Powers may have wherewithal to defray the Expences, &c.* To which he adds, that this Version, made conformably to the Author's Thought, leaves no Room for Criticism; and that Mr. Vander Muelen has done Justice to the Author in this Place.

19.

The Historian puts this Speech in the Mouth of Petilius Cerealis, *Hist. Lib. IV. Cap. LXXIV. Num. 2.*

20.

*Contra Faust. Lib. XXII. Cap. LXXIV. p. 299. Tom. VI. Edit. Eras. Basil.* 1528. This Passage (in which our Author writes *propter necessaria militi*, instead of *propter bella necessario militi*, as the Words stand in the Edition here specified, which probably he used) is quoted in the *Canon Law, Caus. XXIII. Quaest. I. Can. IV.* but not exactly in the same Terms, and among some short Extracts of what goes before, or follows.

21.

The same Apostle says elsewhere, *There was no Cause of Death in me*, that is, *I had done nothing worthy of Death.* Acts xxviii. 18. Justin Martyr makes this Declaration in his second *Apology*:

addressed to the Emperor, the Senate, and the whole Body of the *Roman People*, *But we desire that such as do not live conformably to the Precepts of JESUS CHRIST, and are only nominal Christians, may be punished, even by your Authority.* Grotius.

22.

The Author here alludes to a Passage in Tacitus, relating to Piso, as the learned Gronovius has observed on this Place. *Petitam armis Rempublicam; utque reus agi posset, acie victum.* Annal. Lib. III. Cap. XIII.

23.

This eleventh Argument occurs both in the first Edition of the Work before us, and in that of 1632, which the Author assures us he had carefully revised. I make this Observation, because it is omitted in several Editions, which was probably the Printer's Fault, who skipped over two Lines, being misled by the Resemblance of the Words *Undecimum* and *Duodecimum*. This Article was wanting in the Edition of 1642, the last published in the Author's Life Time; but it had been restored before my Edition appeared.

1

St. Chrysostom explains this Prophecy of the universal Peace established by the Foundation of the *Roman Empire* at the Time of our Saviour's Birth. *It is foretold*, says that Father, *not only that this Religion shall be well established, and immovable, but also that it shall bring much Peace on the Earth; that the several Aristocracies and Monarchies shall be destroyed; and that there shall be one Kingdom raised above all the others, the greatest Part of which shall enjoy Peace in a more perfect Manner than before: For formerly Artificers and Orators bore Arms, and went to the Wars. But since the Coming of CHRIST, that Practice has been abolished, and military Employments are confined to a particular Rank of Men.* Discourse on the Divinity of CHRIST. We have exactly the same Explication in Euseb. *De Praep. Evang.* Lib. I. Cap. X. p. 8. Edit. Rob. Steph. Grotius.

2.

In Reality, as Justin Martyr observes, Christians have no Enemies among themselves to fight with, 'Ου πολεμοῦμεν τοὺς ἔχθρούς. Which is exactly what Philo the Jew said of the *Essenes*, *You can find among them no Artist who makes Javelins, Darts, Swords, Helmets, Cuirasses, Shields, or any Sort of Armour or Machines.* In his Treatise proving *every good Man is free*, p. 877. Edit. Paris. St. Chrysostom likewise says, *If Men loved one another as they ought to do, there would be no capital Punishments.* Grotius.

3.

*Adversus Gentes*, Lib. I. p. 6. Edit. Lugd. Salmas.

4.

It is where he reproaches the Pagans with the Deification of their Conquerors; on which Occasion he reasons thus, *If Immortality can be acquired only by shedding Blood, Who will have Gods, if an universal Concord was established in the World? And this certainly might be effected, if Men would lay aside their pernicious and impious Rage, and become innocent and just. Will no one be worthy of Heaven, on this Supposition? Will Virtue lose its Existence, merely because Men are not allowed to*

*give a Loose to their Passions, and destroy one another?* Instit. Div. Lib. 1. Cap. XVIII. Num. 16.  
*Edit. Celler.*

5.

St. Cyprian explains the Text thus, JESUS CHRIST commands you, *not to demand the Restitution of what is taken from you*. De Patientia. And St. Irenaeus says, that our Lord here commands us, *not to be sorrowful, like Men who cannot bear to be defrauded; but to be cheerful, as if we had freely given what is taken from us*. And if any Man shall compel thee to go a Mile, go with him two. *That is*, says the same Father, *that you should not follow him like a Slave, but go before him like a Freeman*. Lib. IV. Cap. XXVI. Libanius, who had read the Gospels, commends those who did not go to Law for the Recovery of a Coat or a Cloak, *Orat. de Custodiâ Reorum*. St. Jerom says, that *When any Man would sue us, and take away our Coat by litigious Chicanry, the Gospel directs us to grant him our Cloak also*. Dialog. I. Adv. Pelag. Tom. II. p. 274. *Edit. Basil. Grotius.*

The Passage of St. Cyprian, here quoted by our Author, is in his Treatise *De Bono Patientiae*, p. 216. *Edit. Fell. Brem.* But it does not fully appear, that that Father designed it as an Explanation of the Words of the Gospel that follow.

6.

*Vit. Apol. Tyan. Lib. II. Cap. XV. (XXXIX. Edit. Olear.)*

7.

Digest. Lib. IV. Tit. VII. *De alienat. judicii, mutandi causâ factâ*. Leg. IV. § 1. This Law considered in itself, does not relate to the Action of sacrificing some Part of our Property, rather than engage in a Suit of Law. The Case is widely different; for the Person here supposed to avoid the Multiplication of Law-Suits, is in Possession of the Goods of another Man, who sees the Proprietor disposed to recover them into his own Hands. See Mr. Noodt's excellent Commentary on the first Part of the Digest. p. 203, 204; for I should be too long in this Place, if I undertook to give the Grounds of this Explication, which supposes an Acquaintance with the Niceties of the *Roman Law*.

8.

*Lib. I. Cap. XLV.*

9.

Cicero recommends *making large Abatements of our Right, and avoiding Law-Suits and Quarrels, even sometimes to our own Prejudice*. De Offic. Lib. II. Cap. XVIII.

10.

Justin Martyr says, that our Saviour's Design in laying down this Precept, *is to engage us to the Practice of Patience and Civility to all Men, and to avoid Passion*. Apol. II. Grotius.

11.

The same Father explains this of that Cheerfulness with which we ought to *divide our Substance with the Indigent; and the Care we ought to take to avoid Ostentation in all our Actions*. Apol. II. And in another Place, *communicating our Goods to every needy Person*. St. Cyprian says, *We are to refuse*

*our Alms to no one.* Testim. Lib. III. Cap. I. Grotius.

12.

*I will give to the Indigent*, says Seneca, *but so as not to reduce myself to Poverty.* De Benef. Lib. II. Cap. XV. St. Chrysostom, on the Passage of the Epistle to the *Corinthians* here quoted, observes, that *GOD requires of every one according to his Abilities only.* And to explain himself more fully, he adds, that *The Apostle commends the Thessalonians for giving more than they could afford; but does not oblige the Achaians to do the same.* Grotius.

13.

*Lib. VI. Cap. XV. Num. 9.*

14.

*Cyropaed.* Lib VIII. Cap. II. § 11. Edit. Oxon.

15.

This was not literally a Punishment of Retaliation; for no Criminal was to lose an Eye or a Limb, according to the Law of Moses, which only imposed a fine on such as wounded any one, if Death did not ensue. *An Eye for an Eye, a Tooth for a Tooth*, are therefore only proverbial Expressions; the Sense of which is, that every Man should be punished by the Judges, according to the Enormity of his Crime. See Mr. Le Clerc on *Exod.* xxi. 24. and *Deut.* xix. 21.

16.

This law ordered a strict Retaliation, unless the Criminal could prevail with the Person injured, to come to an Accommodation. See A. Gellius, *Noct. Attic.* Lib. XX. Cap. I. and Festus on the Word *Talio*.

17.

See St. Chrysostom in the Place quoted Note 12. Grotius.

18.

*De Constantiâ Sapientis* Cap. V.

\*

*Ibid.* Cap. X. Grotius.

19.

In his *Peribaea*.

20.

These Words are taken from a Piece intitled *Fallacia*, and are quoted by Nonius Marcellus, page 430. *Edit. Paris. Mercer.* as well as those of the preceding Note. Gronovius conjectures, that the last Words should be read *Nisi circumstant Contumeliae*, instead of *Nisi constat Contumelia*.

21.

Oration against Midias, p. 395. *Edit. Gen.* This Passage is quoted by the *Roman Lawyers*, Digest. B. XLVIII. Tit. XIX. *De Paenis.* Leg. XVI. § 6.

22.

*De Constantiâ Sap.* Ch. X.

23.

*Veterem ferendo injuriam, invites novam.* This is one of Publius Syrus's Sentences, preserved by Aulus Gellius, *Noct. Atticae*, Lib. XVII. Cap. XIV. It is the 753d in Gruter's Collection: On which see his Notes, published at Leyden in 1708.

24.

*It is a glorious Victory, says St. Chrysostom, to give the Offender more than he requires, and exceed the Bounds of his vicious Desires, by the Greatness of our own Patience.* In VII. ad *Romanos.* Grotius.

25.

The same Father says in another Place, that *An Affront either subsists or falls to the Ground, according to the Disposition of those who suffer, not according to the Intention of those who offer it.* Orat. I. *De Statuis.* Grotius.

26.

*Mox ut praeberi ora contumelis, &c.* Hist. Lib. III. Cap. XXXI. Num. 5. and *Os & offere contumeliis.* Ibid. Cap. LXXXV. Num. 6. Livy says, *Praebere ad contumeliam os.* Lib. IV. Cap. XXXV. Num. 10.

27.

Sa. *Qui potui melius, qui hodie usque os praebui?*

Adelph. *Act. II. Scen. III. Vers. 7.* See also Cicero's first Epistle to *Atticus*, page 145. Vol. I. His Oration for *Sextus Roscius*, Ch. XLIX. page 205. And against *Verres* III. page 32. *Ed. Graevii*; where the same Expression is used in the same Sense.

28.

The *Proselytes* were placed on the Level with the *Hebrews* in this Particular, and the Laws which prohibited doing an Injury to another, were also extended to those uncircumcised Inhabitants, of whom we have spoken, *Chap. I. § 16.* This is acknowledged by the *Talmudists.* Grotius.

29.

See § 2. of this Chapter, *Num. 3.* at the End.

30.

Tertullian says, *The first Degree of Goodness is that exercised toward Relations: The second, That employed on Strangers.* Against *Marcion.* B. IV. Chap. XVI. St. Jerom having acknowledged himself

*obliged by the Divine Precept to love his Enemies, and pray for his Persecutors; asks, Whether it is just that he should love them like his near Relations? And that no Difference should be made between an Enemy and a bosom Friend? Against Pelag. Dial. I. Vol. II. page 274. Edit. Basil. Grotius.*

31.

These are Seneca's Words, *Nam tam omnibus ignoscere Crudelitas est quam nulli*. De Clementiâ. Lib. I. Cap. VII. St. Chrysostom, speaking of human Punishments, says, *These Things are not done by Men out of Cruelty, but out of Humanity*. In I. ad Cor. iii. 12, &c. And St. Augustin, to the same Purpose, *As there is sometimes a punishing Compassion; so there is also a tender Cruelty*. Ep. LIV. to *Macedonius*. The Emperors Valentinian, Theodosius, and Arcadius, in the third Law of the *Theodosian Code*, *De defensoribus civitatum*, speak thus, *Let all Protections be removed, which by favouring the Guilty, and assisting the Criminal, encourage the Growth of Wickedness*. (This Law occurs in almost the same Terms, under the same Title, in the *Justinian Code*, Leg. VI.) Totila declared, that *To commit a Crime, and screen the Guilty from Punishment, were Actions equally culpable*. Procop. *Gothic*. Lib. III. Cap. VIII.

32.

See St. Cyril on this Subject, in his fifth Book against *Julian*, Page 173, &c. Edit. *Spanheim*. Grotius.

33.

See likewise Matt. xxi. 41. Luke xix. 12, 14, 27. St. Chrysostom, having enumerated the Calamities which befel *Jerusalem*, adds, *And to shew you that CHRIST himself did all this, hear him foretelling it, both in Parables, and in clear and express Terms*. In *Romans* xiv. See also his second Oration against the *Jews*, where he has something to the same Purpose.

34.

*Shall I kill? Shall I cut off a Limb? For there is a Spirit of Lenity, and a Spirit of Severity*. Chrysost. 1 Cor. iv. 21. See likewise St. Augustin, *De Sermonibus Domini in Monte*. Lib. I. and others quoted by Gratian. *Cause XXIII. Quest. VIII*. Grotius.

35.

The Vulgate reads *defendentes* in this Place; but that Word is frequently used by Christian Writers for *revenging*. Tertullian, in his Treatise *Of Patience*, Chap. X. against *Marcion*, B. II. Chap. XVIII. The Passage of St. Paul, here under Consideration, is well explained by St. Augustin in the following Manner: *We are therefore forbidden to resist Evil, that we may not be delighted with Revenge, which feeds the Mind with the Damage sustained by others*. Ep. CLIV. Grotius.

36.

See *Levit.* xix. 8. and *Deut.* xxxii. 35. where we have the Sense of the Words.

37.

The present Distinction of Chapters is attributed to *Hugo de Sancto Charo*, a Cardinal, who lived in the thirteenth Century; or to others not much earlier. Before that Time there was a much more antient Division, made towards the Close of the fourth Age. See Dr. Mills's *Prolegomena*, Num. 905, &c. Edit. *Kuster*. According to that, the twelfth, thirteenth, and fourteenth Chapters in our Editions make

but one; as may be seen in the said Doctor's beautiful Edition.

38.

St. Chrysostom is of Opinion, that by *carnal Weapons* in this Place, are understood *Riches, Glory, Power, Eloquence, Address, Intrigue, Flattery, and Hypocrisy*. Grotius.

39.

- *Divitis hoc vitium est auri; nec bella fuerunt,*
- *Faginus adstabat quum scyphus ante dapes.*
- Lib. I. Eleg. XI. v. 7, 8. *Edit. Brockhuys.*

40.

See, for Example, B. VII. p. 300. *Edit. Paris.* B. XIV. p. 656. and B. XV. p. 713.

41.

Philo the Jew makes the same Remark, in his Treatise *Of a contemplative Life*, p. 892. *Edit. Paris.* upon quoting that Verse of Homer, *Iliad.* B. XIII. v. 6.

- Γλακτοθάγων, ἀβίωντε, δικαιοτάτων ἀνθρωπών.

*Men who live on Milk, and in great Poverty; but are remarkable for their Probity.* Justin, having told us that the Scythians made a Profession of Despising Gold and Silver as much as other Men idolized them, observes, that *The Innocence of their Morals and Freedom from Avarice proceeds from this excellent Disposition;* for, says he, *where the Use of Riches is known, there Covetousness is found.* B. II. Ch. II. Num. 8, &c. Nicephorus Gregoras says something like this of the same People, B. II. The Passage is worth reading. Plutarch, in his Life of *Alexander the Great*, p. 698. Vol. I. *Edit. Wechel.* introduces *Taxiles*, an Indian King, speaking thus to that Prince, *What Necessity is there of Fighting and Wars between us, if you neither come to deprive us of our Water, nor necessary Food; for which only reasonable Men are obliged to take Arms?* Diogenes the Philosopher said, that *Robbers and Warriors were not to be found among such as lived on Water-gruel.* Porphyry looks on a simple and cheap Diet, as what contributes very much towards establishing Piety, and making it common among Men. Of Abstinence from Animal Food, B. II. p. 144. *Edit. Lugd.* 1620. Grotius.

In the Verse quoted from Homer, at the Beginning of this Note, our Author, following the common Explanation, takes Ἀβίων for an Epithet; whereas it is the proper Name of some of the antient Scythians, as the Author of the short *Scholia* observes, tho' he has given Occasion to this false Interpretation. Upon consulting Strabo's *Geography*, B. VII. p. 296, 300. *Edit. Paris.* Arrian's Account of *Alexander's Expedition.* B. IV. Ch. I. Q. Curtius, B. VII. Chap. VI. Num. 11. And Stephanus, *De Urbibus*, under the Word Ἀβίοι, it will appear, that the Poet here speaks of the *Abians*, as a particular People; and it is surprising, that Madam Dacier is the first Translator of Homer, who hath not made a Mistake in this Place; for not only Wetstein's small Edition, but also Mr. Barnes's large and beautiful Edition, are here conformable to those which had appeared before. In the latter the Printer has omitted the whole Greek Scholium on the sixth Verse, which the Editor has not observed, tho' he assures the Publick, he has placed it in better Order than it ever was in before. The Saying of Diogenes, which our Author produces, without telling us where he found it, may be seen in Porphyry, B. I. p. 94. I am the more willing to make this Observation, because this Saying is one of those which have escaped the Enquiries, not only of Mr. Stanley, in his *Philosophical History*, written in English; but also those of

the late Mr. Olearius, who when he translated that excellent Piece into *Latin*, undertook to make the necessary Supplements to it.

42.

*Pharsal. Lib. IV. v. 473, &c.*

43.

*Page 1049. Vol. II. Edit. Wech.* This is a very just Observation, but little regarded. It will not be improper to confirm it by some other Passages, as beautiful as those already quoted. The Philosopher Athenaeus, in a Greek Epigram, *Mortals, why take you so much Pains for evil Things, and engage in Quarrels and Wars, at the Instigation of an insatiable Desire of Gain?*

- Ανθρώπι, μοχθεῖτε τι χείρονα, καὶ διὰ κέρδος
- Ἀπληστὸν νεικῶν ἄρχετε καὶ πολέμουν
- Diogen. Laert. B. X. §12. Edit. Amst.

Fabianus Papirius, an antient Rhetorician, writes thus, *We see Armies drawn up in Battle Array, where often fellow Citizens and Relations are ready to engage one with another: The Hills on both Sides are covered with Cavalry, and soon after the whole Country is covered with dead Bodies, or Plunderers. Should it be asked, What forces Man to commit this Crime on Man? Since even the wild Beasts do not make War one with another; and if they did, Would the same Conduct become Man, that peaceable Animal, and most nearly resembling the Divinity? What excessive Rage actuates you, who are one Family, and of the same Blood? Or what Fury animates you to shed one another's Blood? By what Chance, or by what Fatality, has so pernicious a Practice been introduced among Mankind? Must Parricide be committed, with a View of making splendid Entertainments, and adorning Palaces with Gold? No Doubt those Things must be great, and worthy of Commendation, which induce us to admire our sumptuous Tables, and rich Cielings, rather than retain our Innocence, and live in the open Air. Ought we not to desire to enslave the whole World, that we may have it in our Power to indulge our Appetites and Passions without Restraint? In fine, Why are pernicious Riches sought for with so much Eagerness, but with a Design of leaving them to our Children? Seneca, Controvers. B. II. Controv. IX. p. 153. Edit. Elziv. Doth the Love of Riches, of a Woman, of Glory, or any Thing else that affords Pleasure, prove the Cause of small and common Evils? Doth not this divide the nearest Relations, and convert their natural Affection into irreconcileable Hatred? Is it not for this that large and populous Countries are reduced to so many Desarts, by domestick Seditions? Is it not this that daily fills both Sea and Land with new Calamities, by Means of Fleets and Armies? The Wars of the Grecians and Barbarians, either with one another, or among themselves, which are described by the Tragick Writers, are all derived from one Source, the Desire of Riches, Glory, or Pleasure. Philo the Jew, on the Decalogue, p. 765. Edit. Paris. Pliny observes, that *The Magnificence of Riches has a Tendency to promote enormous Crimes, Destruction, and War.* Hist. Natural Lib. II. Cap. LXIII. The Philosopher Diogenes says, that *Tyranny, the Ruin of Cities, foreign and intestine Wars, are not owing to a Desire of purchasing a simple Diet of Herbs and Fruit; but to a Fondness for exquisite Food and Dainties.* St. Jerome, Adv. Jovinian. B. II p. 77. Edit. Basil. St. Chrysostum observes, that *If mutual Love was maintained among all Mankind, no one would injure another; Murthers, Quarrels, Wars, Seditions, Rapines, insatiable Desires, and all other Vices, would be banished out of the World.* In 1 Cor. xiii. 3. and in another Place, he asks, *Are not they (the Rich) the Authors of Seditions, Wars, the Destruction of Cities, Slavery, Captivity, Murder, and an Infinity of other Calamities?* Orat. ad Patrem fidelem.*

Claudian says, *If Men would be content with the little Nature requires, we should not hear the Sound of the Trumpet, nor be exposed to Sieges.* In Rufin. Lib. I. v. 206, &c.

Agathias maintains, that *The Minds of Men, wholly addicted to Injustice, and insatiable Desires, fill the World with War and Confusion*. Histor. Lib. I. Cap. I. I shall conclude all the fine Passages I have quoted, with a Saying of Polybius, *When one knows how to be contented with the Necessaries of Life, one needs no other Philosophy or Master*. Apud Suidam, voc. Αυτάρκεια.

44.

*Lib. II. Cap. II. Num. 2, &c.*

45.

*De Finib. Bon. & Mal. Lib. I. Cap. XIII.*

46.

*Dissert. XIII. p. 142. Edit. Davis.*

47.

*Cap. XIII. p. 142.*

48.

In the next Chapter, § 3.

1

Πρὸς τὸ δικαιοῦν, καὶ τεταγμένους πολέμους, εἴποτε δέοι, γίγνεσθαι ἐν ἀνθρώποις. Our Author quotes only these Words, without specifying the Place whence he took them.

2.

*Bonum esse, quum puniuntur Nocentes, nemo negat.* Thus our Author cites the Passage, but does not tell us in what Treatise it is to be found. It is in the nineteenth Chapter of his Book *De Spectaculis*, where it is delivered in a more energetical Manner, *Bonum est, quum puniuntur nocentes. Qui hoc nisi Nocens, negabit? It is good to punish the Guilty. Who, but a Criminal, will deny this?*

3.

The same Father says elsewhere, that, according to St. Paul, *Human Justice does not bear the Sword in vain; and the Severity of Punishment is advantageous to Mankind.* De Animâ. Cap. XXXIII. He addresses himself to the Proconsul Scapula, in the following Terms, *We do not attempt to terrify you, nor are we afraid of you. But I wish we could save all Men, by exhorting them not to fight against GOD. You may both exercise your Jurisdiction, and be mindful of the Duties of Humanity; even on this Consideration, that you yourselves are under the Power of the Sword.* Cap. IV. Grotius.

4.

*De Idololatria, Cap. XIX.*

5.

*Cap. XI.*

6.

Tertullian applies this Distinction to Marriage, in his Treatise *Of Monogamy*, and in his *Exhortation to Chastity*. Grotius.

7.

Tertullian says, *Such Persons are not received into the Church, as exercise Professions not allowed of by the Law of GOD*. De Idololatria, Cap. V. The primitive Christians admitted *neither Prostitutes, Stage-Players, nor Persons of any other infamous Professions, to the Sacraments of the Church, till they had renounced such criminal Engagements*. As we learn from St. Augustin, *De Fide & Operib.* Chap. XVIII. See an Example of this Discipline, in regard to a Comedian, in St. Cyprian, *Epist. LXI.* (2d Edit. Oxon.) in regard to the Gladiators, infamous Promoters of Debauchery, and such as traded in Cattle for Sacrifices; in Tertullian, *De Idol.* Cap. XI. of a Charioteer in the publick Games, in St. Augustin. Grotius.

8.

*De Coronâ militis*, Cap. I.

9.

Alexander, *the Son of Theodore, deputed from Hyrcanus, High Priest, and Prince of the Jewish Nation, has declared to me, that his Countrymen cannot engage in the Army; because they are not allowed to bear Arms or March on the Sabbath Day, and will not easily be able to observe the Distinction of Meats, and other Customs belonging to that People.* Antiq. Jud. Lib. XIV. Cap. XVII. pag. 488. Edit. Leips.

10.

This Account immediately follows the Passage quoted in the last Note.

11.

*Antiq. Jud.* XVIII. Cap. V.

12.

This is what Josephus says of *Alexander the Great*, who proposed their serving him on these Conditions. *Antiq. Jud. Lib.* XI. Cap. ult.

13.

*De Idolol.* Cap. XIX.

14.

*De Coronâ Militi*, Cap. XI.

15.

*Ibid.*

16.

*Legat. pro Christian. Cap. I. p. 10. Ed. Oxon. 1706.*

17.

*De Gubernat. Der. Lib III. p. 74. Edit. Paris. 1645.* St. Basil *the Great* pretends that *going to Law is expresly forbidden by the Gospel.* Homil. de Legend. Grecor. Lib. §7. Edit. Oxon. 1694.

18.

Without entering into Theological Disputes, I shall only make some Remarks, which, in my Opinion, will be sufficient for shewing how little Grounds there are for what has been formerly and stillis said in many Places, concerning those pretended *Evangelical Counsels*; and at the same Time discovering what gave Occasion to the Distinction between them and *Precepts*. First, then, I say, if there were really any divine *Counsels*, properly so called, they must necessarily relate to such things as on one hand are always commendable, excellent, and in their own Nature agreeable to GOD: And on the other, left entirely to the Liberty of every Man; so that they can in no Case be obligatory. Now, upon a careful Examination of the very Examples, here alledged by our Author from the ancient Fathers, which are the most considerable of those made to regard the Evangelical Counsels, it will appear that they turn on things, which either are neither good, nor evil in their own Nature, or are really obligatory in relation to certain Persons, and in certain Circumstances. 1. Let us begin with *second Marriages* and *Celibacy* in general, which our Author elsewhere ranks in this Class. *B. III. Chap. IV. §. 2. numb. 1.* It is certain that whether a Person marries or lives single, he does neither Good nor Evil in that, considering the thing in itself. As the married State does not necessarily engage to Vice, so neither is an unmarried Life an infallible Means for practising Virtue.

A Man may be good or bad in a married State; as he may likewise be either in Celibacy. It is but too evident from Experience that those, who have made a Vow of Celibacy, or laid themselves under the same Tie in regard to a second Marriage, have generally fallen into one of these two Inconveniences, *viz.* either they have not lived chastly, or have not proved less subject to other Passions and Vices very unworthy of a Christian, such as Anger, Covetousness, Hatred, Pride, the Spirit of Domination, Sloth, &c. even though a Man's Constitution will easily allow him to for ego Marriage, if while he lives in Celibacy, he does not for that Reason become more useful to Society, and more capable of discharging his Duty, the Matter is then entirely indifferent. But if one has good Reason to believe he shall be able to employ his Time better, and do the Publick more Service in a single Life (which depends on the Condition and Circumstances of each Person, of which they must judge for themselves) he is then under an indispensible Obligation not to marry, supposing he believes himself entirely secure from Temptations of Impurity; or not to marry a second Time, especially when he may thus make a better Provision for his Family. 2. In regard to forbearing Law Suits, and chusing rather to lose one's Property, than sue the Person, who has taken it from us or detains it unjustly; it is a general Maxim, that we are obliged to make some Abatement in our Right, whenever that can bed one without great Prejudice to ourselves, or occasioning any other Inconvenience. The View of promoting Peace, and Prudence equally require such a Cession. So that Law-Suits bring commonly so many pernicious Sources of Hatred, Animosities, Divisions, Discontent, Perplexities, Expences, &c. we are to avoid them as much as possible, and expose ourselves to a slight Loss rather than engage in all unhappy Consequences, which attend the pursuit of our most just Rights. This is not a Counsel, but a real Precept, both the Gospel, and the Law of Nature, especially when certain particular Circumstances demand such a Moderation. This was the Case in the Infancy of Christianity, when, to avoid giving an ill Opinion of that Religion, and its Votaries, it was highly improper for Christians to go to Law in the

Courts of *Pagan* Judges. See what our Author says, Paragraph 8. of this Chapter, *num.* 4. But, if no such Inconvenience to ourselves or others is to be apprehended, and some considerable Interest is at Stake, it is so far from being a very commendable Action, quietly to permit our Property to be taken away, or detain'd, that it would even be a bad one; for thus ill-designing Men would be encouraged to do evil; and such a Moderation would be the more blameable, as it might add to the Inconveniences of one's self or one's Friends. So that Patience in the Case before us, is either useless or prejudicial; and then it cannot deserve Commendation; or it is a real Duty. Almost the same may be said of declining War. Thirdly, when the primitive Christians refused the Edileship or Praetorship, it was, according to Gronovius, because those who accepted of these Posts were obliged to exhibit publick Shews for the Entertainment of the People, in which there was some Mixture of Idolatry. But the extravagant Ideas they had of several other things, give us room to believe, that many of the antient Doctors of the Church condem'd all in general, who sought for or accepted of Honours and Dignities. In regard to the thing its self, the Honours in question are either vain Titles and frivolous Distinctions, which suppose no Merit in the Persons who receive them, and have no Tendency to promote the Good of Society: Or it is requisite that they, on whom they are conferred, should be possess'd of certain commendable Talents and Qualities, for the worthy Discharge of the Functions annexed to them. There is no great Virtue in neglecting or rejecting the former: And as there is great Danger they will inspire us with Sentiments of Pride, even that ought to be a Reason for avoiding them. In regard to the latter, either the Candidate is Possess'd of the Qualifications requisite for acting in a publick Character, or he is not. If not, or even if there are other Candidates who are possess'd of them, in a much greater Degree, he commits a Fault in pursuing, or even barely accepting of the Dignities in Question, for which a Man can never be too well qualified. But if one is convinced not only in one's own Opinion, in which one may deceive himself; but also by the impartial Judgment of understanding Persons, that one is much more capable of acquitting one's self of an honourable Employ, to which one is called, than others who aspire at them, it would be either Sloth or false Modesty to decline it, and it could not be reasonably done, but when the Person is engaged so to do by some stronger Obligation, or knows he has great Reason to apprehend the Influence of Temptations to Vanity, which might prompt him to frequent Abuses of the Power and Privileges with which he would be invested. Fourthly, Lactantius does not allow a Christian to trade by Sea. *For why should he go to Sea,* says that Father, *or what should be seek for in a foreign Country, when his own furnishes him with all Necessaries?* Lib. V. Cap. XVII. But the Apostle St. James manifestly supposes it lawful *to go from Coast to Coast for the sake of Traffick and Gain.* Chap. iv. v. 13, 14. The thing therefore is in itself indifferent; so that as we may Trade either innocently, or in a manner contrary to some Virtue; to abstain from trading, unless it be with a View of avoiding an insatiable Avidity of Gain, to which a Man finds himself disposed, or some other dangerous Temptation, has nothing in it deserving Commendation. In this Case it is no longer a pretended Counsel of extraordinary Perfection, but an indispensible Obligation incumbent on every Christian. Fifthly, taking an Oath is sometimes indispensibly necessary, as when things which regard the Glory GOD, or the Good of Mankind are concerned; or when the Magistrate for just Reasons requires it. As to these Cases, where our Interest only is concerned, and where the Distinction of *Counsels* and *Precepts* might take Place most, we are to judge of them by the Principles already laid down in regard to Law-Suits. Sixthly, to all these Examples given by Grotius, let us add one alledged by Dr. Hammond, who, out of respect to Ecclesiastical Antiquity, had likewise adopted the Distinction of *Counsels* and *Precepts*, as appear from his long Note on *Colos.* ii. 23. It is taken from St. Paul's Generosity, in preaching the Gospel without receiving any Salary. 1 *Cor.* ix. 15. 18. But on a close Examination of the Matter, we shall find nothing in it relating to a *Counsel* properly so call'd. Though the Apostle glories in not having made use of his Power of demanding a Salary, and *expects to be rewarded* for his Conduct, it does not thence follow that the said Act was entirely free in regard to him, and had no relation to his Duty. He himself clearly gives us to understand the contrary, when he says, that if he had not made use of his Power, it was *that the Gospel might be without Charge.* In

Reality, it was a Matter of the last Importance, that the first Preachers of the Gospel should carefully avoid all that could give the least Suspicion of their publishing the Christian Religion for their own Profit and Advantage: And it may be said in general that all who undertake to instruct others in that holy Religion, can never appear too disinterested, or be too humble. Thus, though the Persons to whom the Apostles preached, could with no shew of Reason require them to do it without some Salary; and that, strictly speaking, St. Paul was not obliged to do it; yet as soon as he was persuaded his Ministry would by that Means prove more efficacious (which probably he had room to conclude from some particular Reason unknown to us; and he seems elsewhere to insinuate that he had one, 2 Cor. xi. 9, 10, 11, 12, 13.) he lay under a real Obligation so to do; an Obligation founded on the general Engagement, which requires every Man to seek and employ all Means necessary for acquitting himself of an important Charge, in the best manner he is able. However, as in such Cases Persons make an Abatement of their Right in Favour of those with whom they have to do; and therefore a greater Stock of Virtue is requisite for resolving on such a Sacrifice, than barely refusing to take what others have in Rigour a Right to demand, we have likewise more Reason to congratulate ourselves on so happy a Disposition, and may expect from the Divine Goodness a greater Recompence. Besides, the Apostle here considers the Disinterestedness, for which he applauds himself, as a Duty, not formally enjoin'd him by particular Order from Heaven, or at least not necessarily join'd with the Exercise of the Evangelical Ministry, in Opposition to *the Necessity imposed on him of preaching the Gospel*, v. 16. for which he had received an express Command from our Lord JESUS CHRIST, Acts xxii. 14, 15. See what Grotius himself has said on this Point, in his Notes on Luke xvii. 10. And this leads us to what gave Occasion to this false Distinction of *Precepts* and *Counsels*, which comes now to be consider'd. The Apostles made use of the Word *Counsel*, when speaking to *Christians* of the Conduct they ought to observe in certain Circumstances, in regard to things either indifferent in themselves, or concerning which they had neither any particular Order from JESUS CHRIST, nor any general Rule in the Gospel, imposing an evident and indispensable Obligation of acting or not acting in such or such a manner. Thus St. Paul, 1 Cor. vii. treating of Marriage, and considering the Afflictions and Persecutions, to which *Christians* were then exposed, says, that in Reality such as are not favour'd with the Gift of Continence might, and even ought to engage in that State, and that married Persons ought not to refuse one another the Marriage Debt, unless it be done by mutual Consent; nor separate, even though one of the Parties were not a Christian, But that he had rather those who had never been married, and those whose conjugal Tie had been dissolved by the Death of one or the other, should remain as they are. He declares, however, that *he has no Commandment of the Lord*, concerning that Matter; but that *he gives his Judgment*, or Counsel, *as one who hath obtain'd Mercy of the Lord to be faithful, and who hath the Spirit of the Lord*, v. 25. 40. that is as a good Interpreter of the Will of GOD, in determining what was to be done in regard to the Circumstances of those Times. In which, however, he could not avoid laying down some general Rules, which each Person was to apply for his own Use and Direction, according to his State and Condition, v. 17. so that as he was obliged to leave the Matter to each Man's Judgment and Conscience, he therefore calls his Exhortations bare *Counsels*, or *Advice*. He does the same, when he admonishes the *Corinthians* to practise Liberality to the Poor, the Exercise of which Virtue ought to be voluntary and proportion'd to each Man's Abilities, 2 Cor. viii. 10. Hence some have, without sufficient Grounds, taken Occasion to imagine there are some things, which, though of an excellent Nature, and in themselves highly agreeable to GOD, are left to every one's Liberty, so that there is no evil in the neglect of them, nor any Reason to be apprehensive of Punishment for such Omission; but if any Man forms the noble Design of aspiring to them, he arises to an extraordinary degree of Perfection, and performs such Acts of Virtue as merit a singular Reward. Another Reason, not unlike this, which may have given Birth to the Distinction under Consideration, is, that as GOD requires of Men more extensive Duties and in greater Number, in Proportion to their Knowledge and Assistance on the Practice of them; these are certain virtuous Acts, and even certain Virtues, not expected from great Numbers, because there are but few in Circumstances will oblige

them to such Practices. It has been particularly observed that GOD requires greater Sanctity from *Christians*, than he demanded of the *antient Jews*. But it ought to be consider'd that, if any one, under the *Jewish Dispensation*, had by Force of Meditation and Reflection, acquired as exact and extensive a Knowledge of his Duties, as that to be found in the Gospel, which might have been done by a careful Examination of the Principles, dispersed through the Writings of Moses and the other Prophets; such a *Jew* would then have been obliged to as regular and holy a Conduct, as that of true *Christians*. Lastly, it is to be observed that the Distinction of *Counsels* and *Precepts*, is so far from having any Tendency toward making Men virtuous, that in certain Cases, it may divert them from the Practice of Virtue. As Men are fond of the Wonderful, and of every thing that flatters their Vanity; they are in great Danger of being dazzled with the pompous Ideas of an imaginary Perfection, which raises them above the common level; and, while in pursuit of such Chimeras, neglecting several Branches of their real Duty, the Practice of which their Passions sometimes render more difficult, than the Sacrifice they make by abstaining from Things permitted. It is even possible for Man, under Pretence of extraordinary Sanctity, to deceive himself grossly in regard to plain and common Duties, and imagine himself excused the Practice of them, to make himself Amends for the Violence committed on his Inclinations; by this Abstinence from certain Things. Experience shews the Truth of this Reflection in such as make Vows of Celibacy and Poverty. See Mr. Le Clerc's Addition to Dr. Hammond's Note, already cited; as also his Notes on the second Epistle of Sulpicius Severus. *Edit. Leipsic.* 1709.

19.

The fourth Council of *Carthage* forbids Bishops to go to Law for temporal Concerns, even though actually attacked. See St. Ambrose, *de Offic.* Lib. II. Cap. XXI. and Gregory *the Great*, Lib. II. Ind. XI. Epist. LVIII. Grotius.

20.

See our Author's Notes on Mat. v. 34. and Tillotson's XXII. Sermon.

21.

In *Rom.* i. 9. 2 *Cor.* i. 18. 23. *Gal.* i. 20. *Philip.* i. 8. 1 *Thes.* ii. 5.

22.

*Apolog.* Cap. XLVI.

23.

*For why should he (the just Man) go to Sea, or what should he look for in a foreign Country, who is supplied with all he wants in his own? Why should he go to War, and engage in other Men's mad Quarrels, whose Soul is always at Peace with all the World?* Instit. Divin. Lib. V. Cap. XVII. num. 12. *Edit. Cellar.*

1

Our Author's Thoughts were probably on what that antient Doctor says in his *Stromata*, Lib. I. Cap. XXVI, XXVII. p. 420. and of *Edit. Oxon.* where we meet with the Sense, but not expressed in the same Words.

2.

*Paedag.* Lib. II. Cap. XI. p. 240.

3.

*Lib.* VII. *Cap.* III.

4.

*Lib.* VIII. *Cap.* XXXII.

5.

*Apolog.* *Cap.* XLII.

6.

*Ibid.* *Cap.* XXXVII.

7.

*Cap.* V. Father Pagi, in his Criticisms on Baronius, *Tom. I.* has shewn that this Story has a great Mixture of Fables. But it is sufficient for our Author's Purpose, that *Marcus Aurelius* had Christians in his Army; a Fact which can never be disputed, and which has given Occasion to all the Wonders invented concerning the *thundering Legion*, as it is called by Eusebius, and others.

8.

*Cap.* I.

9.

Add to all these a Soldier, baptized by *Cornelius*, mentioned by Ado, in his Martyrology. Grotius.

10.

*Epist.* XXXIX. *Edit.* Oxon. (34. *Pamel.*)

11.

*Capitalibus suppliciis.* Thus the Words stand in all Editions; but what follows makes it evident that the Author design'd to have said *Capitalibus Judiciis, at Trials for Life*. The Question is about acting as a Judge, not as a bare Spectator of the capital Executions, as Tesmar ridiculously explains this Passage, who quotes Quintilian and Seneca. It appears from Tertullian, that the Obligation of being present at such Trials, was one of the Reasons why the primitive Christians made a Difficulty of bearing Arms; and that Father uses the very Terms which I have placed here, pursuant to my Author's Meaning. *De Idol.* *Cap.* XIX. Grotius has before quoted what follows, and immediately precedes that Sentence, to which he probably alludes.

12.

By this *Senatus Consultum*, or Decree of the Senate, it was ordered, that if a Master happened to be assassinated in his own House, all the Slaves under the same Roof should be put to Death; even tho' no Proof appeared of their being concerned in the Murther, or having heard any Thing when the Blow

was given. We have an Example of the Case in Tacitus, *Annal.* Lib. XIV. Cap. XLII, &c. The Emperor *Adrian*, as our Author has observed in a Note, softened the Rigour of that Decree, by ordering that only they should be racked, who were near enough to the Place, where the Master was killed, to hear some Noise. Spartian, *Vita Hadriani*, Cap. XVIII. Our Author says likewise, in the same Note, we may add to the too rigorous Laws of the *Romans*, that which forbids admitting the Evidence of a Slave, but when he persisted in it on the Rack. See *Cod. Lib. VI. Tit. I. De servis fugitivis, &c. Leg. IV.* and Mr. Noodt's *Probabilia Juris*, Lib. I. Cap. XIII.

13.

*If any one is guilty of the Death of his Parent, or Son, or any other Relation, which falls under the Denomination of Parricide, —Let him be sewed up in a Sack, with a Dog, a Cock, a Viper, and an Ape— and thrown either into the neighbouring Sea, or a River, Lib. IX. Tit. XVII. De his qui parentes aut liberos occiderunt. Leg. ult.* It is well known this was the antient Manner of punishing Parricides among the *Romans*; but the Use of it was abolished. Such Criminals were burnt, or obliged to engage with wild Beasts, for the Entertainment of the Publick. See the Commentators on the *Institutes*, Lib. IV. Tit. XVIII. *De publicis Judiciis*, § 6. and the *Receptae Sententiae* of Paul the Lawyer. Lib. V. Tit. XXIV. with Mr. Schulthig's Notes.

14.

He used to say, *The distempered and rotten Limb must be cut off, that it may not communicate the Infection to those that are sound; but not a sound one, or one that began to heal.* Zon. *Vit. Constantini*, Lib. IV. Cap. XXXI. And this his Historian represents as the Result of his Tenderness for such as reformed their Lives. As the *Christians* complained of that Prince's Excess of Clemency, the *Danes* did the same in relation to their King *Harold*, as we learn from *Saxo the Grammian. Northern Hist.* Lib. XI. p. 193, 194. *Edit. Wechel.* 1576. Grotius.

15.

See the late Mr. Cuper's Notes on Lactantius, *De Mortibus Persecutorum*, Cap. XLIV.

16.

Viget. *De Re Militari*, Lib. II. Cap. V. *Edit. Plantin. Scriver.*

17.

We find a like Saying of St. Augustin, inserted in the *Canon Law*, Caus. XXIII. Quaest. I. Can. V. as taken from his Book, *De verbis Domini*, Tract or Sermon XIX. And our Author quotes the same Words elsewhere, under the Name of that Father, *B. II. Chap. XXV. § 9.*

18.

*De Offic.* Lib. I. Cap. XXVII. This Passage occurs also in the *Canon Law* already quoted; where we have several of the like Thoughts of other Fathers of the Church.

19.

St. Augustin says, *It is a Priest's Duty to intercede for Criminals.* Several Instances of such Acts of Goodness may be seen in that Father's Epistles. Grotius.

The very Passage, here quoted by our Author, occurs in that Father's fifty-fourth Epistle, addressed to *Macedonius*, a Judge, *You ask me*, says he, *Why we say it is a Duty annexed to our sacerdotal Character to intercede for Criminals? &c.* This is followed by his Reply to that Magistrate's Objections.

20.

See St. Chrysostom, *Homil. XVI. De Statuis.* The Council of *Orleans*, Cap. III. and the Laws of the Wisigoths, *Lib. VI. Tit. V. 16. Lib. IX. Tit. II. Cap. III.* Grotius.

21.

*As soon as the first Day of the Paschal Feast is come, let no Man remain in Prison; let every ones Chains be loosed.* Cod. *Lib. I. Tit. IV. De Episcopali audentiâ, &c. Leg. III.* This, however, took Place only in regard to some certain Crimes, as appears from the rest of the Law. See *Observationes divini & humani juris*, printed at Paris in 1564. p. 43, &c. They were written by Barnabas Brisson, a President famous for his great Learning. Besides, the Custom under Consideration had been before received by the Jews, as any one may perceive from what he reads in the Gospels. Our Author, in his Notes on Matt. xxvii. 15. conjectures that this Privilege was granted them by *Augustus*.

22.

These Exceptions may be seen in Cassiodore, *Var. Lib. XI. Cap. XL.* See also the *Decretals*, *Lib. III. Tit. XLIX. De immunitate Ecclesiarum, Caemeterii, &c. Cap. VI.* Grotius.

23.

Simeon le Maitre expresses the Sense of this Canon thus, *Let such as (having at first resisted the Violence used on them) have afterwards yielded to Iniquity, and engaged in the Army again, be excluded from Communion for ten Years.* Balsamon, Zonaras, and Rufinus, *Lib. X. Cap. VI.* give this Canon the same Sense. Grotius.

24.

Tertullian, in his Treatise *Of Idolatry*, Cap. I. calls it, *The most enormous Crime which Man can commit: The Height of Guilt.* And St. Cyprian, *gravissimum & extremum Delictum. Ep. XI. (XV. Edit. Oxon.)* Grotius.

25.

In the Life of *Constantine*, *Lib. I. Cap. LIV.*

26.

We have likewise the Authority of Sulpicius Severus for this Fact. Licinius, *being engaged in disputing the Empire with Constantine, ordered his Soldiers to offer Sacrifice, and dismissed those from the Service who refused to comply.* Hist. *Sacr. Lib. II. Cap. XXXIII. Num. 2. Edit. Vorst. Valentinian*, who was afterwards Emperor, had for the same Reason been deprived of a military Employment, under *Julian*; as we learn from Rufinus, Philostorgius, Theodore, Sozomen, &c. Victor of *Utica* says somewhat like this, when he tells us, that under King *Huneric*, several quitted the Service, because they could not continue in it without declaring for *Arianism*. Grotius.

27.

See Sozomen, Hist. Lib. V. Cap. XVII.

28.

Eusebius, in the Life of *Constantine*, Lib. II. Cap. XXXIII.

29.

*Epist. XC.* (al. XCII.) to *Rusticus*, a Bishop, Cap. X. We find this Passage in the *Canon Law*, Caus. XXXIII. Quaest. III. *De Paenitentiâ Dist.* V. Can. III. And in the *Capitularies of Charlemagne*, Lib. VI. Cap. CCLXIV. *Edit. Paris.* 1640.

30.

Pope Leo, in the same Epistle to *Rusticus*, says, that *He who obtains Pardon for doing Things unlawful, must abstain from several that are in their own Nature lawful*. We have almost the same Thought, in the Letter written by the Bishops to *Lewis King of Germany*, *Every Man ought to renounce the Use of what is in itself allowable, in Proportion to the Liberty he has allowed himself in unlawful Acts*. And in the *Capitularies* of *Charles the Bald*, *Let every one endeavour to enrich his Soul with good Works, of greater Value, as it has been more impoverished by Crimes*. Grotius.

31.

Eusebius observes, that the Life of a Christian is of two Sorts; the one perfect, ἐντελής, the other short of Perfection. He adds, that such as lead the latter, ought, among other Things, to represent their Duty to those, who serve in a just War. *Demonstr. Evang.* Lib. I. Cap. VIII. Grotius.

32.

*Let not Ecclesiasticks or Monks engage in temporal Affairs.* Canon of the Council of *Mentz*, quoted in the *Decretals*, Lib. III. Tit. L. Cap. I. Grotius.

33.

See St. Jerom's Epistle to *Nepotian*. Grotius. The Canon here quoted, is not the VI. but the VII. as Ziegler observes on this Place.

34.

*Whoever has attempted to divert the Priests and Ministers of the Church, from the Service of the Altar, deserves not even to be mentioned in the Priest's Prayers at the Altar: For which Reason, Victor, who, in Opposition to the Regulation lately made in a Council, dared appoint a Priest to the Charge of a Guardian, is not to be allowed any Oblation among you, for the Repose of his Soul; (pro Dormitione ejus) nor is any Prayer to be offered in the Church in his Behalf.* Lib. I. Epist. IX. (*Edit. Oxon.* Ep. I.) Addressed to the Priests, Deacons, and Laity at *Furni*. See also Justinian's *Code*, Lib. I. Tit. III. *De Episcopis & Clericis, &c.* Leg. LII. Grotius.

The Passage of St. Cyprian, to which our Author barely refers, occurs in the *Canon Law*, Distinct. LXXXVIII. *Can. XIV.* and *Caus. XXI. Quaest. III. Can. IV.* From which it appears, that, according to that Father, the deceased deserves some Kind of Punishment even after Death, for having dared to

name a Priest Guardian; because he, on that Account, forbids Oblations, or publick Prayers to be offered in his Name, on the Anniversary of his Death, according to the Custom then introduced, which afterwards paved the Way to Superstition. See Bishop Fell's Note on this Passage; and Dodwell's fifth *Dissertation on St. Cyprian*. To which may be added, Mr. Le Clerc's Life of St. *Cyprian*, in his *Biblioth. Univers.* Tom. XII. p. 234, &c.

35.

Examples of this Acceptation of the Word may be seen in Tertullian, *De Idololatria*, Cap. XIX. in his Treatise, *De fuga Persecut.* Cap. III. Cyprian, *Epist.* X. (XVI. *Edit. Oxon.*) XXII. XXXI. (XXX. *Edit. Oxon.*) *De Lapsis*, p. 123. Sulpicius Severus, *Hist. Sacra*, Lib. II. Cap. XXXII. Num. 1 & 2. *Edit. Vorst.* Cap. XXXIII. Num. 3. and at the Beginning of his *Hist. Lib.* I. *Cap. I. Num. 3.* Grotius.

36.

(*The Emperor Julian, &c.*) This Passage does not belong to St. Ambrose, tho' attributed to him in the *Canon Law*, Caus. XI. Quaest. III. Can. XCIV. where it has been observed, that St. Augustin has something like it, on Psalm cxxiv. which is also produced in *Can. XCVIII*. See Mr. Pithou's Note. Our Author himself elsewhere quotes a Passage not unlike this, from the Father last named, in a Note on *B. II. Chap. XXVI. § 3.*

37.

This Declaration is taken from the Account of the Martyrdom of the *The bean Legion*, attributed to St. Eucherius, Bishop of *Lyons*. But Mr. Dubourdieu, Minister of the *French Church* in the *Savoy*, at *London*, published a Dissertation in 1705, shewing that Relation to be a spurious Piece, and that the *The bean Legion* never had any real Existence.

38.

Our Author says nothing that can assist us in guessing from what Part of St. Basil's Works these Words are taken.

## **BOOK II: CHAPTER I: Of the Causes of War; and first, of the Defence of Persons and Goods.** ↪

[I. *What Causes of War may be termed justifiable.*] I. 1. Let us now proceed to the Causes of War, I mean such as are properly said to *justify* it;<sup>1</sup> for there are some *Motives of Advantage*, sometimes different from *just Occasions*, that determine us to take up Arms. *Polybius*<sup>2</sup> accurately distinguishes these two Sorts of Causes, the one from the [390] other, and both from the<sup>3</sup> *Beginning of the War*, or that which gave Occasion to the first Acts of Hostility, as was the *Stag*<sup>4</sup> wounded by *Ascanius*, whence arose the War between *Turnus* and *Aeneas*. But tho' there be a manifest Difference between those three Things, yet the Terms made Use of to [128] express them are commonly confounded. Thus *Livy*, in the Speech which he puts in the Mouth of the *Rhodians*, calls *Beginnings* what we call *justifying Reasons*.<sup>5</sup> You *Romans*,<sup>6</sup> (say the Deputies) *profess to believe that the Success of your Wars are happy, because they are just; and you glory not so much in the Victory that determines them, as in the*<sup>7</sup> *Beginnings, or because you do not under take them without Reason.* [391] In which Sense *Aelian* stiles them ἀρχὰς πολέμων; and *Diodorus Siculus*, treating of the War of the *Lacedemonians* with the *Aelians*, calls them προφάσεις and ἀρχὰς.

2. And these *justifying Reasons* are indeed our proper Subject here, where it will be no Ways impertinent to mention that of *Coriolanus* in *Dionysius*,<sup>8</sup> *Let it be your principal Care, that the Cause of your War be just and honest.* And *Demosthenes*,<sup>9</sup> *As in the Building of Houses, Ships, &c. the Foundations ought to be firm and solid:* So all our Actions and Enterprizes whatever, should be founded on the substantial Basis of Truth and Justice. Thus too *Dion Cassius*,<sup>10</sup> *We ought chiefly to look to the Justice of our Cause; for with that we have Room to conceive good Hopes of the Success of our Arms, and without it we can depend on nothing, even tho' at first Things should succeed to our Wishes.* So also says *Tully*,<sup>11</sup> *Those Wars are unjust that are undertaken without Cause.* And in another Place<sup>12</sup> he blames *Crassus*, because<sup>13</sup> he had passed the *Euphrates*, *When there was not the least Grounds for a War.*

[392]

3. What has been said touching the Justice of the Cause, ought to be observed in publick Wars, as well as in private. And *Seneca* with Reason complains of the Difference that is put in that respect,<sup>14</sup> *We punish, says he, Murders committed between private Persons: But do we act in like Manner with regard to Wars, and the Slaughter of whole Nations? It is a glorious Crime, Avarice and Cruelty reign there without Restraint.—Barbarities are authorised by the Decrees of the* [129] *Senate, and Orders of the People; and what is prohibited in private*<sup>15</sup> *Persons is enjoined by the State.* 'Tis true, those Wars that are commenced by publick Authority have certain Effects of Right, as the Sentences of Judges: Of which hereafter: But are therefore not less criminal, if begun without a *just Foundation*. Thus was *Alexander*, for unjustly invading the *Persians*, and other Nations, deservedly reproached by the *Scythians* as a *Highwayman*, in *Curtius*,<sup>16</sup> and by *Seneca*<sup>17</sup> and *Lucan*<sup>18</sup> branded with the opprobrious Names of *Thief* and *Robber*; by the *Indian Magi* he was taxed<sup>19</sup> with *criminal Ambition*, and by a *Pirate* was told he was the<sup>20</sup> same himself. So *Justin*, [393] speaking of his Father *Philip*, said,<sup>21</sup> that two Kings of *Thrace* were dethroned by the *Fraud* and *Villany* of a *Thief*. To which may be referred that Passage of *St. Austin*,<sup>22</sup> *What are Kingdoms without Equity, but so many great Robberies?* So that of *Lactantius*,<sup>23</sup> *That Conquerors being dazzled with a vain Glory, miscall their Vices by the Name of Virtue.*

4. There is no other *reasonable* Cause of making War, but an *Injury received*: So says *St. Austin*,<sup>24</sup> *The Iniquity of one Side*, that is, the *Injury received*, *furnishes a just Occasion of War. Iniquitas in this*

Place is taken for *Injuria*; as if we should use the Greek Word ἀδικία instead of ἀδίκημα. So the Roman Herald,<sup>25</sup> I declare, and call you to witness, says he, that that People has acted unjustly, and does not make us due and proper Satisfaction.

[**II. Justifiable Causes of War are, when for Defence; for the Recovery of one's Property, or one's Debt; or for the Punishment of an Offence committed.**] II. 1. Now, as many Sources as there are of judicial Actions, so many Causes may there be of War. For where the Methods of Justice cease, War begins. Now in Law there are Actions for Injuries *not yet done*, or for those *already committed*. For the First, When Securities are demanded against a Person that has threatened an Injury, or for the indemnifying of<sup>1</sup> a Loss that is apprehended; and other Things included in<sup>2</sup> the Decrees of the superior Judge, which prohibited any Violence. [394] For the Second, that Reparation may be made, or Punishment inflicted; two Sources of Obligation, which<sup>3</sup> Plato, and before him Homer,<sup>4</sup> have judiciously [130] distinguished. As for Reparation, it belongs to what is or was properly *our own*, from whence<sup>5</sup> real and some<sup>6</sup> personal Actions do arise, or to what is properly *our due*, either by *Contract*, by *Default*, or by *Law*. To which also we may refer those Things which are [395] said to be due by a<sup>7</sup> *Sort of Contract*, or a<sup>8</sup> *Sort of Default*: From which Heads all other personal Actions are derived. The *Punishment of the Injury* produces *Indictments* and<sup>9</sup> *publick Judgments*.

[**Baldus ad Leg. 2. Cod de serv. & aqua. n. 71. Wilh. Matt. de Bello justo, & licito.**] 2. Most Men assign three just Causes of War, *Defence*, the *Recovery* of what's our own, and *Punishment*: Which three you have in *Camillus*'s Declaration against the *Gauls*.<sup>10</sup> *Omnia quae defendi repetique & ulcisci fas est: Whatever may be defended, recovered, or revenged*; in which Account, if the Word *Recovered* be not taken in a greater Latitude than usually it is, it will not include the suing for that which is our Due; which suing was not omitted by *Plato*, when he said,<sup>11</sup> *That War is not only undertaken when one is insulted, or plundered; but also when imposed upon, [396] or treated in any fraudulent Manner*. To which agrees that of *Seneca*,<sup>12</sup> *It is a very equitable Saying, and founded on the Law of Nations, Pay what you owe*. And it was a Part in the Form used by the *Roman Herald*,<sup>13</sup> *That they neither gave, paid, nor did, what they ought to have given, paid, and done*: And as *Salust* has it in his History,<sup>14</sup> *I demand my own by the Law of Nations*. *Saint Austin*,<sup>15</sup> when he said, that *Those Wars which are to revenge our Injuries, are [131] generally termed*<sup>16</sup> *Just*: He took the Word *Revenge* in a general Sense, which implies all Removal, Cessation, Abolition, and Reparation of Injuries, which appears by the Sequel, where there is not so much an Enumeration of the Parts, as an Illustration by Examples. So, says he, *That Nation or City may be invaded, that shall neglect to punish the bad Actions of those that depend on it, or to restore what's unjustly taken from another*.

3. Conformable to this Principle of natural Equity did the *Indian King* (as *Diodorus*<sup>17</sup> informs us) accuse *Semiramis*, that *she had commenced War against him, without having received any Manner of Injury*. Thus the *Romans* argued<sup>18</sup> with the *Senones*, that they ought not to make War on a People that had given them no *Provocation*. *Aristotle* observes,<sup>19</sup> that *Men usually make War on those who first have done some Injury*. So [397] *Curtius*<sup>20</sup> speaking of the *Abian Scythians*, *They were reputed the most just of the Barbarians; they never took up Arms, but in their own Defence*:<sup>21</sup> The first Cause therefore of a *just War*, is an *Injury*, which tho' not done, yet *threatens* our *Persons* or our *Estates*.

[**III. War in Defence of Life, lawful.**] III. We have before observed, that if a Man is assaulted in such a Manner, that his Life shall appear in inevitable Danger, he may not only make *War* upon, but very justly *destroy* the *Aggressor*; and from this Instance,<sup>1</sup> which every one must allow us, it appears that such a *private War* may be *just* and *lawful*. [*Sylvest. verbo Bellum, p. 1. n. 3. & p. 2.*] It is to be observed, that this *Right of Self-Defence*, arises directly and immediately from the Care of our own Preservation, which *Nature* recommends to every one, and not from the Injustice or Crime of the *Aggressor*; for if the Person be no Ways to blame, as for Instance, *a Soldier who*<sup>2</sup> *carries Arms with a*

good Intention; [Bartol. ad Leg. 3 Dig. de just. & jure. Bald. in l. 1. Cod. unde vi. Bann. 2, 2. Q. 10. Art. 10. Dub. ult. Soto, l. 4. Disp. 5. Art. 10. Val. 2, 2. Disp. 5. Q. 10. p. 7.] or a Man that should mistake me for another; or one *distracted*,<sup>3</sup> or *delirious*, (which may possibly happen) I don't therefore lose that *Right* that I have of *Self-Defence*: For it is sufficient that I am not obliged to suffer the Wrong that he threatens to do me, no more than if it was a Man's *Beast* that came to set upon me.

[398]

IV. 1. It is a Matter of Dispute, whether an innocent Person,<sup>1</sup> who happens to be in our Way, and hinders that *Defence* or *Escape* that is absolutely necessary for the *Preservation* of our Lives, may be run through, or crushed in Pieces. There are some, even among *Divines*, who think it *lawful*. [IV. **But only against the Aggressor.**] And certainly, if we have regard to *Nature* only, the Engagement we lie under to maintain Society, is of less Moment than the *Preservation of ourselves*: But the Law of *Charity*, especially the *Evangelical*, which has put our Neighbour upon<sup>2</sup> a Level with our Selves, does not permit it. [132]

[Card. Q. 33. l. 1. Pet. Navar. l. 2. c. 3. n. 147. Cajetan. 2. 2. Art. 67. Qu. 2.] 2. It was well observed of *Thomas Aquinas*, if apprehended rightly, that in our own Defence we do not *purposely* kill another; not but that it may be sometimes lawful, if all other Means prove ineffectual, to do that *purposely* by which the *Aggressor* may *die*; but we take this Course, as the only Means left to preserve *our selves*, and not as the *principal* End proposed, just as in the Judgment of Criminals condemned to Death: For he that is actually attacked, ought even then to chuse rather to do any Thing else, that may stop the Fury of the *Aggressor*, or disable him, [Second. second. Qu. 64. Art. 1.] than to secure himself by killing him.

[V. *In a present and certain Danger, but not in such a one as is only Matter of Opinion.*] V. 1. But here 'tis necessary that the<sup>1</sup> Danger be *present*, and as it were, contained in a *Point*. I grant, if a Man takes Arms, and his Intentions are visibly to destroy another, the other may very lawfully prevent his Intentions; for as well in *moral* as in *natural* Things, there is no Point but what admits of some Latitude: But they are highly mistaken, and deceive others, who admit that any Sort of Fear gives a Right to take [399] away the Life of another. 'Tis very justly observed by *Cicero*,<sup>2</sup> that one frequently commits Injustice, by attempting to hurt another, in Order to avoid the Evil which he apprehends from him. So *Clearchus* in *Xenophon*,<sup>3</sup> καὶ γὰρ ὁίδα, &c. *I have known many People moved either by some false Report, or by Suspicion, who for Fear of others, and to be before hand with them, have done most horrible Injuries to those, who never would have offered, nor ever designed to offer them any Hurt in the World.* So *Cato*, in his Oration for the *Rhodians*,<sup>4</sup> *Shall we ourselves be first guilty of that which we alledge they intended to do?* It was excellently said by *Aulus Gellius*,<sup>5</sup> *That a Gladiator's Condition is such, that he must either kill or be killed; but human Life is not under such unhappy Circumstances, that we are necessitated to do an Injury to prevent the receiving one.* And as *Tully* in another Place no less admirably expresses it,<sup>6</sup> *Whoever maintained, or to whom can it be allowed without exposing the Life of every one to the greatest Dangers, that a Man may lawfully destroy another, through a Pretence of Fear, lest the other should one Day kill him?* To which this Passage of *Euripides* may be applied,<sup>7</sup>

'Ει γὰρ σ' ἔμελλεν, &c.

[400]

*Your Husband, say you, would have killed you: You should have staid till he actually attempted it.* So *Thucydides*,<sup>8</sup> *What is to come is yet uncertain, nor should any one be so far transported with the Apprehensions of what may happen, as to engage in a declared Enmity, accompanied with present*

*Acts of Hostility.* The same Author, where he eloquently describes the Evils that Faction had brought upon the States of *Greece*,<sup>9</sup> blames those People, because *It was thought commendable in a Man to [133] injure another first, for Fear of being injured himself.* A very shameful Thing, as<sup>10</sup> *Livia* calls it in *Dion Cassius*. *Livy* says,<sup>11</sup> that *By taking Precautions against what we apprehend from another, we give Occasion first to apprehend something from us*,<sup>12</sup> and *we do to others the Injury we would repel, as if there were a Necessity either of doing or receiving Wrong.* One may [401] apply to such an act in that Manner, that of *Vibius Crispus*, so much celebrated by *Quintilian*,<sup>13</sup> *Who gave you an Authority thus to fear?*

[*Bann. q. 64. Art. 7. Dub. 4. Bald. in Leg. 17. Cod. De Liberali Causa, & in. l. 1. Cod. unde vi, Less. l. 2. c. 9. Dub. 8. Soto, l. 5. qu. 1. art. 8.*] 2. Tho' we were certainly informed, that a Person has conspired against us, or designs to lay an Ambush for us, or is preparing to poison us, to bring a false Accusation against us, to suborn false Witnesses, and to corrupt the Judges: Yet whilst we have nothing to fear for the present, on the Part of that Person, I maintain that we cannot lawfully *kill* him; if either such a *Danger* can be possibly *avoided* any other Way, or even if it does not *then* sufficiently appear that it may *not* be avoided. For *Time* gives us frequent Opportunities of *Remedy*, and there may many Things happen, as the *Proverb* has it,<sup>14</sup> *betwixt the Cup and the Lip*. There are however both *Divines* and *Lawyers*, who are a little more indulgent in this Affair: But the *other Opinion*, which is certainly the *safer and better*, has also its *Partisans*.

[*VI. For the Preservation of a Limb or a Member. Card. in Clem. l. 5. tit. 4. De Homicid. &c. leg. si furiosus, &c. Covarr. ib. part 4 § 1 n. 2. Sylvest in Verbo Homicidium, 3. q. 4.*] VI. But what shall we then say of the Danger of<sup>1</sup> *losing a Limb, or a Member?* When a *Member*, especially if one of the *principal*, is of the highest Consequence, and almost *equal* to *Life* itself; and 'tis besides doubtful whether we can *survive* the Loss; I am of Opinion, if there be no Possibility of avoiding the Misfortune, the Aggressor may be *lawfully killed*.

VII. That the same may be done on Account of<sup>1</sup> *Chastity*, can scarce be here any Matter of Dispute; when not only the<sup>2</sup> *Opinion* of the *World*, [402] but even the<sup>3</sup> *Law of GOD*, [*VII. Especially in Defence of Chastity. Sylvest. in Verbo Homicidium, c. 3. q. 4. Pro Milon. c. 4. Declamat. Tribunus Marianus. Vit. Mar. p. 413. Ed. Wech.*]] has made it equivalent to *Life* itself. So *Paulus* the Law-[134] yer.<sup>4</sup> that to defend ones *Chastity*, tho' with the *Death* of him who would *violate* it, is but an *Act of Justice*. We have an Example of this in *Cicero*, *Quintilian*, and *Plutarch*, in the Person of one of *Marius's Tribunes*, who was *killed* by a Soldier. Among Women<sup>5</sup> who have vindicated their *Chastity*, *Heliodorus* records that Act of *Heraclea*, which he calls ἀμύνης νόμον, &c.<sup>6</sup> *A just Defence of her injured Honour.*

VIII. Tho' some agree with me in what I observed before,<sup>1</sup> that tho' I may *lawfully kill* him who attempts to take away my *Life*, 'tis more commendable [403] to *die one's self* than to kill another: [*VIII. Self-Defence may sometimes be omitted. Soto ubi supra, Sylvest. de verbo Bellum, p. 2. n. 2.*] Yet they will only grant it upon this Condition, that we<sup>2</sup> except Persons that are useful to many others. But it seems to me not very safe to maintain, that all those whose Lives are of *Advantage* to others, are under such an Obligation as that, so contrary<sup>3</sup> to *Patience*; and therefore I think this ought to be *limited* to those only whose particular *Office* and *Duty* it is to *defend* others, such as those who are ingaged to *guard Travellers*; or the *Governors of the State*, to whom we may apply that of *Lucan*,<sup>4</sup> *Since the Life and Safety of so many Nations depend on your Preservation, and so large a World has established you for their Head; it would be Cruelty in you to be willing to die.*

[*IX. Self-Defence against a Person, very useful to the Publick. A Crime from the Law of Charity. Soto ubi supra.*] IX. 1. It may happen, on the contrary, that because the Aggressor's *Life* may be

serviceable to many, it would be *criminal* to take it from him; and this not only by the *Divine Law*, both of the *Old and New Testament*, of which we have spoke before, when we shewed that the *King's Person* is *sacred* and *inviolable*, but also by the very *Law of Nature*. For *natural Right*, considered as a *Law*,<sup>1</sup> does not only respect what we call *expletive Justice*, but comprehends the Acts of other Virtues, as of *Temperance, Fortitude, and Prudence*; so that in certain Circumstances they are not [404] only *honest*, but of an *indispensable Obligation*. Besides that, as to what we were now speaking of,<sup>2</sup> *Charity* does also oblige us.

[Lib. 1. Contr. illust. 18.] 2. Neither am I ever the less of this Opinion, on Account of what *Vasquez* asserts, that *A Prince who attacks the Life of an innocent Person, is ipso facto no more a Prince*. A Proposition not only absurd, but even very dangerous too. For as the *Right of Property*, so the *Right of Sovereignty* is not lost<sup>3</sup> by an *evil Action*, unless [135] it be decreed by some particular Law; but what *Law* was there ever enacted, that *Kings* should be *dethroned* for an Injury done to a *private Person*? Surely there is no such *Law* yet in Being, nor I believe ever will, for what a Confusion would it make? But what *Vasquez* lays down as the Foundation for this, and other Conclusions of the like *Nature*, is, that *All Governments regard the Good of the People, and not that of the Prince*; which, were it *universally* true, would be nothing to the Purpose. For a Thing is not destroyed,<sup>4</sup> as soon as the Advantage of it ceases in some Respect. What he further urges, that every *Man* does only for his own Sake wish well to the *Commonwealth*, and that therefore he ought to prefer his own *Good* to that [405] of the *Publick*, is likewise a weak Argument. 'Tis true every *Man* for his own Sake wishes well to the *Commonwealth*, but not for his own Sake only, it is also<sup>5</sup> for the Sake of others.

3. The most judicious Philosophers have with Reason rejected the Opinion<sup>6</sup> of those who think that Friendship is only founded on Indigence; for it is evident we are prompted to it by natural Inclination: And to prefer the Advantage of many Persons to my own single Interest, is what *Charity* often advises, sometimes commands. So *Seneca*,<sup>7</sup> 'Tis no Wonder that *Kings and Princes, and in general all the Governors of the State, whatever Title they bear*,<sup>8</sup> should be loved by every one, and even more than *private Persons, to whom we are nearly related*; for if 'tis agreed by all wise Men, that the publick *Good* should rather be consulted than any private *Interest* whatever; it follows, that nothing should be dearer to us than the *Person* of him on whom the *Welfare of All* depends. St. *Ambrose* says,<sup>9</sup> that Every one finds more *Pleasure* in saving his *Country*, than in extricating [406] himself out of *Difficulties*. So the same *Seneca*;<sup>10</sup> *Callistratus and Rutilius, the former an Athenian and the latter a Roman, refused to be recalled from Exile, because it was better that two Persons should suffer unjustly, than that their Return should expose the State to any Danger*.

[X. That it is not lawful for Christians to murder a Man for a Box on the Ear, or such other slight Injury, or to avoid running away.] X. 1. There are some of Opinion, that if a *Man* is in Danger of receiving a Box on the Ear, or any Injury of the like *Nature*, he has a *Right* of revenging so small a Crime, even by the Death of him that attempts it.<sup>1</sup> If *Regard* be here only had to *expletive Justice*, I don't deny it; for tho' there be no Manner of Proportion betwixt Death, and so slight an Injury; yet, whoever shall attempt to wrong me, gives me from that Time an unlimited<sup>2</sup> *Right*, that is, a certain Mo- [136] ral Power against him *in infinitum*; upon a Supposition, that I am not otherwise capable of diverting such an Injury from my own *Person*. Neither does *Charity* of itself lay us under an *indispensible Obligation* of sparing the Offender in that Case; but the *Gospel* does expressly forbid this, for *CHRIST* commanded his *Apostles* rather to receive a Blow than to hurt their *Adversary*.[*Soto, ubi supra. Navarr. c. 15. n. 3. Sylvest. in Verbo Homicidium, 1. q. 5. Lud. Lopez, c. 62. Ubi supra.*] How much more then does he forbid the Killing of a *Man* to avoid the Blow? By this Example we are admonished to beware of what *Covarruvias* advances on this Topick, that *The Ideas of natural Right being within the Extent of human Knowledge, it cannot be said, that any Thing is permitted by natural Reason, which is not at the same Time permitted before GOD, who is Nature itself*.<sup>3</sup> For *GOD*, who is

so the Author of Nature, that he can, whenever he pleases, act above Nature, has a Right [407] also of prescribing Laws to us, even in those Things which are in their own Nature free and indifferent. How much more then can he command us to do that which is naturally honest, tho' not obligatory?

[*Navarr. c. 15. Henr. de Irreg. c. 11. Victor. de jure belli, p. 5.*] 2. It is therefore very surprising, that when GOD has so manifestly declared his Will in the *Gospel*, we should find Divines, nay *Christian* Divines, who maintain, that 'tis not only lawful to kill a Man, in Order to avoid a Blow, but even after it is received, if he that gave it endeavours to escape: For then, say they, one ought to recover one's Honour: Which to me seems as well contrary to Reason as to Piety. For Honour being the Opinion of some Excellency or Merit, he that can put up such an Affront, expresses a particular Excellency of Temper; and therefore, rather adds to his Honour than detracts from it. But if some Persons, through a false Notion of Honour, call this Virtue of Patience by a wrong Name, and so turn it into Ridicule, it is not material: For those false Judgments do not alter the Nature of the Thing, nor diminish its Value; nor did the primitive *Christians* only think so, but even the Philosophers, who said, that *It argued a Meanness of Soul in Man, not to be able to bear an Affront*. As we have elsewhere observed.

[*Soto, art. 8. ubi sup. q. 5. Doct. in Leg. 3. Dig. de Just. & Jure, & in Leg. 1. Cod. Unde vi. Vasquez ub. sup. c. 18. n. 13, 14. Sylvest. in Verbo Bellum. p. 2. n. 4. In Addit. ad Alex. Cons. 119.*] 3. From hence it appears too, that we ought not to approve what many Casuists assert, that even by the Divine Law, a Man in his own Defence may kill another; (indeed if we consider the Law of Nature only, 'tis beyond all Manner of Dispute) nay, tho' at the same Time he may escape from him without any Danger: Because, say they, to turn one's Back is mean and reproachful, and below a Gentleman: Whereas in Reality 'tis no Ways a Disgrace, but only a vain Imagination, which ought to be despised by all that have a Regard to Virtue and Wisdom; in which Matter I am not a little pleased, that amongst Lawyers I have the excellent *Charles Du Moulin* of my Sentiments. Now what has been said of a Box on the Ear, and making one's Escape, may be equally applied to all other Cases where Man's true Honour is not injured. But what if a Man shall *report* any Thing of us, by which that Reputation we have with good Men, may possibly suffer? There are those who assert, that a Man may lawfully kill such Persons too; [*Pet. Navarr. l. 11. c. 3. n. 376.*] but this is not only extreme false, but highly repugnant to the Laws of Nature; for such an Action is no proper Means of preserving one's Character.

[408]

[*XI. Murther in Defence of our Goods permitted by the Law of Nature.*] XI. We now proceed to those Injuries that affect our Estates or Possessions;<sup>1</sup> and here, if we have Regard to *expletive* Justice, I must own, that for the Preservation of our Goods 'tis lawful, if there's a Necessity for it, to kill him that would seize upon them. For the Inequality betwixt the Goods of one Man and the Life of another is made up, by the Difference betwixt the favourable Cause of the innocent Person, and the odious Cause of the Robber, as was before observed: From whence it follows, that if we have Regard only to this Right, I may shoot that Man who is making off with my Effects, if there's no other Method of my recovering them. So *Demosthenes* in his Oration against *Aristocra-* [137] *tes:*<sup>2</sup> *Is it not, says he, highly unjust, and contrary not only to written Laws, but also to that which is common to all Mankind, that I shall not be suffered to use Force against him that robs me, and so commits an Act of Hostility against me?* Nor does Charity, by Way of Precept, (if we consider it abstractedly from all Human and Divine Laws) disallow of this; unless in those Things that are in themselves too inconsiderable to be regarded; which Exception some Authors do very justly subjoin.

[*XII. How far permitted by the Law of Moses. Soto ubi supra. Mathesilanus Notabil. 135. Jas & Gom. in Inst. de Act. princ. Covar. ubi sup. § 1. n. ib. decimo., Less. Dub. 11. n. 68. Covar ubi sup. August. cit. in C. si perfodiens. De Homicid. Lessius, D. c. 9. Dub. 11. n. 66.*] XII. 1. But let us see

in what Sense the [1 Mosaick Law](#)[2](#) is to be understood, to which agrees that [3 old Law of Solon](#), which *Demosthenes* urges against *Timocrates*, from whence [4](#) the Law of the *Twelve Tables* was taken, and [5](#) *Plato's Maxim*, in his ninth *de Leg.* all which consent in this, [409] that they make a Distinction betwixt a Night and a Day Thief. But it is not agreed upon what Reason that Difference is founded. There is some who think it only regards this, that by Night it cannot be discovered, whether the Person who comes in upon you be a *Thief* or an *Assassin*, and therefore he ought to be treated as the latter; and others think that it turns upon this, that as the *Thief* cannot be known in the Obscurity of the Night, one sees no other Way of recovering one's Effects; but to me it seems, that those Legislators had neither the one nor the other of these Reasons in View. They rather intended to shew, that [6](#) the Life of no Man was to be taken away merely on the Account of one's Goods, which would certainly happen; if, for Instance, I should shoot a [7 Thief](#) who is running away, to recover by his Death what he had stoln from [410] me: But that if I am any Ways in Danger of my own Life, 'tis lawful then to secure myself, tho' it be at the other's Peril. Neither is it any Objection to me, that I brought myself into this Extremity, by endeavouring either to keep or recover my own, or to apprehend the Thief; for in all this there's nothing can be laid to my Charge, who am only concerned in a lawful Act. Neither do I any Injustice to any Man, since I only make use of my own Right.

2. The Difference therefore betwixt a Night and a Day Thief, consists in this, that in the Night it is not an easy Matter to have Witnesses; and therefore, if the Thief should be found dead, we readily give Credit to a Person who declares that he slew him in his own Defence, since he was armed with some dangerous Instrument. For this the *Hebrew Law* supposes, where it treats of a Thief taken, [138] כמחרת in the Act of *Piercing*, or as some better translate it, with a *stabbing Instrument*; in which Sense also the most learned Rabbies have expounded that Word in *Jer. ii. 34*. I am inclined the more in Favour of this Opinion by the Law of the *Twelve Tables*, which forbids the Killing of a Thief in the Day-time, unless he *defends himself with some Weapon*.[8](#) It is therefore by this presumed, that a Night Thief defended himself with some Weapon. Under the Name of *Arms* or *Weapon*, an Iron, a Club, or a Stone are included; as *Cajus*[9](#) observes on this Law. On the contrary, 'tis the Opinion of [411] *Ulpian*, that what is said of Killing a nocturnal Thief with Impunity,[10](#) is to be understood of killing him, when we could not secure our Goods and spare him, without running the Hazard of our own Lives.

[412]

3. This therefore is that Presumption which is allowed in favour of him who has killed a Thief by Night; but if Witnesses should chance to be present, by whom Proof could be made, that the Person who thus slew the other, was far from being in Danger of his own Life, then should we presume no longer in his Favour, but account him guilty of Murder. It is, besides this, provided by the Law of the *Twelve Tables*, that whoever shall surprize a Thief, either by Day or Night, [139] shall signify it by an *Outcry*, (as we learn from *Cajus*[11](#)) in Order that the Magistrates or Neighbours may come in to his Assistance, or be Witnesses of the Fact: But because, as *Ulpian*[12](#) observes, on the above-mentioned Passage of *Demosthenes*, this cannot be so easily effected in the Night as in the Day, therefore we give more Credit to the Person who asserts his Danger then.

**[Deut. xxii. 23, &c.]** 4. Much like this is the *Jewish Law* in Case of a Rape, which if committed in the Field, the Woman's bare Word was Evidence sufficient; [413] but [13](#) if in the City the Case was otherwise, it being presumed that she ought to have called for Assistance, and might have had it. To this we may add, that tho' all other Circumstances were equal, yet one cannot so well discover what happens in the Night, nor know so well the Nature and Greatness of the Danger, and consequently, is more frightened than one would be at what happens in the Day-time. The Law therefore, as well of the *Jews* as of the *Romans*, prescribes the same Thing to the People that Charity enjoins, I mean, not to kill any Person merely upon account of Theft, but only when one runs the Hazard of his Life, by

endeavouring to preserve his Effects. And as *Moses Maimonides* observes, *No private Person is permitted to kill another, except in defence of that which, if once lost, is irreparable, as Life and Chastity.*

[**XIII. Whether permitted at all, and how far, by the Gospel.**] XIII. 1. What shall we then say of the Gospel in this Affair? Does it allow the same that the Law of *Moses* did? Or does it, as it is in other Things more perfect than the *Mosaick* Law, require something *more* of us in this Respect also? In my Opinion it is not to be questioned but that it does. For if CHRIST has commanded, rather to part with a Cloak or a Garment than contend about it; and<sup>1</sup> *St. Paul*, rather to suffer Wrong than to go to Law about it; tho' this be a Dispute where no Blood is shed: How much more should even Things of greater Moment be given up, rather than a Man's Life should be taken from him, who is the Image of GOD, and descended from the common Father of all Mankind? [414] Wherefore, if there's any Possibility of preserving our Goods, without running the Hazard of committing Murder, we may certainly do so; but if not, we should rather be the Losers, unless it be of such Things on which not only our own Life, but even that of our Family depends, and which, by the Methods of Justice, can never be recovered, because perhaps the Thief is not known, and we are in some Hopes that the Affair may be concluded without any such Bloodshed.

[**Soto ubi sup. Lessius, Dub. 11. n. 74. Sylv. in Verb. Bellum, 2. n. 3.**] 2. I know that almost all the modern *Lawyers* and *Divines* maintain, that in Order to save one's Goods it is permitted to kill him that would rob us, and that they even extend this Permission beyond the Limits prescribed by the *Jewish* and [140] *Roman Laws*; for they say, if the<sup>2</sup> Thief runs away after he has taken any Thing, the Proprietor may pursue and kill him. But I do not doubt but the Opinion I declare for was that of the primitive Christians; and *St. Austin* was fully persuaded of it, when he said,<sup>3</sup> *How can Men be guiltless in the Sight of GOD, who even for Things that a Christian ought to despise, shall embrue their Hands in human Blood?* Indeed in this, as in other Cases.<sup>4</sup> Christianity is fallen from its primitive Purity, and the Interpretation of the Gospel is by Degrees accommodated to the Customs of the present Age.[**Panorm. c. 11. De Homic. Less. ubi supra.**] In former Times the Clergy at least were obliged to follow the antient Maxim; but<sup>5</sup> at Length they also were exempted from all Censure on this Account.

[415]

[**XIV. Whether the Civil Law permitting Murder in one's own Defence, gives a Right to the Fact, or only dispenses with the Punishment of it. Explained by a Distinction.**] XIV. 'Tis a Question with some Persons, Whether the Civil Law, which is vested with a Power of Life and Death, if in any Case it shall allow that a Thief may be killed by a private Person, does not so far excuse the Fact, as to exempt it altogether from being a Crime. Which in my Opinion is scarce to be admitted of. For first, the Law has no Power over the Life of any Subject upon every Offence, but for Crimes only of so heinous a Nature as to deserve Death. Now, I think the Opinion of *Scotus* very probable, who affirms that it is not lawful to condemn any to Death, but<sup>1</sup> for those Crimes that were punished<sup>2</sup> with Death by the Law of *Moses*, or for those that appear equal to these, upon impartial Examination. Nor does it appear, that the Knowledge of the Divine Will, which alone can quiet the Consequence, can, in an Affair of so high a Consequence as this is, be otherwise had, than from this Law only, which certainly has no where sentenced a Thief to Death. Besides, the Law neither does nor ought to give a Power to any Man, to kill him privately who has deserved Death, unless in Crimes of the most flagrant Nature; for else it would be needless to have Courts of Justice. Therefore, when the Law acquits that Man who has killed a Thief, it may be understood to take off the Punishment, but not to give him<sup>3</sup> a real Right to the Act itself.

**[XV. When a Duel, or single Combat, may be lawful.]** XV. From what has been said it appears, that in two Cases we may justify a *single Combat*: The first is, when the Aggressor<sup>1</sup> permits the other Person to defend himself, being otherwise determined to kill him if he [416] does not fight. The other, when a King or Magistrate shall doom two Malefactors, both equally guilty of Death, to combat together. In this last Case, each of the Criminals may lawfully use the Means offered him, for endeavouring to save his Life: But he who gave the Commandment, does not so equitably discharge his Duty; since it were better, if he thought it sufficient for one only to suffer, that a Lot<sup>2</sup> should determine the Choice.

**[XVI. Of Defence in a publick War.]** XVI. What we have hitherto said, concerning the Right of defending our *Persons* and *Estates*, principally regards private Wars; but we may likewise apply it<sup>1</sup> [141] to publick Wars, with some Difference. For first, in a private War, the Right of Defence is as it were, only momentary, and ceases as soon as one can apply to a Judge: Whereas a publick War, arising only between those that acknowledge no common Judge, or when<sup>2</sup> the Exercise of Justice is interrupted; the Right of Defence has here some Continuance, and is perpetually maintained, by fresh Injuries and Damages received. Besides, in a private War we have only a Regard to our own Defence, but the supreme Powers have not only a Right of Self-Defence, but of<sup>3</sup> revenging and punishing Injuries. Whence it is, [417] that they may lawfully prevent an Insult which seems to threaten them, even at some considerable Distance; not *directly*, (for the Injustice of that we have shewed already) but *indirectly*, by punishing a Crime that is only *begun*: Of which we shall have Occasion to treat<sup>4</sup> in another Place.

**[XVII. War only to weaken a neighbouring Power, not lawful. Alberic. Gentil. I. 1. c. 14.]** XVII. But I can by no Means approve of what some Authors have advanced, that by the Law of Nations it is permitted to take up Arms to reduce the growing<sup>1</sup> Power of a Prince or State, which if too much augmented, may possibly injure us. I grant, that in deliberating whether a War ought to be undertaken or not, that Consideration may enter, not as a justifying Reason, but as a Motive of Interest. So that where we have any other just Cause for making War, it may for this Reason too be thought prudently undertaken.**[Bald. in Leg. 3. De Rerum divis.]** And this is all that the Authors before cited do in Effect say; but to pretend to have a Right to injure another, merely from a Possibility that he may injure me, is repugnant to all the Justice in the World: For such is the Condition of the present Life, that we can never be in perfect Security. It is not in the Way of Force, but in the Protection of Providence, and in innocent Precautions, that we are to seek for Relief against uncertain Fear.

**[XVIII. Nor in him who himself gave the just Occasion for a War.]** XVIII. 1. Neither can I admit another Maxim of those Authors, namely, that even those who have given just Cause to take up Arms against them, may lawfully defend themselves; because, say they, there are few who are content only to proportion their Revenge to the Injuries they receive. But such a Suspicion of what is uncertain, gives no Man a Right to oppose Force to a just Attack, no more than a Criminal can plead a Right of defending himself against the publick Officers of Justice,**[Alberic. Gentil. I. 1. c. 13. Cast. I. 5. de Justitia.]** who would [418] apprehend him, by Order of the Magistrate, on a Pretence that his Punishment may be greater than his Crimes deserve.

2. But he who has offended another,<sup>1</sup> ought first to offer him such a Satisfaction, as by the Judgment of any honest Man shall be thought sufficient; and if that be refused, he may in Conscience defend himself. Thus *Hezekiah* being threatned with a War by the King of *Assyria*,**[2 Kings xviii. 7, 14, and xix.]** for not observing the League that his Ancestors had made, acknowledged his Fault, and left it to that King to nominate what Recompence he should make him; which done, and being afterwards invaded with a powerful Army, he then trusted to the Justice of his Cause, defended himself, and, by the Assistance of the most high GOD, became Successful. So *Pontius*, the *Samnite*, having made a full Restitution to the *Romans*, for what had been unjustly taken from them, and delivered up him who was

the Author of the War, said,<sup>2</sup> *Do not imagine that our Embassy has been fruitless: We [142] have thereby expiated the Violation of the Treaty, and prevented whatever we had Reason to apprehend from the Wrath of Heaven. I am persuaded that the Gods, who were pleased that we should be reduced to the Necessity of restoring what was required of us by virtue of our Engagements, were not pleased that the Romans should so haughtily reject the Satisfaction we offered them.—What more, ye Romans, do I owe you? What ought I to do to repair the Infraction of the Alliance, and to appease the Gods, who were the Witnesses and Guarantees of it? To whose Judgment should I submit, in Regard to a Punishment capable of satisfying your Resentment, and expiating the Crime of my Infidelity? There is no Nation, nor private Person, that I refuse on this Head.* So when the Thebans<sup>3</sup> had offered to the Lacedemonians all that they could in Justice [419] require, and they were yet for pushing Matters further, Aristides said, that the good Cause<sup>4</sup> passed then from the Party of the latter to that of the former.

## Endnotes

1.

See *Chap. XXII.* of this Book, and Pufendorf, *B. VIII. Chap. VI.* § 3, 4.

2.

In the third Book of his History, where he calls the Motives of Advantage, which induce a Nation to engage in a War, Άιτίαι, *Causes*, and the Reasons urged for justifying such a Step, Προφάσεις, *Pretexts*, both which, as he observes, precede the Αρχή, the *Beginning* of the War, that is, the actual Execution of the Design formed, or the first Acts of Hostility, *Cap. VI.* He then applies this to the War between the *Grecians* and *Persians*, and that made on the *Romans* by *Antiochus*. In the former two Causes were alledged, *viz.* the experienced Weakness of the Barbarians, on the memorable Retreat of the ten thousand, who passed through all *Asia*, while none dared venture to attack them; and King *Agesilaus*'s Expedition in *Asia*, which confirmed *Philip* of *Macedonia* in that Opinion of the *Persians*, and put him on making Preparations for attacking them. But his *Pretext* was, that he designed to revenge the Injuries the *Grecians* had received from the *Persians*; and the War did not actually begin 'till his Son *Alexander* marched into *Asia*. The Causes given for the latter War, was the Resentment of the *Etolians*, who in Revenge for the Marks of Contempt given them by the *Romans*, engaged *Antiochus* to espouse their Interests. This was followed by a *Pretext* of freeing the *Grecians* from the Yoke of the *Romans*, against whom they animated all the Cities of *Greece*, and the War begun when *Antiochus* landed at *Demetrias* with a Fleet. All this may be read in the Original, *Cap. VI. VII.*

3.

This is what Virgil calls *Exordia pugnae*, *Aeneid. VII. 40.* Grotius.

4.

*Aen. VII. 481, &c.*

5.

*Lib. XLV. Cap. XXII. Num. 5.*

## 6.

Certainly no Nation was so long remarkable for a careful Enquiry into the Justice of the Wars they undertook. Polybius, as quoted by Suidas observes, that *The Romans were particularly cautious never to attack their Neighbours, nor appear the Aggressors; but always let the World see they took Arms in their own Defence*. Under the Word Ἐμβατεῖ. This Dion Cassius shews in his beautiful Comparison of the *Romans* with *Philip of Macedon* and *Antiochus*. Excerpt. Peiresc. (p. 314, &c.) The same Historian elsewhere says, that *The Antients* (that is, the *Romans*) *had nothing so much at Heart, as that the Wars in which they engaged were just*. Excerpt. Legation. *And to come to no Resolution without mature Deliberation*. Excerpt. Peiresc. (p. 341.) Grotius.

The Passage quoted from Suidas appears in the Place specified; but the Lexicographer doth not attribute it to Polybius. The Comparison between the *Romans* and the two Princes here mentioned, as also that last produced in the Note before us, belong to Diodorus of *Sicily*. The Reader may see the Places of the *Excerpta Peiresciana*, which I have marked exactly. I do not find in the *Excerpta Legationum*, the Passage here quoted by our Author; which induces me to believe, he has on this Occasion also taken one Writer for another. In Regard to the Thing itself, or the glorious Conduct of the *Romans*, see my 7th Note on § 27. of the *Preliminary Discourse*.

## 7.

In the same Sense Elian uses the Words Πολέμων ἀτὰρ ἀρχαί. *Var. Hist. Lib. XII. Cap. LIII.* Diodorus of *Sicily*, treating of the War between the *Lacedemonians* and *Eléans*, calls them Προφάσεις καὶ ἀρχαί, *Lib. XIV. (Cap. XVIII. p. 404. Edit. H. Steph.)* and Procopius, Δικαιώματα, *Justifications. Gothic. Lib. III. Cap. XXXIII.* See the Beginning of *Chap. XXII.* of this Book. The Emperor Julian makes Use of the Word ὑπόθεσις. *Orat. II. De Laudib. Constantii*, (p. 95. *Edit. Spanheim*). Grotius.

## 8.

*Antiq. Rom. Lib. VIII. Cap. VIII. p. 468. Edit. Oxon.* (486 *Sylburg*).

## 9.

*Olynthiac II. p. 7. Edit. Basil.* 1572. The Orator there speaks of the military Expeditions of *Philip of Macedon*.

## 10.

*Lib. XLI. p. 189. Edit. H. Steph.*

## 11.

*Illa Bella injusta sunt, quae sunt sine causá suscepta.* Thus our Author quotes the Passage, and in his Margin refers us to the third Book of Cicero's Treatise *De Republicâ*. But I do not find those Words in the Fragments of that illustrious *Roman's* lost Works; I see only a Thought which bears some Resemblance to it, preserved by St. Augustin, and taken from the same third Book, *De Repub. A well regulated State enters into no War, but for making good its Engagements, or for its own Security. De Civit. Dei, Lib. XXII. Cap. VI.*

## 12.

*De finib. Bon. & Mal. Lib. III. Cap. XXII.*

13.

Appian of Alexandria says, that *The Tribunes of the People* (οἱ Δῆμαρχοι) opposed Crassus's Motion for making War on the Parthians, from whom no Offence had been received. (De Bello Civil. Lib. II. p. 723. Edit. Toll. 438 Steph.) And Plutarch relates, that several expressed their Dislike of attacking Men who not only had given no Provocation, but were even in Alliance (with the Romans). Vit. M. Crass. p. 552. Tom. 1. Edit. Wech. Grotius.

The Words last quoted are likewise in Appian, *De Bell. Parth.* p. 220. Edit. Toll. (135 H. Steph.) The other Passages of the same Author are to be explained by what he says in his History of the *Parthian War*; for Aetius was the only Man who dared oppose Crassus's unjust and rash Designs, in which he was not supported by the other Tribunes, as Plutarch also observes.

14.

*Epist. XCV.* p. 464. Edit. major Elzevir. 1672.

15.

The same Philosopher elsewhere says, that *Some Enterprizes are esteemed glorious, which were looked on as Crimes, while the Execution of them could be hinder'd.* De Irâ. Lib. II. Cap. VIII. See Seneca and St. Cyprian, as quoted *B. III. Chap. IV. §5.* Grotius.

16.

*Lib. VII. Cap. VIII. Num. 19.*

17.

*He (Alexander) was from his Infancy a Robber and Plunderer of Nations, &c.* De Benef. Lib. I. Cap. XIII. Justin Martyr says, *The Power of those Princes, who prefer their own private Opinions to Truth, is just as great as that of Highwaymen in a Desart.* Apol. II. And Philo the Jew calls such as are ambitious of Power, so many great Robbers, who disguise their Crimes under the specious and venerable Names of Sovereignty and Government. (De Decal. p. 763. Edit. Paris.) Grotius.

18.

*Faelix Praedo; a fortunate Highwayman,* Lib. X. Ver. 21.

19.

*You are a Man, like others, with this Difference only, that busying yourself with Things which do not concern you, and animated by a criminal Ambition, you have left your own Kingdom, and traversed so much Ground, to torment yourself, and others.* Arian. *De Expedit. Alex.* Lib. VII. Cap. 1. Edit. Gronov.

20.

Nonius Marcellus has preserved us this Expression in a Passage, which he quotes from the third Book of Cicero's Treatise, *De Repub.* A Pirate being asked by Alexander, on what wicked Motive he infested the Sea; replied, on the same which puts you on infesting the whole World. In Voce Myoporo, p. 534. Edit. Mercer. See also St. Augustin, *De Civit. Dei*, Lib. IV. Cap. IV.

21.

*Lib. VIII. Cap. III. Num. 15.*

22.

*De Civit. Dei. Lib. IV. Cap. IV.*

23.

*Instit. Divin. Lib. I. Cap. XVIII. Num. 8, 9. Edit. Cellar.*

24.

*De Civit. Dei*, Lib. IV. The Words, as quoted by our Author, are, *Iniuitas partis adversae justa Bella ingerit*. They do not stand thus in the Book of St. Augustin here specified. But that Father, in Book XIX, says *Iniuitas enim partis adversae justa bella ingerit gerenda Sapienti*. Cap. VII. The Mistake proceeds from our Author's copying Alberic Gentilis, *De Jure Belli*, Lib. I. Cap. VI. p. 49, &c. confounding this Passage with another, quoted by that Lawyer from *B. IV. Chap. XV.* where the Word *Iniuitas* is used in the same Sense, and on the same Subject.

25.

Livy, *Lib. I. Cap. XXXII. Num. 10.*

1

*Damni infecti*. A Roman Law Expression, as are those which follow in this Division; where they are not, however, always used precisely in the Sense of the antient Lawyers, but accommodated to the general Notions of natural Law. See Digest. *Lib. XXXIX. Tit. II. De damno infecto, & de suggrundis & protectionibus, &c.*

2.

*Interdicta ne vis fiat*; or as the Roman Lawyers speak, *Prohibitoria, quibus [Praetor] vetat aliquid fieri; veluti vim, sine vitio possidenti, vel mortuum inferenti, quo ei jus erat inferendi*. That is, *Prohibitories, by which [the Pretor] forbids the doing of any Thing, as offering Violence to a just Possessor, or to a Man that brings a dead Body into a Place where he had a Right to bring it*. Instit. *Lib. IV. Cap. XV. De Interdictis, §. 1.*

3.

The Author here quotes *Lib. IX. De Legib.* and undoubtedly had that Passage in View, where the Philosopher says, *Two Things are to be considered, the Injury, and the Damage; the latter is to be repaired by Laws, as far as is practicable. In Regard to the former, whether great or small, the Law is to direct, and oblige him never willingly to do such a Thing again*. Pag. 862. Tom. II. *Edit. H. Steph.*

4.

*Penelope's* Suitors made *Ulysses* an Offer of paying handsomely for what they had eat and drank in his House, and giving him what Quantity of Gold and Silver he desired. To which *Ulysses* replied, that, *tho' they should restore him all his Father's Fortune and Effects, which were in their Hands, and*

*even make a large Addition to them, he would not stop his Hand, 'till he had made them pay for all their Extravagancies.* Odyss. Lib. XXII. v. 62, &c. Cassiodore observes, that *When we have waved our Right of punishing, we ought at least to suffer no Damage. Ut qui vindictam remisimus, damna minimè sentiamus*, Lib. V. Epist. XXXV. See below, Chap. XVII. XX. Grotius.

In the Passage here quoted from Homer, Madam Dacier explains those Words in the first Line, πατρωία πάντ' ἀποδοιτε, as if meant of the Patrimony of the Suitors themselves. But I leave the judicious to determine whether the Word ἀποδοιτε, which signifies *to restore*, does not better agree with our Author's Explication, which is likewise that given by the Interpreters. Besides, the Sequel of the Discourse does not require, we should in this Place leave the natural Sense of the Terms.

## 5.

*Vindicationes, or Actiones in rem.* See Note 4. on Pufendorf, B. IV. Chap. IX. §8.

## 6.

Such are, as the learned Gronovius observes, First, *Condictio causâ datâ*, or *ob causam dati, causâ non sequutâ*. A personal Action for redemanding a Thing, which was given on a Condition which is not fulfilled. See Digest. Lib. XII. Tit. IV. *De Condictione causâ datâ*, &c. Secondly, *Condictio ob turpem vel injustam causam*, ibid. Tit. V. which is when any one redemands what was given for an unjust or dishonest Thing done by the Person who received it. Thirdly, *Condictio indebiti*, ibid. Tit. VI. A personal Action of what is *not due*; when a Man redemands what he has paid, thinking he owed it, tho' he really did not. Fourthly, *Condictio furtiva*. A personal and civil Action on the Account of Theft. Lib. XIII. Tit. I.

## 7.

See Pufendorf, B. IV. Chap. XIII. § 5. Note 11. Second Edit.

## 8.

The *Roman* Lawyers by that Term understood certain Trespasses, in Consequence of which the Person is obliged to Indemnification, tho' it was not committed with a bad Intention, or even was committed by another, without the least Concurrence of the Defendant. Thus a Judge was obliged to pay the full Value of the Loss of a Cause, to the Person whom he had condemned wrongfully, tho' he passed a wrong Sentence only through Ignorance or Inadvertency. When any Thing was thrown out of a Window, the Person to whom the Chamber belonged, or who lodged in it without paying Rent, was answerable for the Damage, tho' done without his Knowledge, by one of his Servants, or any other Person. A Master of a Ship, one who keeps a Publick House, or a Stable, were responsible for whatever was stolen from, or spoiled in, the Vessel, House, or Stable, tho' they themselves had no Share in the Theft or Damage. This was termed *Quasi Maleficium*, or *Quasi Delictum*; because there was a Sort of Fiction in such Cases, by Virtue of which a Person was judged culpable, tho' not really so. See *Instit. Lib. IV. Cap. V. De obligation bus, quae quasi ex delicto nascuntur*.

## 9.

This Term, in the *Roman* Law, signifies those Causes which concern certain Crimes, wherein the Publick is more particularly and directly interested; for which Reason every Citizen was allowed to appear in the Character of Accuser on such Occasions. Of this Sort were *Treason, Adultery, Murther, Parricide, Forgery*, publick or private *Violence, Peculation*, the Crime of those who monopolize and

raise the Price of Goods, &c. Instit. Lib. IV. Cap. XVIII. & ult. *De publicis Judiciis.*

10.

These Words of *Camillus* are not part of a Declaration of War, but of a Speech to his Soldiers, *He exhorted them*, says the Historian, *to retrieve the Glory of their Country by the Sword, not by Gold; fixing their Eyes on the Temples of their Gods, on their Wives, their Children, on their native Land disfigured with the Calamities of War, and every Thing that might be lawfully defended, redemanded, and punished, &c.* Livy, Lib. V. Cap. XLIX. Num. 3.

11.

*Alcibiad.* p. 109. Tom. II. Edit. H. Steph.

12.

*De Benef.* Lib. III. Cap. XIV.

13.

Livy, Lib. I. Cap. XXXII. Num. 11.

14.

This is spoken by a Tribune of the People. *Orat. Marci Licinii*, Cap. X. *Fragm.* Lib. III. p. 50. Edit. Wass.

15.

The whole Sentence runs thus, *The usual Definition of just Wars, is, that they are undertaken for revenging Injuries; when any Nation or State, on which War is to be made, either has neglected the Punishment of its own Delinquents, or the Restitution of what was taken away unjustly,* Lib. VI. Quaest. X. on *Joshua*. This Passage is quoted in the *Canon Law*, Caus. XXIII. Quaest. II. *Quod Bellum sit justum, &c.* Can. 2.

16.

Servius has observed, that when *the Romans designed to make War, the Chief of the Heralds appeared on the Frontiers of the Enemy, and, after some previous Solemnities, declared with a loud Voice, that he proclaimed War for certain Reasons; either because they had injured the Allies, (of the Roman People) refused to restore the Cattle they had seized, or give up the Offenders.* On *Aeneid.* Lib. IX. v. 53. Grotius.

17.

That Prince being informed, that the Queen was marching toward him, sent an Embassy with this Accusation. Lib. II. p. 74. Edit. H. Steph. Cap. XVIII.

18.

Livy, Lib. V. Cap. XXXV. Num. 5.

19.

*Analytic. post. Lib. II. Cap. XI. p. 171. Ed. Paris.*

20.

*Lib. VII. Cap. VI. Num. 11.*

21.

Plutarch says, that Hercules, *by defending himself, conquered all whom he engaged*. In Vit. Niciae (p. 539. Tom. J. Edit. Wech.) And Josephus, *That such as begin the Attack unjustly, on Persons not aware of the Design, force the injured to take up Arms in their own Defense*. Antiq. Jud. Lib. XVII. (Cap. XI. p. 604. Edit. Lips.) Grotius.

1

In *Chap. II. § 3.* of the foregoing Book. See Pufendorf, *B. II. Chap. V.*

2.

*Bonâ fide militet.* The Author means those who serve their Sovereign in a War which they sincerely think just, tho' it is not really so. See *Chap. XXVI.* of this Book. Pufendorf, *B. II. Chap. V. § 5.* misunderstands our Author, as if he had in View the Case of a Soldier, who takes his Comrade for one of the contrary Party; which Case is specified in the Words immediately following, *aut alium me putet quām sim.* The learned Gronovius also gives the Words in Question a wrong Explanation, and supposes them spoken of every Soldier, listed in Form.

3.

We may here add the Example of such as walk in their Sleep. See my first Note on Pufendorf, *B. I. Chap. V. § 11.*

1

See Pufendorf, *B. II. Chap. VI. § 4.*

2.

The Laws of Charity, however understood, require us to love our Neighbour *as ourselves, not more than ourselves*, which we should do in the Case before us, and others of the like Nature. See our Author, *B. I. Ch. III. § 3.* All other Things being equal, the Care of our own Preservation is certainly allowed to take Place of the Care of another Man's. The Observation of Thomas Aquinas, which our Author alledges, and approves of afterward, ought with much more Reason to be applied in this Case.

1

See a good Use of this Distinction in Agathias, *Lib. IV. Cap. I. II.* in relation to the Murther of *Gubazes. Phrynicus*, General of the Athenians, said *he ought not to be blamed, if, finding his Life in Danger, he did all in his Power to avoid being destroyed by his Enemies.* Thucydides, *Lib. VIII. (Cap. L. Edit. Oxon.) Grotius.*

That General's Case was not one of those mentioned by our Author; as appears from consulting the Historian, in the Place here quoted. In Regard to this whole Paragraph, consult Pufendorf, *B. II. Chap.*

V. § 6, 7, 8. where he not only explains the Matter more at large, but likewise carefully distinguishes, what may be done in the State of Nature from what is allowed in Civil Society; a Distinction of great Importance, which our Author doth not seem to have much considered.

2.

*De Offic. Lib. I. Cap. VII.*

3.

*De Expedit. Cyri, Lib. II. Cap. V. § 2. Edit. Oxon.*

4.

Aulus Gellius, *Noct. Att. Lib. VII. Cap. III. p. 382. Edit. Jac. Gronov.*

5.

*Idem. ibid. p. 383.*

6.

*Orat. pro Tullio, apud Quintilian. Instit. Orat. Lib. V. Cap. XIII. p. 315, 316. Edit. Obrecht.*

7.

*Your Husband.* It ought to have been rendered *My Husband*; for it is *Merope*, Sister-in-Law to *Polyphontes*, who speaks thus to that Prince, guilty of her Husband's Murther. Our Author, however, has committed the same Mistake, in his *Excerpta ex Trag. & Com. Graecis*, published since this Work, p. 390. The two Verses may be seen in Aulus Gellius, as more than once quoted; and Mr. Barnes places them among the Fragments of a lost Tragedy, entitled *Cresiphontes*.

8.

The Historian's Words are these, *What may happen in Regard to the War (which the Corcyreans apprehending, exhort us to begin the Attack) is as yet uncertain, &c. Lib. 1. Cap. XLII. p. 26. Edit. Oxon.* Where our Author, as is evident, makes a general Maxim of what was said on Occasion of the Fear of a particular War.

9.

*Lib. III. § 82. p. 195.*

10.

In a Discourse, where she gives *Augustus* Advice for his Conduct, *Lib. LV. p. 640. Edit. H. Steph.*

11.

*Lib. III. Cap. LXV. Num. 11.*

12.

Thus *Caesar*, having made himself Master of the Commonwealth, declared he was forced to take that Step by the Fear he entertained of his Enemies. We have a beautiful Passage on this Occasion, in Appian of *Alexandria*, Bell. Civil. Lib. II. Grotius.

I do not know where this fine Passage occurs. I do not find it in any Part of the Book quoted by our Author, where the Historian speaks of *Caesar's* Transactions' till his Death. I imagine our Author had his Eye on what *Caesar* said in a Letter to the Senate, before he engaged in the Civil War. He there promised to quit the Command of his Army, if *Pompey* would do the same; and added, that it would be unjust to force him to that Act while *Pompey* appeared in Arms; because thus he (*Caesar*) was in Danger of being delivered into the Hands of his Enemies. This may be seen in Dion Cassius, at the Beginning of *Book XLI*. Appian takes no Notice of this Fear, with which *Caesar* disguised his Ambition; on the contrary, he makes him say, with a threatening Air, that if *Pompey* pretended to continue at the Head of his Forces, he would do the same, and march to *Rome* immediately, to revenge the Injuries done to his Country, and those he himself had received. p. 448. Edit. H. Steph. So that it is not improbable our Author, trusting his Memory in quoting, has confounded these two Historians. See also an Expression of *Caesar*, after the Battle of *Pharsalia*, as related by Asinius Pollio, on whose Authority Suetonius, (*in Jul. Caes. Cap. XXX.*) and Plutarch, (*Vit. Caes. p. 730.*) have inserted it in their Writings.

### 13.

This Question was put to one who appeared armed in the *Forum*, and pretended he did it out of Fear. *Instit. Orat. Lib. VIII. Cap. V. p. 723. Edit. Burman.*

### 14.

*Inter os & offam.* This old Proverb is set down by A. Gellius, on which he quotes the Words of one of Cato's Speeches, *Saepe audivi, inter os & offam multa intervenire posse.* Noct. Attic. Lib. XIII. Cap. XVII. See also Erasmus, in his *Adages*.

### 1

Compare this Paragraph with Pufendorf, *B. 2. Chap. V. § 10.*

### 1

See the Place last quoted from Pufendorf, § II. and what I have said in Note 1, on the Abridgment of *The Duties of a Man and a Citizen.* B. I. Chap. V. § 22. in the third and fourth Edition.

### 2.

Seneca places *Liberty*, *Chastity*, and *a sound Understanding*, after Life, without which three valuable Things a Man may indeed live, but so as that Death would be preferable. *De Benefic.* Lib. I. Cap. XI. St. Augustin observes, that *The Law allows the Killing of a Ravisher, either before or after the Action, in the same Manner as it permits a Man to kill a Highwayman, who attempts our Life.* *De Lib. Arbitr.* Lib. I. (Cap. V.) Grotius.

### 3.

It hath been doubted, whether our Author could find any Passage in Scripture, from which he might infer what he advances here without quoting any Text. It appears from his Notes on the Old Testament, that he had the following Law in View, *If a Man find a betrothed Damsel in the Field, and force her,*

*and lie with her, then the Man only who lay with her shall die; but unto the Damsel thou shalt do nothing; there is in the Damsel no Sin worthy of Death; for as when a Man ariseth against his Neighbour and slayeth him, even so is this Matter.* Deut. xxii. 25, 26. It must, however, be acknowledged, that it cannot be directly concluded from those Words, that Chastity and Life are of the same Value. For the Legislator means only, that in the Case before us, a Damsel is no more culpable than a Man who is killed by Highwaymen; for she is supposed to have had no more Power to defend herself against the Brutality of the Ravisher, than a Person murdered had against the Ruffians. Mr. Le Clerc gives this Explication in his Paraphrase.

#### 4.

He expresses himself in the following Manner, *He who kills a Robber attempting his Life, or a Ravisher, is not to be punished. For the one defends his Life, and the other his Chastity, by an Action in which the publick Good is concerned, (publico facinore). Recept. Sent. Lib. V. Tit. XXIII. Ad Leg. Cornel. de Sicariis, &c. § 3.*

#### 5.

We read also, that *Mars*, who had killed a Son of *Neptune*, for attempting the Chastity of his Daughter, was cleared in the *Areopagus*, by the Judgment of twelve Gods. Apollodore *Bibliotheca*, Lib. III. (Cap. XIII. § 2. Edit. Gall.) Add to this a remarkable Story in *Gregory of Tours*, Lib. IX. Grotius.

#### 6.

*Book I.*

##### 1

The Author has no where said this, at least formally and directly. It may indeed be barely inferred from what he insinuates in *Chap. II.* of the first Book, § 9. and *Chap. III.* § 3.

##### 2.

That is, they are of Opinion that in such a Case a Man is not allowed to let himself be killed; and, according to their Way of Reasoning, Patience is so far from being commendable, that it is really vicious, on Account of the Injury done to those to whom his Life was useful.

##### 3.

But if the Obligation to Patience doth not extend thus far, as our Author acknowledges, why should not a Man be bound to preserve a Life that is useful to several others, and what should oblige him to sacrifice their Interest, as well as his own, to that of a Villain? In Reality, the Care of defending one's Life is a Thing to which we are obliged, not a bare Permission. See my 5th Note on Pufendorf, *B. II. Chap. V.* § 2. Second Edition; and what that Author says in § 14. of the same Chapter.

##### 4.

*Pharsal.* (Lib. V. ver. 685, &c.) Thus *Craterus* remonstrates to *Alexander the Great*, that, while he exposed himself to such evident Dangers, he forgot that he drew after him the Ruin of so many Souls. Quintus Curtius, *Lib. IX.* (Cap. VI. Num. 8). Grotius.

##### 1

See *B. I. Chap. I. § 9.*

2.

I should think that *Charity*, that is, the Interest of others, and of a great Number, should not indispensably be allowed the Preference to Self-Preservation, so strongly recommended, and in some Manner prescribed by Nature, unless such Interest is in itself very considerable, and certain. Now, on a careful Enquiry into the Cases which may happen in the Question before us, I am confident it will appear, that the Advantage which may accrue to another, from a Man's submitting to be killed, is very far from being considerable and certain enough to oblige us to sacrifice our own Life to it. Besides, in such Sort of Cases, where a Man is in Danger of being killed, he is so affrighted, that he is not capable of enquiring whether it is advantageous to the Publick, or not, to permit himself to be killed, rather than kill the Aggressor.

3.

All that the Nature of Sovereignty, well understood, requires, is, that it should not be forfeited for all Manner of Faults, or for every Abuse of Power: But there are some Acts of Injustice directly contrary to the End for which Sovereignty is established; and consequently, whenever the Sovereign wilfully and deliberately proceeds to such Excesses, he forfeits his Right, at least in Regard to the Persons injured. Of this Sort is the Case of a Prince, who, without just Cause, attempts the Life of one whom he ought to protect and defend against all such as shall attack him in the same Manner. See my first Note on *Book I. Chap. IV. § 2.*

4.

True: But when this Advantage fails considerably, and such a Prejudice arises as is evidently contrary to the End for which a Thing was established, who can doubt but that then the Thing itself is destroyed.

5.

It is certain that a Regard is to be had for the Interest of others, and especially for that of a considerable Number; and that we are sometimes obliged to sacrifice our own Interest to it. But the Question is, Whether we have sufficient Grounds for believing that a Prince, who is guilty of the Extravagance under Consideration, is useful to Society? I therefore still adhere to what I have said in my first Note on Pufendorf, *B. II. Chap. V. § 5.* of the second Edition.

6.

See Seneca, *De Benefic.* Lib. I. Cap. I. and Lib. IV. Cap. XVI. where he confutes this pernicious Opinion. Grotius.

It would have been more proper to refer the Reader to that Philosopher's ninth Epistle, where he treats of the Subject more directly, and more at large. See also Cicero, *De Amicitia*, Cap. IX. and XIV.

7.

*De Clementiâ*, Lib. I. Cap. IV.

8.

According to Plutarch, *The principal Act of Virtue is to preserve him, who preserves every Thing else.* Vit. Pelopid. (p. 278. Tom. I. Edit. Wech.) Cassiodorus, (or rather Peter of Blois) says, that *If the Hand, by the Assistance of the Eyes, perceives a Sword ready to fall on any other Part of the Body, it receives the Sword, without regarding its own Danger, and shews more Concern for another Limb than for itself:—Consequently, those who save their Master's Life, at the Expence of their own, do well, if in this Case they consider the Safety of their own Souls, more than the Deliverance of another Man's Body. For as Conscience tells them they ought to be faithful to their Master, it seems reasonable that they should prefer his Life to their own.* From all which he concludes, that *A Man may safely expose his Body to Death, out of a Principle of Charity, especially for the Preservation of a great Number.* Grotius.

9.

*De Offic. Lib. III. Cap. III.*

10.

*De Benef. Lib. VI. Cap. XXXVII.*

1

On this Question see Pufendorf, *B. II. Chap. V. § 12.* and Mr. Vander Muelen, on this Paragraph of our Author.

2.

Apollodorus tells us, that Linus, *the Brother of Orpheus, coming to Thebes, and being made free of that City, was killed by Hercules, whom he had struck;* and that Hercules *being tried for Murther, pleaded the Law of Rhadamanthus, which acquitted such as defend themselves against an unjust Aggressor.* Biblioth. *Lib. II. (Cap. IV. § 9. Edit. Paris Galei.)* Grotius.

3.

Ziegler observes, that that *Spanish Lawyer* doth not maintain what our Author charges him with, and that he reasons on a Supposition that there was no positive Divine Law in this Case, which deprives us of the Right which each Man hath by Nature.

1

*See Pufendorf, B. I. Chap. V. § 16.* and what I have said on the Abridgment of *The Duties of a Man and a Citizen.* B. I. Chap. V. § 23. third and fourth Edition.

2.

*Orat. adversus Aristocrat. p. 436. Edit. Basil. 1572.*

1

This is examined both in the Text, and Notes on Pufendorf, *B. II. Chap. V. § 17, 18.*

2.

See B. I. Chap. III. § 2.

3.

This is quoted in the Place last referred to.

4.

[See the same Place.] To these may be added a Law of the *Wisigoths*, Lib. VII. Tit. II. Cap. XVI. and the Capitulary of *Charlemagne*, Lib. V. Cap. CXCI. One of the Laws of the *Lombards* allows a Man to kill a Person who enters his Court-Yard in the Night, except he submits to be bound. Grotius.

5.

*If a Thief enters a House by Night, with an Intent to steal, and he be taken and killed, let the Slayer be reckoned innocent.* De Legib. Lib. IX. p. 874. Tom. II. Edit. H. Steph.

6.

This is not the Spirit of those Laws. On the contrary, they evidently suppose, that the Defence of a Man's Goods, when there is no other Way for preserving them, authorizes him to kill the Thief, as fully as the Defence of Life. As to the Thought itself, that we ought not to kill any one *precisely* and *directly* for the Preservation of our Goods, it can be allowed only in this Sense; that he who finds a Thief in his House, ought not directly and principally to propose killing him, but only making Use of that Right which every Man hath to preserve his own Property, on default of all other Means. Now this will hold good in Relation to an Aggressor, who attempts our Life, as has been observed, § 4. Our Author is not entirely consistent with himself on this Subject. He will not allow a Man to kill a flying Thief, for the Recovery of his Goods, because that would be doing it *directly* and *precisely*, for the Preservation of his Property; and yet in the following Period, he says one may kill him, either with a View of taking from him what he has stolen, or securing the Thief himself. In which Case the Thief is supposed to fly, and consequently, that the Life of the Person robbed is not in Danger. Besides, Pufendorf has very well observed, that, if it is not allowable to kill any one precisely and directly for the Preservation of the Goods which he attempts to steal, or actually carries off, neither will it be allowable to defend or endeavour the Recovery of our Goods, so far as to put ourselves under a Necessity of Killing the Thief, who, rather than quit his Prize, attacks our Life, which he had at first no Design to attempt.

7.

*Si fugientem telo prosternerem, &c.* Thus the Words stand in all the Editions of the Original: But I am pretty well assured there is a Word omitted, and that we ought to read, *si fugientem inermem telo prosternerem, &c.* as the Sequel of the Discourse evidently requires. For we must suppose the Thief *unarmed*, in Order to make this Case different from the following, where the Thief likewise endeavours to escape, and it is in this that our Author grounds the Difference between a Night Thief and a Day Thief. As to the Substance of the Question, our Author's Opinion still remains exposed to the Objection offered in the Close of the foregoing Note.

8.

This Consequence is not just. All that can be inferred, is that the Laws of the Twelve Tables supposed it hardly possible to recover one's Goods in the Night, but by killing the Thief, because commonly

speaking, we do not know the Thief, and consequently, if we permit him to proceed, or escape, we have no Means left for recovering what he takes; and if the Thief is known, we have abundant Reason to believe he will make off, and evade Prosecution: Whereas in the Day Time, when the Thief quits his Booty, as soon as he perceives himself discovered, it is commonly easy to know him, or apprehend him, with the Assistance of the Neighbourhood. But, as it is possible that a Day Thief, in Hopes of escaping with his Prize, may run all Hazards, and defend himself by Force of Arms, in that Case the Law allows the Proprietor to kill him, because he has then as much Reason to fear the Recovery of his Goods, as if the Attempt was made in the Night; especially when the Thief is not known.

9.

Digest. Lib. XLVII. Tit. II. *De Furtis*, Leg. LIV. § 2.

10.

Digest. Lib. XLVIII. Tit. VIII. Ad. Leg. *Cornel. de Sicarii, &c.* Leg. IX. Mr. Noodt, in his *Probalia Juris*, Lib. I. Cap. IX. and his Treatise, *Ad Legem Aquiliam*, Cap. V. has given very plausible Reasons for proving that Tribonian has misplaced this Law, and that it ought to appear under the Title of the *Aquilian Law*, which relates to the Reparation of Damages done by one who had killed another Man's Slave, caught in the Act of Stealing, and not the Punishment of Murther. His Opinion is grounded on the following Considerations. *First*, The *Cornelian Law* punished only such Murthers as were committed maliciously and deliberately (*dolo*); and in Particular, with Regard to that in Question, it was entirely conformable to the Laws of the Twelve Tables, which allowed of Killing a Night Thief, without any Distinction of Cases; as appears from Cicero's Oration in Defence of *Milo*, Cap. III. Ulpian, *Collat. Legum Mosaic & Roman.* Tit. VII. § 2. Paul, *ibid. ex Lib. V. Sententiarum. Ad Leg. Cornel. de Sicariis, &c.* Tit. XXIII. § 9. To which may be added a Passage of St. Augustin, quoted in the *Decretals*, Lib. V. Tit. XII. *De Homicidio volunt. vel casuali*, Cap. III. Ulpian, indeed, in the Place already specified, and in another of his Fragments. Digest. Lib. IX. Tit. II. *Ad Leg. Aquilam*, Leg. V. seems to say, that the Man who kills a Night Thief, whom he might have apprehended, incurs the Penalty of the *Cornelian Law*. But it is probable, that that antient Lawyer inadvertently wrote *Lege Corneliam*, instead of *Lege Aquiliam*, as the learned and judicious Professor thinks, whose Opinion I am giving. Perhaps, the Transcribers having made this Mistake in one of the two Fragments, it was copied in the other, with a View of correcting the Text; or perhaps the Transcribers have actually committed the same Fault in both Places; for all this is possible, and there may have been other Causes, of which we are ignorant. *Secondly*, The Law under Consideration, is taken from Book XXXVII. *on the Edict of the Pretor*. Now it appears from several other Passages in the same Book, quoted elsewhere, that it doth not treat of Murther, or any other publick Cause, but of some private Causes only. *Thirdly*, Ulpian's Fragment, preserved in the *Collatio Leg. Mosaic. & Roman.* speaks only of the *Aquilian Law*, both before and after these Words, *Ergo etiam Lege Corneliam tenebitur*, nor doth it appear to what Purpose they are inserted. So that it is highly probable here is a false Reading; and, consequently, that in the ninth Law, *Ad Legem Corneliam, &c.* which belongs to the same Lawyer, *impunè ferre*, signifies no more than *to be exempt from paying Costs and Damages*. We find *innoxium esse* in the same Sense, *Tit. de Lege Aquiliam*, Leg. XLV. § 4. I add that the Adverb *impune* is used to express the same Thing, by Marcellus, the Lawyer, when he says, that *if a Man who has promised another a Slave, takes him in the Fact, he may kill him with Impunity, (impunè) and the Person to whom he stands engaged, shall be allowed no Action for Damages*, (*utilis Actio*). Digest. Lib. XLV. Tit. I. *De verborum obligat.* Leg. XCVI. But, whatever becomes of this Question, Mr. Noodt's Reasons seem to me well grounded, even after the Perusal of Mr. Van de Water's Objections against them, in his *Observationes Juris Romani*, Lib. I. Cap. XVIII. The famous Mr. Schulting, Mr. Noodt's Colleague and Relation, owns that Ulpian's two Fragments treat of the *Aquilian Law*; but he has some Difficulty in allowing the *Cornelian Law* to

be erased from this Place, where it is said it is improperly mentioned. In Order to this, he restrains the Generality of the Terms employed by the old Lawyer; and, after all, he acknowledges the Explication of the Passage very difficult, supposing no Mistake in it. See what he says on that Subject, in his excellent Notes on the *Jurisprudentia ante Justinianea*. p. 760.

11.

Digest. Lib. IX. Tit. II. Ad Leg. Aquil. Leg. IV. § 1. From what has been said in the foregoing Note, it appears that this Condition cannot be enjoined by the Law of the Twelve Tables, which absolutely permitted a Man to kill a Night Thief. Mr. Noodt likewise offers some very plausible Reasons, in his *Observ. Lib. I. Cap. XV.* for proving that this doth not relate to the Punishment of Murder, ordered by the *Cornelian Law*, but to the Reparation of Damages, which belongs to the *Aquilian Law*; and that even in that Point, the Lawyers had softened the Rigour of the Law, by insinuating, that it ought to be reckoned sufficient, that a Man, who finds another Man's Slave attempting to rob him in the Night, cries out before he kills him; whereas before it was very difficult to prove a Man obliged so to do by the Necessity of defending his own Life, and consequently avoid making his Master a Recompence, if there was any Means left of securing one's self from the Danger without Killing the Slave. Others, as James Godfrey, (*ad LL. XII. Tab. p. 58.*) and Mr. Schulting, (*Jurip. Antejust. p. 508, 759.*) chose rather to consider the Words, *ut tamen id ipsum cum clamore testificetur*, as an Addition made by Tribonian. But which Opinion soever is followed, our Author's Thought is still equally ill grounded.

12.

*Page 265. Edit. Basil. 1572.*

13.

Philo the Jew, explaining this Law, judiciously observes, that the Difference of Places is specified only, as the most common Example of Cases in which a young Woman is forced; not that a Regard is always to be had to this single Circumstance, in condemning or clearing her. For, says he, it may happen that a Man may hinder a young Woman from crying out, before he ravishes her, tho' the Fact is committed in the Middle of a City; and a young Woman may consent to be debauched in the Fields. *De specialib. Legib.* (p. 788. *Edit. Paris.*) Grotius.

1

All that can be inferred from our Saviour's Words, and those of the Apostle, is, that when the Thing in Question is of but small Consequence, we ought not to kill the Thief, who attempts to take it, or is carrying it off. But when a Man finds a Thief in his House, he doth not immediately know he has taken a Thing of small Value; he hath very good Reason to presume the contrary; for Persons of that Character do not usually leave the best Goods; and even tho' at first he had a Design on one certain Thing only, it is well known that Opportunity makes the Thief.

2.

See § 12. Note 6.

3.

*De Lib. Arbitr. Lib. I. Cap. V.* But he is not there speaking of Goods; his Discourse runs only on the Defence of Life or Honour, as appears from the preceding Words.

#### 4.

St. Jerom, in his Life of *Malchus*, observes that *Since the Church began to have Christian Magistrates, it became more considerable for Riches and Power, but less so for Virtue*. See the *Decretals*, Lib. V. Tit. XII. *De Homicidio Volunt.* Cap. X. and Distinct L. *Ecclesiastici criminosi, &c.* Can. XXXVI. Grotius.

This Passage of Jerom, which appears at the Beginning of the Letter here quoted, runs thus in the Original: *Et post quam ad Christianos Principes venit [Ecclesia] Potentiâ quidem & Divitiis major, sed virtutibus minor facta est.* That is, *After the Church came into the Hands of Christian Princes, &c.* p. 255. Tom. I. Edit. Basil.

#### 5.

Our Author speaks here of the Liberty with which Ecclesiasticks have been indulged in the later Ages, of making War, and commanding Armies; whereas, according to the antient Discipline, they could not even kill a Man in their own Defence, without incurring the Penalties specified in the Canons. See Conradus Rittersus, *Dissert. Juris Civil. & Canon.* Lib. VI. Cap. VI. and Lib. VII. Cap. XIII. as also the Authors above quoted, *B. I. Cap. V. § 4. Note 2.*

#### 1

See Pufendorf, *B. VIII. Chap. III. § 26.*

#### 2.

See Gregory of *Tours*, Lib. X. Cap. X. John of *Salisbury*, *Policratic.* Lib. I. Cap. IV. Peter of *Blois*, Epist. CXXIX. concerning such Laws as punished Peasants with Death for Hunting. Grotius.

#### 3.

It gives a real Right, in all Cases, where the Action is allowed by the Law of Nature, and the Rules of Charity well understood.

#### 1

Some of our Author's Commentators on this Place fight with their own Shadow, undertaking to refute him at large, as if he meant to speak of *Duels*, properly so called; whereas it is evident, he treats only of what we term *Rencounters*, or Cases in which a Man is unexpectedly attacked, without any Appointment.

#### 2.

See my *Discourse on the Nature of Lots*, § 20.

#### 1

Ammian Marcellinus says, *It is an universal and perpetual Law, that no Custom can deprive us of the Right of Defending ourselves by all Means in our Power, when attacked by foreign Arms.* Lib. XXIII. (Cap. I.) The Emperor Alexander Serverus spoke thus to his Soldiers on the Subject, *An unjust Aggressor has no good or plausible Excuse for his Conduct; but he, who repels such an Aggressor, receives Confidence from the Goodness of his Conscience, and hopes for Success, because he is doing*

*no Injury, but is only acting in his own Defence.* Herodian, *Lib. VI. (Cap. III. Num. 8, 9. Edit. Boecler).* Grotius.

*Nihil renitente vi moris.* Adrian de Valois, in his Edition of this Author, reads *nihil remittente vi moris*, from an antient MS. but the common Reading, which our Author follows, seems preferable. The Passage is very well explained by James Godfrey, in the last Page of *Tome V.* of his Commentary on the Theodosian *Code*, where he refers this *vi moris* to the superstitious Custom of engaging in no military Expedition, without first consulting the Auspices. It is surprizing, that the last Editor of that *Code* hath said nothing on this Subject, nor even referred the Reader to that Lawyer's Remark.

2.

*Ubi cessant Judicia.* Our Author means in the Time of a Civil War.

3.

See *B. II. Chap. XX. § 8.*

4.

In the Place quoted § 39.

1

See *B. II. Chap. XXII. § 5.* and Pufendorf, *B. II. Chap. V. § 6.* and *B. VIII. Chap. VI. § 5.* Boecler observes, that Alberic Gentilis, whom our Author has here in View, as appears by the marginal Quotation, is at the Bottom of the same Opinion with him.

1

See Pufendorf, *B. I. Chap. V. § 19.* and *B. V. Chap. XIII. § 1.*

2.

Livy, *Lib. IX. Cap. I. Num. 3, 4, 7, 8.*

3.

The Author here changes the Persons, and attributes to the *Thebans*, what the *Greek* Orator says of the *Lacedemonians*. Besides, Aristides doth not even say that the *Lacedemonians* had offered the *Thebans* a reasonable Satisfaction; but only that the People last mentioned, had gained it by the Victory at *Leuctra*; for he is speaking of the Succours which the *Lacedemonians* demanded of the *Athenians*, when the *Thebans*, after that Victory, seemed resolved to compleat the Destruction of the vanquished. See *Orat. Leuctrica*, p. 98. Tom. II. *Edit. Paul Steph.* And Xenophon, *Hist. Graec.* *Lib. VI. Cap. V. § 33, &c. Edit. Oxon.*

## BOOK II: CHAPTER XXII: *Of the unjust Causes of War.*

[I. *The Difference between the real and pretended Causes of War shew'd.*] I. 1. In [a](#) beginning to treat of the Causes of War, we divided them into [1](#) justifying Reasons and Motives. *Polybius*, the first Author of the Distinction, calls the one Προφάσεις, as being usually such as are openly assigned for the War, (*Livy*[b](#) sometimes terms them the *Title* of the War) to the other he gives the general Name of αἰτίαι, *Causes*.

[1097]

2. Thus in the War of *Alexander* against *Darius*, to take Vengeance of the *Persians*, for the [2](#) Injuries they had formerly done the *Greeks*, was the justifying Reason, whilst the Motive was a strong Desire of Glory, Empire, and Riches, in Conjunction with confident Hopes of Success, conceived from the fortunate Expeditions of [3](#) *Xenophon* and [4](#) *Agesilaus*. So in the second *Carthaginian* War, the justifying Reason was a Controversy about *Saguntum*, but the Motive was an old Grudge, entertained by the *Carthaginians* against the *Romans*, for the hard Terms they were obliged to accept of, when reduced to a low Condition, and (as *Polybius*[c](#) takes Notice) their being animated and flushed by the Successes which had of late attended their Arms in *Spain*. So [5](#) *Thucydides* is of Opinion, that the true Cause of the *Lacedemonian* War was a Jealousy of the over-growing Power of the *Athenians*, but a Quarrel of the *Coryreans*, *Potidians*, and some other Things, were the Pretence made use of for justifying the War; tho' in this Place he seems to confound the Terms Προφάσεις, and Αἰτίαι. The same Distinction do we find in the [1098] Speech of the *Campanians*[6](#) to the *Romans*, where they profess that it was in [475] Order to aid the *Sidicines* that they took up Arms against the *Samnites*; whereas, in Reality, their own Interest induced them to it, foreseeing that if the *Sidicines* were once set on Fire, the Flames would soon reach them. *Livy* reports too, that [7](#) *Antiochus* made War upon the *Romans*, for the Murder of *Brachylas*, and under some other Pretext, but the real Incitement was, some extraordinary Hope she had conceived from the Remissness of the *Roman* Discipline. *Plutarch*[8](#) remarks, that *Cicero*'s Charge against *Antony*, as being the Cause of the Civil War, was not true; for *Antony* only furnished *Caesar*, who was already determined for the War, with a plausible Pretence for it.

[1099]

[II. *To engage in a War without either of these Causes is brutish.*] II. But there are some who engage themselves in War, having neither of these Causes.[1](#) Coveting (as *Tacitus* represents them) *Dangers*[2](#) for Danger's Sake. This Vice so far passes the Bounds of Humanity, that by [3](#) *Aristotle* it is stiled *Brutishness*. *Seneca* speaking of such Wretches, says [4](#) *To take Pleasure in Massacres is not so properly Cruelty as Ferity and Savageness: One might call it Distraction; for there are several Sorts of this, but none of them more visibly so, than that which carries People to the Murders and Butcheries of their own Kind.* Consonant to this is that of *Aristotle*, Δόξαι γὰρ, &c.[a](#) *For he is superlatively barbarous, who for nothing but the Sake of Fighting, and Spilling human Blood, converts his Friends into Enemies.* And *Dion Prusaensis*[b](#) says, that *To be engaged without any Reason in Wars and Broils is perfect Madness, a seeking one's own Destruction.* And *Seneca*, in his fourteenth Epistle, *The Effusion of human Blood for its own Sake, and no other Reason, is what scarce any Man can be guilty of.*

[III. *A War without a just Reason is no better than Robbery.*] III. 1. But the Generality of those who engage in Wars, are induced thereto by Motives, either in Conjunction with justifying Reasons, or without them. Some there are who do not care whether they have any justifiable Reasons at all, of whom we may pronounce, as the *Roman* [1100] Lawyers do, that such are Robbers, who being called

to Account how they came by such and such Things, can shew no<sup>1</sup> Right they have to them, but only that they are in their Possession: And [476] Aristotle says of the common Instigators to War, that<sup>a</sup> *They seldom consider the Injustice of enslaving their inoffensive Neighbours, and such as no Ways injure them.*

2. Of this Stamp was<sup>2</sup> Brennus, who asserted, that *The strongest have always the best Title*. So Hannibal, whose Motto, according to Silius,<sup>3</sup> was

- *Justice and Leagues to me my Sword points out.*

And so Atila,<sup>4</sup> and all others who tell you, that

- <sup>5</sup>*The Reason of the War they ne'er inquire,*
- *It's Conclusion's all they care for.*

And,

- <sup>6</sup>*To be o'ercome is Argument of Guilt.*

[1101]

And,

- <sup>7</sup>*Successful Arms are always in the Right.*

Applicable to this is that of St. Austin.<sup>8</sup> *To make War on our Neighbours, from thence to push our Violence farther on, and so to oppress inoffensive People, out of a Thirst after Empire, what Title does it deserve, but that of a notorious Robbery?* Of these Wars Velleius says, that<sup>b</sup> *They are not entered into on Account of any just Provocation, but only for the Advantage that is expected from them.* And we read in Cicero,<sup>9</sup> *That Elevation of Soul which discovers its self in Hazards and Fatigues, unless contending for Justice, is so far from being a Principle of Virtue, that it is indeed the greatest Inhumanity.* They, says<sup>10</sup> Andronicus Rhodius, who for some great Interest [1102] of their own, take where they ought not to take, are called wicked, impious, and unjust, such as Tyrants, and those who depopulate Cities.

**[IV. There are some Reasons which upon first Appearance seem justifiable, but will not bear the Test of Examination.]** IV. There are those who alledge some Sort of justifying Reasons, but such as, being weighed in the Balance of right Reason, are found to be unjust. And in [477] this Case, (to use Livy's<sup>1</sup> Expression) *The Dispute is not who is in the Right, but who is the most powerful. The Generality of Princes, says<sup>2</sup> Plutarch, employ the two Terms of War and Peace, as they do their Money, not for what is just and honest, but for what will serve their Turns.* The Knowledge of what Causes are unjust, may be pretty well collected from the just Causes already mentioned. For the Windings of a crooked Line presently appear upon its Application to a strait one. However, to make the Matter as plain as we can, we will insist a little upon the<sup>3</sup> principal of them.

**[V. Such as an uncertain Fear.]** V. 1. First therefore, the Dread (as we before<sup>a</sup> observed) of our Neighbour's encreasing Strength, is not a warrantable Ground for making War upon him. To justify taking up Arms in our own Defence, there ought to be a Necessity for so doing, which there is not, unless we are sure, with a moral Certainty, that he has not only Forces sufficient, but a full Intention to injure us.

2. Wherefore their Opinion is not to be assented to, who maintain that it is lawful to bring War upon a

neighbouring Prince, who, in his own Territories shall erect a Castle, or other fortified Place, which may some Time or other be detrimental to us, tho' he is under no Obligation to the contrary by any previous Compact. For to remove such Apprehensions, we should apply ourselves to the raising such within our own Dominions, and look out for other Remedies, rather than immediately have Recourse to War. From whence it is deducible, that the War of the [1103] *Romans* against <sup>b</sup>*Philip* King of *Macedon*, and of <sup>1</sup>*Lysimachus* against *Demetrius*, if they had no other Cause (than this uncertain Fear) were not just. I am wonderfully pleased with that of *Tacitus*, about the <sup>2</sup>*Cauchi*, *They are a People of the greatest Repute and Figure in all Germany, and chuse to maintain their Grandeur by their Justice, living quiet, and keeping at Home; as free from Ambition as from Envy. They give no Occasion for Wars, committing neither Outrage nor Robbery; and what is a great Proof of their Valour, and their Strength, they preserve their Superiority, without Injury and Oppression: However, they are always in a Readiness for War, and can, if their Affairs require it, raise an Army in an Instant, being well provided with Men and Horses, and in the midst of Peace are equally respected and feared.*

[VI. *An Advantage without a Necessity.*] VI. Nor does the <sup>1</sup> Advantage from a War give us as good a Right as a Necessity for one.

[1104]

[VII. *Refusal of Marriages, when there is Plenty of Women.*] VII. Nor is the Refusal of supplying us with Wives, tho' there be great Plenty of Women, a just <sup>1</sup> Provocation to War, which was what moved *Hercules* against <sup>2</sup>[478] *Eurytus*, and <sup>3</sup>*Darius* against the *Scythians*.<sup>4</sup>

[VIII. *The Desire of a better Land.*] VIII. Nor is the Desire of changing our former Settlements, of removing from moorish and desert Ground to a more fertile Soil, a just Plea for making War, which *Tacitus* reports to be the <sup>1</sup> Cause of most of the Wars amongst the antient *Germans*.

[IX. *The Discovery of Things that belong to others.*] IX. Nor is it less unjust <sup>a</sup> to go to War, and lay Claim to a Place upon the Score of making the first Discovery of it, if already inhabited, tho' the Possessor should be a wicked Man, or have false Notions of GOD, or be of a stupid Mind; because by the Right of Discovery we can pretend to those Places only which are not appropriated.

[1105]

[X. *But what if the first Possessors are Fools.*] X. 1. Nor is the being endued with Virtues, moral or divine, or an extraordinary Capacity, a Qualification absolutely requisite for Property, unless if there be a People <sup>a</sup> entirely destitute of the Use of Reason, that then dispossessing them may seem defensible, as having no Right of Property; and all that Charity would in that Case oblige one to, is to allow them Necessaries sufficient for Life. What has been already <sup>b</sup> delivered with Respect to the Provisions made by the Law of Nations, for preserving the Rights and Properties of Infants and Idiots, is to be applied to those with whom Compacts and Agreements can be made, which these People totally void of Reason, are not qualified for, if any such there be, which I very much question.

2. The Greeks therefore were to blame, who thought the *Barbarians* naturally <sup>1</sup> their Enemies, because they were different in their Manners, and of more shallow Apprehensions (in their Opinions) than themselves. But how far upon the Account of enormous Crimes, Crimes against Nature, or prejudicial to human Society, it is lawful to dispossess People, is a different Query, and already <sup>c</sup> discussed in our Discourse about *The Right of Punishments*.

[XI. *The Desire of Liberty in a People who are subject, is also an unjust Reason.*] XI. Nor is the taking up Arms upon the Account of Liberty, justifiable in particular Persons, or a whole

Community;<sup>1</sup> as if to be in such a State, or a State of Independence, was naturally, and at all Times, every one's Right. For when Men are said to be<sup>2</sup> by Nature in a State of Freedom, by Nature is to be understood the Right of Nature, as it is antecedent to all human Acts to the contrary; and the Freedom there meant, is an Exemption from Slavery, and not an absolute Incompatibility with Slavery, that is, no Man naturally is a Slave, but no Man has a Right never [1106] to become such, for in this Sense no Body living is free. And this is what *Albutius*<sup>3</sup> intends, when he says, that *No Man is born either a Freeman or Slave, but these Names Fortune gives them afterwards.* Thus Aristotle,<sup>4</sup> Νόμω τὸν μὲν δοῦλον εἶναι τὸν δ' ἐλεύθερον, *To the Law it is owing, that one is in a free, another in a servile Condition.* And therefore it is every Man's apparent Duty, who is reduced to a State of Servitude, either civil or personal, to be content with his own Condition, as the Apostle St. Paul teaches us, *Art thou called, says he, being a Servant, care not for it.* 1 Cor. vii. 21. [479]

**[XII. And the Desire of ruling others against their Wills, under Pretence of its being their Interest to be governed by them.]** XII. It is unjust likewise to bring under Subjection by Force of Arms, such as we may fancy are fit for nothing else, or (as the Philosophers sometimes stile them) are Slaves by Nature; for I must not compel a Man even to what is advantageous to him. For the Choice of what is profitable or not profitable, where People enjoy their Senses and their<sup>a</sup> Reason, is to be left to themselves, unless some other Person has gained any Right over them. But that of Infants<sup>1</sup> is a quite different Case, for as they have not the Power to manage themselves, Nature gives it to the first that will take upon him to manage them, and who is qualified for such a Charge.

**[XIII. The Emperor has no Claim to universal Monarchy, tho' some give him that Title.]** XIII. 1. I should not here have observed the Vanity of the Title<sup>a</sup> with which some have dignified the *Roman* Emperor, as if the Right of governing the most distant, and even undiscovered Parts of the World, was his, had not *Bartolus* (who for a long Time passed for the most celebrated [1107] Civilian) presumed to declare that Man an<sup>b</sup> Heretick, who should dare to deny it; because, forsooth, the Emperor does sometimes<sup>1</sup> stile himself<sup>c</sup> *Lord of the Universe*; and because that the Empire (to which modern Historians have given the Name of<sup>2</sup> *Romania*) is in Holy Writ<sup>3</sup> called by the Name τῆς ὀικουμένης, of the<sup>d</sup> World; which is no more than such Strains and Flights as

- <sup>4</sup>The whole World to Rome's victorious Arms
- Subjection already paid,

and many such other Expressions, by Way of *Hyperbole* or Eminence; especially if we consider, that in the same Sacred Pages,<sup>5</sup> *Judaea* alone has frequently the Name of the *World* given it. And in this Sense we are to apprehend that old Expression of *Jerusalem*'s being situated<sup>6</sup> in the Middle of the Earth, that is, of the Land of<sup>e</sup> *Judaea*: So *Delphos* being in the Centre of *Greece*, is called the<sup>7</sup> *Navel of the World*. Nor are the Arguments used by<sup>8</sup> *Dante* for the universal Jurisdiction of the Emperor, [1108] drawn from its Tendency to the Interests of Mankind, at all convincing; for the Advantages he proposes are counterpoised by the Inconveniences that attend them. For as a Ship may be built to so vast a Bulk, as to be unwieldy, and not manageable, so an Empire may be extended over so great a Number of Men and Places so widely distant from each other, that the Government of it becomes a Task, to which<sup>f</sup> no one Sovereign can be equal.

2. But however, allowing what he contends for, the *Expediency of such an universal Monarchy*, yet the Right of Empire cannot be<sup>g</sup> thence inferred. For Consent is the Original of all Right to Government, unless where Subjection is inflicted as a Punishment. Neither can the *Roman* Emperor now lay Claim to all the Dominions of his Predecessors, many of which, as they were acquired in War, so were they lost by War. Some have been alienated by Contract, and others by [480] Abdication,<sup>9</sup> are become subject to other Potentates and Nations. And some States that once were entirely subject, are since

become so only in Part, or made a Sort of Confederates on unequal Conditions. For all these Methods of losing, or changing a Right, hold equally good against the *Roman* Emperor as against any other Potentate.

[**XIV. Nor the Church as others alledge.**] XIV. 1. But some there are,<sup>a</sup> who would confer on the Church a Power over the Inhabitants of even the undiscovered Parts of the World;<sup>1</sup> whereas St. *Paul* openly declares, that he had no judicative Power where Christianity was not embraced. For *What* (says he) *have I to do to judge them that are without?* 1 Cor. v. 12. And this Power of the Apostle, tho', after its Manner, it belonged to earthly Things, yet was it of a celestial (if I may so say) not of a terrestrial Nature, I mean, not to be exerted [1109] by Arms and Blows; but by the Word of GOD, delivered both in general, and applied to particular Circumstances; by administering or refusing the Sacraments, which are the Seals of the divine Grace, as it was proper and most expedient; and lastly, by a Vengeance not natural, but above the Power of Nature, and therefore derived from GOD, as is manifest in the Punishment of *Ananias, Elymas, Hymenaeus*, and others.

2. CHRIST himself, from whom all Ecclesiastical Power is derived, who was a Pattern for the Church to walk by, declared that<sup>b</sup> his *Kingdom was not of this World*, that is, not of the same Nature with other Kingdoms; adding, that if it were, he, like other Princes, should make use of Soldiers. And had he been willing to demand any Legions, they would not have been Legions of Men, but of Angels, Matt. xxvi. 53. And whatever Authority he used, he did it not by a human Power, but a divine Virtue, even then when *He drove out of the Temple the Buyers and Sellers*. For the Scourge which he then used, was not the Instrument, but only the Symbol of GOD's Wrath; as at another Time the Spittle and the Oil was not the Salve, but<sup>c</sup> the Token of the Cure. St. *Austin*, upon the forementioned Passage of St. *John*, breaks forth into these passionate Expressions:<sup>2</sup> *Give ear, O ye Jews and Gentiles, circumcised and uncircumcised, attend to what I say, all ye Kingdoms of the Earth; your Dominion here below I do not interrupt, for my Kingdom is not of this World. Disturb not yourselves with imaginary Terrors, as Herod the Great did, when he received the News of CHRIST's Birth, who was more cruel by his Fear than by his Passion, when he caused so many Infants to be destroyed, in Hopes that JESUS might be among them. My Kingdom (says he) is not of this World: What would you have more? Come to the Kingdom which is not of this World: Come to it by Faith, and let not your Fears transport you to Cruelty.*

[1110]

3. St. *Paul*, among his other Charges, gives this for one, that *A Bishop be no Striker*, 1 Tim. iii. 3. And St. *Chrysostom*<sup>d</sup> says, that it is for Kings, and not Bishops, ἀνάγκη κρατεῖν, to rule imperiously, or by human Force and Compulsion.<sup>3</sup> And [481] in another Place,<sup>4</sup> *We have no Power given us to restrain Men from sinning by the Authority of a Sentence*, that is such an Authority as includes the Right of executing the Sentence like a Sovereign, or by Force, or of taking away<sup>5</sup> any human Right. And he says, that *a Bishop discharges the Duty of his Function, not by Constraint but by [1111] Persuasion*. Now from what has been said, it is evident that Bishops,<sup>6</sup> as such, can exercise no human Dominion.<sup>7</sup> St. *Jerome* comparing a King and a Bishop together, says, that *the one presides over Men whether they will or no; but the other has none but voluntary Subjects*.

4. Whether Christian Kings can make War against those who reject the Christian Religion, by Way of Punishment, has, as far as is requisite to our Purpose, been already discussed in a former<sup>e</sup> Chapter concerning Punishments.

[**XV. Nor a Desire of accomplishing Prophecies without a Commission from GOD.**] XV. I will here give another Caution, and it will be somewhat necessary too, because, by comparing Things present

with Things past, I foresee a great Mischief like to ensue, if not guarded against. The Caution is this, that<sup>1</sup> *the Hopes we conceive from the Explication of some Divine [1112] Prophecies, can be no just Cause for our declaring War.* For besides that<sup>2</sup> there can no certain Interpretation be made of such Prophecies as are not yet accomplished, without Inspiration, the Times of [482] the Accomplishment of those Things that are ever so certain may be unknown to us. Nor does the Prediction at all, unless there be along with it an express Command of GOD, give any Right, since GOD often permits his Predictions to be brought to pass by wicked Men, or by wicked Actions.

[**XVI. Nor a Debt not due in Strictness of Justice but by some other Way.**] XVI. This we are also to understand, that if a Man owes another any Thing, not in Strictness of Justice but by some other Virtue, suppose Liberality, Gratitude, Compassion, or Charity, he cannot be sued for it in any Court of Judicature, neither can War be made upon him on that Account; for to either of these it is not sufficient, that that which is demanded ought for some moral Reason to be performed, but besides it is requisite we should have some Right to it, such a Right as both divine<sup>1</sup> and human Laws do sometimes give us to those Things which are due by other Virtues; and when that is so, there arises a new Obligation which [1113] belongs to Justice. But when this is wanting, the War on that Account is unjust, as was that of the<sup>2</sup> *Romans* against the King of *Cyprus*, for his Ingratitude. For he<sup>3</sup> who has done a Kindness, has no Right to demand a return of his Favour: For if so, it would be a Bargain and not a Kindness.

[**XVII. The Distinction between a War whose Cause is unjust, and that which is faulty in some other Respects; and the different Effects of both.**] XVII. 1. We are also to<sup>a</sup> take Notice, that it often comes to pass, that tho' there be a just Cause for War, yet some Fault may accompany the Action from the Disposition of the Agent, as when something else, not of itself unlawful, does more powerfully incite us, than the Right we have to do it, as<sup>1</sup> the desire of Glory, for Instance, or some Advantage either private or publick that is expected to accrue to us from the War, considered distinctly from the justifying Reason of it, or when some unlawful Passion arises in us, as the taking a Satisfaction in another's suffering, without regard to any Good. Thus *Aristides*<sup>2</sup> tells us, that the *Phocians* were deservedly destroyed, but that King *Philip* did very ill in so doing, because he put them to the Sword, not for Religion, as he pretended, but on account of enlarging his Dominions.

2. *There is one, and that a very antient Reason for making War, (says<sup>b</sup> Sallust) and that is an insatiable desire of Empire, and Riches.* In *Tacitus*; [1114] <sup>c</sup>*Gold and Wealth were ever the chief Motives for War.* And in the Tragedy you have:

- <sup>d</sup>*Rash Anger and Gain's impious Frenzy*
- *Have broke the Alliance off.*

Whereunto we may refer that of St. Austin:<sup>e</sup> *A Pleasure in doing Mischief, or in Revenge, a restless and implacable Spirit, a Spirit of Rebellion, the Lust of Dominion, and such like are justly culpable in all Wars.* But tho' these Things are criminal, yet when the War is grounded on a justifiable Reason, they do not render it Unjust, and therefore there is no Obligation to make Restitution<sup>f</sup> for Damages sustained by such a War. [483]

## Endnotes

FN 2692-2785

a

Chap. 1. § 1. of this Book.

1

This Distinction is made also by Plutarch, in his *Galba*; and Dion, in the Affairs of *Caesar* and *Pompey*; and by Polybius, where he treats of the *Roman War* against the *Illyrians*, Excerpt. Legat. CXXVI. We may call the justifying Reasons the Pretext, and the Motives the Cause of the War, as Suetonius does, where he speaks of *Julius Caesar*, *This was his Pretext indeed for a Civil War; but all the World are of Opinion, that the Causes were something else.* Thucydides in some Places distinguishes between Πρόφασιν the *Pretence*, and Τὸ ἀληθὲς, the *Truth*, as in the *Athenians* Descent upon *Sicily*, where the Pretence was to assist the People of *Egesta*, but the Truth and Reality was their Desire of seizing upon *Sicily* for themselves. Hermocrates, in an Harangue of his, speaking of the *Athenians*, calls that the Colour, this the Intent. You have both these Passages in Thucydides's sixth Book. And Appian, in his *Mithridatic* uses the Word Προφάσεων: and in his *Civilian*, Lib. VI. where he treats of the Peace between *Octavius* and *Sextus Pompeius* being broken, he says, that the concealed Reasons were quite different from those that were declared. Agathias, in his fifth Book, what others term Πρόφασιν calls Σκῆψην καὶ προκάλυμμα, *Fiction and Disguise*, to which he opposes αἰτίαν, *In Hist. Hunn. Zamagan*. Add to this what we said above, in *Chap. I. § 1. of this Book*. Procopius, *Persic.* II. says, that *It is but Folly to be reserved when the Action is directed by Justice, and attended with Advantage.* Grotius.

One may perceive at first Sight, that the last Passage from Procopius is not to the Purpose, for the Question here is not concerning Freedom of Speech. I cannot comprehend how our Author found any Thing in it that could relate to the Subject of this Note, nor how he came to change the Sense of the Historian; for the Passage he had, probably, in View, at least there is nothing elsewhere that has any Resemblance to the present Subject, in the two Books of the War against the *Persians*, is, at the Close of the Speech made by the Embassadors of the *Lazians*, to *Chosroez King of Persia*, to intreat him to receive their Nation into his Alliance and Protection against the *Romans*. After having set forth all the Reasons that were capable of shewing the Justice of their Demand, they represent the Advantages that *Chosroez* himself would have in complying with it; and conclude, that it is no more than prudent to accept offers, *Which Justice precedes, and Advantage accompanies.* Lib. II. Cap. XV.

b

*For Instance*, l. 37. c. 54. n. 13.

2.

See what is said in the preceding Chapter, § 8. Note 2.

3.

In the famous Retreat of the ten thousand *Greeks*, of which that Philosopher and great Captain has writ the History.

4.

See his Life in Cornelius Nepos, *Cap. III.* and in Polybius, *Lib. III. Cap. VI.*

c

Lib. 3. c. 6, 7, 8, 9.

5.

*Lib. I. (Cap. XXIII. See also Cap. LVI. and LXVIII.)* In his fifth Book, where he treats of the War between the *Argives* and the *Epidaurians*, he calls αιτία, what he had a little before called Πρόφασις. In the same Manner (as we have observed in the first Chapter of this Book) the Greek Word Ἀρχαὶ, and the Latin Word *Principia*, and such others as are made Use of to express the Origin of a War, are equivocal. The Writers of the *Constantinopolitan History* often use the Word Πατροκλος, to signify what others call Pretext, Πρόφασις, and that in Allusion to the History of Achilles, who took Occasion from the Death of *Patroclus* to resume his Arms, which he had before renounced. Grotius.

6.

*Quanquam pugnavimus, &c. Livy, Lib. VII. Cap. XXX. Numb. 12.*

7.

Our Author by not attending to the Construction of the Terms, attributes to King *Antiochus*, what the Latin Historian says of the *Boeotians*: *In Boeotiam ipse [Antiochus]—— habentem —— revera per multa jam secula publicè privatimque labante egregiā quondam disciplina gentis, & multorum eo statu, qui diuturnus esse sine mutatione rerum non posset.* Lib. XXXVI. Cap. VI. Num. 1, 2. Boecler has exactly copied this Error, in a Dissertation, intitled *De Clarigatione & Manifestis*, Vol. II. p. 1212. where he expresses himself in the same Manner as our Author, tho' he does not mention him.

8.

As the Place where the Philosopher makes that Reflection is not named here, Gronovius seems to doubt whether it be really his. But I shall give the Passage; from which it will appear also, that that learned Man was mistaken, in imagining our Author spoke of *Octavius*, or *Augustus Caesar*, whereas the Passage relates to *Julius Caesar*. Διὸ καὶ Κικέων ἐν τοῖς φιλιππικοῖς, &c. *In Vit. Marc. Anton.* p. 918. C. D. Vol. I. Edit. Wech. The Passage in the *Philippicks*, of which Plutarch speaks, and wherein it is said, that *Antony* was the Cause of the Civil, as *Hellen* had been of the *Trojan*, War, is in the II. *Philippick*. Cap. XXII. Our Author cites here, in a Note, some Verses of Lucan, wherein that Poet says on the same Subject, that the ill Treatment of the Tribunes of the People, *Q. Cassius* and *Mark Antony*, finally determined *Caesar*, who was before irresolute, Fortune supplying him thereby with Pretexts to justify the War wherein he engaged himself.

- *Ecce faces belli, dubiaeque in proelia menti*
- *Urgentes addunt stimulus, cunctasque pudoris*
- *Rumpunt fata moras: justos Fortuna laborat*
- *Esse ducis motus, & causas invenit armis.*
- *Pharsal. Lib. I. ver. 262, &c seq.*

1

*Periculorum propter ipsa avidi.* Our Author reports the Sense rather than the Words, in this Place; for he had probably in View the Passage concerning *Cornelius Fuscus*. *Non tam praemiis periculorum, quam ipsis periculis, laetus.* Hist. Lib. II. Cap. LXXXVI. Num. 7. But Tacitus says elsewhere, only

*periculorum avidi*, Lib. III. Cap. XLI. Num. 4. and Lib. V. Cap. XIX. Num. 5. I find in Seneca an Expression implying the very same Thing, *Pereclitamur periculi causâ*. Quaest. Nat. Lib. V. Cap. XVIII. p. 778. Edit. Var. Elzevir.

2.

Ammianus Marcellinus says of the *Alani*, that they love Dangers and War, as much as pacifick Persons do Repose and Tranquillity, *Utque hominibus quietis & placidis otium est voluptabile, ita illos pericula juvant & bella*. Lib. XXXI. (Cap. II. p. 672. Edit. Vales. Gron.) Grotius.

3.

Θηριότης (Ethic. Nicomed. Lib. VII. Cap. I.) Grotius.

4.

*Possumus dicere, non esse hanc crudelitatem, sed feritatem cui, voluptati saevitia est, &c.* De Clementia, Lib. II. Cap. IV. He says elsewhere, speaking of *Apollodorus* and *Phalaris*, two most inhuman Tyrants, who delighted in shedding human Blood, without any Reason for it, that they could not be said to have acted purely and simply from Passion, but that what they did was the Effect of a brutal Ferocity: *Hi qui vulgo saeviunt, & sanguine humano gaudent, &c.* De Ira, Lib. II. Cap. V. Grotius.

a

*Eth. Nic.* 1. 10. c. 7. p. 138. tom. 2. Edit. Paris.

b

*Orat.* 37.

1

*Sed enim & bonarum possessor, &c.* Digest. Lib. V. Tit. III. *De haereditatis petitione*, Leg. XI. in fin. & XII. XIII. init. Such was the War of the *Heruli* against the *Lombards*, undertaken without Pretext. Πόλεμος ἀποφάσις, (as Procopius styles it, *De bello Gothic*. Lib. II. Cap. XIV.) Grotius.

a

*Rhet.* 1. 1. c. 3.

2.

*Romanis quaerentibus, & quid in Etruria rei Gallis esset? Quum illi se in armis jus ferre, & omnia fortium virorum esse, ferociter dicerent, &c.* Livy, Lib. V. Cap. XXXVI. Num. 5.

3.

- *Ductoremque feram, cui nunc pro foedere, proque*
- *Justitiâ est, Ensis — — —*
- *De bello Punic.* II. Lib. XI. ver. 183, 184.

4.

Our Author had, probably, in View what the Emperor Valentinian says in a Letter to *Theodorick*, as Jornandes relates, *Qui [Attila] causas praelii non requirit, sed quidquid commiserit, hoc putat esse legitimum.* De Goth. orig. & reb. gestis, Cap. XXXVI. Edit. Vulcan.

5.

It is a Passage in one of Seneca's Tragedies,

- —— *Quaeritur belli exitus,*
- *Non causa* ——
- Hercul. Fur. v. 407, 408.

6.

This is the Sense our Author gives to a Verse of Lucan which he uses here, without saying whose it is. But *Caesar*, whom the Poet introduces speaking in this Manner to his Soldiers, means, that the Gods would shew whose Cause was good, by making the Victory turn to that Side; so that the Application is not very just. The Original is

- *Haec, fato quae teste probet, quis justius arma*
- *Sumserit, haec acies victum factura nocentum est.*
- Pharsal. Lib. VII. ver. 259, 260.

In the same Manner a *Roman* Herald, declaring War against the *Samnites*, said, that the Gods who preside in War, would judge which of the two Nations had broken the Treaties. Dionysius Halicarnassensis, *Excerpt. Legat.* p. 705. Edit. Oxon.

7.

These are Tacitus's Words, and are cited before, in the *Preliminary Discourse*, § 3. Note 2.

8.

*Inferre bella finitimus, &c.* De civitat. Dei. Lib. IV. Cap. VI. in fin.

b

Lib. 2. c. 3.

9.

*Sed ea animi elatio, &c.* De Offic. Lib. I. (Cap. XIX.) Agathias treats those as insolent and abandoned, who, from the Love of Gain, or unreasonable Enmity, Possess themselves of other People's Land, without any just Subject of Complaint against them, Lib. II. (Cap. I.) Menander, *Protector*, gives us a remarkable Instance of this, in the Person of *Bagan*, Chagan (or Prince) of the *Avari*, who broke the Treaties he had made with the *Romans*, without so much as seeking any false Pretext to colour the Rupture. (Cap. XXI. Of the Embassies of *Justinian*, *Justin*, and *Tiberius*.) Grotius.

10.

(*Paraph. Ethic. Nicom.* Lib. IV. Cap. II. p. 202.) Philo the *Jew*, speaking also of Tyrants and ambitious Persons, excellently observes, that when they have the Power in their own Hands, and can assure

themselves of Impunity, they plunder whole Cities, and commit the greatest Robberies, under the specious Name of Government. *In Decalog.* (p. 763. C. D.) This agrees perfectly well with the Passages of Seneca, Quintus Curtius, Justin, and S. Austin, cited above, *Chap. I. § 1.* of this Book. Grotius.

1

The Historian says this of *Hannibal*, who sought Pretexts to quarrel with the Neighbours of *Saguntum*, *Quibus, quum adesset idem, qui litis erat sator, nec certamen juris, sed vim quaeri, adpareret, &c.* Lib. XXI. Cap. VI. Num. 2.

2.

*In Vit. Pyrrhi*, p. 389. E. Vol. I. *Edit. Wech.*

3.

See Pufendorf, *Law of Nature and Nations*, B. VIII. Chap. VI. § 4, 5.

a

Ch. 1. § 17. of this Book.

b

*Zonar.* tom. 2. ubi *de bell. Maced.* 1.

1

Pausanias, cited in the Margin by our Author, says, that *Lysimachus* was for preventing *Demetrius*, whom he knew to be as ambitious as his Father, *Lib. I. Cap. X. p. 9. Edit. Graec. Wech.* But we find immediately after, that *Lysimachus* took his Pretext from the Perfidy of *Demetrius* to *Alexander*, the Son of *Cassander*, whom he assassinated, that he might reign in his Stead in *Macedonia*. The *Romans* also alledged other Reasons in Justification of their War against *Philip*; which, however, were not much better. See the *Specimen Jurisprud. Hist.* of Mr. Buddeus, § 101. The Conjecture of Gronovius in this Place, in accusing our Author of having taken one Thing for another, has no Foundation. For our Author does not mean, that those Wars were undertaken to hinder a Neighbour from building a Fortress upon the Frontiers; that was said only by Way of Instance of what gives Umbrage; and it suffices, that those Wars had, either for their End or Pretext, the Prevention of an Evil apprehended from another. Now this is what Zonaras, cited in the Margin, expressly says of the War of the *Romans* against *Philip*. So that our Author had not in View what Livy says *Lib. XXXII. Cap. XXXVII. Num. 3.* as Gronovius supposes.

2.

*Populus [Chauci] inter Germanos nobilissimus, &c.* German. *Cap. XXXV. Num. 4, 5, 6.*

1

The commodious Situation of a Place, and its being proper to cover a Prince's Frontiers, are not lawful Causes for seizing it by Force of Arms. This is an instance alledged by the late Mr. Vitriarius, *Instit. Jur. Nat. & Gent.* Lib. II. Cap. XXII. § 3.

1

See above, *Chap. II.* of this Book, § 21.

2.

If we follow Apollodorus, this Example is ill applied. For, according to him, *Eurytus*, King of *Oechalia*, had promised his Daughter *Iole* in Marriage to him who could outshoot him and his Sons. *Hercules* presented himself, and having won the Prize proposed, *Eurytus* refused to let him have it: So that here was a Breach of Faith, for which *Hercules* had a Right to do himself Justice by Arms. *Biblioth. Lib. II. Cap. VI. § 1.* But our Author has followed Diodorus Siculus, who does not mention the Promise, and only says, that *Hercules* demanded *Iole* in Marriage, *Lib. IV. Cap. XXXI.*

3.

Our Author has, no Doubt, taken this from Justin. That Epitomiser says, that *Jancyres* (a Name very differently expressed by Authors) I say, that *Jancyres*, *Idantyres*, or *Indathyrses*, having refused to give his Daughter in Marriage to *Darius*, the latter declared War against him upon that Account. *Huic Darius Rex Persarum —— quum filiae ejus nuptias non obtinuisset, bellum intulit. Lib. II. Cap. V. Num. 9.* I perceive however, that Albericus Gentilis, whose Work our Author had before him, when he composed his own; relates this Example on the Authority of Jornandes, *Hist. Gotth.* (Cap. X.) and of Paulus Orosius, *Lib. II. Cap. VIII.* See the Treatise of that Civilian often cited, *De jure Belli*, *Lib. I. Cap. XX. p. 158.*

4.

And *Antoninus Caracalla*, against *Artabanus*, King of the *Parthians*. See *Xiphilinus*, (*Epit. Dion.* p. 356. *Edit. H. Steph.*) Grotius.

1

*Eadem semper causa Germanis, &c. Hist. Lib. IV. Cap. LXXIII. Num. 6.*

a

*Franc. Victor. de Indis*, *Select. 1. n. 31.*

a

*Idem, de bello*, n. 5, 6, 7, 8. & 1. 2. n. 18.

b

Ch. 3. § 6. of this Book.

1

Φύσει πολέμωι. See Plato, *De Republica*, (Lib. V. p. 470. C. Vol. II. *Edit. Steph.*) Aristotle, *Politic.* (Lib. I. Cap. II.) Euripides, *in Hecub.* [or rather *Iphigen. in Aulid.* ver. 1400, 1401.] Livy, *Lib. XXXI.* (Cap. XXIX. Num. 15.) Isocrates, *Orat. Panathen.* (p. 267. *Edit. Hen. Steph.*) Grotius.

See above, *Chap. XX. § 40. Note 10, and 11.*

c

Ch. 20. § 40. of this Book.

1

See the fourth Council of *Toledo*, and what we have said above in *Chap. IV. § 14.* of this Book. Grotius.

2.

See Pufendorf, *B. III. Chap. II. § 8. Law of Nature and Nations.*

3.

Albutius, & *philosophatus est; dixit, &c.* Seneca, *Controvers.* Lib. III. Cont. XXI.

4.

He does not say this of his own Head, but relates it as the Opinion of others, who believed that all Slavery is contrary to Nature, and consequently unjust. *Politic.* Lib. I. Cap. III.

a

*Franc. Victor. de Indis, n. 24. Ayala. de jure belli, l. 1. c. 2. n. 29.*

1

Mr. Barbeyrac adds, *And Idiots, (les Insensez)* because, says he, it is highly probable, that the Printers skipt over & *amentium*, from the Resemblance of the Word *infantium* which preceded. In § 10. our Author joins together Infants and Madmen.

a

*See Covar. in Cap. peccatum. part 2. § 9. n. 5.*

b

*Ad Leg. 24. Dig. De captiv. & postlim. &c.*

1

c

*See also the Council of Calcedon, Act. 11. and 12.*

2.

As Athanasius does also, in his Letters *Ad Solitarios*, and that was scarce the sixth Part of the then known World. Grotius.

The same Father says, *Rome* is the capital City of *Romania*. Vol. I. p. 832. C. *Edit. Colon. seu Lips.* 1686.

3.

Philo the *Jew* says, that the Countries between the *Euphrates* and the *Rhine* may be properly called the Earth, or habitable World. *De Legat. ad Cajum.* (p. 993. D. E.) Grotius.

d

*Luke ii. 1.*

4.

*Orbem jam totum victor Romanus habebat.*

Petron. *Satyr.* Cap. CXIX.

5.

*The Word Earth, tho' the Particle all be added to it, must be restrained to that Country the Discourse is of.* St. Jerom. Grotius.

See the late Mr. Reland's *Palestine*, Lib. I. Cap. V.

6.

Consult the *Geograph. Sac.* of the last cited Author, *Lib. I. Cap. X.*

e

*See Joseph. de bello Jud. 1. 3. c. 4.*

7.

The Authorities of the Antients upon this Head may be found in the same Part of Mr. Reland's Work.

8.

In the second Book of Dante Aligheri, *De Monarchia*, printed at *Basil* in the Year 1559, by *John Oporin.*

f

*See Aristot. Politic. 1. 7. c. 4.*

g

Sylvest. *verbo Bellum*, p. 1. n. 21. Covar. *ubi supra.*

9.

*Spain*, for Instance: Upon which see Gomez, in § *Fuerat*, Num. 5. *De Actionibus*. Panormitan, in Cap. *Venerabilem*, Col. 9. *De Electione*. Jason, in Leg. I. Cod. *De Summa Trin.* Col. 2. Menochius, *Consil.* II. Num. 102. Cardinal Tuschus, *Practic. Concl.* CCCXLV. § *Rex Hispan.* Du Moulin, *Cons. Paris.* Num. 20. *Princ.* Chassaneus, *De gloria Mundi*, Part. V. Considerat. XXVIII. Azorus, *Institut. Moral.* Lib. II. Cap. V. p. 2. Grotius.

a

See Franc. Victor. *De Indis, Relict.* 1. n. 21, &c. Ayala, l. 1. c. 11. n. 29.

1

Compare with this the Treatise of our Author, *De Imperio Summarum Potestatum circa Sacra.* Cap. IV.

b

John xviii. 36. See Petr. Damian, l. 4. *epist.* 9. and Bernard. *epist.* 220.

c

As Tostatus *admirably explains it, on Matt. ix.*

2.

*Audite erga Judaei & Gentes, &c.* In Joann. XVIII. 36. (*Tractat. CXV.*) St. Hillarius Arelatensis says, *For CHRIST did not come to invade another's Glory, but to bestow his own: Not to seize on an earthly, but to confer an heavenly, Kingdom.* Non enim ad hoc venerat CHRISTUS ut alienam invaderet gloriam, sed ut suam donaret; non ut regnum terrestre praeriperet, sed ut coeleste conferret. Grotius.

d

In Act. Apost. *hom.* 3. *In Epist. ad Tit.* 1. *to Thess. hom.* 4.

3.

His Words are in his second Book, *De Sacerdotibus*, Μάλιστα μὲν οὖν τοῖς χριστιανοῖς, &c. It is by no Means allowable for Christians to reform Offenders by Force and Violence. The secular Judges indeed, when they get Malefactors under their Jurisdiction, exercise a large Power over them, and make them, whether they will or no, amend their Manners: But as for us, we are to better People by Persuasion, and not by Compulsion. The Laws give us no such Authority to restrain Criminals; nor, if they did, could we put it in Execution, because GOD does not crown those who by Necessity abstain from their Vices, but who do it out of Choice: And therefore, there is a great Deal of Art and Industry to be used by us, that they who labour under such Distempers may voluntarily apply themselves to the Clergy for a Cure. And presently after, οὐ γὰρ ἐλκύσαι, &c. For we must not drag him by Force, nor necessitate him by Fear. And upon *Ephes.* iv. εἰς διδασκαλίαν, &c. Our Business is to teach and instruct; not to command and govern, but to persuade and advise: Now he who offers his Advice, says what he pleases, he does not compel his Hearer, but leaves him to his own Liberty and Discretion, of following his Advice or not. St. Ambrose, *Lib. I. De Cain & Abel,* Cap. IV. The Priest indeed tells the Man his Duty, but he exercises no Power and Authority over him. This is cited, C. Verbum. *De poenitent. Distinct.* I. Grotius.

Our Author has treated this Subject more at large in his Treatise *De Imperio Summarum Potestatum circa Sacra.* Cap. III. and IV.

4.

See the Passages cited by our Author in the Margin, and in his Treatise, *De Jure Summarum Potestatum circa Sacra*, (Cap. IV. § 7.)

5.

For it belongs to Princes and not to the Church, to determine about Fiefs. *C. Novit. de Judiciis, de Feudis, de Possessionibus. C. Causam quae inter qui Filii sint legitimi. For Kings allow no Superior in Temporals. C. per venerabilem, as before, Christ would have Christian Emperors be beholden to the Clergy for what regards an eternal Life, and the Clergy to make Use of the Emperor's Laws in what concerns their temporal Affairs, that so our spiritual Proceedings might have no clashing and interfering with those that are carnal, and that he who is engaged in the Service of GOD might not be involved in secular Matters.* C. quoniam distinct. x. and c. cum ad verum distinct. xcvi.

Not foreign to this is what we laid down in the last Section of these cond Chapter of the first Book, from the eighty second Apostolical Canon, and several other Passages there both in the Text and Notes upon that Subject. Grotius.

6.

Our Author intimates by this that if Ecclesiasticks, have any coactive Power, as they hold it from the Laws and the Sovereign, when they exercise it, they do not act as Ministers of the Gospel; they assume, if I may say so, another Personage, and become in that Regard Seculars. See again here our Author's Treatise, *De Jure Summarum Potestatum circa Sacra*. Cap. VIII. and IX.

7.

*Ut regi, sic Episcopo, &c.* Epistol. and Heliodor. *De Epitaphio Nepotian.* (Vol. I. p. 25. B. Edit. Froben.) In a Letter of one that was Captain of the Emperor's Life-Guard, to the Bishop, it is said, Let the Bishop instruct so as the Judge may find no Cause to punish: *Episcopus doceat, ne judex possit invenire quod puniat.* Cassiodor. Var. XI. 3. The Emperor Frederick Barbarossa says, in a Poem, speaking of the Pope: *Let him govern his Church, and make spiritual Regulations; but let him leave Empire and Civil Authority to us:*

- *Ecclesiam regat ille suam, divinaque jura,*
- *Temperet: imperium nobis fascesque relinquat.*

Gunther. *Ligurin.* When *William*, Bishop of *Roschild*, refused *Sueno*, King of *Denmark*, who was excommunicated, entrance into his Church, by opposing his Crosier against him, and the King's Officers upon that laid their Hands on their Swords, he did as a Bishop ought to do, and offered them his Neck. See what we have said upon this, *B. I. Chap. IV. § 5.* Grotius.

e

*Chap. 20. § 48. & seqq.*

1

See, concerning a Person named *Theodore*, in the Emperor *Gratian's* Time. Zosimus, (*Lib. IV. Cap. XIII. Edit. Cellar.*) And Ammianus Marcellinus, (*Lib. XXIX. Cap. I.*) and in Relation to *John of Cappadocia*, Procopius, *Persic.* Lib. II. (*Cap. XXX.*) See also Leunclavius, *Hist. Turc.* Lib. XVIII. Grotius.

We may add here what the celebrated Mr. Schulting says upon the *Receptae Sententiae* of Paulus the

Civilian, *Lib. V. Tit. XXI. § 1. Jurisprud. Ante-Justin*, p.502.

2.

For the Books of the Prophets are *closed up and sealed till the Time of the End*, so that they cannot be understood, *Dan. xii. 4, 8, 9.* St. Jerome upon Daniel. *If the Prophet heard and did not understand, what will they do who presume to declare what is contained in that sealed Book; a Book involved in numerous Obscurities till the Time of its Consummation?* Procopius, *Goth. Cap. II.* Τῶν γὰρ Σιβύλλης, &c. *I think it impossible for any Man to find out the Meaning of the Sibyls Oracles before the Event.* And presently, *ταῦτη τε ἀδύνατα, &c.* *It is impossible for any Man living to understand the Sibylline Oracles before their Accomplishment; for it is Time alone, which upon the Arrival of the Affair itself, and the Conclusion of what is predicted, can exactly tell what the Verse intended.* Gregoras, *Lib. V. ἀλλ’ ὥσπερ, &c.* *But as other Predictions are very difficultly guessed at and expounded, because they have a thousand Intricacies and various Explications till their actual Expiration, so this Oracle too deceived many, and even the Emperor Andronicus himself till his Decease, as it shall be related by and by. But when he was dead and gone, the Oracle discovered itself.* Have a Care then you who are Divines, that you be not too bold this Way: And do you who are Politicians have a Care, that you be not imposed on by such presumptuous Theologists. There is a Passage very well worth your viewing in Thuanus, *Lib. LXXIX.* at the Year 1583. about one *Jacobus Brocardus.* Grotius.

1

See Pufendorf, *B. III. Chap. III. § 4. Of the Law of Nature and Nations.*

2.

Our Author cites Nobody: But he has here in View, what Strabo says of *Ptolomy* the last King of *Cyprus*, who was deprived of his Kingdom by the *Romans*, for his ill Conduct and Ingratitude to his Benefactors. *Geogr. Lib. XIV. in fin. p. 1004. A. Edit Amstel.* (684. *Edit. Paris.*) But this War had still more unjust Causes, as well with Regard to *P. Clodius*, who brought the *Roman People* into it; as to the *Roman People* themselves. See Cicero, *Orat. pro Sext. Cap. XXVI.* Florus, *Lib. III. Cap. IX.* Dion Cassius *XXXVIII. p. 86, 87. Edit. Steph.* Appianus Alexandrinus, *De Bell. Civil. Lib. II. p. 728. Edit. Amstel.* (441. *H. Steph.*) Ammianus Marcellinus, *Lib. XIV. Cap. VIII. in fin. Edit. Vales. Gron.*

3.

See Pufendorf, *Law of Nature and Nations*, *B. III. Chap. III. § 17.*

a

*Franc. Victor. De Jure Belli, Num. 2.*

1

Which Vice insinuates itself the most, under the Appearance of Virtue. But as St. Austin well observes, it is much better to suffer as the greatest Coward, than to acquire Glory by such an use of Arms: *Satius est cuiuslibet inertiae poenas luere, quam illorum armorum gloriam quaerere.* *De Civit. Dei. Lib. III. Cap. XIV.* See the Passage of Agathias cited above, § 3. (Note 3.) Grotius.

But in the Passage referred to here, as well as in the other of St. Austin, the Question relates to Wars unjust in themselves.

2.

*Orat. II. De Societate, Vol. II. p. 256, 257.*

b

*Epist Mithr. ad Arsacen, Frag. Lib. 4. § 3.*

c

*Hist. Lib. 4. Cap. 74. n. 7.*

d

*Senec. Hipp. V. 540, 541.*

e

*Contra Faust. I. 22. c. 74.*

f

*Covar. in C. peccatum, Part 2. § 9. n. 2. Cajetan. 2. 2 Quaest. 40. Art 1. Sylvest. verb. Bellum, n. 2.  
Summa Ang. verb. Bellum, n. 5. Summ. Ros. ib. n. 3. & 8. Thom. Aquin. 2. 2 Qu. 66. Art. 8.*

## BOOK II: CHAPTER XXIII: *Of the dubious Causes of War.* ↵

[I. *From whence Causes of doubt in moral Matters proceed.*] I. What Aristotle says, holds very true, that we cannot expect<sup>1</sup> the same Degrees of Evidence, in Moral, as in Mathematical Sciences, because Mathematicians consider<sup>2</sup> Forms abstractedly from Matter, and Forms themselves are generally such<sup>3</sup> as will not admit of any Mean, as between strait and crooked there is nothing of a Medium to be found; but in *Ethics* the least Circumstances alter the Matter, and the Forms or Qualities treated of in such Sciences<sup>4</sup> have commonly some Mean coming [1116] between them, and of such an Extent, that they sometimes draw nearer to this, and sometimes to that Extream. So between what we ought, and what we ought not to do, there is a Medium, *viz.* that which is permitted, but it approaches sometimes nearer to one, sometimes to the other Extream; whence we are often at a stand to know, which of the Extreams it has the nearer Alliance to, as in a Twilight, or Lukewarm Water, and this is what<sup>5</sup> Aristotle says, ἔστι δὲ χαλεπὸν, &c. *It is often difficult to judge which Side to take.* Andronicus Rhodius explains it thus, τὸ κατ' ἀλήθειαν, &c.<sup>a</sup> *It is hard to distinguish what is really just, from what appears to be so.*

[II. *We are to do nothing against our Conscience, tho' it be erroneous.*] II. 1. But this we are first to take notice of, that tho' an Action be in itself lawful, yet if upon weighing all its Circumstances, he who performs it is of Opinion that it is unlawful, that Action is vicious and bad; and this is what St. Paul means in asserting, *Rom. xiv. 23.* that *whatsoever is not of Faith is Sin;*<sup>1</sup> in which Passage Faith is taken for the Judgment which a Man passes upon a Thing; for GOD has given us a distinguishing Power, called Conscience, conformable to whose Dictates we are to square our Actions, and whenever we neglect and contemn its Suggestions, our Minds degenerate and become brutish.

2. But it often comes to pass, that the Judgment can afford no Certainty, but hangs in Suspence and Doubt,<sup>a</sup> which if, upon thorough [1117] Consideration, we cannot be satisfied in, Cicero's Direction will not be amiss,<sup>2</sup> who forbids us to *do any Thing,*<sup>3</sup> whilst we are in doubt whether we shall do well or ill. The Hebrew Rabbins give [484] us this Caution,<sup>b</sup> *forbear what is doubtful;* but this Advice cannot take Place, when a Man is as it were forced to do one or the other, and yet doubts of the Lawfulness of either; for in that Case he is to chuse the safer Side, that which he thinks to be least unjust;<sup>4</sup> for at all Times when we are under a Necessity of chusing, then the lesser Evil puts on the Form of Good; *of two Evils we must take the least,* says Aristotle;<sup>5</sup> and Cicero<sup>6</sup> advises the same; and Quintilian<sup>7</sup> tells us, that *if we compare Evils together, the smallest holds the Place of Good.*

[III. *That our Resolutions are determined by Reasons drawn from this Thing itself.*] III. But in doubtful Points, generally speaking, when the Mind has made some Examination, it does not hover any longer, in a Suspence and Equilibrium, but is drawn to one Side or the other,<sup>1</sup> by Arguments deduced from the Thing itself, or by the good Opinion it entertains of other Men, who have declared themselves upon that Affair. For here that true Saying of<sup>2</sup> Hesiod takes Place, *It is best to see with one's own Eyes, and to be guided [1118] by one's self, and next to that, where Knowledge is wanting, to be guided by the Judgment of another.* As for the Arguments deduced from the Thing itself, they are taken from the Causes, the Effects, and other Circumstances.

[IV. *Or by the Authority of others.*] IV. 1. But for our right Understanding of these Things, some Ingenuity and Experience are necessary, and those who want these Qualifications<sup>a</sup> must listen to the Directions of wiser Men in order to regulate their Judgment in Practice. For according to<sup>1</sup> Aristotle Things are probable, when all the World agree to them, or the Generality of the World, or at least the Men of Understanding; and again, when either all these Men of Understanding, or the Majority of them, or however the most Eminent agree to them. And this way of judging is what Princes chiefly make use of,<sup>2</sup> who can hardly afford Time enough to learn and examine by themselves the most

subtle Points of Arts and Sciences.

[1119]

- Σοφοὶ τύραννοι τῶν σοφῶν συνουσίᾳ.
- *Princes are from their Conversation wise.*

[3](#) Aristides in his Harangue to the *Rhodians* upon Concord tells them, that, as when [485] a Fact is in dispute, that which has the greatest Number of, and those the most credible Witnesses to assert it, is held for Truth, so in Matters of Practice, where Opinions are different, those are the safest to be entertained and followed, which rely upon the Authority of the most numerous and judicious. Thus the old *Romans* first advised with the [4](#) College of certain Priests (*Feciales*) established for that Purpose before they declared War against any Nation, and the Christian Emperors seldom or never undertook one without consulting their [5](#) Bishops; to the End that if there was any Thing that could raise any Scruple, they might be warned and advertised of it.

**[V. If a Scruple arise in a Matter of Importance, on both Sides of the Question, and we are obliged to determine one way or other, we must choose the safest Resolution.]** V. 1. But it may happen in several Controversies, that the Argument on both Sides may seem probable, as well from the Reason of the Thing itself, as from the Authority of others, and when it so falls out, if the Cases in Question be inconsiderable and of indifferent Concern, either Side may be adhered to, and the Judgment be blameless. But if the Matter in Hand be of great Moment, such as the putting a Man to Death, [1120] then on account of the vast Difference between the Things to be chosen, the safest Side is preferable, according to the usual Saying,

- [1](#)*If you must err, err as little as you can.*

And therefore it is better to run the Hazard of acquitting a Criminal, than of condemning the Innocent.

2. The Author of those Problems that go under [2](#) Aristotle's Name, says, *There is none of us all, who would not sooner clear the Guilty, than condemn the Innocent;* and he adds this which we have mentioned before as his Reason, ἔστι γὰρ, &c. *For when a Man is in a doubt, he is to chuse that Side where there is the least Fault.* Parallel to this is the Saying of Antiphon, εἰ δέον, &c. [a](#) *If we must do amiss, it is better to pardon tho' unjustly, than to condemn wrongfully; for by the former we are only guilty of a Mistake, by the latter of a horrid Crime.*

**[VI. Whence it follows that we are not in such a Case to declare for War.]** VI. Now War is a Matter of the weightiest Importance, since it commonly brings many Calamities, even upon the Innocent, and therefore when there are Reasons on both Sides of the Question, we ought to incline to Peace. *Fabius* is on this Account much commended by *Silius Italicus*, [1](#) who gives the following Character of him:

[1121]

- *With Caution he proceeds and wisely weighs*
- *Each future Hazard; thus he nor eager*
- *Nor forward is for slight uncertain Wrongs*
- *To rouse up bloody Mars.*

Now there are three Ways whereby Misunderstandings among Princes may be accommodated without a War.

[VII. *For this may be avoided by a Conference.*] VII. 1. The first is by a Conference: *There being two Sorts of disputing in the World*, says [1](#) Cicero, *the one by Reason, the other by Force, that agreeable to the Nature of Man, and this to Brutes, we ought never to have recourse to the latter*, [486] *but when we cannot redress our Grievances by the former. A Man of Prudence and Discretion*, says [a](#) Terence, [2](#) *would try every Method rather than that of Compulsion; how do you know but that he may do it without any Force at all. Apollonius Rhodius speaks to the same Effect*, μηδ' αὐτως, &c. [b](#) Try first with Words, before you go to Blows; and Euripides,

- Λόγοισι πείσων· εἰ δὲ μὴ βίᾳ δορός;
- I'll do it by Words; if not, by Force of Arms.

And in his Suplicants he blames the States that neglected this Means of Accommodation.

[1122]

- *What Words alone might easily decide*
- *You to the Sword's Determination leave.*
- Ver. 748, 749.

And Achilles in his Tragedy of *Iphigenia at Aulis*:

- *If he submits to Justice you've no need*
- *Of my Assistance, you are then secure,*
- *And I the Favour of my Friend preserve:*
- *Nor can the Army blame me if I gain*
- *My Point by Reason rather than by Force.*
- Ver. 1017, &c.

The very same we read in Euripides's *Phoenissae*.

- Πᾶν γὰρ ἔξαιρει λόγος
- Ό καὶ σίδηρος πολεμών δράσειν ἄν.
- *For all the hostile Sword can do,*
- *By Conference is done as well.*
- Ver. 518, &c.

Pheneas in Livy makes this Improvement of it,[3](#) *Men for preventing of War do allow of several Things which by force of Arms they could not be compelled to. And Mardonius in Herodotus's Polymnia taxes the Greeks upon this Score: τοῦς χρῆν, &c.* [c](#) *Whose Duty it was, since they were of the same Language, to have endeavoured to compose their Differences by the Mediation of Heralds and Embassadors, rather than by the Point of their Swords.*

2. Coriolanus in Dionysius Halicarnassensis, says τὸ μὴ, &c. [d](#) *If any Body without desiring what is another's Property, only sues for his own, and being not able to obtain it does thereupon declare War, all the World will acknowledge that War to be just. King Tullus in the same Author maintains.* [e](#) *that what cannot be accommodated by fair Means must be decided by foul ones. I must profess, says Vologeses in Tacitus.* [f](#) *I had rather keep the Conquests my Ancestors have left me, by Justice than by the Effusion of Blood, by a Conference than by Force of Arms. And King Theodorick takes* [1123] *Notice* [g](#) *that it is then only our Interest to run to Arms, when we cannot otherwise have Justice done us by our Enemies.*

**[VIII. Or by Arbitration; whereof the Duty of Christian Kings in respect of the Parties at War.] VIII.**

1. The second way to prevent War between those, who, not belonging to the same Jurisdiction, have no common Judge to appeal to, is<sup>1</sup> to put the Matter to [487] Arbitration: ἐπὶ τὸν δίκας, &c. says *Thucydides*, [1124] *It is barbarous and abominable to fall upon him as an Enemy, who is willing to put his Case to Reference*. So *Diodorus*<sup>a</sup> relates that *Adrastus* and *Amphiaraus* submitted the Determination of the Crown of Argos to the Judgment of *Eriphyle*. Five *Lacedemonian*<sup>b</sup> Umpires were chosen between the *Athenians* and *Megarenses* to settle the Right of the Island of *Salamis*. The forementioned *Thucydides*<sup>c</sup> tells us that the *Corcyreans* notified to the *Corinthians*, that they were ready to refer the Matter in Controversy to such Cities of *Peloponnesus*, they should agree upon. And *Pericles* is extolled by<sup>3</sup> *Aristides*, that for the Prevention of War δίκη, &c. *he offered to refer himself*. And *Isocrates* in his Oration against *Ctesiphon*, reckons this amongst King<sup>4</sup> *Philip*'s Commendations, [1125] *That he was ready to refer the Differences which he had with the Athenians to any disinterested and impartial State.* [488]

2. Thus did the *Ardeates*<sup>d</sup> and *Arcinians* formerly, and after them the *Neapolitans*<sup>e</sup> and *Nolans*, who submitted all their Matters in Dispute to the Determination of the *Romans*; and the<sup>f</sup> *Samnites* in their Variance with the *Romans* appeal to their common Friends. *Cyruse*<sup>e</sup> refers the Point between him and the King of Assyria to the *Indian King*. The *Carthaginians* for avoiding War about the Controversies with<sup>g</sup> *Masinissa*, appeal to Judgment. And the *Romans* themselves, as to their Differences with the *Samnites*, (according to<sup>8</sup> *Livy*) do so to those they were both in Alliance with. *Philip of Macedon* would have his Disputes with the *Grecians* ended after the same Manner. *Pompey* allowed Arbiters to the *Parthians* and *Armenians*, when they<sup>f</sup> demanded it, for regulating [1126] their Bounds and Limits. *Plutarch* tells us,<sup>9</sup> *That it was the principal Business of the Roman Priests, called Feciales, to prevent the coming to a War, till all Hope of Accommodation by Means of Arbitrators was lost*. *Strabo* says of the<sup>10</sup> *Druids* in *Gaul*: *That in former Times they were the Umpires between Nations at War, and had often accommodated Matters upon the very Point of an Engagement*. The same Author records,<sup>g</sup> that the Priests in *Spain* did use to do the same.

3. But much more are Christian Kings<sup>11</sup> and States obliged<sup>h</sup> to take this Method for the Prevention of War and Bloodshed; for if certain Arbitrators were constituted both by *Jews* and Christians to prevent their going to Law in Infidel Courts, and the same was expressly commanded by *St. Paul*, 1 Cor. vi. &c. how much more should we be inclined to it, for the avoiding of a much greater Inconvenience, which is War? It is from hence that *Tertullian* argues that<sup>12</sup> *A Christian must not bear Arms, since he is not so much as allowed to commence a Law Suit*; which Expressions, as it was observed in another<sup>i</sup> Place, are to be taken in a qualified Sense.

4. And for this, as well as several other Reasons, it would be not only convenient, but somewhat necessary that Congresses of Christian States were held, where, by them who are no ways interested on one Side or other, the Differences of contending Parties might be made up; and<sup>k</sup> that some Means were thought upon<sup>13</sup> to oblige the Parties at Variance to accept of a Peace upon fair and reasonable Terms: And that this very [1127] Business<sup>14</sup> was the *Druids* Employment<sup>15</sup> formerly among the *Gauls* is what *Diodorus*<sup>l</sup> and *Strabon*<sup>m</sup> inform us. And we read too that the Kings of *France* referred the Division of their Kingdom to their<sup>16</sup> Nobles. [489]

**[IX. Or by casting of Lots.] IX.** The third Way to prevent War is to determine Differences<sup>1</sup> by casting Lots: Which Method *Dion Chrysostom* highly approves of in his second Oration in *Fortunam*, and before his Time<sup>2</sup> *Solomon*, Prov. xviii. 18.

**[X. Whether Duelling may be allowed for preventing War.] X.** 1. Something like this is<sup>1</sup> Duelling, a Custom which is not altogether to be rejected, if two Antagonists,<sup>2</sup> whose Disputes would otherwise

involve whole Nations in Misery and Ruin, are willing to decide the [1128] Matter themselves by the Sword, as *Hyllusa* and *Echemus* formerly did about *Peloponnesus*; *Hyperochus*<sup>b</sup> and *Phemius* about a Province near *Inachus*; *Pyraechma*, the *Aetolian*, and *Degmenus* the *Epean* about<sup>c</sup> *Elis*; *Cerbis* and *Orsua* about<sup>d</sup> *Iba*: For the People may accept of this way of Determination (if it be not justifiable in the Champions themselves) as being the lesser Evil. *Metius* in *Livy* thus addresses himself to<sup>e</sup> *Tullus*, *Let us make use of some compendious Way of deciding which of us shall sway the Scepter*, with as little Bloodshed as possible. *Strabo*<sup>f</sup> records this as an antient Custom of the *Greeks*, and *Aeneas*<sup>g</sup> in *Virgil* pronounced it justifiable, that the Matter depending between him and *Turnus* should be so determined.

2. *Agathias* in his first Book, where he describes the Manners of the antient *Gauls*, does in particular extreamly commend this Custom; his Words, as being very remarkable, I shall set down at large:<sup>h</sup> *If any Difference happen between their Princes, to Arms they immediately go, as tho' they were resolved to have the Matter determined by the Sword; on they march, but when the Armies advance near one another, laying aside all Animosity, [1129] they enter into Sentiments of Peace, and tell their Kings either to make up the Difference, or to fight it out in single Combat, and so end the Dispute at the Hazard of their own Lives: It being neither agreeable to Reason nor the Usage of their Country, that their Kings, on Account of their private Piques and Quarrels, should embroil, or overturn the State. They therefore presently disband their Armies, and enjoy a free and peaceable Commerce, being perfectly reconciled. So great a Regard for Justice and such an Affection for their Country had those Subjects, so tender and condescending was the Temper of their Kings.*

[XI. *That the Person in Possession has the better of it, where the Case is equally doubtful.*] XI. But tho' in a doubtful Case both Sides are obliged to endeavour after Terms of Peace, to avoid the Mischiefs consequent upon War, yet does this concern him who makes the Demand, more than him who is in actual Possession.<sup>a</sup> As in all Cases of equal Claim the Possessor has the better Title,<sup>1</sup> not only by a Civil, but also by a natural Right: The Reason of this has been already<sup>2</sup> laid down out of the Problems ascribed to *Aristotle*. And here we must further add,<sup>b</sup> that he, who is satisfied in the Justice of his own Cause, but cannot produce sufficient Evidence, [490] whereby to convince the present Occupant of the Injustice of his, cannot lawfully declare War, because he has no Right to force his Adversary to quit his Possession.

[XII. *If neither be in Possession where the Case is equally dubious the Thing depending may be divided.*] XII. Where the Title is doubtful and<sup>a</sup> neither Party in actual Possession, or both equally, there he shall be reputed the unjust Person who refuses to accept the Half of the Thing in Controversy, when it is tendered to him.

[1130]

XIII. 1. From what has been premised, That *much controverted* Question may be easily solved,<sup>a</sup> *Whether War can be just and lawful on both Sides, with Respect to the chief and principal Authors of it.*<sup>1</sup> [XIII. *Whether a War may be just on both Sides, explained by several Distinctions.*] Here we must distinguish the different Acceptations of the Word *Just*. A Thing may be termed *just*, either from its Cause, or according to the Effects it produces. Again in respect of the Cause, either as Justice is taken in a particular Sense, or in that general Signification under which are comprehended all Sorts of Rectitude. Further, this strict and special Acceptation of the Word *Justice*, is divided into that which regards the Action, and that which regards the Agent.<sup>2</sup> The first Sort of Justice may be called *positive*, and the other *negative*. For the Agent is said sometimes to act justly whilst he acts not unjustly, tho' that which he acts be not just, as *Aristotle*<sup>3</sup> very judiciously distinguishes between τὸ ἀδικεῖν, and τὸ ἀδίκον παράττειν, *to do unjustly, and to do that which is unjust*.

2. In the particular Acceptation of the Word, and as it regards the Action itself, War cannot be<sup>b</sup> just on both Sides, nor can any Law Suit be so, because the very Nature of the Thing does not permit one to have a moral Power, or true Right, to two contrary Things, as suppose *to do a Thing, and to hinder the doing of it*. But it may happen that neither of the Parties in War acts unjustly. For no Man acts unjustly, but he who is conscious that what he does is unjust; and this is what many are ignorant of. So People may justly, that is, may honestly and fairly go to War. Because Men are very frequently unacquainted with several Things, both as to Matter of Right, and as to the Fact, from whence Right proceeds.

[1131]

3. In the general Sense and Meaning of the Word, it bears the Name of *Just*, when the Agent is for his Part in no manner of Fault.<sup>c</sup> For there are many Things done without Right, when at the same Time no Blame can be charged on the Agent, on account of an inevitable Ignorance: An Instance of this we have in those who do not conform themselves to a Law, which without any Fault of theirs they are Strangers to, tho' that Law has been published, and so long too that they had Time enough to have been acquainted with it. Thus also it may happen in Law Suits, that both Parties may be free from Injustice or any other Fault; especially if the Plaintiff and Defendant, or either of them, has a Suit depending, not in his own, but in another's Name; as suppose, he be a Guardian, whose Business it is not to abandon any Right of his Ward's, tho' never so uncertain. So Aristotle affirms,<sup>d</sup> that in Contests about a Right that is really disputable, neither of the Parties is to blame, which he expresses by πονηρὸς, wicked or malicious, Quintilian<sup>e</sup> is of the same Mind, when he says, that *a Counsellor may honestly plead on either Side*. And Aristotle adds, that to assert that a<sup>f</sup> Judge pronounces a just Sentence, is an equivocal Expression; for it may be taken either as he judges, ως δει^, intirely as he ought, without any Ignorance, or as he judges, κατὰ τὴν ἑαυτοῦ γνώμην, According to the best of his Capacity and his real Thoughts of the Matter. And in another Place he says,<sup>g</sup> If he determined it out of Ignorance, he has not acted unjustly.

4. But in a War it is scarce possible, but that Rashness and want of Charity will be there, on account of the great Importance of the Affair, [1132] which is indeed of [491] such a Nature as to require not Reasons barely warrantable, but the clearest Evidences in the World.

5. But if we construe the Word *Just*, as it respects some Effects of Right, it is plain that War in this Sense may be on both Sides just, as it will be made out by what we shall lay down by and by concerning a publick War, in form. In the same Manner as a wrong Sentence, and an unjust Possession have some<sup>h</sup> Effects of Right.

## Endnotes

1

See the Passage related at large in Pufendorf, *Law of Nature and Nations*, B. I. Chap. II. § 1. and what I have said in the Notes upon that Paragraph.

2.

Pufendorf has examined this in the last cited Chapter, § 9. All that our Author says, proves only, that the Application of the Principles of Morality to particular Cases is often very difficult. See my Preface to the same Work of Pufendorf, § 3. *Num. 3.*

### 3.

In this Sort of Forms, the Change is made Εἰς τὸ ἀντικείμενον, from one Extremity to the other: Whereas in Moral Things, it is εἰς τὸ μεταξὺ, by a *Medium*. Grotius.

### 4.

See St. Chrysostom upon *Ephesians* iv. and Aristotle, *Magn. Moral.* (Lib. I. Cap. IX.) Grotius.

I have supplied here the latter Citation by guess, of which the Author is omitted in the Original, where the Note stands thus: *Vide Chrysostomum ad IV. Ephesiorum. II. Morali.* I imagined the Printers had skipped the Word *Aristot.* and then put II. for I. For I find in the Chapter of the Book which I have referred to, something agreeable enough to the Subject; the Philosopher there shewing, that Vices are sometimes more and sometimes less remote from the Mean, [*Medium*] in which he makes Virtue consist. In my *Latin Edition*, I conjectured, that the Name omitted was *Azorium*, the Schoolman, whose *Institutiones Morales*, cited elsewhere by our Author, are extant. But I have not the Book, to see whether that Conjecture be better founded than the other, to which I shall therefore keep. The Thing is indeed of little Importance.

### 5.

"Ἐστι δὲ χαλεπὸν, &c. *Ethic. Nicom.* Lib. III. Cap. I.

#### a

*Lib. 1. c. 3. p. 10.*

#### 1

To the same Purpose are the following Expressions in the same Chapter of that Epistle of St. Paul, ἔκαστος ἐν τῷ ἴδιῳ νοὶ πληροφορείσθω, *Let every Man be fully persuaded in his own Mind*, And μακάριος ὁ μὴ κρίνων Ἐαυτὸν ἐν φῷ δοκιμάζει, *Happy is he that condemneth not himself in that Thing which he alloweth*. St. Ambrose. *Whatever is done contrary to the Approbation of the Judgment, is Sin.* St. Austin is of the same Mind; they are both quoted by Gratian after *Chap. XIV. Caus. XXVIII. Quaest. I.* Not very foreign to this is that of Plutarch in his *Timoleon*, δεῖ οὐ μόνον, &c. *For an Action must not only be good and just in itself, but the Persuasion upon which it is grounded must be firm and constant, that so we may do it out of Principle and Conviction.* Grotius.

To this may be added, what our Author says in his *Votum pro pace Ecclesiastica*, Ad Attic. XXI. p. 71. & seq. Edit. 1642.

#### a

See *Covar. Tom. 1. De Matrimon.* Part 2. c. 7. § 2. n. 9. & seqq.

### 2.

*Bene praecipiunt, qui vetant quidquam agere, quod dubites, aequum sit an iniquum.* De Offic. Lib. I. Cap. IX. See Pufendorf upon this, *Lib. I. Cap. III. § 8. Law of Nature and Nations.*

### 3.

And Pliny the younger: *Aut si tutius putas, illud cautissimi cuiusque praeceptum: Quod dubitas ne feceris, id ipsum rescribe*, Lib. I. Epist. XVIII.

b

*R. Gamaliel*, in *Perke Aboth*, p. 14. Ed. P. Fagii.

4.

This requires to be rectified. See the Place in Pufendorf which I have cited in the second Note of this Paragraph.

5.

*Ethic. Nicomed.* Lib. II. Cap. IX. p. 27. Vol. II. *Edit. Paris.*

6.

*Sed quia sic ab hominibus doctis, &c.* *De Offic.* Lib. III. Cap. I.

7.

Nam in comparatione malorum, &c. *Instit. Orat. Lib. VII. Cap. IV.* p. 626. *Edit. Burman.*

1

St. Austin says, *Lib. III. De Ordine. When the Obscurity of an Affair perplexes us, here are two Ways for us to go, either to follow our own Reason, or some other's Authority.* This is explained by Gabriel Vasquez, *Disput. LXII. Chap. III. Num. 10.* See also Medina I. 2 *Quaest. XIV.* Grotius.

2.

- Οὗτος μὲν πανάριστος, &c.

The Poet adds, he who wants Understanding himself, and will not follow that of others, is a worthless Wretch:

- Ὁς δέ κε μήτ' αὐτὸς νόει, &c.

(*Oper. & Dier. Ver. 293. & seqq. Edit. Cleric.*) This Thought has been copied by Livy, who puts it into the Mouth of *Minutius* speaking to his Soldiers: *Saepe ego audivi, Milites, eum, primum esse virum, qui ipse consulat quid in rem sit; secundum eum, qui bene monenti obediatur: Qui nec ipse consulere, nec alteri parere sciat, eum extremi ingenii esse.* *Lib. XXII. (Cap. XXIX. Num. 8.) Cicero* has also borrowed it: *All the World allows him to be the wisest Man, who can himself judge what is most expedient and necessary, and that he is next to him who conforms to the good Counsels of another.* *Sapientissimum esse dicunt eum, cui, quod opus sit, veniat in mentem: proximè accedere illum, qui alterius bene inventis obtemperet.* *Orat. pro Client. (Cap. XXXI.) Grotius.*

a

*Franc. Victor. De Indis, Select. 1. n. 12. and De Jure Belli, n. 21. and 24.*

1

*Topic. Lib. I. Cap. I.*

2.

*Quibus artium momenta ediscere aut expendere vix vacat.* Our Author has here imitated what Cicero says in regard to *Cato Major*, *Et primum M. Catoni vitam ad certam rationis normam dirigenti, & diligentissimè perpendenti Momenta Officiorum omnium, de officio respondebo*. Orat. pro Muren. Cap: II. He cites here the Greek Verse in the Text without saying from whence he took it.

- Σοφοὶ τύραννοί, &c.

That is; *The Conversation of wise Men makes Princes wise*. This is an antient proverbial Sentence, as Aulus Gellius tells us, *Noct. Attic. Lib. XIII. Cap. XVIII.* upon which the Commentators may be consulted, who however have not observed, that Stobaeus, *Serm. XLVIII.* cites it as from Euripides; and others, as from Sophocles, as appears from the *Excerpta ex Trag. & Comoed. Graecis* of our Author, p. 122. As to the Thing itself, it is but too true, that the Great in general, and especially Princes, see little with their own Eyes, and rely upon those of others. But this proceeds not from the Want of Time or Means of being instructed by themselves in the Affairs, of which they are obliged to judge. If they were well educated, and would employ as many Hours for that Purpose, as they devote to Pleasures and frivolous Occupations; they would have all the Leisure necessary to enable them to judge for themselves, in acquiring sufficient Knowledge: And they generally have all the necessary Means in their own Hands, if they would vouchsafe to use them.

3.

*Vol. II. p. 378. bc*

4.

See the Dissertation of Mr. Jensius, *De Fetialibus*, in his *Ferculum Literarium*, printed 1717.

5.

But were those Bishops to know better than the Emperors, what related to so important a Part of the Power and Duty of Sovereigns? Have Ecclesiasticks, or ought they to have, a sufficient Knowledge in political Affairs to determine, when War ought, or ought not, to be made? If we consider the Temper that many amongst them have been of in all Ages, there is more Reason to fear that they would engage a Prince in unjust and rash Wars. The History of such of them as have been Ministers of State sufficiently proves this.

1

*Verum in istam partem potius peccato tamen.* [Terent. *Adelphi*. Act II. Scen. I. Ver. 20.] Ammianus Marcellinus, [or rather Cicero, *Epist. ad Quint. Fratr. I. 1.* cited by that Historian] says, that a Facility to be angry and to be appeased is better than implacable Wrath, and that therefore the former Vice is preferable to the latter, as the least of two Evils: *Interdum enim exoratus parcebat aliquibus, &c.* Lib. XXVIII. (Cap. I. p. 562. *Edit. Vales. Gron.*) See Gabriel Vasquez, *Disput. LXII. Cap. IV. Num. 21.* Grotius.

2.

"Ετι δὲ ἔκαστος ἡμῶν μᾶλλον ἀν προέλοιτο τοῦ ἀδικοῦντος (it should be read so instead of μὴ

ἀδικοῦντος) ἀποψηφίσασθαι ως οὐκ ἀδικεῖ, ἡ τοῦ μὴ (it is here the μὴ should be added, which is wrong placed in the preceding Line) ἀδικοῦντος καταψηφίσασθαι ως ἀδικεῖ, &c. Sect. XXIX. Num. 13. Grotius.

See Pufendorf, B. I. Chap. III. § 6. Note 3. of the second Edition.

a

Orat. 14. 15. p. 133. Edit. Wech.

1

He says,

- *Ast Fabius cauta speculator mente futuri,*
- *Nec laetus dubiis, parcusque lacessere Martem.*
- *Punic. Lib. I. Ver. 679, 680. Edit. Cellar.*

1

*Nam, quum sint duo genera decertandi, &c. De Offic. Lib. I. Cap. XI.*

a

*Eunuch. Act. 4. Scen. 7. V. 19, 20.*

2.

Dionysius Halicarnassensis, in *Excerpt. legat.* μὴ πρότερον ἄρξαι, &c. *We must not proceed to Deeds before we have tried what Words can do.* And Menelaus in Libanius, πρῶτον μὲν, &c. *For it is more agreeable to human Nature, to attempt by Reason and Argument to have Justice done one, than immediately to fly to Arms.* Not very different from this are those Reflections of the Chorus in Euripides's *Helena*.

- Τὸ Θεῶν
- Ἔπος ἀληθὲς εὑρόν,
- Ἀφρονες, &c.
- *What the Gods say I always found was Truth.*
- *For none but Fools and Madmen e'er would seek*
- *Or Rest or Virtue from the bloody Points*
- *Of Sword and Spear: For if human Mis'ries*
- *By these should be determin'd, War and Contention*
- *Would every City, every State infest.*
- Grotius.

b

*Argon. I. 3. v. 185.*

3.

(*Lib. XXXV. Cap. XLV. Num. 4.*) Donatus ad Eunuchum: *For it is an Observation almost to a Proverb, That what a Man will stand up for, and maintain with all his Might and Main when you would force it from him, he will generously part with, when you quit your Pretensions.* Grotius.

c

*Lib. 7. cap. 9. n. 2. Ed. Gronov.*

d

*Antiq. Rom. 1. 8. c. 8. p. 468. Edit. Oxon. 487. Sylb.*

e

*Lib. 3. c. 11. in fin.*

f

*Annal. 1. 15. c. 2. n. 3.*

g

*Cassiodor. Var. iii. 1.*

1

A Method indeed generally slighted by the more potent. See Connestagius about the Union of the two Crowns of *Castile* and *Portugal*: but this is a Way that ought to be taken by those who have any Regard to Justice and Peace. Several great Princes and People mentioned in the Text, have done it. Let us subjoin a few more. The Contest between *Magnus* and *Canutus*, Kings of *Norway* and *Denmark*, each of them laying Claim to both Crowns, was put to Arbitration: Just as *Julian*, the first of that Name, finding that *Severus* disputed with him the Empire, would have a Decree about the Possession. *Magnus* King of *Sweden* was chosen Umpire between the two *Ericks* Kings of *Denmark* and *Norway*. Five *Spartans*, *Critoliadas*, *Amompharetus*, *Hipsechidas*, *Anaxilas*, *Cleomenes*, were elected Judges of the Controversy of the *Athenians* and *Magarenses* about *Salamis*. In the Treaty of the *Lacedemonians* and the *Argives* in Thucydides V. δίκας δίδοντας κατὰ πάτρια, *willing, as the Custom of their Ancestors was, to compromise the Matter*. And again, εἰ δὲ τὶς τῶν, &c. *If any Dispute should happen between two States in Alliance, let them refer their Cause to some other State that is indifferent to them both.* You have both these Passages in Thucydides, *Lib. V.* Several Nations independent of the *Roman Empire* to avoid entring into Wars, took *Marcus Antoninus* for the Arbitrator of their Controversies. Victor and others take Notice of this. In Procopius, *Gotthic. III.* the *Gepidae* say to the *Lombards*, δίκη γὰρ διαλύειν, &c. *For we for our Parts are ready to have our Differences concluded by Arbitration; and it is by no Means reasonable to offer Violence to those who are desirous to be determined by a Reference.* And in *Gotthic. IV.* *Theudibaldus* King of *Austrasia*, declares himself ready to submit his Dispute with the *Romans* to Judgment. See too what the *Romans* signified to *Philip*, in Polybius, *Excerpt. legat.* Num. 4. And what there is in *Antiochus's* Treaty out of the same Polybius, in *Excerpt.* Num. 35. The King of *England* was Judge of the Succession to the Crown of *Scotland*, and the Count of *Holstein* between the King of *Denmark* and his Brothers, as Pontanus relates it. *Hist. Dan. Lib. VII.* Add to these some Instances in *Mariana, Lib. XXIV. Chap. XX. Lib. XXIX. Chap. XXIII.* in *Paruta, Lib. VII.* and *XI.* in *Bizarus, Lib. XII.* *Crantzius, Lib. VI. Saxon. Cap. XV.* and what we say below, *B. III. Chap. XX. § 46. Grotius.*

In this Note our Author thro' Inadvertency ascribes to *Marcus Antoninus the Philosopher* what the Historians say of *Antoninus Pius*: For there is nothing like this related of the first of those Emperors. Aurelius Victor or he whom our Author cites under that Name, which is generally given him, says of the other, *Adeo trementibus eum, [Antoninum Pium] atque amantibus cunctis Regibus, Nationibusque, & Populis, ut Parentem, seu Patronum, magis quam Dominum, Imperatoremve reputarent: Omnesque uno ore, in coelestium morem, propitium optantes, de controversiis inter se judicem poscerent.*

Epitom. Cap. XV. Num. 3. See also Eutropius, *Breviar. Lib. VIII. Cap. IV. Suidas, Lexic. in voc.*

Ἀντωνίῳ: Capitolin. in *Antonin, Pio. Cap. IX.* with the Note of the learned Casaubon, upon these Words: *Caussas regales terminavit*: In which he seems to have Reason for saying, that this ought only to be understood of some petty Eastern Kings, who were in some Manner dependent on the *Romans*. The Passage itself of Aurelius Victor, which I have just recited, insinuates it plainly enough. So that on that Foot, the Application made of it by our Author is not entirely just. As to what he says of *Didius Julian*, that he would *agere interdicto*, I do not find that Expression in any of the Historians, who have writ his Life. Our Author had probably in View the Partition of the Empire, upon which the Senate passed a Decree at that Emperor's Request, when Advice came of the Approach of *Severus's Army*: *Quare meliore consilio ad Senatum venit, petiitque ut, fieret Senatus consultum de participatione Imperii, quod statim factum est.* Spartan, in *Did. Julian. Cap. VI. in fin.* See also the Life of *Septimius Severus, Cap. V.* and the Abridgment of Dion, by Xiphilinus, in *Did. Julian. p. 292. Edit. Rob. Steph.* But this Step of *Julian's* was only an Effect of his want of Power to resist a Competitor more beloved than himself. His Fear was so great, according to Herodian, (*Lib. II. Cap. XII. Edit. Boecler.*) That he even urged for Permission to renounce the Empire entirely. So that our Author might have spared doing him the Honour of a Thing, in which there was nothing less than a Desire of terminating amicably the Dispute for the Empire.

## 2.

*Lib. I. Cap. LXXXV. Edit. Oxon.*

### a

*Lib. 4. c. 67.*

### b

*Plutarch in Solon. p. 83. Tom. 1. Edit. Wech.*

### c

*Lib. 1. c. 28.*

## 3.

In his second Oration against Plato. *Vol. II. p. 248. B. Edit. P. Steph.*

## 4.

Our Author refers us in this Place, from the first Edition of his Work, to the Oration against *Ctesiphon*: But Isocrates has none upon that Subject; and I do not know that the Word *Ctesiphon* is to be found in his Writings. He meant Aeschines: For here is the Passage in which the Orator, accusing Demosthenes of having been the Cause of the War with *Philip of Macedon*, says, that when that Prince offered to be determined by the Arbitration of some natural and disinterested State, Demosthenes maintained, there

was no such Judge between *Philip* and the *Athenians*: Εἰ δὲ ἐπιτρέπειν (Φιλιππος) &c. *Orat. Advers. Ctesiphon.* p. 286. A. The Mistake of our Author arose from Isocrates's Commendation of *Philip of Macedon*, especially in an Oration addressed to himself; but in which there is nothing concerning these Offers of Accommodation with the *Athenians*.

d

*Liv. Lib. 3. c. 71. n. 2.*

5.

Our Author cited Nobody here in all the Editions before mine, except Livy, *Lib. VIII.* which could agree only with the Instance of the *Samnites* related in the following Period. This proceeded from his not understanding rightly, to what the marginal Citation of Albericus Gentilis referred, *De Jure Bell. Lib. I. Cap. III. p. m. 23.* The Fact in Question is in Cicero, *Lib. I. Cap. X.* and in Valerius Maximus, *Lib. VII. Cap. III. Num. 4.*

6.

I am very much deceived, if this is not the same Fact which our Author relates a little lower, by changing the Parties. For Livy says of the Ambassador, sent by the *Romans* to the *Samnites*: *Quum Romanus Legatus ad disceptandum eos [Samnites] ad communes socios atque amicos vocaret, &c.* *Liv. Lib. VIII. Cap. XXIII. Num. 8.* I know no other Place, where this is said of the *Samnites* in regard to the *Romans*: And it is very probable, that our Author, who uses in both Places the express Terms of the Original, as recited above, with this Difference only, that in the one he puts *amicos*, and in the other *socios*; it is, I say, very probable, that having at first quoted by Memory, or rather on the Credit of the same Author I mentioned in the preceding Note, who commits the same Fault, *p. 23.* and uses also the Word *amicis*; he afterwards cited by the Original itself, where he imagined he had found a new Fact, thro' the Mistake he had fallen into, in putting the *Samnites* for the *Romans* in the first Citation.

e

*Xenophon. Cyrop. l. 2. c. 4. § 7. Edit. Oxon.*

7.

See Livy, *Lib. XL. Cap. XVII.*

8.

See *Note 6.*

f

*Plutarch, Pomp. p. 637.*

9.

*Plutarch, Vit. Numae. p. 68. A. Vol. I. Edit. Wech.*

10.

*Geograph.* Lib. IV. p. 302. A. Edit. Amstel. (197. Edit. Paris Casaub.)

g

*Lib.* 11. p. 765. Edit. Amst.

11.

One of the Writers of the *Byzantine* History, speaking of *Alexander the Bulgarian* says, that it was very indecent for Christians to make War with so much Barbarity upon one another, when they might accommodate their Differences with great Ease, and unite their Arms against the impious. Nicephor. Gregoras, *Lib.* X. Grotius.

h

*Franc.* Victor De Jure Belli, n. 28.

12.

I find this Passage in the Treatise *De Coron. Milit.* where that Father speaks thus: *Et praelio operabitur filius pacis, cui nec litigare conveniet?* Cap. XI.

i

*B.* 1. c. 2. § 8. n. 3.

k

*Molina.* Disp. 103. § *Quando inter, &c.* Aegid. Reg. *De Act. Supern.* Disp. 31. Dub. 4. n. 72.

13.

See a Precedent in Cassiodore, *Lib.* III. 1, 2, 3, 4. and Gail. *De Pace publica*, *Lib.* II. Cap. XVIII. Num. 12. Grotius.

14.

They discharged this Office because of the great Respect they were held in by the People; as appears from the Passage of Strabo quoted above Note 10. which is the same our Author had here in View, and that which agrees with that of Diodorus Siculus.

15.

The *Druuids* were succeeded in this Office, and indeed with a much better Title, by the Bishops. See the Letter of the Bishops to King *Lewis* in the Statutes of *Charles the Bald*, and Roderic of *Toledo*, *Lib.* VII. Chap. III. about the Bishops of *Spain*. Grotius.

l

*Lib.* 5. C. 31.

m

*Geogr.* l. 4.

16.

I do not know whom our Author means here; for he cites Nobody. This must relate to some of the first Race of the Kings of *France*, amongst whom the Kingdom was hereditary, as Father Daniel shews in his *Historical Preface*. And our Author must have known, that the Crown of *France* was elective under the second Line, after what he has said above, *B. I. Chap. III. § 13.*

1

See St. Austin, *De Doctrina Christ.* Lib. I. Cap. XXVIII. and Thomas Aquinas, *Summ. Theol.* II. 2 *Quaest. XCV. Art. VIII.* & ibi *Cajetan.* Grotius.

2.

See what I have said on this Head in my *Discourse upon the Nature of Lot*, § 27. and what our Author says below, *B. III. Chap. XX. § 42.*

1

See below, *B. III. Chap. XX. § 43.* and Pufendorf, *B. VIII. Chap. VIII. § 5. Law of Nature and Nations.*

2.

The Author of the *Thebais* [or Seneca in the *Phoenissae*, according to the best Manuscripts] introduces *Jocasta* saying to her Sons *Eteocles* and *Polynices*: Determine which of you shall reign, between yourselves: But let not the Kingdom be ruined.

- —— *Rex sit e vobis uter*
- *Manente regno, quaerite.* ——

(Ver. 564, 565.) The Emperor *Otho* said, that it was much juster that one Man should perish for the Publick, than that a Multitude should perish for one Man. Dion [or rather his Epitomizer Xiphilinus] in *Othon.* (p. 204 B. Edit. H. Steph.) Grotius.

a

*Herodot.* l. 9. c. 26.

b

*Plutarch, Qu. Graec.* p. 294. Tom. 2.

c

*Strabo, Geogr.* l. 8. p. 548. Edit. Amst.

d

*Liv.* l. 28. c. 21.

3.

*In eamus aliquam viam, quâ, utri utris imperent, sine magna clade, sine multo sanguine utriusque populi decerni possit.* Liv. Lib. I. Cap. XXIII. Num. 9.

4.

Upon Occasion of the single Combat between *Pyraechma* and *Degmenus*, of which mention is made a little above, *Lib. VIII. p. 548. B. Edit. Amst. (357. Paris.)*

5.

*Aequius huic Turnum fuerat se opponere morti.* Aen. XI. Ver. 115.

- *Turnus then should try*
- *His Cause in Arms to conquer, or to die;*
- *My Right and his are in Dispute, the Slain*
- *Fell without Fault, our Quarrel to maintain.*
- Dryden.

Upon just such an Account *Anthony* sent a Challenge to *Octavius*. Plutarch in his Life of *Anthony*, (p. 944. E. Vol. I. Edit. Wech. Grotius.)

It was not out of Compassion for the *Romans*, that *Mark Anthony* sent that Challenge to *Octavius*, but to oppose Bravado with Bravado: ἀντικομπάζων, as the cited Historian says.

6.

*Lib. I. (Cap. II.)* See the Statute of *Charles the Bald* in *S. Arnulfus*, and the Treaty of *Aix la Chapelle*. The *Lombards* were as equitable. See *Paulus Warnefrid*, *Lib. I. Cap. XII. Lib. IV. Cap. XVIII. Lib. V. Cap. XL. Grotius*.

a

*Victor. De Jure Belli, n. 27. 30. Herrera, Tom. 2.*

1

*In pari causa possessor potior haberi debet.* Digest. *Lib. L. Tit. XVII. De diversis Reg. Juris, Leg. CXXVIII.*

2.

See *Cap. V. of this Book, § 18. Note 4.*

b

*Lessius, De Justitia, c. 29. Dub. 10. Molina, Disp. 103. § In secundo vero, &c. Lorca ii. 2. Sect. 3. Disp. 53. n. 4.*

a

*Lorca ii. 2. Sect. 40. Disp. 53. Soto. 5. De Institut. Jur. 41. Art. 7.*

a

*Covar.* in Cap. *peccatun.* Select. 2. § 410. n. 6. Alciat. *Paradox* ii. 21. Falgos. *De Just.* 1. 5.  
*Picolomino.* Philos. Civil. Lib. 6. c. 21. Alb. Gent. Lib. 1. c. 6.

1

Gratian, in an Addition to a Passage of the *Canon Law*, distinguishes between a Sentence, just in its Cause, just in regard to Order, and just in Conscience, *causa, ordine, animo*, Caus. XI. Quaest. III. Post. Cap. LXV. Grotius.

2.

[*The first Sort of Justice may be called Positive, and the other Negative.*] This Sentence had apparently been left out here by the Printers in all the Editions of [[sic: but]] the first. I restored it in mine published in 1720.

3.

*Ethic. Nicomach.* Lib. V. Cap. XI. (p. 70. A. Vol. II. Edit. Paris.) See the foregoing Chapter, and the *Rhetorick* of the same Philosopher. Lib. I. Cap. XIII. Grotius.

b

See St. *Austin*, *De Civit. Dei.* Lib. 15. c. 5. Lib. 19. c. 15. and *Covar.* ubi supra.

c

See *Suarez.* *De Legibus*, Lib. 3. c. 18. Alphons. de Castro, *De potest. Leg. paen.* Lib. 1. c. 1. and 3.

4.

He says this in Opposition to the Question of Fact, in regard to which either one of the Parties falsely denies his having done what he is conscious he has done; or the other accuses him without Grounds of having done what he has not done. Whereas, when the Question is to know what is just or unjust, there may be Ignorance on both Sides. *Rhetic.* Lib. III. Cap. XVII. *init.* See Victorius's Notes upon that Passage.

5.

The Rhetorician says, that this can scarce happen but by a Sort of Miracle; because Causes manifestly unjust, are foreign to the Art of Rhetoric: *Alioquin, ubi unjesta causa, &c.* Instit. Orat. Lib. II. Cap. XVII. p. 196. E. Vol I. Edit. Burman.

6.

*Topic.* Lib. I. Cap. XV. p. 190. Vol. I. Ed. Paris.

7.

*Ethic. Nicom.* Lib. V. Cap. XII.

8.

That is to say, unjust Effects, which may give some right before Man, but none before the Tribunal of GOD.

## **BOOK II: CHAPTER XXIV: *Exhortations not to engage in a War rashly, tho' for just Reasons.*** ↵

**[I. We are often to abate of our Right for avoiding a War.]** I. 1. Tho' it be somewhat foreign to the Matter in Hand, which is designed only to treat and discourse of the Right of War, to explain what other Virtues, distinct from Justice, require or direct with respect to War; yet by the way we must obviate a certain Mistake, lest any one should imagine, that whenever he has a just Cause given him, he is thereupon immediately obliged to declare War, or that it is warrantable at any Time for him so to do. On the contrary, it happens that it is commonly a greater Piece of Goodness and much more commendable to abate somewhat of our Right, than rigorously to pursue it. For we observed above<sup>a</sup> in its proper Place, that we may very laudibly hazard our own Lives to secure another's, or to promote as far as in us lies his eternal Salvation. And this Duty obliges us Christians most of any, who therein follow the exact Pattern of Christ, who laid down his Life for us, *while we were yet Sinners and Enemies to him*, Rom. v. 6. which Instance should much more excite and direct us not to be so eager in pursuing our Rights to that Degree, as to bring upon others all those Inconveniences and Mischiefs which War is attended with.

[1134]

2. It is the Advice of<sup>b</sup> Aristotle and<sup>1</sup> Polybius, that<sup>2</sup> we should not make War on every such Account. Hercules<sup>3</sup> was condemned by the Antients for declaring War against<sup>4</sup> Laomedon, and<sup>5</sup> Augeas for not paying him for his Labour. Dion Prusaensis in an Oration of his about War and Peace, says that this was not the only [492] Question, εἰ συμβέβηκεν, &c. *Whether any Injury was received from them we intend to make War on*, but also, *of what Importance the Injury offered us was*.

**[II. Especially when that Right consists in inflicting Punishments.]** II. 1. There are indeed several Reasons to dissuade us from punishing. We may observe, how many Offences Parents will connive at, and overlook in their Children: On which Topick Cicero has a Discourse in [1135] <sup>a</sup> Dion Cassius. A Father<sup>1</sup> (as Seneca says) *will not disinherit his Son, unless the Provocations given be so many and so intolerable as to overcome his Patience, and unless he foresees more heinous Crimes like to ensue than those which he has been already guilty of*. Much to the same Purpose is Phineus's Saying, which<sup>b</sup> Diodorus Siculus records, μηδένα πατέος, &c. *No Father willingly brings his Son to Punishment, unless the Greatness of his Fault exceeds the natural Affection of Parents to their Children*, and that Saying of<sup>c</sup> Andronicus Rhodius imports as much, οὐδεὶς πατήσ, &c. *No Father casts off his Son, unless he be notoriously wicked*.

2. But whoever he be who goes about to punish another,<sup>2</sup> does, as it were, personate a Magistrate, that is, a Father; in Allusion to which St. [1136] Austin,<sup>3</sup> speaking to Count Marcellinus says,<sup>d</sup> *Discharge and perform, Sir, you who are a Christian Judge, the Duty and Office of a kind and religious Father*. Julian the Emperor was a great Admirer of Pittacus's Maxim, ὃς τὴν συγγνώμην, &c.<sup>e</sup> *Who preferred Pardon to Punishment*. And Libanius in an Oration of his *De seditione Antiochena* says, *That he who would be like his Heavenly Father ἀφιεῖς, &c. Must take a greater Delight in forgiving than punishing*.

3. Circumstances too may sometimes fall out so, that<sup>f</sup> it may not only be laudable, but an Obligation in us to forbear claiming our Right, on account of that Charity which we owe to all Men, even tho' our Enemies; whether this Charity be considered in itself, or as it is what the sacred Rule of the Gospel requires at our Hands. And thus, as we have already<sup>g</sup> mentioned, there are some Persons, for whose Safety, tho' they assault us, we should wish to lay down our Lives, because we know they are either

necessary or very useful for the common Good of Mankind. If Christ would have us undervalue and neglect some Things, rather than quarrel, and contend for them in Law; without doubt he would have us neglect much greater Things for the Prevention of War which is infinitely more pernicious and destructive than a Law Suit.

4. St. Ambrose<sup>4</sup> says, that to *remit something of what is our Right, is not only an Act of Generosity, but is commonly much to our Advantage.*<sup>5</sup> Aristides advises [493] States συγχωρεῖν, &c. to resign and give up Matters of indifferent Consequence; and gives this as a Reason ὃσπερ γάρ, &c. for you highly extol those private Men who are of so mild a Temper, as to choose rather to sustain some Losses than go to Law.<sup>6</sup> Xenophon in the sixth Book of his Grecian History tells us, that wise People will not engage [1137] in War, no, tho' there are important Reasons for it. And Apollonius in Philostratus,<sup>7</sup> that War is not to be undertaken, even where the Provocations are great.

[III. **And particularly must an injured Prince do so.**] III. 1. As for Punishments, it is a principal Duty of ours, if not as Men,<sup>1</sup> yet certainly as Christians, to be ready and willing to forgive those Injuries that are committed against us, as GOD forgives us in CHRIST, Eph. iv. 32. *Not to be angry at those Things, says<sup>2</sup> Josephus, for which they who are guilty of them are liable to suffer Death, is a near Approach to the Divine Nature.*

2. Seneca says of a Prince,<sup>a</sup> that *He should be more easily prevailed on to pardon Injuries done against himself, than those done against others; for as he is far from generous, who is only lavish of what is none of his, but he is certainly liberal who takes from his own Stock what he bestows upon another. So I cannot call him kind and good-natured, who is easy under another's Affliction, but him, who, when himself is wronged, bears it patiently, and does not sally out into Passion and Resentment; who considers, that it is the Property of a noble and elevated Spirit, to support itself under Injuries, at a Time when it has the greatest Power of returning them; and that<sup>3</sup> nothing is really more glorious than an injured Prince, who scorns to take any Revenge.* And Quintilian, *We would persuade a Prince to aim at the Reputation of Tenderness and Humanity, rather than to seek the barbarous Pleasure of being cruel and revengeful.* This was the sublimest Character that<sup>b</sup> Cicero could bestow upon C. Caesar, that he was never forgetful of any Thing but Injuries. Livia, in her Discourse to Augustus, [1138] inc<sup>c</sup> Dion, speaks thus, Τοῦς ἀρχοντας, &c. *It is the Opinion of most Men, that Sovereigns ought to bring to condign Punishment, all Offenders against the State, but to forgive those who offend against their own Persons.*<sup>4</sup> Antoninus the Philosopher, in his Oration to the Senate, says, that *The Revenge of a personal Injury looks little and mean in a Prince; for tho' the Punishment be just and deserved, yet it carries along with it the Appearance of Cruelty.* St. Ambrose, in his Epistle to Theodosius, *You have pardoned the Antiochians your own Injury.* And Themistius, in his Encomiums on the same Theodosius to the Senate, says, ὅτι οὐκ, &c. that *A good Prince should be above those that offend him, and not only not return their Wrong, but be forward to do them any kind Office.*

3. Aristotle<sup>5</sup> denies that he can be a Man of any great Spirit, who retains in his Breast the Memory of every Ill he receives: Which Cicero expresses thus,<sup>d</sup> *Nothing can be more worthy of a Man of Honour than Clemency and Good-nature.* The Holy Scriptures afford us very remarkable Instances of this noble Virtue in Moses, Num. xi. 12. and in David, 2 Sam. xvi. 7. And this we are especially obliged to, when we are conscious to ourselves of some Offence of our own;<sup>e</sup> or when what is committed against us, proceeds from human Frailty, and consequently excusable, or when the Offender gives plain Demonstration of his Sorrow and Repentance. Cicero says,<sup>6</sup> *There is a Measure to be observed in our Revenge, and our Punishments, and I do not know whether<sup>f</sup> the Offender's Repentance be not a sufficient Satisfaction.* A wise Man (says<sup>f</sup> Seneca) *forgives many a Crime, and will save many an ill-inclined Person, provided he finds him not incurably bad.* [494] And these are the Reasons which Charity suggests to us for abstaining from War; a Charity we either owe to, or which we may and

ought to bestow upon our Enemies.

[1139]

**[IV. A Prince is often to decline going to War, both for his own and his Subjects Safety.] IV. 1.**

Besides it often happens, that it is<sup>1</sup> for the Interest of us and ours to do all we can to decline a War.

*Plutarch*, in the Life of *Numa*, acquaints us, that after it had been concluded by the Priests called *Feciales*, that a War might justly be undertaken,<sup>2</sup> the Senate had a Debate whether it was convenient or no. It is said in one of CHRIST's Parables, *Luke* xiv. 31, &c. that *If one King is going to make War with another King, he sitteth down first, (the Manner and Posture of such as deliberate with great Care and Attention) and considereth, whether he be able with ten thousand to meet him that cometh against him with twenty thousand; or else, whilst the other is yet a great Way off, he sendeth an Embassage, and desireth Conditions of Peace.*

2. Thus the *Tusculans*,<sup>a</sup> by suffering every Thing, and refusing nothing, merited a Peace from the *Romans*. And in *Tacitus* we have,<sup>3</sup> *In vain did the Romans seek an Occasion of quarrelling with the Aedui, who not only, according to the Contributions demanded of them, supplied them punctually with Money and Arms, but did, over and above, furnish them with Provisions at their own Expence*. So Queen *Amalasuntha* declared positively, to *Justinian's* Embassadors,<sup>b</sup> that she would not break out into a War with him.

3. One may sometimes too moderate the Matter, as *Strabo*<sup>c</sup> mentions that *Syrmus* King of the *Triballi* did, who denied *Alexander the Great* the Liberty of Landing upon the Island *Peuce*, and yet, at the same Time, sent him some very valuable and magnificent Presents, in Order to make it appear to him, that he did it out of a just Fear, and not out of any [1140] Hatred or Disrespect to his Person. And what<sup>d</sup> *Euripides* spoke of the *Greek States*, may not improperly be applied to any other,

- *When by the State it is decreed for War,*
- *Not one does ever think his Ruin near,*
- *But all of us some other's Death mark out:*
- *In their Debates, had they but seen their Fate,*
- *Mad Greece had never fallen by the Sword.*

*Think with yourself, says<sup>e</sup> Livy, not only of your own Strength, but of the Power of Fortune, and the common Hazards of War. And<sup>f</sup> Thucydides gives this Caution, Consider before you enter into it, what unexpected Incidents there are in War.*

**[V. Rules of Prudence directing our Choice of what is good.] V. 1.** When People are deliberating, they lay before them not only the<sup>1</sup> subordinate Ends, but the Means too which lead to those Ends. The End we have in View, is always some Good, or, at least, the declining some Evil, which is much the same Thing. The Means are not sought for in themselves, but only as they conduce to the End, either one Way or the other. And therefore, in all our Consultations, we should compare, not only the Ends with one another, but the Capacity of the Means for bringing about those Ends: For, as *Aristotle* wisely observes, in his Treatise *De Motione Animalium*,<sup>2</sup> *What one proposes by any Action is of [495] two Sorts, either an Advantage or a Possibility*. Which Comparison has these three<sup>3</sup> following Rules for its Direction.

[1141]

2. The *first* is, that if the Matter under Consideration appear, morally speaking, to be as much disposed to produce Good, as to produce Evil, we may venture upon it, provided the Good includes a greater

Degree of Good than the Evil includes of Evil. This is what *Aristides* means by the Expression,<sup>4</sup> *When the Good hoped for is less than the Evil apprehended, it is better to make Peace.* *Andronicus Rhodius*, in his Character of a Man of Bravery, says, that<sup>a</sup> *He will not expose himself to Danger upon every slight Occasion, but when he has Reasons of the last Importance for it.*

3. The *second* is, that if the Good and the Evil which may possibly result from the Thing in dispute are equal, we may undertake the Affair, if there be a greater Tendency in it to the Good, than to the Evil.

4. The *third* is, that if the Good and the Evil seem disproportional, and the Disposition of the Affair in Hand to produce the one or the other, no less disproportional, we may still venture upon it,<sup>5</sup> if its Disposition to produce Good, compared with its Disposition to produce Evil, does more considerably exceed that, than the Evil itself, compared with the Good, exceeds the Good; or if the Good compared with the Evil, is more considerable than the Disposition of the Thing to produce Evil, compared with its<sup>6</sup> Disposition to produce Good.

5. *Cicero* establishes some Maxims which are not indeed so exact as the Rules we have laid down, but which express the same Thing in a more plain and familiar Way, when he advises us to<sup>7</sup> *Take Care not to thrust ourselves into Hazards and Difficulties, where there is no Manner of Occasion for it, there being no greater Folly upon Earth than such a Rashness: And therefore, in Attempts of any Danger, we should imitate the Practice of skilful Physicians, who to their Patients that are but a little indisposed, [1142] administer very gentle Medicines; but in desperate Cases are forced to have Recourse to desperate Cures. It is Madness to wish for a Storm when we enjoy a Calm; but it is a wise and prudent Part, when a Storm is come, to use all Means to remedy it, especially, if the Good to be obtained by dissipating it is greater than the Evil that results from the Trouble.*

6. And in another Place,<sup>8</sup> *Where no great Advantage can accrue to us, if we meet with Success, and the least Miscarriage may be fatal, what need we run any Risque at all?* *Dion Prusaensis*, in his second *Tarsensis*, delivers himself thus, ἔστω δεινὸν, &c. Suppose this be an unhandsome and unworthy Treatment of us: We must not however, tho' our Usage be unjust, by our strugling and contentious Humours expose ourselves to farther Inconveniences. And afterwards, ὥσπερ οἴματι, &c. As we endeavour to shake off those Burdens, the Weight of which is so great that we are not able to bear it; so when we have Shoulders answerable to our Load, and we are loaded with such Things that we must either stand under them, or something more intolerable, we in this Case make ourselves as easy as we can.<sup>9</sup> When our Fears, says *Aristides*, are greater than our Hopes, we ought not to expose ourselves to the Danger.

[VI. *An Example directing us in our Consultations about Liberty and Peace, when it is to save a State from utter Ruin and Destruction.*] VI. 1. Let what<sup>1</sup> *Tacitus* relates, that the States of *Gaul* consulted about, *Whether they should chuse Liberty or Peace*, be a Precedent for us in this Affair. By Liberty is meant Civil Liberty, that is, a Right of governing themselves by their own Laws; which Right, in a popular State, is full and absolute, but in an Aristocracy is something limited, especially in such a-one where no Citizen is excluded from Offices. But by Peace we are to understand such a-one, as by preventing the [496] War, prevents the utter Ruin of the whole State; that is, as *Cicero* illustrates this Question, in a *Greek Passage*, ἐὰν, &c.<sup>2</sup> *If the State be in Danger of being entirely undone.* As when, suppose, having examined and considered [1143] thoroughly the Consequence of the Matter, we can find nothing but the sad Presage of a total Destruction; as was the Condition of *Jerusalem*, besieged by *Titus*. It is obvious what *Cato* would say in this Case, he who had rather die than be subject to one Man. And agreeable to this Resolution is that of the<sup>3</sup> Poet,

- *How easily may*

- *A Man's own Hand from Slav'ry set him free?*

And several other Expressions to the same Effect.

2. But right Reason suggests quite another Thing; she tells us, that Life is far preferable to Liberty, as being the Foundation on which all temporal Blessings are built, and the Occasion of those that are eternal, whether you consider one or the other, with Respect to a single Person or a Community. And therefore GOD himself imputes it<sup>a</sup> as an Act of his Favour, that he did not cut off his People with the Sword, but made them Captives. And in another Place, he<sup>b</sup> advises the *Hebrews*, by his Prophet, to surrender themselves into the Hands of the King of *Babylon*, lest they should die by Famine and Pestilence. Wherefore, tho' the Antients highly extolled

- 4——— *What brave Saguntum did*
- *By Hannibal blocked up.*

[1144]

Yet is it a Conduct very far from deserving any such Commendation, no more than the Means that lead to it.

3. For utter Destruction,<sup>c</sup> in such Circumstances, is to be looked on as the greatest of Evils.<sup>5</sup> Cicero, in his second Book of Invention, lays down this as a Case of extreme Necessity, that the *Casilinenses* were forced to surrender themselves to *Hannibal*, tho' their Necessity had this Exception,<sup>6</sup> unless they chose rather to starve. And *Diodorus Siculus*'s Judgment of the *Thebans*, who lived in *Alexander the Great's* Time, was Τοις παρασήμασιν, &c. *That*<sup>7</sup> with greater Courage than Prudence they had drawn upon themselves the entire Ruin of their Country. [497]

[1145]

4. And *Plutarch*<sup>d</sup> pronounces against *Cato* before mentioned, and *Scipio*, who after *Caesar's* Victory at *Pharsalia*, would not submit to him, Αἰτίαν ἔχουσιν, &c. that *They were highly to blame for destroying so many brave Men in Africa, without any Occasion for it.*

5. What I have spoken in Relation to Liberty, I would have understood of other desirable Things; we ought to sacrifice them, when we have as much or more Reason to fear a greater Evil. For, as *Aristides*<sup>8</sup> well observes, *The Custom is to save the Vessel, with the Loss of the Cargo, and not by throwing the Passengers overboard.*

**[VII. That he ought to forbear pursuing a Punishment by Force of Arms, who is not much superior in Power.]** VII. We are also particularly to take Notice, that *No Prince should ever make War upon another, who is of equal Strength with himself, on the Account of inflicting Punishment:* For as the<sup>a</sup> Civil Magistrate is supposed to have greater Power than the Criminal; so should he also who attempts to revenge Injuries by Arms, be stronger than him he attacks. And indeed it is not only Prudence, or Affection for his Subjects, that requires him to forbear engaging in a dangerous War, but very often<sup>b</sup> Justice itself, that political Justice, which from the very Nature of Government does no less oblige a Prince to take Care of his Subjects, than it does the Subjects to obey their Prince. From whence it follows, (as Divines do with Reason teach us) that *A King who undertakes a War upon frivolous Accounts, or to inflict some needless Punishments, and such as will involve his Subjects in a great Deal of Trouble, is obliged to make up the Damages they suffer thereby:* For tho' he cannot be accused with any Injury done to his Enemies, yet may there be a heavy Charge laid against him of wronging his Subjects, by plunging them in so much Misfortune and [1146] Misery for such Reasons. *Livy*<sup>1</sup>

says, that *War is justifiable in those who are under a Necessity of being engaged in it, and that Arms are warrantable, when we have no Hopes but in our Arms.* This is what *Ovid* desires when he says, *Fast. 1.*

- *Let the Soldier wear*
- *No other Arms than what defensive are.*

[**VIII. War not to be engaged in but out of Necessity.**] VIII. The<sup>1</sup> Case therefore very seldom happens, wherein War cannot, nor ought not to be for born; and that is, as *Florus*<sup>2</sup> expresses it, *When all the Justice we can expect is more cruel than War itself. One runs into Danger, says Seneca,*<sup>3</sup> *when one apprehends the same Inconveniences if one sits still: Or perhaps greater.* Which<sup>4</sup> *Aristides* thus explains, *Tότε χον̄, &c. It is then adviseable, tho' the Event be uncertain, to prefer an Hazard, when to be at Quiet is evidently worse. It is Prudence, says*<sup>5</sup> *Tacitus, to [1147] exchange a miserable Peace for a War, when, as the same Author has it,*<sup>6</sup> *either our Courage will procure us our Liberty, or, if we lose the Day, we are just as we were before; or, when (as*<sup>7</sup> *Livy speaks) Peace [498] with Slavery is more insupportable than War with Freedom.* But not if (according to<sup>8</sup> *Cicero*) it be likely, that *Being conquered you shall be proscribed, or being Conqueror you will be a Slave still.*

[**IX. Or when there is an important Reason, joined with a very favourable Opportunity.**] IX. Another Time for going to War is, *If, upon a just Estimation, we find that we have not only Right on our Side, and such a Right as is of the greatest Importance, but likewise superior Strength.* This is what *Augustus* meant, when he said, that<sup>1</sup> *War was not to be undertaken, but when there appeared a greater Prospect of Advantage, than Fear of Loss.* And here may be applied that which<sup>2</sup> *Scipio Africanus* and *L. Aemilius Paulus*<sup>3</sup> used to say of an Engagement, that *We should never fight,*<sup>4</sup> *but in Cases of extream [1148] Necessity, or of some very favourable Opportunity.* What I have said ought especially to be observed, when there is a Prospect of gaining our Point<sup>5</sup> by the Terror and Rumour of our Preparations, with little or no Hazard on our Side. This was *Dion's*<sup>6</sup> Advice for delivering *Syracuse*. And in<sup>6</sup> *Pliny's* Epistles there is this Passage, *He vanquished them by the Fear of him, which is the handsomest Victory in the World.*

[**X. The Miseries of War displayed.**] X. 1. War, says *Plutarch*,<sup>1</sup> is a most cruel Thing, and brings along with it an Ocean of Calamities and Violences. And *St. Austin* very wisely expresses himself thus, *If I should attempt to speak of what Mischiefs and Massacres, what Misery and Hardships are occasioned by War, I should not only want Words, but not know when to put a Period to so large a Field of Discourse; but a Prince of Prudence and Thought (say they) will engage only in a just War; as if, when he reflects upon himself to be a Man, he will not, on the contrary, heartily lament, that there could ever be a Necessity of entring into any just Wars, because, unless he were satisfied of the Justice of them, he could not have had any Hand in them, and from hence it is plain, that a Prince of Prudence and Thought would, by his good Will, have no Wars at all; for it is the Injustice of the adverse Party that thrusts him into Wars, which are not only just, but sometimes inevitable; which Injustice*<sup>3</sup> *[1149] every Man ought to bewail, as it is human Injustice, tho' it did not oblige us to Arms.* Whoever therefore considers with Regret, such great, such horrid, such barbarous Ills, [499] must own that he is unfortunate, in being obliged to occasion them; but whoever can endure them, or make them the Objects of his Thoughts, without Grief and Emotion, that Wretch is still more miserable, because he counts himself happy in having cast off the Sentiments of Humanity. And in another Place he tells us.<sup>4</sup> *That the Good never engage in War but out of Necessity, whereas the Wicked take Delight in it.*<sup>5</sup> *Maximus Tyrius* tells us, *τῆς τοῦ πολεμεῖν, &c.* that *Tho' there were no Injustice in a War, yet the very Necessity of it is deplorable.* And again, *φάινεται, &c.* *It is certain that good People make War only when compelled to it, but the Wicked do it out of Choice.*

2. To which we may add that of *Seneca*,<sup>6</sup> that *One Man should not be profuse of another's Blood.* *Philiscus* gave *Alexander* this Advice,<sup>7</sup> that he should have a Desire of Glory, but not to indulge his Ambition so far as to become the common Pest and Scourge of Mankind; meaning that Massacres and Devastations of Cities were Acts that most resembled a Plague, and that nothing was more worthy of, and heroick in a King, than to have a tender Regard for the Preservation of all Men, which is the Fruit of Peace.

3. If according to the Law of the *Hebrews*, he who killed a Man, tho' involuntarily,<sup>a</sup> was obliged to fly for it. If GOD would not suffer [1150] *b David* to build him a Temple,<sup>8</sup> because he had been the Occasion of so much Bloodshed, tho' his Wars are said to be just.<sup>9</sup> If among the ancient *Greeks* it was a Custom, that they who had defiled their Hands with human Blood, tho' without any Fault of theirs, had need of Expiation; what Person living, and particularly if he be a Christian, does not see how unfortunate and ominous a Thing War is, and with what Endeavours we should strive to keep ourselves from it, tho' it were not unjust? And it is certain, that among the Christian *Greeks*, a Canon was for a long While observed, by Vertue of which, *Whosoever killed his Enemy, in what War soever, was c excommunicated for the Term of three Years.*

## Endnotes

a

*Chap. 1. § 8.* of this Book. See *Fr. Victor. De Jure Bell. n. 14. & 33.*

b

*Rhet. ad Alexandr. Cap. 3.*

1

Our Author cites in the Margin the fourth Book of that Historian, where I find nothing that has any Relation to the present Subject, but the Reflection he makes in blaming the *Messenians* for not entering into a War against the *Aetolians*: I agree, said he, that War is what we ought to fear, but not so far as to suffer every Thing to avoid it. *Cap. XXXI. p. 416. Edit. Amst.* It is plain he supposes here, that we ought to suffer something, rather than come to a War.

2.

*Seneca, Suasor V. Gallio* said, *That we ought to engage in War for the Defence of our Liberty, our Wives and our Children; but that we ought not to do so for any trifling Matter, or for what, if it did happen, could not hurt us.* *Apollonius* said something more to the King of *Babylon*, προσετίθει, &c. *He added*, says *Philostratus, Lib. XXIII.* *that one should not differ with the Romans for a few small Villages, much larger than which some private Men often possess, and that one should not even for greater Matters commence a War against them.* *Josephus* in his second Book against *Apian*, speaking of his Countrymen, Ο οὐδὲ τὴν ἀνδρίαν, &c. *Nor do we exercise our Courage, or enter into Wars out of Avarice and Ambition, but for the Security and Preservation of our Laws; and therefore, tho' other Damages we bear with abundance of Patience, yet if once they attempt to force us to recede from our Constitutions, we then even beyond our Strength betake us to our Arms, and will maintain them to the last Extremities.* (P. 1080. C.) *Grotius.*

3.

But where do they *condemn* him? Pausanias, whom our Author cites here in the Margin, *Lib. V.* says only, that *Hercules* had not Opportunity to signalize himself very much in the War he undertook against *Augeas*, Cap. II. p. 148. *Edit. Graec. Wech.* And he adds, that this was occasioned by the powerful Support of the *Actorides*. Our Author, in reading this Passage hastily, or quoting it by Memory, might have imagined to find there that this Expedition was not *glorious* to *Hercules*, and explained the Word λαμπόν, implied that the Occasion of the War was frivolous.

4.

See an Account of this in Apollodorus, *Biblioth.* Lib. II. Cap. IV. § 9. in Diodorus Siculus, *Lib. IV. Cap. XXXII.*

5.

The Authors, I have cited in the foregoing Note, speak of this: The first at § 5. of the same Chapter; and the other at Chapter XXXIII. of the same Book.

a

*Lib. 44. p. 290. Edit. H. Steph.*

1

Where he speaks of *Abdication* or *disinheriting*: *Numquid aliquis sanus filium, &c.* De Clement. *Lib. I. Cap. XIV.* Philo the Jew says also, that Fathers do not resolve to disinherit their Sons, till the Wickedness of the latter has overcome their paternal Tenderness and Affection. *De Nobilitat.* (p. 904. C. *Edit. Paris.*) A Father, who tried his Son for parricide [at the Time when Fathers had a Power of Life and Death over their Children] took *Augustus Caesar* for one of his Counsellors, or Assessors, according to Custom; who was of Opinion, that the Father should content himself with banishing him whither he thought fit; and for this Reason, because a Father ought to punish his Children with as little Rigour as possible. *Dixit* [Caesar Augustus] *relegandum, &c.* Seneca, *De Clement.* *Lib. I. Cap. XV.* The same Thought is expressed thus in a Verse of *Terence*,

- *Pro peccato magno paululum supplicii satis est patri.*

*Andr.* (Act. V. Scen. III. Ver. 32.) Cicero says, that when a Person is accused before his Father, he asks Pardon, confesses his Fault, imputes it to Ignorance, promises never to be guilty of the like again, and submits upon Breach of Word to all the Indignation his Offence deserves. Whereas, before the Judges he denies the Fact, maintains that the Crime is forged, and the Witnesses false: *Ignoscite, judices: erravit, &c.* Orat. pro Legario. Grotius.

b

*Lib. 4. c. 45. p. 172. Edit. H. Steph.*

c

*Lib. 8. c. 18. p. 569. Edit. Heins. 1616.*

2.

Seneca in his eighty seventh Epistle says, *That good Nature spares another's Blood as it would its own, knowing that one Man must not be lavish of another's Life.* Diodorus Siculus, in *Frag.* Όù δει τοὺς ἀμαρτήσαταις, &c. *Not every one who offends must by all Means be punished, but those only who persist in their Crimes without Repentance.* St. Chrysostom, *De Statuis vi*, μαθέτωσαν, *Let all who are Strangers to our Faith know that the fear of Christ bridles and restrains every Power. Honour your Master, and forgive your Fellow Servants that he may have the greater Regard to you, that he may at the Day of Judgment remembring this Tenderness and Humanity of yours, shew you a kind and propitious Countenance.* And Gratianus, *Caus. XXIII. Quaest. IV.* cites the following Expression out of St. Austin, *It is not in vain that we use these two Words, a Man and a Sinner together; for if the Sinner deserves Punishment, the Man claims our Pity.* See both what follows there, and what we have said above, at *Chap. XX. § 12. § 26. and 27. Grotius.*

### 3.

This Passage is quoted in the *Jus Canonic. Caus. XXIII. Quaest. V. Can. I.*

#### d

*Epist. 159.*

#### e

*Orat. 2. p. 50. Edit. Spanheim.*

#### f

*Molin. De Justit. Tractat. 2. Disp. 103. Lorca, Disp. 153. n. 2. Aegid. Reg. De Act. Supern. Disp. 31. Dub. 7. n. 107.*

#### g

*Chap. 1. § 9. of this Book.*

### 4.

*Si quidem de suo jure, &c. De Offic. Lib. II. Cap. XXI.*

### 5.

I doubt whether this Passage be in Aristides or not. I do not find it either in the Harangue of this Orator to the States of *Greece*, to exhort them to Union, or in any other Place. Our Author perhaps wrote the Name of one *Greek* Orator for another, as for Instance, Aristides for Dion *Prusaeensis*.

### 6.

It is in the Discourse of *Callias* to the *Lacedemonians*: Καὶ σωφρόνων μὲν δῆ, &c. *Hist. Graec.* Lib. VI. Cap. III. § 4. *Edit. Oxon.*

### 7.

This Passage is cited above in *Note 2. upon Paragraph I.*

#### 1

See Note 2. upon § 2. of this Chapter; and what has been said above, *Chap. XX.* § 26. at the End.

2.

*Antiq. Jud. Lib. II. Cap. III. p. 49. C.*

a

*De Clement. l. 1. c. 20.*

3.

St. Chrysostom, speaking in commendation of Clemency, ὅπαντα μὲν, &c. *For this is glorious to every one, particularly to People in Power. For since Sovereignty allows a Man to do any Thing, it is prodigiously for a Prince's Reputation and Glory, to put a Restraint upon his Passions, and to make the Law of GOD the Director of his Actions.* St. Austin, in his 104th Letter to Count Boniface. *Remember to forgive as soon as he who has injured you asks your Pardon.* Grotius.

b

*Orat. pro Ligar. c. 12.*

c

Lib. 55. p. 643. *Edit. H. Steph.*

4.

In Vulcatius Gallicanus's Life of *Avidius Cassius.* (Cap. XII.) Grotius.

5.

(*Ethic. Nicomach.* Lib. IV. Cap. VIII. p. 51. C. Vol. II. *Edit. Paris.*)

d

*De Offic. l. 1. c. 25.*

e

Dried. *de Libert. Christ. l. 2. c. 6.*

6.

This Passage of Cicero is cited above, *Ch. XX.* § 39. Num. 2.

7.

Procopius, *Vandal.* II. Μεταμελός γὰρ, &c. *When Offenders are seized with a timely Sorrow and Concern for what they have done, the Parties injured are commonly induced to forgive them.* Grotius.

f

*De Clement.* 1. 2. c. 7.

1

Procopius, *Goth.* Lib. II. Cap. VI. says, that the *Goths* addressed themselves to *Belisarius* in the following Manner, ὅταν δὲ αὐτὰ, &c. *Since Matters stand thus, the Governors on either Side should not, out of their own Vanity and Ambition, sacrifice their Subjects Safety, but prefer what is just and advantageous, not only for themselves but their Enemies.* Grotius.

2.

Plutarch speaks of the King, *In Vit. Numae*, p. 68. B. Vol. I. *Edit. Wech.* Our Author cites here, in a Note, a Passage from Thucydides, which is recited above, *Chap. XX. § 4. Num. 1.*

a

Plut. *in Vit. Camill.*

3.

*Frustra adversus Aeduos, &c.* (*Histor. Lib. I. Cap. LXIV. Num. 5.*) In the Reign of *Septimius Severus*, a King of *Armenia* prevented a War with which that Emperor threatened him, by sending him Hostages and Presents of his own Accord. See *Herodian, Lib. III. (Cap. IX. Num. 3. Edit. Boecl.) Grotius.*

b

Procop. *Vandal.* 1. 2. c. 5. *Goth.* 1. c. 3.

c

*Geograph.* 1. 7. p. 462. *Ed. Amst.* (301 *Ed. Paris.*)

4.

- Ὅταν γὰρ ἔλθῃ, &c.
- *Supplic.* ver. 481. & seq.

5.

In *Hannibal's Harangue to Scipio*, Quum tuas vires, tum, &c. *Lib. XXX. Cap. XXX. Num. 20.*

6.

The Embassadors of *Athens* say this to the *Lacedemonians*. *Lib. I. Cap. LXXVIII. Edit. Oxon.* Our Author, from his having quoted this Passage after Stobaeus, (*Florileg. Tit. L.*) expresses it a little differently from the Terms in the Original.

1

These subordinate Ends may be considered as Means, with Regard to the last End.

2.

*Cap. VII. p. 705. D. Vol. I. Edit. Paris.*

3.

See an Explanation of these Rules in Pufendorf, *Law of Nature and Nations*, B. I. Chap. II. § 7.

4.

[*Orat. I. De pace*, Vol. II. p. 63. B. Edit. P. Steph.]

a

*Paraphr. in Ethic. Nicom.* 1. 4. c. 5. p. 219.

5.

Narses makes a very wise Use of this Rule in Procopius, *Gotth. Lib. II.* (Cap. XVIII.) Grotius.

6.

I have observed, in my Notes upon Pufendorf, at the Place referred to Note. 3. that in the Original there is *comparata ad malum*, for *comparata efficaciae ad malum*. This Omission had been in the first Edition, and was suffered to pass, amongst other Faults of the like Nature, in all subsequent Revisals and Editions. But I have restored the Text, as the Author's Thought and Intention required.

7.

*Sed fugiendum etiam illud, &c.* *De Offic. Lib. I. Cap. XXIV.*

8.

*Ubi enim ἐπίτευγμα, magnum, &c.* *Lib. XIII. Epist. ad Attic. XXVII.*

9.

*Orat. Sic. II. Vol. II. p. 52. D.*

1

The Passage is recited above *B. I. Chap. IV. § 19.*

2.

This Passage from Cicero, is quoted in the Place referred to in the foregoing Note.

3.

Lucan says this,

- *Non tamen ignavae, post haec exempla virorum,*
- *Percipient gentes, quam sit non ardua virtus*
- *Servitium fugisse manu — — —*
- *Pharsal. Lib. IV. v. 575, & seq.*

a

2 Chron. xii. 7, 8.

b

Jer. xxvii. 13.

4.

They burnt themselves, with their Wives, Children, and all their Effects. See Livy, *Lib. XXI. Cap. XIV.* Our Author cites here, without saying from whom he takes it, a Verse which makes a Part of the Speech that Lucan puts into the Mouth of the *Marseillian* Deputies, addressed to *Caesar*. This is it, with that which precedes,

- *Nec pavet hic populus pro libertate subire*
- *Obsessum Paeno gessit quod marte Saguntum.*
- *Lib. III. ver. 349, 350.*

c

See St. Austin, *De Civit. Dei*, 1. 22. c. 6.

5.

*Atque etiam hoc mihi, &c. De Invent. Lib. II. Cap. LVII.*

6.

*Anaxilaus*, who had surrendered the City of *Byzantium*, for Want of Provisions, justified his Conduct by saying, that Men are to fight against Men, but not against Nature. This Xenophon tells us, (*Hist. Graec.* Lib. I. Cap. III. § 12.) Procopius observes, that Men do not commend those who make Death their Choice, whilst there is any Hope that appears greater than the Danger. *Gothic.* Lib. IV. (seu *Hist. Misc.* Cap. XII. in *Bessas*'s Speech to persuade the Garrison of a Citadel to surrender). A German Poet makes *Guido Blandratensis* say, in a Discourse to the People of *Milan*, no Man of Sense loves his Liberty better than his Life; and that it is not Love of Liberty but Vain Glory, to expose one's Self to certain Destruction when it may be avoided;

- *Omnia securi pro libertate feremus.*
- *Sed libertatem contempta nemo salute*
- *Sanus amat: Neque enim certae susceptio cladis,*
- *Quam vitare queas, nisi cum ratione Salutis,*
- *Libertatis amor, sed gloria vana putanda est.*

Gunther. *Ligurin.* (Lib. VIII. p. 397. *Edit. Reuber.*) Grotius.

*Anaxilaus* does indeed excuse himself on Account of the Famine which oppressed the City; but the Sentence our Author puts in his Mouth, is not in the Place of Xenophon referred to, which speaks of that Governor of *Byzantium*. I imagine our Author has confounded this with what the same Historian makes *Cyrus* say, That there is no Man valiant and vigorous enough to contend with Hunger and Cold. *Cyrop.* Lib. VI. Cap. I. § 10.

7.

*Lib. XVII. (Cap. X.)* The same Author, when he has given an Account of the War the *Athenians* engaged in, after *Alexander's* Death, says, that in the Opinion of the wisest Men, *They had consulted their Glory well, but had vastly mistaken their Interest;* because it was a *Danger they hurried themselves into, without any Manner of Necessity for it;* no Ways warned by the Fate of the unhappy *Thebans.* (*Lib. XVIII. Cap. X.*) Grotius.

d

*In vit. Othon.*

8.

Our Author had evidently the Passage of that Orator in his Thoughts, where he says, the Master of a Ship cannot command any of the People on board to be thrown into the Sea; but only the Goods, for the People's Safety. *Orat. Platon. II. Vol. III. p. 283. B.*

a

Cajetan, ii. 2. qu. 95. art. 8.

b

Molin. *De Instit. tract. 1. c. 102.*

1

*Justum est bellum, Samnites, &c. Lib. IX. (Cap. 1. Num. 10.)* Ovid's Words are

- *Sola gerat miles, quibus arma coercent, arma.*
- (Ver. 715.)

Grotius.

1

The Grammarian Servius supposes, that there is none just enough to engage Men to enter into a War. It is where he explains a Verse of Virgil, in which the Poet says, that the Gods pitied the foolish Rage of the two Parties at War, and the great Trouble that Men give themselves,

- *Dī Jovis in tectis iram miserantur inanem*
- *Amborum, & tantos mortalibus esse labores.*

[*Iram Miserantur Inanem.*] *Generaliter dicit omnem iram bellicam, &c.* In Aeneid. X. (ver. 758, 759.) Grotius.

2.

Here is only the Expression which suits our Author's Sense, and that different from the Historians. It relates to *Quintilius Varus*, the *Roman* General, who administered Justice to the *Germans* newly conquered, in a Manner more cruel, in their Opinion, than the War itself; which obliged them to revolt, under their Leader *Arminius*, *Ut primum Togas, & saeviora armis jura viderunt, duce Arminio arma*

*corripiunt.* Lib. IV. Cap. XII. Num. 32.

3.

*Incurri in pericula, ubi quiescenti paria metuuntur.* This is the Manner in which our Author quotes the Passage, which I can find no where.

4.

In his first Oration concerning Peace. Vol. II. p. 67. B.

5.

*Miseram pacem vel bello bene mutari.* Annal. Lib. III. Cap. XLIV. Num. 3.

6.

*Denique ausos aut Libertas sequetur, aut victi iidem erimus.* Hist. Lib. IV. Cap. XXXII. Num. 6.

7.

The *Samnites* say this, when about to throw off the Yoke of the *Romans*: *Rebellasse, quod pax servientibus gravior, quam liberis bellum esset.* Lib. X. Cap. XVI. Num. 5.

8.

He speaks of the Course that was to be taken in the War between *Caesar* and *Pompey*, *Depugna, inquis, potius quam servias. Ut quid? Si victus eris, proscribare? Si viceris, tamen servias.* Lib. VII. ad Attic. Epist. VII.

1

He speaks both in Regard to undertaking War, and giving Battle, after having had Recourse to Arms. *Praelium quidem aut bellum suscipendum omnino negabat, nisi quum major emolumenti spes, quam damni metus ostenderetur.* Suetonius, in *August.* Cap. XXV.

2.

*Idem [Scipio Africanus] negabat aliter cum hoste configi debere, quam si aut occasio obvenisset, aut necessitas incidisset.* Valerius Maximus, Lib. VII. Cap. II. Num. 2.

3.

*In quo de Publico Africano, Pauli filio ita scriptum est: Nam se patrem suum audisse dicere L. Aemilium Paulum, nimis bonum imperatorem signis collatis non-decertare, nisi summa necessitudo, aut summa ei occasio data esset.* Aulus Gellius, *Noct. Attic.* Lib. VII. Cap. II. Num. 2.

4.

Plutarch, in his *Gracchus's*, Οὐ γὰρ ἄνευ τὴς, &c. *It is neither like a good Surgeon nor a good Politician, to cut and hack, unless there is the utmost Necessity for it.* It is *Marcian's Expression* in *Zonaras*, Μὴ δεινὸν ὅπλα βασιλέα κινεῖν, ἔως εἰρηνεύειν ἐξόν, *A Prince ought never to think of War as long as he may enjoy Peace.* St. Austin, in his fiftieth Epistle to *Boniface*: *Peace should be our*

*Choice, but War the Result of Necessity alone; that so GOD may deliver us from that Necessity, and preserve us in Peace.* Grotius.

The last Passage is not in the fiftieth, but the two hundred and fifth Epistle to *Boniface*, and there is even some Difference as to the Terms in the Editions I have seen.

5.

*The Lion scorning to use the Weapons Nature gives him, for a long Time defends himself by his Terror only, and does as it were shew that he is forced to engage.* This Passage is in Pliny's Natural History, Lib. VIII. Cap. XVI. Grotius.

a

*Diod. Sicul.* 1. 16. c. 17.

6.

*Ostentatoque bello, ferocissimam gentem (quod est pulcherrimum victoriae genus) terrore perdomuit [Spurinna] Lib. II. Epist. VII. Num. 2.*

1

*Vit. Camill.* p. 134. B. Vol. I. Edit. Wech.

2.

*Quorum malorum, [quae ex bello nascuntur] &c. De Civit. Dei, Lib. XIX. Cap. VII.*

3.

The *Lacedemonians* say, in an Harangue extant in Diodorus Siculus, Lib. XIII. Θεωροῦντες τὰς ἐν τῷ πολέμῳ, &c. *Seeing so many Animosities, and so many other shocking Incidents in War, we think it our Duty to declare, both to GOD and Man, that we are not any Ways the Authors of these Things.* Plutarch, in his *Numa*, Τί οὖν φήσει, &c. *If any one says to me, Has not Rome improved by Wars? He asks me a Question that requires a long Answer; when we have to do with those who make Improvement to consist rather in Riches, Luxury and Empire, than in Safety and Humanity, in Justice and Contentment.* Stephanus, a Physician, says in Procopius, *Persic.* Lib. II. to Chosroes the Persian King, Οὐκῶν δὲ κράτιστε βασιλεῦν, *By being employed in Massacres and Battles, and enslaving of People, you may probably, great Prince, acquire some other Titles, but you can never by such Methods be reputed Good.* Add to this a famous Passage in Guicciardin, Lib. XVI. (§ 4. in the Speech of the Bishop of Osima.) Grotius.

4.

*Belligerare, malis videtur felicitas, bonis necessitas.* De Civit. Dei. Lib. IV. Cap. XV.

5.

(*Dissert.* XIV. p. 146. *Edit. Davis.*)

6.

*Quae (Clementia) alieno sanguini, tanquam suo parcit, &c. Epist. LXXXVIII. p. 390. Edit. Gron. maj.*

7.

Aelian. *Var. Hist.* Lib. IV. Cap. XI.

a

Numb. xxxv. Deut. xix.

b

1 Chron. xxviii. 3.

8.

Oὐκ ἐπιτρέπει, &c. *He would not suffer him, a Man who had been engaged in so many Wars, and who was stained with Blood, tho' it was the Blood of his Enemies.* These are Josephus's Words, *Lib. VII. Cap. IV.* where there follow more to the same Purpose. And Pliny, *Lib. VII. Cap. XXV.* after having related the Battles of Caesar the Dictator, says, *I cannot indeed think it for his Reputation, to have brought so many Miseries upon Mankind, tho' he had even been forced to it.* Philo, in his Life of Moses, καὶ γὰρ εἰ νόμοι, &c. *For tho' the Laws allow us to kill an Enemy, yet whoever kills any Man, tho' justly, tho' in his own Defence, tho' forced to it, seems to be guilty of Blood, on the Account of that common Relation we bear to one another, and therefore such Homicides were obliged by some Purgations to expiate the reputed Crime.* Grotius.

9.

See Pufendorf, *Law of Nature and Nations*, B. II. Chap. V. § 15. Note 2.

c

**Basil. ad Amphil. ii. 13. Zonar. Niceph. Phoc. vol. 3.**

## BOOK III: CHAPTER X: *Advice concerning Things done in an unjust War.* ↵

[I. In what Sense Honour and Conscience may be said to forbid what Law permits.] I. 1. I must now reflect, and take away from those that make War almost all the Rights, which I may seem to have granted them; which yet in Reality I have not. For when I first undertook to explain this Part of the Law of Nations, I then declared, that many Things are said to be of Right and lawful, because they escape Punishment, and partly because Courts of Justice have given them their Authority, tho' they are contrary to the Rules, either of Justice properly so called, or of other Vertues, or at least those, who abstain from such Things, act in a manner more honest and more commendable in the Opinion of good Men.

2. *Seneca* in his *Troas*<sup>1</sup> makes *Pyrrhus* speak thus,

- *Lex nulla capto parcit, aut poenam impedit.*
- *No Law commands to spare the Captive Slave,*
- *Or does forbid to punish him.*

*Agamemnon* replies,

- *Quod non vetat Lex, hoc vetat fieri Pudor.*
- *What Law forbids not, Honour doth restrain.*

By *Honour* we are here to understand, not so much the Consideration of other Men, and the Care of our own Reputation; as a respect for Equity and Justice, at least a constant Adherence to that which is most [1412] just and most honest; so we read in *Justinian's*<sup>2</sup> Institutions, *Feoffments of Trust so called, because they are secured by no Bond of Law, but only the Honour of the Person entrusted.* So in *Quintilian*<sup>3</sup> the Father, *the reditor cannot (Salvo pudore) with Honour demand his Debt of the Security, but when he cannot get it from the prime Debtor.* And in this Sense we often see, *Justitia and Pudor, Justice and Honour, joined together.*

- - *4Nondum Justitiam facinus Mortale fugārat,*
  - *Ultima de superis illa reliquit humum.*
  - *Proque metu populum sine vi pudor ipse regebat. [627]*
- - *The Crimes of Men were not so mighty grown,*
  - *As Justice to expell from mortal View;*
  - *She, last of all the Goddesses, retir'd;*
  - *And Honour, without Force, then rul'd the World.*

*Hesiod. Oper. & Dior. Ver. 192, 193.*

- —— Δίκη δ' ἐν χερσὶ, καὶ Αἰδώς
- Ὄυκ ἔσται· βλάψει δ' ὁ κακὸς τὸν ἀρείονα φῶτα.
- *Honour and Justice both have left the Stage,*
- *All fall a Sacrifice to Vice and Rage.*

*Plato* in his 12th Book of Laws,<sup>5</sup> παρθένος γὰρ αἰδοῦς δίκη λέγεται τε καὶ ὄντως εἴρηται, or rather πάρεδρος. That the Sense may be, *Justice is called the Companion of Honour, and that with Reason.* And in another Place the same *Plato* tells us,<sup>6</sup> θεὸς, &c. God being solicitous for Mankind, lest they should be entirely destroyed, bestowed upon Men Honour and Justice, the Ornaments of

*States, and the Bonds of Friendship.*<sup>7</sup> Plutarch in like manner calls δίκην *Justice*, ἔνοικον αἰδονῆς, *the Cohabitant of Honour*; and in another Place he joins αἰδῶ & δικαιοσύνην, *Honour and Justice*, together. In *Dionysius Halicarnassensis*<sup>8</sup> are named together, αἰδὼς, κόσμος, καὶ δίκη, *Honour, Modesty and Justice*. So *Josephus*<sup>9</sup> couples together, αἰδω and ἐπείκειαν, *Honour and Equity*. *Paulus*<sup>10</sup> the Lawyer unites *natural Right and Honour*. But *Cicero*<sup>11</sup> thus distinguishes between *Justice* and *Honour*. *Justice* (says he) teaches not to hurt our Neighbour, *Honour* not to offend him.

3. With the Verse before quoted of *Seneca*, agrees that Expression of the same Author in his philosophical Writings.<sup>12</sup> *How small a Matter is it, to be a good Man, only so far as the Laws require? How much larger is the Rule of Duty than of Right? How many Things does natural Affection, Humanity, Liberality, Justice and Faith demand? Which are all beyond the reach of the civil Laws.* Where one may see he puts a Difference between *Jus*, and *Justitia*, Right and Justice. He means by Right, that which is [1414] actionable in Courts of Judicature. The same *Seneca* excellently explains this in another Place, by the Example of a Master's Right over his Slaves.<sup>13</sup> *As to our bond Servants we must consider, not what we may without Danger of the Law put upon them, but what the Nature of Equity and Honesty would allow, which obliges us to be merciful to our Prisoners, and those purchased with our own Money.* Further, *Indeed every Thing is lawful with regard to a Slave, [628] considered as such: But there are some Things which are not lawful with regard to a Slave, considered as a Man, according to the common Right of Animals.* In which Place we may observe the double Meaning of the Word *lawful*, the one being taken for that which is really lawful in itself, the other for that which is only lawful externally.

[II. *This applied to what is allowed by the Law of Nations.*] II. 1. To the same Intent is the Distinction of *Marcellus* in the *Roman Senate*,<sup>1</sup> *Not what I have done is here to be debated, since the Right of War justifies whatsoever I have done against the Enemies, but what they ought to have suffered, viz. in Reason and Equity.* Aristotle disputing the Point, whether Slavery arising from War may be esteemed just, hints at this Distinction.<sup>2</sup> *Some having in View a Sort of Right, that is, the Law which [1415] is certainly*<sup>3</sup> *something just, maintain that Captivity in War is just, but they do not say it is absolutely just, because it may so happen that the War may proceed from an unjust Cause.* Agreeable to this is that of *Thucydides*<sup>4</sup> in the Oration of the *Thebans*, *For those ye killed in Fight, it is not so much a Grievance to us, what they suffered was by a Kind of Right.*

2. So also the *Roman Lawyers* themselves, what they often call the<sup>5</sup> Right of Captivity, in another Place call an Injury, and oppose it to natural Equity; and *Seneca*<sup>6</sup> says the Name of a Slave arose from Injustice, having a respect to what often happens. The *Italians* also in *Livy*,<sup>7</sup> retaining what they had taken from the *Syracusians* in War, are called obstinate in keeping what they had unjustly gotten. *Dion Prusaensis* having declared, that when Prisoners return Home, they recover their Liberty, adds this,<sup>8</sup> ώς ὀδίκως δουλεύοντας, *As being unjustly enslaved.*

3.<sup>9</sup> *Lactantius* speaking of the Philosophers says, *When they dispute of Duties relating to military Affairs, they reason not according to the Principles of Justice and true Virtue, but adapt their Precepts to the common [1416] Practice and Customs of civil Life.* He says afterwards, that the *Romans*<sup>10</sup> acted unjustly by Law.

[III. *What is done in an unjust War is unjust in itself.*] III. We then first declare, if the Cause of the War be unjust, tho' it be undertaken in a solemn Manner, yet all the Acts of Hostility done in it are unjust in themselves. So that they who knowingly do these Acts, or join in the acting of them, Are to be accounted in the Number of those, who without Repentance cannot enter into the Kingdom of Heaven, 1 Cor. vi. 10. But true Repentance, if Opportunity and Ability will allow, absolutely requires<sup>1</sup>

that he who has done any Da- [629] mage, either by killing, ravaging or plundering, should make full Restitution. Therefore GOD himself declares their<sup>2</sup> Fasts to be unacceptable to him, who detained their Captives unjustly taken. And the King of Nineve, (*Jonah* iii. 8.) proclaiming a Fast to his Subjects, commands them all to restore what they had taken by Rapine; acknowledging, by the Guide of natural Reason, that all Repentance without such a Restitution would be but pretended, and to no Purpose. And not only the<sup>3</sup> Jews and Christians are of this Opinion, but even the<sup>a</sup> Mahometans themselves.

**[IV. Who are hereby obliged to make Restitution, and how far.]** IV. But the Authors of War, whether by their Authority, or Counsel, are obliged to make this Restitution, according to what we have declared in general<sup>a</sup> elsewhere, for all those Damages which are the usual Consequences of War; and for what are unusual, if they either contributed to them by Command or Advice, or not prevented them, if it was in their [1417] Power to have done it. Thus are Generals and Officers also obliged to do, in Relation to those Things which have been committed by those under their Command. The Soldiers, who have concurred in an Act of Hostility committed in common, as the burning of a Town, are each responsible for<sup>1</sup> the whole Damage. But if the Damage has been caused by the distinct Acts of several, each shall be answerable for the Mischief, of which he has been the sole or partial Cause.

**[V. Whether Things taken in an unjust War, are to be restored by the Captor.]** V. 1. Neither can I allow the Exception, which some make of those that serve under others, that they are only responsible for the Damage, when there is on their Part<sup>1</sup> some Fault accompanied with Fraud. For the bare Fault, without bad Intention, is sufficient to engage to a Restitution. [1418] There are some who seem to think, that Things taken in a War, tho' its Cause were really unjust, are not to be returned; because both Sides, when they engaged in the War, were supposed to have granted them to the Captors. But it cannot be easily presumed, that any Man will rashly part with his Right, and War in itself is far different from the Nature of Contracts. But that neutral Nations might know what to do, and might not be forced into a War against their Wills, it was judged sufficient to introduce this external Right of Property, (which we have mentioned before) which may be agreeable with the internal Obligation to Restitution. And indeed those very Authors seem to allow as much concerning the Right over Prisoners of War. Wherefore the *Samnites* in *Livy*<sup>2</sup> say, *We have restored the plundered Goods of our Enemies, which by the Law of Arms seemed to be ours; seemed only*, he saith, because that War was unjust, as the *Samnites* had before acknowledged. [630]

2. Not much unlike this, a certain Power arises from the Law<sup>3</sup> of Nations in a Contract made without Fraud, wherein there is an Inequality, to force the Contractor to perform his Contract; Nevertheless he that stipulates more than his Due, is obliged in Honesty and Conscience to reduce it to a fair and just Equality.

**[VI. Whether by him also that detains.]** VI. 1. But further, tho' a Man has not done the Damage himself, or if he did it without any Fault of his,<sup>a</sup> but yet keeps in his Possession<sup>1</sup> a Thing taken away by another in an unjust War, he is obliged to restore it; because there can be no Reason produced naturally just, why the other should be deprived of it. There is neither a Consent on his Part, nor an Occasion of Punishment, nor a Compensation to make. Not unlike to this is that of *Valerius Maximus*.<sup>2</sup> *The People of Rome, saith he, when [1419] P. Claudius publickly sold some Camerine Prisoners taken in the War, when he was General, tho' they found their Treasury filled with the Money, and the Borders of the Empire enlarged, yet because they were not fully convinced of the Justice of that Expedition, they with utmost Diligence having sought out the Prisoners, redeemed them, and restored them their Lands.* Thus by the Decree of the *Romans*, even their publick Liberty was restored to the<sup>3</sup> *Phocians*, and also their Lands, which had been taken from them: And afterwards the<sup>4</sup> *Ligurians*, who had been sold by *M. Pompilius*, (their Ransom being paid to the Purchasers) were restored to their Liberty, and

their Goods carefully returned. The Senate<sup>5</sup> decreed the same in favour of the *Abderites*, adding this Reason for it, because the War made upon them was unjust.

2. Yet may the present Possessor, whatsoever Charge or Pains he has been at, lawfully deduct as much, as the Proprietor would willingly have expended to have recovered his endangered Possession, according to the Principles we have before laid down. But if the Possessor of it, without any Fault of his, has either wasted or alienated it, he shall not be obliged to refund, further than he shall be thought to have been made richer by it.

## Endnotes

1.

*Ver.* 333, 334.

2.

*Sciendum itaque est, &c.* Institut. Lib. II. Tit. XXIII. De Fideicommissariis hereditat. § 1.

3.

*Non enim aliter, &c.* Declamat. CCLXXIII.

4.

Speaking of the Reign of *Saturn*. Ovid. *Fast.* Lib. I. Ver. 249. & seqq.

5.

*De Legib.* p. 943. E. Vol. II.

6.

*In Protagor.* (p. 322. C. Vol. I. Edit. H. Steph.)

7.

*Ad princip. in erudit.* (p. 781. Vol. II. Edit. Wech.)

8.

*Antiq. Roman.* Lib. VI. (Cap. XXXVI. p. 354. Edit. Oxon. 369. *Sylb.*)

9.

*Antiq. Jud.* Lib. XIII. Cap. XIX. (p. 456. A.)

10.

In speaking of Marriages, wherein Modesty, properly so called is intended: The Lawyer says, that it is contrary to the Rules of this natural Modesty, and in Consequence to the Law of Nature, to marry

one's own Daughter: *In contrahendis matrimonii, Naturale jus & Pudor inspiciendus est. Contra pudorem est autem, filiam uxorem ducere.* Digest, Lib. XXIII. Tit. II. De ritu Nuptiarum, Leg. XIV. § 2.

11.

Honour, in general, is not meant here, according to the Idea, which our Author, after the Antients, affixes to the Word *Pudor*, I mean, a constant Adherence to the Rules of Honesty and Virtue. Cicero speaks of that Virtue, which consists in the Observation of the Rules of *Decorum*: *Justitiae partes non violare homines, Verecundiae, non offendere. De Offic. Lib. I. Cap. XXVIII.*

12.

*Ut hoc ita sit, quam angusta innocentia, &c.* De Ira, Lib. II. Cap. XXVII. That Philosopher observes elsewhere, that there are many Things, for which there is no Law nor any Action to be brought, that however the Rules of Commerce in human Society require, which are superior to all written Laws: *Multa legem non habent, nec actionem, ad quae consuetudo vitae humanae, lege omni valentior dat aditum.* De Benefic. Lib. V. Cap. XXI. Cicero maintains, that the Laws redress Wrongs, in a different manner from that in which the Philosophers correct them. The Laws confine themselves to what is more gross and palpable; the Philosophers cut off every Thing, as far as the Light of an attentive and penetrating Reason extends: *Sed aliter Leges aliter philosophi tollunt astutias: Leges quatenus manu tenere possunt: Philosophi, quatenus ratione & intelligentia.* De Offic. Lib. III. Cap. XVII. See a Passage in Quintilian, *Instit. Orat.* Lib. III. Cap. VI. which has been cited above in the fourth Chapter of this Book, § 2. Num. 2. Grotius.

The Reader may see my two Discourses, *De Permissione & Beneficio Legum*, upon this Subject.

13.

*Et in mancipio cogitandum, &c.* Lib. I. *De Clementia*, Cap. XVIII. We might believe from what the Philosopher calls in the End of this Passage, *commune jus animantium*, that according to the Stoicks, there was a Right really and properly common to Men and Beasts. But see what I have said upon Pufendorf, *Law of Nature and Nations*, B. II. Chap. III. § 2. Note 2. and § 3. Note 10. of the second Edition.

1

*Sed non, quid ego fecerim in disquisitionem venit, quem, quidquid in hostibus feci, jus belli defendit, sed quid isti parti debuerint.* Livy, Lib. XXVI. Cap. XXXI. Num. 2. So our Author cites this Passage. But the Words *quem, quidquid in hostibus feci, jus belli defendit*, which he cites also above, *Chap. IV.* of this Book, § 5. Note 3. are not in the Manuscript, and Gronovius had Reason for omitting them in his Edition, which has only, *in dis quisitionem venit, quamquidisti*. See that learned Critick's Note. He might have observed, that this Gloss crept in probably from the following Words, which are a little lower in the Text, and which I have substituted in the Note referred to: *Quae autem singulis vitor aut ademi, aut dedi, quum belli jure, tum ex cuiusque merito, scio me fecisse.*

2.

*Politic.* Lib. I. Cap. VI. p. 302. A. Vol. II. *Edit. Paris.* See Giphanius's Commentary upon it.

3.

Seneca says, that some acquire a Right to Lands belonging to other People by Arms: *Alii armis sibi jus*

*in aliena terra fecerunt.* Consolat. ad. Helviam Cap. VI. *Right*, and *the Acquisition of another's Effects*, continuing such, seem incompatible. But they are reconcileable by the Principles we have here laid down in the Text. Add what we have said in *Chap. IV.* of this Book, § 2. Grotius.

4.

*Lib. III. Cap. LXVI.* Edit. Oxon.

5.

See the Law cited above, *Chap. VII.* of this Book, § 6. *Note 10.* with the Reflection which I have made there.

6.

He says, that as the Title of *Knight* arose from Ambition, the Names of *freed Man* and *Slave* derived their Origin from *Injury and Injustice*: *Quid est Eques Romanus, aut Libertinus, aut Servus? Nomina ex ambitione, aut ex injuria nata.* Epist. XXXI.

7.

On the contrary it was the *Greeks*, who were for keeping what they had taken, during the War, from the antient Inhabitants of *Italy*: *Graeci res a quibusdam Italici generis, &c.* Lib. XXIX. Cap. I. Num. 16, 17.

8.

*Orat. XV.*

9.

*Itaque quum de Officiis, &c.* Instit. Divin. Lib. VI. Cap. VI. Num. 24. St. Austin says, that if Men duly observed the Precepts of the Gospel, War itself would not be made without Charity and Benevolence: *Ac per hoc si terrena, &c.* Epist. IV. *Ad Marcellin.* He observes elsewhere, that Wars themselves are peaceable among the sincere Adorers of the true GOD: *apud veros Dei cultores, etiam ipsa bella pacata sunt.* De diversis Ecclesiae Observationibus. Grotius.

The last Passage is cited in the Canon Law, *Caus. XXIII. Qu. I. C. I.*

10.

These Words have been cited above, *Chap. IV.* of this Book, § 5. *in fin.*

1

See Numbers v. 6, 7. St. Jerome says, that if all we have unjustly taken be not restored, we cannot avoid the Sentence of Condemnation: *Nec differtur ultionis sententia, si non reddantur universa.* Ad Rusticum. St. Austin maintains, that if another's Goods are not restored, for which we have sinned, when it is in our Power to restore them our Repentance is not real, but feigned. *Ad Macedon.* Epist. LIV. The latter Passage is cited in the Canon Law, *Caus. XIV. Quaest. VI. Can. I.* Grotius.

I do not find the Words of St. Jerome in the Place referred to.

2.

It is in the fine Passage of Isaiah, *Chap. LVIII. Ver. 5, 6, 7.* that Justin *Martyr*, repeats in *Greek* in his Dialogue with *Tryphon*. (p. 47. Edit. Oxon.) Grotius.

3.

Micotzi, *Lib. Praeceptorum Legis*, Praecept. jub. XVI. See also the *Penitential Canons* of Maimonides, *Cap. II. § 2.* Grotius.

a

See Leunclavius, *Turc.* v. and 17.

a

B. 2. c. 17.

1

It is decided in a Law, which our Author cites in the Margin, that if two or more Men have stolen a Beam, which one of them alone could not carry off, each of them is entirely responsible for the Theft: *Si duo pluresve unum, &c.* Digest, *Lib. XLVII. Tit. II. De Furtis, Leg. XXI. § 9.* We must further observe here, that it is generally impossible for a Soldier to make amends for the Damage, to which he has concurred in common, and for which he is thus wholly responsible. The Instance of burning a City suffices to explain this. And as to what a Soldier has done, where the Proportion of the Damage he has caused, may be distinguished, as when he has been concerned with others in plundering a City; he cannot commonly know to whom what he has taken belonged, nor in Consequence to whom he ought to restore it. In the first Case the absolute Impossibility of Amends must acquit him, with regard to those who have suffered the Damage. In the latter, the Obligation of making Restitution is suspended, till the Soldier has discovered the right Owner of the Booty he has taken. But in either Case, a Person that has the least Tenderness of Conscience, will be extremely mortified for the Impossibility either absolute or present under which he finds himself; since when People have the Means in their own Hands of making Amends for a Wrong done, it is a great Consolation, and a Discharge, which obliterates in some Sort the Crime. After all, as the Powers, who undertake an unjust War, are always more culpable than those who serve under them in such Wars, they can also generally make Amends, either wholly or in Part, for the Evils of which they have been the first Cause; and by discharging their Duty in that manner, exempt the Soldiers from the Obligation they are under of making Restitution, which they very seldom believe they are bound to do.

1

In all the Editions it is in this Place: *Si modo in ipsis aliquid haereat culpea.* But our Author's Answer to this Proposition shews, that there must be some Fault in it. I therefore translate it, as if it had been writ: *Aliquid haereat Dolosae culpea.* The Sense necessarily requires something of this Kind, and I might perhaps assure myself, that I have guessed the Word, if I had Sylvester, to whom our Author refers in the Margin, (*Part I. Num. 10*) and whom he refutes.

2.

*Res hostium in praeda captas, quae belli jure nostrae videbantur, remisimus*, Lib. IX. Cap. I. Num. V.

3.

See above, *B. II. Chap. XII. § 26.* or last.

a

*See B. 2. ch. 10.*

1

This must be explained according to the Principles referred to in my Notes upon the Chapter cited in the Margin.

2.

*Idem [Populus Romanus] quum, &c. Lib. VI. Cap. V. Num. I. Mark Anthony caused the Tyrians to return what belonged to the Jews. He ordered, that the Prisoners, who had been sold should be set at Liberty, and the Effects taken from the Jews restored to their Right Owners. Joseph. Antiq. Jud. Lib. XIV. (Cap. XXII. p. 492. G.) Macrinus restored the Prisoners and Booty to the Parthians, because the Romans had broken the Treaty without Cause. Herodian. Lib. IV. in fin. Sultan Mahomet set the Prisoners at Liberty that had been taken at Santa Maria in Achaia, Chalcocondylas, Lib. IX. Grotius.*

3.

*Phocaeensibus & ager, quem, &c. Livy, Lib. XXXVIII. Cap. XXXIX. Num. 12.*

4.

*Quas ob res, placere Senatui, &c. Idem. Lib. XLII. Cap. VIII. Num. 7. See also Diod. Sicul. Excerpt. Peiresc. (p. 298.) Grotius.*

5.

*Iisdem mandatum, ut & Hostilio, &c. Livy, Lib. XLIII. Cap. VI. Num. 21.*

## **BOOK III: CHAPTER XI: *Moderation concerning the Right of killing Men in a just War.*** ↪

[I. *That some Acts in a just War, are unjust in themselves.*] I. 1. But that is not to be allowed in a just War, as is commonly said,

- —— [1](#)Arma tenenti
- Omnia dat, qui justa negat. ——
- He gives up all, who what is just denies.

But Cicero has it better, *There are certain Duties to be observed even towards those that have wronged us,*[2](#)for there is a Moderation required in [1421] Revenge and Punish- [631] ment. The same Author commends the antient Times of the[3](#) Romans, when the Ends of their Wars were either mild, or rigorous, merely through Necessity. Seneca[4](#) calls those cruel, who having a just Cause to punish, have no Moderation in it. Aristides saith,[5](#) It is possible that they may be unjust, who only revenge a Wrong done to themselves, if they go beyond Moderation; for he that in this Act shall exceed just Bounds, renders himself culpable in his Turn. Thus in Ovid's[6](#) Opinion, a certain King,

- ◦ —— *Caede nocentum*
- *Se nimis ulciscens extitit ipse nocens.*
- ◦ *Following the Guilty with too quick Revenge,*
- *Deriv'd a Guilt upon himself. ——*

The Plateans in an Oration of Isocrates demand,[7](#) If it be just, thus for such slight Trespasses to exact rigorous Punishments. And the same Aristides in his second Oration for Peace, saith, Consider not only the Reasons for [1422] punishing, but also the Persons to be punished, who we ourselves are, and what is the just Measure of Punishment. Minos is commended in Propertius:

- *Victor erat quamvis, aequus in hoste fuit.*
- *Tho' Conqueror,*[8](#)*to Foes was always just.*

And in Ovid,[9](#)

- —— *leges captis justissimus auctor*
- *Hostibus imposuit ——*
- *Most just to Captives he dispenses Laws.*

[II. *Who may be killed with a safe Conscience.*] II. 1. But when it is just to kill (for there we must begin) in a just War according to internal Justice, and when not, may be plainly understood from what I have said in the first Chapter of this Book. For a Man may be killed either designedly, or [632] without a direct Design. No Man can be justly killed with Design, unless for a capital Crime, or because we cannot really secure our Lives and Estates without doing it. Tho' that very Thing, to kill a Man on account of our Estates, which are frail and perishable Goods, is not repugnant to Justice strictly taken, yet is it far wide from[1](#) the Law of Charity. But that the Punishment may be just, it is absolutely required, that he who is killed should have rendered himself culpable, and that in so heinous a Manner, that before an upright Judge he should be condemned to die. Of which we shall here say the less, because we have fully explained already, in the Chapter concerning Punishments, whatever is necessary to be known on this Head.

**[III. No Man can be justly killed for his Misfortunes, as they that are forced to follow a Party.] III.**

1. Above,<sup>a</sup> when we treated of Suplicants, (for there are such both in Peace and War) we distinguished between the unfortunate and culpable. *Gylippus* in that Place of *Diodorus Siculus*, which I there quoted, asks this Question,<sup>1</sup> in what Class the *Athenians* ought to be reckoned, either of the unfortunate or the unjust. And he declares, they cannot be ranked among the unfortunate, because voluntarily without any manner of Provocation, they had made War on the *Syracusans*: When ceheinfers, since they had freely begun a War, they must expect to undergo the Miseries of that War. They are to be esteemed unfortunate who happen to be in the Party of one of the Enemies, without any hostile Disposition towards the other Party, as the *Athenians* in the Time of *Mithridates*, of whom thus speaks *Velleius Paterculus*,<sup>2</sup> *If any one should charge the Athenians with Rebellion, at the Time (when Athens was besieged by Sylla ) he is very ignorant both of Truth and antient History. For the Fidelity of the Athenians was so firm to the Romans, that always, and upon all Occasions, whatsoever was done with a singular Honesty, the Romans used proverbially to say, it was done Athenian like. But then being oppressed by the Forces of Mithridates, they were reduced to a most miserable State, whilst they were within enslaved by their Enemies, and besieged by their Friends, whilst their Hearts were without the Walls, but their Bodies in compliance with Necessity, were within.* Which last Part seems to be taken out of *Livy*,<sup>3</sup> in whom *Indibilis* the *Spaniard* declares, that his Body only served the *Carthaginians*, but his Mind the *Romans*.

2. For, saith *Cicero*,<sup>4</sup> *all those whose Lives are in the Power of others, often consider what they can or may do, at whose Mercy they lie, rather than what they ought to do.* So says the same *Cicero*<sup>5</sup> for *Ligarius*, *It is the third Time that he continued in Africk after the coming of Varus, which if it be a Crime, it is of Necessity not of Will.* And *Julian* took this course in the [1424] Case of the *Aquileians*, as *Ammianus*<sup>6</sup> testifies, who when he had ordered the Punishment of a few, adds, he let the others Escape, *as whom Necessity, not Choice, had forced into Arms.* Thus says an antient<sup>b</sup> Commentator on that Place of *Thucydides*, of the *Corcyrean* Captives that were sold. *It was an Act of Clemency, worthy of the Greeks, for it is inhuman to kill [633] Prisoners after the Battle is over, especially Slaves, who [1425] do not fight of their own Choice.* The *Plataeans* thus argue in the aforesaid Oration of *Isocrates*,<sup>7</sup> *We did not serve them willingly (the Lacedemonians ) but were forced to it.* And so for the other *Grecians*, *They were forced with their Bodies to join with them, but their Hearts were with you.* *Herodotus*<sup>8</sup> also says of the *Phocians*, *They followed the Medes not voluntarily, but forced by Necessity.* *Alexander* spared the *Zeldi*, as *Amianus* relates,<sup>9</sup> *Because they were forced into the Service of the Barbarians.* *Diodorus*<sup>10</sup> makes *Nicolaus* the *Syracusan* thus plead for the Captives, *The Allies were forced to make War; wherefore as it is but just that they should be punished, who designedly offer the Wrong; so it is equally just to pardon them, who offend against their Will.* So in *Livy*,<sup>11</sup> the *Syracusans* to excuse themselves to the *Romans*, said, *they broke the Peace being oppressed by Fear and Fraud.* Thus for a like Reason *Antigonus* declared,<sup>12</sup> *That he made War with Cleomenes, and not with the Spartans.*

**[IV. Nor for a middle Fault between Misfortune and Fraud, whose Nature is explained.] IV.** 1. But it is to be observed, that between an absolute Injury, and a mere Misfortune, there often intervenes something of a middle Nature, as it were composed of both, so that the Action cannot be said to be either entirely of Knowledge and voluntarily, nor purely of Ignorance and against the Will.

2. Aristotle calls this Act ἀμάρτημα, in Latin rendered *culpa*, a Fault. For thus he says in the 5th Book of his Morals, and the 10th Chapter. *Of voluntary Actions, some we do deliberately, others not. They are said to be done deliberately, which are acted by a certain previous Consultation of the Mind; what are otherwise, we say are done unadvisedly. Since then in human Society an Injury may be done three Ways, that which proceeds from Ignorance is termed a simple Fault. As, if a Man should do a Mischief to one whom he did not design to hurt, or what he did not really intend, or not in the manner*

he intended it, or not with such a View; as if any one did [1426] not think to strike with this Instrument, not this Man, or not upon this account; but it happened otherwise than he proposed to himself: He designed to pinch, not to wound, either not this Person, or not in this manner. Therefore if a Damage happen thus against all Expectation, it is a Mischance; but if it might in some manner have been expected or foreseen, tho' not with an evil intent, it is a simple Fault: For there is some Fault on the Part of the Agent, when the Principle of Action is within him: But when the Principle of Action is without him, he is only unfortunate; but when a Man does knowingly what he does, though not deliberately, it must be acknowledged that an Injury is done: As whatsoever Men may do through Anger, or other like Disturbances of the Mind, either natural, or inevitable; for they who in Passion do Mischief, and yet through their Fault, do certainly commit an Injury, neither yet are they reckoned unjust or malicious. But if a Man should do it deliberately, he is rightly accounted wicked and unjust.

3. Therefore whatsoever is done through Anger, is judged with Reason not to be done premeditately; for he does not begin, who in a Passion does an Injury, but he that provoked that Passion. Hence it is, that when such Cases are tried at Law, the Question frequently turns, not upon the Fact, but upon the Right; for Anger arises from hence, that a Man thinks himself wronged. Therefore the Query is not here, as in Contracts, whether what is complained of be done, or not; for there, unless there be Forgetfulness, one of the Parties must of Necessity be wicked in not performing the Contract, but in this they demand, whether what was done were justly done. Now he that first laid an Ambush, did it not through Ignorance, wherefore no wonder if the one Person [634] thinks himself wronged, and the other not. But even those who commit Injuries without Deliberation, and in Passion, ought to be accounted unjust, when in rendering Evil for Evil, they pass the Bounds of Proportion or Equality; so he is truly just who acts justly with Deliberation, for sometimes a Man may do a just Thing willingly, but not deliberately.

4. But of those Wrongs that are not done voluntarily, some may be pardonable, others not;<sup>1</sup> those are pardonable that are done not only by Men [1427] ignorant, but through pure Ignorance also. But if any be done by ignorant Persons, but not through pure Ignorance, yet through some Passion that exceeds the common Bounds of human Nature, they are no wise pardonable.

5. Michael Ephesius interpreting this Passage, as an Instance of what happens contrary to all Expectation, gives us the Case of a Son, who by the opening of a Door, has hurt his own Father: Or of a Man who in a solitary Place trying to shoot, has accidentally wounded a Person; and of *that which might have been foreseen, but without any evil Intent*, he alledges the Case of a Man shooting at random in a Highway. The same Commentator gives us an Example of Necessity in him, who is obliged by Hunger, or Thirst, to do any Thing. *Of natural Passions*, in Love, Grief, Fear: He says that one acts through Ignorance, when the Fact is unknown; as if a Man did not know a Woman was married; a Crime is done by a Person *ignorant*, not through pure *Ignorance*, when the Right is not known. But this Ignorance of Right may sometimes be excused, and sometimes not; all which well agree with the Opinion of the antient Civilians. There is a Place in Aristotle not unlike this, in his Book of the Art of Oratory: *Equity distinguishes between simple Faults and Injuries, and between simple Faults and Mischances; Mischances are those which could neither be foreseen, nor done with an ill Design. Simple Faults, those that might have been foreseen, but not done with an evil Intent; but Injuries, which have been done both designedly; and with a malicious Intent.* The Antients have remarked that Homer had a Notion of those different Sorts of Action: And on that Head alledge what the Poet<sup>2</sup> relates in the last of his Iliad concerning Achilles.

- Ὅυτε γὰρ ἐστ’ ἄφον, οὔτ’ ἀσκοπος, οὔτ’ ἀλιτήμων.
- *Not ignorant, nor rash, nor ill disposed.*

6. The like Distinction is also in *Marcian*,<sup>3</sup> We offend either purposely, through Passion, or accidentally. Purposely, as a Gang of Thieves do. Through Passion, as when a Man in Drink falls to fighting with Fists or [1428] Sword. Accidentally, as when in Hunting an Arrow levelled at a Deer, kills a Man. Those two which are done purposely and through Passion, Cicero thus distinguisheth, In all Acts of Injustice it is highly to be considered,<sup>4</sup> whether they be done by any Perturbation of Mind, which is generally short, and quickly over; or with premeditated Design. For those are much slighter, which are done by some sudden gust of Passion, than they done deliberately and designedly.<sup>5</sup> Philo in his Explanation of some particular Laws, says, *It is but half a Crime, which is not done deliberately.*

7. Of which Kind are those chiefly, which Necessity,<sup>6</sup> if it does not justify, yet [635] excuses; for as *Demosthenes*<sup>7</sup> argues against *Aristocrates*, *Necessity takes from us the Liberty of examining what we ought to do, or not to do; wherefore such Cases are not to be too strictly searched into by equitable Judges*. Which Point the same Author (*Demosthenes*) handles<sup>8</sup> more largely, in his Oration of false Witness against *Stephanus*. As also [1429] *Thucydides*, in his fourth Book,<sup>9</sup> *It is highly probable, that GOD himself is willing to forgive those, who are compelled by War, or otherwise necessitated to do any Thing; for the sacred Altars have been ever allowed sure Places of Refuge for them to fly unto, as have unwillingly offended; and the Name of Crime is given to unlawful Actions, which are committed on purpose, and not to those which extreme Necessity gives Courage to commit*. The *Cerites* in *Livy*,<sup>10</sup> thus address the *Romans*, *That they would construe that a deliberate Act, which was more justly to be called Force or Necessity*. And *Justin*<sup>11</sup> says thus, *The Act of the Phocians, tho' all condemned it for its heinous Sacrilege, yet it brought a greater Odium upon the Thebans, who perfectly forced them to it, than upon themselves*. And this is the Opinion of *Isocrates*,<sup>12</sup> *Of him who steals purely to keep himself from starving, he hath Necessity, a good Plea for Pardon*. Also *Aristides*<sup>13</sup> says, *The Hardness of the Times is some Excuse for those that abandon their Allies*. Thus says<sup>14</sup> *Philostratus* of the *Messenians*, that they did not receive those that were banished from *Athens*, *They could not safely do it, for Fear of Alexander, whom all Greece severely dreaded*. And thus we find in *Aristotle*,<sup>15</sup> *Half [1430] wicked, but not unjust, nor a Lier-in-wait*. *Themistius*, in his Praises of the Emperor *Valens*, thus applies these Distinctions to our Purpose,<sup>16</sup> *You have well distinguished between a real Injury, a Fault, and a Misfortune*;<sup>17</sup> *tho' you are not acquainted either with Plato, or Aristotle, yet you put in practice their Precepts; for you have not judged them worthy of the same Punishment, who were the Authors of the War, and those who afterwards were forcibly [636] engaged in it, and those who submitted to him who seemed Master of the Empire*. But those you have condemned, those you have corrected, and the last received unto Mercy.

8. The same Author, in another Place, advises a young Emperor. *Consider what Difference there is between a Misfortune, a Fault, and a direct Injury; and how it becomes a Prince to forgive the first, chastise the second, and severely punish the third*. Thus, according to *Josephus*,<sup>18</sup> did *Titus* the Emperor punish only the principal in a Crime, μέχρις ἔργου, *really*; but the Multitude μέχρι λόγου, *only by Reprimands*. Bare Misfortunes neither deserve Punishment, nor engage us to make any Restitution; but [1431] unjust Actions are obnoxious to both. But the Fault of a middle Nature, as it is liable to Restitution, so often it does not merit Punishment, especially capital. To this we may refer that of *Valerius Flaccus*.

- - *At quibus invito maduerunt sanguine dextrae,*
  - *Si sors saeva premat miseros, sed proxima culpae*
  - *Hos variis mens ipsa modis agit, & sua carpunt*
  - *Facta viros resides — —*
- - *But those who by Chance imbrue their Hands in Blood,*
  - *Press'd by Misfortune, tho' not the greatest Crime,*
  - *Yet conscious of a Guilt, feel Loads of Anguish,*

- Remorse distracts 'em, and the hideous Image
- Still stares them in the Face.

[V. *The principal Authors of a War to be distinguished from those drawn into it.*] V. We meet with frequent Examples in History, of differenta Punishments inflicted on the principal Authors of a War, and those who have been drawn into it (as *Themistius* observes); *Herodotus*b relates, that the *Grecians* took an exemplary Punishment on those who had been the chief Authors of the *Thebans* Revolt to the *Medes*. Thus (as *Livy* tells us)<sup>1</sup> the principal Men of *Ardea* were beheaded. In the same Author,<sup>2</sup> *Valerius Levinus, having taken Agrigentum, he whipt their chief Leaders with Rods, and then beheaded them, the Rest, and the Prey, he sold*. Also, in another Place of the same *Livy*,<sup>3</sup> When *Atella* and *Calusia* were surrendered, their Leaders were put to Death. Again, in another Place,<sup>4</sup> (he addresses the *Roman Senate*) Since the chief Authors of this Rebellion are deservedly punished by the immortal Gods, and by you, illustrious Fathers, [1432] what do you intend to do with the innocent People? At last they were pardoned, and their Freedom restored;<sup>5</sup> to the End (as he says) where the Fault begun there the Punishment should stop. *Eteocles* the Argive is highly commended in *Euripides*,<sup>6</sup> because

- When he was Judge, the Guilty always bore
- The Weight of their own Faults; the People never
- Groan'd with the Burden of their Rulers Crimes.

And the *Athenians* (as *Thucydides* relates) repented of their Decree against the *Mitylenians*,<sup>7</sup> That they should destroy the whole City, rather than the principal Au- [637] thors of the Revolt. *Demetrius* is also reported by *Diodorus*, when he took *Thebes*, to have put only ten of the chief Leaders to the Sword.

[VI. *In the very Authors we must distinguish the Causes, whether probable, or improbable.*] VI. 1. But also in the very Authors of the War, we must distinguish the Causes; for there are some, not indeed just, but yet such as may impose upon Men not really wicked. The Writer to *Herennius* lays down this as a most just Plea for Pardon,<sup>1</sup> If any one who hath offended, did it not out of Hatred or Cruelty, but out of Duty and good Design. *Seneca's Wiseman*,<sup>2</sup> Will let his Enemies go off safe, even sometimes commended, if they were engaged in the War upon honest Grounds, out of Loyalty, according to the Obligations of an Alliance, for their Liberty. The *Caerites*, in *Livy*,<sup>3</sup> beg [1433] Pardon for their Fault<sup>4</sup> in assisting their Kinsmen. The *Phocians*,<sup>5</sup> the *Chalcidians*, and others, who had aided *Antiochus*, according to their Treaty, were pardoned by the *Romans*. *Aristides*, in his second *Leuctrica*, speaks of the *Thebans*, who under the Conduct of the *Lacedemonians* marched against the *Athenians*,<sup>6</sup> They were indeed engaged in an unjust Action, but with a fair Plea, they did it out of Fidelity to the Lacedemonians.

2. *Cicero*,<sup>7</sup> in his first Book of Offices, says, they are to be pardoned who have not been cruel nor inhuman in the War. Also, that Wars undertaken for the Glory of Empire, are to be managed with less Severity. Thus King *Ptolemy* signifies to<sup>8</sup> *Demetrius*, that They ought not to make War for every Kind of Reason, but only for Glory and Empire. And so *Severus*,<sup>9</sup> [1434] in *Herodian*, When we first took Arms against *Niger*, we had not any specious Pretences of Quarrel against him; but the Empire being the Prize disputed for, both of us with equal Ambition contended for it.

3. That often happens, which *Cicero*<sup>10</sup> observed in the War between *Caesar* and *Pompey*. There was a great Uncertainty, the most famous Commanders were not agreed, many could not tell whose Cause was best. And what he also says in another Place,<sup>11</sup> Tho' we be guilty of a Failing, through human Frailty, yet we are certainly free from a Crime. As in *Thucydides*, those Acts are positively declared

par- [638] donable which are done, *Not out of Malice, but through Error*. The same Cicero<sup>12</sup> says of *Dejotarus, He did not engage out of any Hatred to you, but slipt through common Frailty*. And Salust,<sup>13</sup> in his History, *And the common People, more from Example than any Understanding of the Cause, flocked in one after another, and followed the foregoing Leader as the wiser*. What Brutus writ of Civil Wars, may not improperly be applied to all Wars.<sup>14</sup> We ought to be more severe in preventing them, than ready to discharge our Wrath upon the conquered.

**[VII. Even to Enemies who have deserved Death, often times the Punishment may rightly be remitted.]** VII. 1. Even where Justice does not demand it, yet it is often agreeable to Goodness[[],]<sup>1</sup> to Moderation, and a great Soul to forgive. Salust<sup>2</sup> [1435] says, that *The Romans advanced their Greatness by forgiving*. And Tacitus,<sup>3</sup> *We ought to be as merciful to Suppliants, as implacable against Enemies*. But Seneca,<sup>4</sup> that *It belongs only to wild Beasts, and even such as have no Spark of Generosity, to bite and tear those they have thrown down. Elephants and Lions, after they have slung on the Ground, what resisted them, leave it there, and go away*. The Situation of Things is often such that one may say, as it is in Virgil,

- ◦ *5—— Non hic victoria Teucrûm*
- *Vertitur, aut anima una dabit, discrimina tanta.*
- ◦ *If I survive, shall Troy the less prevail?*
- *A single Soul's too light to turn the Scale.*
- Dryden.

2. There is a remarkable Place to the same Purpose, in the fourth Book to *Herennius*.<sup>6</sup> “Our Ancestors well observed, to put no captive King to Death. And why? It would be unjust to abuse that Power which Fortune hath bestowed on us to the Destruction of them, whom the same Fortune, a little before, had placed in the most eminent Station. But, you will say, he brought an Army against us! I now absolutely forget it. Why so? Because it is the Part of a brave Man to hold those his Enemies who dispute with him the Victory, and to consider them as Men, when vanquished; that so Valour may finish the Calamities of War, and Humanity augment the Advantages of Peace. But, you will say again, suppose he had got the Victory, would he have done the same? Why then should you spare him? Because it is my Practice to despise such Folly, not to imitate it.” If you understand this of the *Romans*, (which is very uncertain, since the Author often employs Reasons drawn from foreign Examples, or even such as are fictitious) it is absolutely repugnant to that which we meet with in the Panegyrick of *Constantine*, the Son of *Constantius*.<sup>7</sup> [1436] “Tho’ he be the more prudent Man, who by a Pardon gains the Affection of [639] Enemies, yet he is the more valiant, who treads them under Foot when vanquished. You have revived, O Emperor! that antient Boldness of the *Roman Empire*, which always put the Generals of the Enemy, whom they had taken Prisoners, to Death. For then the captive Kings, after they had attended the triumphant Chariot of the Conqueror, from the Gates to the Forum, as soon as ever he turned his Chariot to the Capitol, were dragged to Prison, and there put to Death.

[1437]

Except only *Perseus*, who, by the particular Favour of *Paulus Aemilius*, (to whom he had yielded himself) escaped this severe Punishment. But the Rest, deprived of Life in a Prison, served as a Warning to other Kings, rather to court the Friendship of the *Romans*, than provoke their Justice.” But this Author expresses himself too generally. *Josephus* indeed mentions the like Severity of the *Romans*, in the History of *Simon Barjora*, who experienced it; but he speaks of Generals, such as *Pontius the Samnite*, not of those who had the Title of Kings. The Meaning of his Words may be taken thus.<sup>8</sup> “The Conclusion of the Triumph was when they were come to the Capitol, the Temple of

*Jupiter*, for there, by antient Custom, the Conqueror staid, till he had Notice of the Death of the Enemy's General. It was Simon the Son of *Jora*, who was led among the Prisoners in triumph: He then having a Halter about his Neck, was hurried to the publick Place, his Keepers also whipping him on: For in that Place it is the Custom of the *Romans* to put to Death, those that are condemned for capital Crimes. As soon then as it was declared that he was dead, they first offered up Vows, and then Sacrifices." *Cicero*<sup>9</sup> almost writes the same of Punishments, in his Oration against *Verres*.

3. We have many Examples of Generals thus executed, and some of Kings, as *Aristonicus*,<sup>10</sup> *Jugurtha*,<sup>12</sup> *Artabasdos*. Yet besides *Perseus*, [1438] *Syphax*,<sup>13</sup> [640] *Gentius*,<sup>14</sup> *Juba*<sup>15</sup> and, in the Time of the *Caesars*, *Caractacus*,<sup>16</sup> and others, escaped this Punishment; whence it appears, that the *Romans* had Respect to the Causes of the War, and the Manner of prosecuting it; whom yet *Cicero*,<sup>17</sup> and other antient Authors, do acknowledge to have been too cruel in their Victories. Therefore *M. Aemilius Paulus*, in *Diodorus Siculus*, well advised the *Roman* Senators, in the Case of *Perseus*.<sup>18</sup> *Tho' they fear not the Power of Man, yet they ought to dread the Divine Vengeance, which is ready to fall on them who insolently abuse their Victories.* And<sup>19</sup> *Plutarch* observes, that in the *Grecian* Wars, the very Enemies refrained all Violence to the *Lacedemonian* Kings, in Respect to their Dignity.

4. An Enemy then who hath not Respect purely to what human Laws allow, but what is really his own Duty, and what the Rules of Virtue [1439] require, will spare even his Enemy's Life; and will put no Man to Death, unless to save himself from Death, or something like it, or to punish personal Crimes that deserve Death. Nay, and to some of those that deserve it, either from a Principle of Humanity, or some other good Reason, he will either remit all Punishment, or at least the capital Part. The same forementioned *Diodorus Siculus*<sup>20</sup> excellently observes, "The taking of Cities, successful Battles, and other Prosperities of War, are often more owing to Fortune than Valour. But to shew Mercy to the Vanquished is purely the Effect of Wisdom." We read in *Curtius*,<sup>21</sup> "Tho' *Alexander* had just Reason to be angry against the Authors of the War, yet he forgave them all."

**[VIII. We must take all possible Care that the Innocent be not, tho' against our Intention, kill'd.]**  
VIII. As to Persons who are killed accidentally, and not on purpose, we are to remember what we said<sup>a</sup> above, that if not for Justice, yet for Pity, we must not attempt any Thing which may prove the Destruction of Innocents, unless for some extraordinary Reasons, and for the Safety of many. *Polybius* is of the same Opinion, who, in his first Book, thus speaks,<sup>1</sup> "It is the Part of a good Man not to prosecute a War to the utmost, against those that are wicked, but only so far, till they have made Satisfaction for, and amended their Crimes, and not promiscuously to involve the Innocent in the Punishment of the Guilty, but, for the Sake of those Innocents, even to pardon the Guilty."

**[IX. Children to be spared, and Women, unless highly criminal, and also old Men.]** IX. 1. These general Principles being laid down, it will not be difficult to infer more particular Rules.<sup>1</sup> *Tender Age must excuse the Child, and her Sex the Wo-* [641] *man*, (says *Seneca*, in his Books against Anger). GOD himself, in the Wars of the *Hebrews*, even after Peace offered and [1440] [1441] refused, would have Women and Infants spared, (*Deut. xx. 14.*) only some few Nations excepted by a special Command, against whom the War was not a human War, but a War of GOD, as it was commonly called. And when he ordered the *Midianitish* Women to be slain for their own personal Crimes, he yet excepted those that were pure Virgins. (*Numb. xxxi. 18.*) Nay, when he denounced fearful Judgments on the *Ninevites*, for their enormous Sins, he was pleased to delay the deserved Vengeance, in Compassion of so many thousands, who could not distinguish between Good and Evil. (*Jonah iv. 2.*) Like to which is that in *Seneca*,<sup>2</sup> *Can any one be angry with Children, whose Age as yet understands not the Difference of Things?* And in *Lucan*,<sup>3</sup>

- *Crimine quo parvi caudem potuere mereri?*

- How could young Infants ever merit Death?

If then GOD, who, as the Author and Lord of Life, may, without Injustice, take it away when he pleases, and without any other Reason, from Persons of whatsoever Sex or Age, has, nevertheless, commanded, and acted himself towards Women and Children, in the Manner we have now seen; what ought Men (to whom he hath given no other Right over their Fellows, than what is necessary to preserve the Safety and Society of Mankind) to do in this Case?

2. We might add here, first, in Regard to Children, the Judgment of those Nations and Times wherein Justice most prevailed:<sup>4</sup> *We carry Arms* (says *Camillus*, in *Livy*) *not against that tender Age, which is spared, even at the taking of Cities, but against those who are in Arms.* He adds, that this is one of the Laws of War, that is, one of the Rules of natural Right, which take Place here. *Plutarch*, treating on the same Subject, tell us,<sup>5</sup> *Good Men observe even some Laws of War.* Where, pray observe, he saith [1442] *Good Men*, that you may distinguish this Right from that allowed by Custom, and which only implies a bare Impunity. So *Florus*<sup>6</sup> says, it cannot in Honesty be otherwise. And *Livy* has it in another Place,<sup>7</sup> [642] *Which Age the Enemy, tho' highly provoked, should spare.* And again,<sup>8</sup> *Their savage Cruelty and Rage reached even to harmless Infants.*

3. There is no Exception here with Respect to Children, who have not as yet the Use of Reason. But as to Women, the Thing takes Place only in general, that is, unless they have committed some Crime which deserves a particular Punishment, or have usurped the Offices of Men. For that is, as *Statius* expresses it,

- <sup>9</sup>*Sexus rufus insciusque Belli,*
- *A Sex unskill'd, and ignorant of War.*

The Prefect in the Tragedy, replies to *Nero*, calling *Octavia* his Enemy,

- —— *Femina hic nomen capit?*
- <sup>10</sup>*Can a Woman deserve that Name?*

And *Alexander*, in *Curtius*,<sup>11</sup> *I use not to make War with Captives and Women. He must be in Arms that I take for an Enemy.* So *Grypus*, in *Justin*, [1443] <sup>12</sup>*None of his Ancestors after Victory did ever, in all their Wars, either foreign or domestick, shew Cruelty to Women, whom their very Sex did fully secure from the Hazards of War, and the Fury of the Conqueror.* And another, in *Tacitus*,<sup>13</sup> *That he never made War against Women, but only those that were actually in Arms against him.*

4. *Valerius Maximus*<sup>14</sup> calls the Behaviour of *Munatius Flaccus* against Women and Children, a barbarous Cruelty, and not fit to be mentioned; *Diodorus*<sup>15</sup> tells us, that the *Carthaginians*, at *Selinus*, killed old Men, Women, and Children, *without any Manner of Compassion.* And in another Place he calls this Act *a savage Cruelty.* *Latinus Pacatus*<sup>16</sup> stiled Women, *A Sex which the Wars spare.* And so did *Statius* of old Men.

- <sup>17</sup>— *Nullis violabilis armis*
- *Turba senes ——*
- *Old Men should be from Violence secur'd.*

[X. *Priests and Scholars to be spared.*] X. 1. What we have said (of Women and Children) may be generally said of all Men, whose Manner of Life is wholly averse to Arms.<sup>1</sup> *By the Laws of War, only those that are in Arms, and do resist, are to be killed*, according to *Livy*, that is, that Law which is agreeable to Nature. So says *Josephus*,<sup>2</sup> It is just that they should suffer by Arms, who have taken up

Arms, but the Innocent should not be [643] touched. When *Camillus* [1444] had taken the City of *Veii*,<sup>3</sup> he ordered, that they should not hurt those that were not in Arms. In the first Rank of these ought to be held, those who are engaged in *holy Things*. For as it was in all Ages the general Custom of Nations to excuse them from bearing Arms,<sup>4</sup> so were they excused also from the Violence of Arms. Thus the *Philistins*, tho' professed Enemies of the Jews, spared the<sup>5</sup> College of Prophets at *Gaba*, as you may find, 1 *Sam.* x. 5. and 10. And so to another Place where was a like College, as it were set apart and privileged from all Violence, did *David* flee with *Samuel*, 1 *Sam.* xix. 18. *Plutarch*<sup>6</sup> informs us, when the *Cretans* were engaged in Civil Wars, they mutually forbore all manner of Violence<sup>7</sup> to the Priests, and those who had the charge of burying the Dead. To this we may apply the *Greek* Proverb,

[1445]

- Ὄυδὲ πυρφόρος ὑπελείφθη.
- *Not a single Priest escaped.*

<sup>8</sup> *Strabo* observes, when all *Greece* was up in Arms, the *Eleans*, as sacred to *Jupiter*, and those that sojourned among them, enoyed a secure Peace.

2. They also have justly this same Privilege, as the Priests, who have embraced a like Sort of Life, as Monks, and<sup>9</sup> Lay-Brothers, that is, *Penitents*, whom the<sup>10</sup> *Ecclesiastical Canons*, according to natural Equity, would have spared equally as Priests. To these we may justly add those who apply themselves to the Study of Sciences and Arts beneficial to Mankind.

**[XI. And also Husbandmen.]** XI. Next to these, the Canons<sup>1</sup> privilege Husbandmen. *Diodorus Siculus*<sup>2</sup> highly commends the *Indians*, *In their Battles they kill one another (without Mercy)* [644] but they do not Harm to the Husbandmen, as being necessary for the publick Good. *Plutarch* says of the antient *Corinthians*<sup>3</sup> and *Megareans*, *None of them would in any wise hurt the Husbandmen.* [1446] And *Cyrus* sends to the *Assyrian King*.<sup>4</sup> *He was desirous that Husband men should be secure and indemnified.* And *Suidas*<sup>5</sup> says of *Belisarius*, *He was so favourably inclined to Husbandmen, and took such a particular care of them, that whilst he was General, there was no manner of Violence done to them.*

**[XII. Merchants and the like.]** XII. Next to these the Canon<sup>1</sup> includes *Merchants*, which is not to be understood only of those who sojourn for a Time in an Enemy's Country, but also such as are natural and perpetual Subjects, because the manner of the Life they use is entirely averse from War: And under this Denomination are comprehended all Sorts of *Mechanicks* and *Tradesmen*, whose immediate Interest makes them more inclinable to Peace than War.

**[XIII. And Captives.]** XIII. 1. That we may come to those that bore Arms, I have<sup>a</sup> already mentioned that of *Pyrrhus* in *Seneca*,<sup>1</sup> who said that Honour, that is, a regard to Equity, does not permit us to take away the Life of a Prisoner. We have quoted<sup>b</sup> a Saying of *Alexander* to the same Purpose, who allows Captives the same privilege with the Women. We may add that of St. *Augustin*,<sup>2</sup> *In fight we ought not to kill the Enemy but through Necessity, [1447] and against our Will. But as Violence is allowable against one that is in Arms, and in a Case of Resistance, so is Mercy due to the Vanquished, or Captive, especially where there is no danger of the Disturbance of the Peace thereby.* *Xenophon*<sup>3</sup> reports of *Agesilaus*, *He ordered his Soldiers not to punish their Prisoners as Malefactors, but to preserve them as Men.* And we find in *Diodorus Siculus*, *All the*<sup>4</sup> *Greeks in general engaged stoutly against those that resisted, but shewed Mercy to the Vanquished.* The same Author also informs us of the *Macedonians*<sup>5</sup> under *Alexander*, *They were more severe to the Thebans, than the Laws of War allowed.*

2. *Sallust*,<sup>6</sup> in his History of *Jugurtha*, speaking of young Men, who were put to Death, after they had surrendered, says, it was done against the Law of Arms, [645] that is, against the Law of natural Equity, and the known Practice of all civilized Nations. And we read in *Lactantius*, [1448] *They spare the Vanquished, and even in Arms there is room for Mercy*. *Tacitus* commends *Primus Antonius* and *Varus*, two Generals of *Vespasian*, *That after the Battle was over, they exercised no Cruelty to any*. So *Aristides*,<sup>8</sup> says of the *Lacedemonians*, that *They fought vigorously against those who resisted, but shewed Mercy to them when conquered*.

The Prophet *Elisha* asks the King of *Samaria* this Question about Prisoners of War, *Wilt thou kill those whom thou hast taken Captive, with thy Sword, and with thy Bow?* 2 Kings vi. 22. In *Euripides*,<sup>9</sup> when one asked in the *Heraclidae*,

- *Does your Law forbid the killing of an Enemy?*

The *Chorus* answers,

- *Yes; when taken Prisoner in a Fight.*

In the same Author *Eurystheus* the Captive says,

- *My Murderer shall be rank'd among the Guilty.*

In *Diodorus Siculus*,<sup>10</sup> the *Byzantians* and *Chalcedonians*, because they had slain many of their Prisoners, were branded with this Character, *They committed Acts of abominable Cruelty*. The same Author in another Place calls<sup>11</sup> to spare Captives, *The Law of Nations*. And they who transgress this Law, he says, without doubt, are guilty of a great Crime. Equity teaches us to be merciful to Prisoners, as we mentioned before out of the philosophical Treatises of *Seneca*.<sup>12</sup> And Historians<sup>13</sup> highly commend [1449] those, who when the Multitude of their Prisoners has been so great, that the Number would be either chargeable or dangerous, have chose rather to send them all away freely, than to kill them.

[XIV. *Those to be accepted who surrender upon fair Terms.*] XIV. 1 For the same Reasons,<sup>1</sup> they that either in a Battle, or a Siege, shall demand Quarter, are to be accepted. Wherefore *Arrianus*,<sup>2</sup> says, that the *Thebans* killing of their Prisoners that had yielded, was not done according to the *Grecian Custom*, οὐκ Ἐλληνικήν σφαγήν. Likewise *Thucydides*,<sup>3</sup> in his third Book, *You received us unto Mercy, who voluntarily, and with Hands listed up, craved a Surrender. And it is the Custom of the Greeks not to put such to Death*. And the *Syracusan* Senators, in *Diodorus Siculus*,<sup>4</sup> tell us, *It is the Part of a great Soul to spare a Suppliant*. And *Sopater*,<sup>5</sup> says, *It is the Law to preserve Suplicants in the Wars*.

2. In besieged Towns, the *Romans* observed this Custom before the battering Ram struck the walls. *Caesar*,<sup>6</sup> declares to the *Aduatichi*, he would save their City, [646] if they surrendered themselves before the Ram touched the Wall; which is still observed, *viz.* in weak Towns, before [1450] the playing of the Batteries; and in fortified Cities, before *the giving of a Storm*. But *Cicero*,<sup>7</sup> considering not so much what is done, as what ought in Equity to be done, gives his positive Opinion thus: *As we ought to take Care of those we conquer, so we should take them into our Protection, who laying down their Arms, surrender to our Generals, tho' our Rams have battered their Walls*. The *Hebrew Expositors*,<sup>8</sup> observe, that it was a Custom among their Ancestors, when they laid Siege to a Town, not to encompass it quite round, but to leave one Place free for them to escape, that desired to flee, that they might have less Occasion to shed Blood.

[XV. *They are also to be spared that surrender without Conditions.*] XV. The same Equity commands

us to spare those, who surrender to the Conqueror without Conditions in a suppliant Manner.<sup>1</sup> *To kill those that have yielded*, (says *Tacitus*) is barbarous. And *Salust*<sup>2</sup> relating how *Marius* put to Death the young Men of *Campsas*, who had surrendered, calls it, *An Act against the natural Right of War*. And the same Author in another Place, *He put to the Sword not those that were in Arms, and in Battle, by the Right of War, but the very Suppliants that cried for Mercy*. And (as I before mentioned) in *Livy*,<sup>3</sup> *Killing of armed Men, and those [1451] that resist, is allowed by the Right of War*. And the same *Livy* again,<sup>4</sup> *He made War upon those that had submitted, against all Equity and Justice*. Nay, the chief Business of a General should be rather to force his Enemies thro' Fear to a Surrender, than to put them to Death. It was highly commendable in *Brutus*,<sup>5</sup> *He suffered not his Men to fall on the Enemy immediately, but surrounding them with his Horse, bid his Soldiers spare those who shortly would be their own*.

[XVI. *Provided they were not guilty of some enormous Crime before, and how this is to be understood.*] XVI. 1. Against these Rules of natural Right and Equity, some Exceptions use to be made, no way just, viz. If it be done by way of Retaliation; if by way of Terror, to frighten others; or if they have been obstinate in their Resistance. But no Man can look upon this enough to justify a Slaughter, who has seriously weighed what has been said before of the just Causes of killing Enemies; For there is no Danger from Prisoners, or from those who have actually surrendered themselves, or desire to do it. That they may therefore be justly put to Death, there ought to be a previous Crime, and that such a one, as an impartial Judge shall think Capital. And so we sometimes see Prisoners, and those that have surrendered themselves, put to the Sword, and their yielding upon Condition to have their Lives spared, not accepted; if they being satisfied of the Injustice of the War,<sup>1</sup> have still continued in Arms; if they have<sup>2</sup> [1452] abused the Conqueror with slanderous Reproaches, if they [647] have<sup>3</sup> broke their Faith, or any other Law<sup>4</sup> of Nations, as the Privilege of Ambassadors; or if they have<sup>5</sup> deserted their Colours.

2. But Nature doth not allow Retaliation, unless against the personal Offenders; neither is it enough to pretend, that the Enemies are but one entire Body engaged against us, as may easily be understood from what hath been already<sup>a</sup> said concerning the Communication of Punishments. We find in *Aristides*,<sup>6</sup> *It is not perfectly absurd, to imitate as just, what we ourselves condemn as wicked and unjust?* Wherefore *Plutarch*<sup>7</sup> blames the *Syracusans*, for putting to Death the Wives and Children of *Hicetas*, purely because *Hicetas* had before killed the Wife, Sister, and Son of *Dion*.

3. The Benefit which may follow from hence, by striking a Terror for the future, does by no Means give a Right to put to Death. But if we are otherwise authorised to put to Death, this Consideration may engage us not to abate of our Right.

4. Further, an eager Desire to maintain our own Party, if the Cause itself be not absolutely dishonest, cannot really deserve Punishment, as the *Neapolitans* argue in *Procopius*; or if there were any Punishment due, it could never amount to that of Death, before an equitable Judge. When *Alexander* had commanded all the young Men<sup>8</sup> in a certain Town to be put to the Sword, because they had made an obstinate Defence, he seemed to the *Indians* to make War like a Robber; whereupon the King [1453] to avoid for the future such Reflections, shewed more Mercy in his Victories. He more honourably spared some *Milesians*, because they appeared brave and faithful to their own Country, which are the very Words of<sup>9</sup> *Arrian*. When *Phyto*, Governor of *Rhegium*, was hurried away to Torments and Death, for stoutly defending his City against *Dionysius*, he cried out, that he was thus barbarously used, because he would not be tray his Country, and that Heaven would quickly revenge his Death. *Diodorus Siculus* calls it,<sup>10</sup> *unjust Punishment*. I much approve that Wish in *Lucan*,<sup>11</sup>

- • —— *Vincat, quicunque necesse*

- *Non putat in Victos saevum distingere ferrum*
- *Quique suos cives, quod signa adversa tulerunt,*
- *Non credit fecisse nefas. — — —*
- ◦ *— — — May he be crown'd with Victory,*
- *Who thinks it base to kill th' unhappy Vanquish'd;*
- *Tho' in the Battle, with Minds truly brave,*
- *They stood against him. — — —*

But we must understand by the Word *Cives*, not the Inhabitants of this or that Country, but all those who are Members of that great State, which comprehends all Mankind. Much less can the Resentment for a Loss received by War, render the shedding of Blood just and lawful; as we read that *Achilles*, *Aeneas* and *Alexander*, celebrated the Obsequies of their deceased Friends with the Blood of their Prisoners, or those that had yielded themselves; therefore *Homer* justly expresses it,

- [12](#)*Κακὰ δὲ φρεσὶ μῆδετο ἔργα.*
- *And in his Mind did evil Things devise.* [648]

[1454]

**[XVII. Offenders may be pardoned on account of their Multitude.]** XVII. But where the Crimes are such, as they really deserve Death, yet the Greatness of a Multitude may be some Plea to mitigate the Severity of the Punishment; a Pattern of which forbearing Mercy we have from GOD himself, who[a](#) ordered a Peace to be offered to the *Canaanites*, and their Neighbours, tho' notoriously wicked, with the Promise of Life under the Condition of being Tributaries. To this agrees that of [1](#) *Seneca, Generals rigorously punish a Soldier, who alone commits any Fault; but where a whole Army is unanimously engaged in a Mutiny, a general Pardon is requisite. What abates then the Anger of a wise Man? The Multitude of Offenders.* And in *Lucan*,[2](#)

- ◦ *Tot simul infesto juvenes occumbere Letho,*
- *Saepe fames, pelagique furor, subitaeque ruinae,*
- *Aut Caeli, Terraeque lues, aut bellica clades,*
- *Nunquam poena fuit. — — —*
- ◦ *At once so many Youths to hurry into Death,*
- *Hunger may do it, or Shipwrecks, or the quick*
- *Amazing fall of Buildings, or poysone'd Air,*
- *Or blasting Damps, or War; it can't be Punishment.*

[1455]

Therefore (*Cicero*[3](#) tells us) *to prevent the shedding of too much Blood, they brought in the casting of Lots.* And *Salust*[4](#) thus addresses *Caesar*, *Neither does any one provoke you to severe Punishments, or fearful Judgments, which rather tend to depopulate a State, than to correct the Guilty.*

**[XVIII. Hostages to be spared, unless personally faulty.]** XVIII. 1. From what has been already[a](#) mentioned, may easily be understood, what is allowable by the Law of Nature concerning Hostages. As it was formerly believed every one had the same Right over his own Life, as over other Things wherein he had a Propriety; and that this Right, by the Consent, either express, or tacit, of the Individuals, was transferred to the State, it was the less to be admired, if Hostages, personally innocent, were (as we[1](#) read) put to Death for the Crimes of their Country, whether by Vertue of their own particular Consent, or of the Publick, which may be inclusive of their own. But since a truer Wisdom has informed us, that GOD has reserved to himself the Power of our Lives, so that no Man

can solely by his own Consent bestow upon another a Power either over his own Life, or that of his Subjects. Therefore (as *Agathias* writes) that good General *Narses* abhorred putting innocent Hostages to Death, as a brutish and cruel Act. So also have others done; witness the Example of *Scipio*, who used to say<sup>2</sup> that he would severely punish those who had rebelled, but not the innocent Hostages; neither would he take Revenge of an unarmed Person, but of an Enemy actually in Arms.

2. But what our modern Lawyers, and those not in considerable, maintain, that [649] such Agreements are valid, if authorised by Custom, I [1456] allow, if they mean by Right, only an Impunity; which in this Case often comes under that Denomination. But if they suppose, that they who take away a Man's Life, only by virtue of such an Agreement, are really blameless, I am afraid they are both mistaken themselves, and by their own Authority dangerously mislead others. Indeed, if he that comes as an Hostage, is then, or was before, a notorious Offender, or has afterwards falsified his Faith given in weighty Affairs, his Punishment may then be just.

3. Yet when *Clelia*, who<sup>3</sup> not of her own accord, but by the Order of the State, went an Hostage, escaped by swimming over the *Tyber*,<sup>4</sup> *The Hetrurian King* not only did her no Harm, but even commended her on account of her Bravery: To use *Livy*'s own Words in the Affair.

[XIX. *All needless Combats to be avoided.*] XIX. This also is to be added, that all *Combats*, which are not of Use for the obtaining of Right, or concluding a War, but merely for vain Ostentation of Strength, that is, as the *Greeks* call it, *Rather a show of Strength, than a warlike Action*, [[1]] are wholly repugnant to the Duty of a Christian, and Humanity itself. Therefore all Magistrates ought strictly to forbid these Things, for they must render an account for the unnecessary shedding of Blood to him, whose vicegerents they are; *Sallust*,<sup>2</sup> tho' a Pagan, commends those Generals, who purchase Victory with the least Blood. And *Tacitus*<sup>3</sup> writes of the *Catti*, a People of known Valour, *They seldom made Excursions, or had skirmishes with the Enemy.*

## Endnotes

1

Lucan. *Pharsal.* Lib. I. Ver. 349, 350.

2.

*Sunt autem quaedam officia, &c. De Offic. Lib. I. Cap. XI.* See what we have said above, *B. II. Chap. XX. § 2. and 22.* and the Passages of St. Austin, cited in the preceding Chapter, (§ 2. *Num. 3. Note 9.*) in regard to the Benevolence *Christians* ought to retain for each other, even in War. Aristotle speaking of a too rigorous Punishment exercised of old at *Thebes* and *Heraclea*, ascribes it to a Spirit of Sedition. *Politic.* Lib. V. Chap. VI. Thucydides ranks amongst the Disorders of *Greece*, of which he gives a lively Description, the revenging of Injuries, beyond the Bounds of Justice and the publick Good, *Lib. I. (Cap. LXXXII.)* Tacitus says of *Pompey*, that in making too rigorous Laws for the Correction of Vice, the Remedies were worse than the Diseases: *Tum Cn. Pompeius, tertium Consul, corrigendis moribus delectus & gravior remediis, quam delicta erant, &c. Annal. Lib. III. (Cap. XXVIII. Num. 1.)* The same Historian blames *Augustus* a little above, for having forgot, in the Punishment of Adultery, the Clemency of the antient *Romans*, and his own Laws: *Nam culpam inter viros ac foeminas, &c. (Ibid. Cap. XXIV. Num. 3.)* Juvenal observes that an Husband's Resentment for his Wife's Infidelity hurries him sometimes into more terrible Extremities, than all the Laws have ever

admitted in favour of Revenge:

- —— *Exigit autem*
- *Interdum ille dolor plus, quam Lex ulla dolori*
- *Concessit ——*

*Sat. X. Ver. 314, 315.* Quintilian takes it for granted, that only the most atrocious Parricides are punished, when no longer in Being, that is to say, by depriving their Bodies of Sepulture: *Ideoque non nisi ab ultimo parricidio exigitur poena trans hominem.* Declam. VI. (Cap. X. p. 137. *Edit. Burm.*) The Emperor *Marcus Antoninus* wrote to the Senate so to moderate the Proscription and Punishment of the Accomplices in the Revolt of *Avidius Cassius*, that nothing might be too rigorous nor cruel in them: *Et ad Senatum scribam, ne aut proscriptio gravior sit, aut poena crudelior.* Vulcat. Gallican. *Vit. Avid. Cass.* (Cap. XI.) Ausonius intimates, that Punishment and Vengeance may exceed the Crime:

- —— *Vindictaque major*
- *Crimine visa suo ——*

[*Cupid. Crucifix. Ver. 93, 94.*] Ammianus condemns such Conduct in regard to a conquered Enemy: *Saevitum est in multos acrius, quam errata flagitaverant, veldelicta,* Lib. XXVI. (Cap. X. p. 514. *Edit. Vales. Gron.*) There is a like Reflection in Agathias, *Lib. III.* [or rather *Lib. IV. Cap. VI.*] Grotius.

3.

*Verumtamen quamdiu imperium, &c.* De Offic. *Lib. II. Cap. VIII.*

4.

*Illos ergo Crudeles vocabo, &c.* De Clement. *Lib. II. Cap. IV.*

5.

*Orat. Leuctric. I.* (p. 94. A. Vol. II. *Edit. Paul. Steph.*)

6.

*De Ponto, Lib. I. Epist. VIII. Ver. 19, 20.*

7.

*Orat. Plataic. p. 298. B. Edit. H. Steph.*

8.

*Lib. III. Eleg. XVII. Ver. 28.*

9.

(*Metam. Lib. VIII. Ver. 101, 102.*) The same Poet says elsewhere, that Compassion is laudable even towards an Enemy:

- *Est etiam miseris pietas, & in hoste probatur.*
- *Trist.*
- *Lib. I. Eleg. VIII. (Ver. 35.) Grotius.*

1

But see what I have observed above, *B. II. Chap. I. § 13. Note 1.*

a

*B. 2. ch. 21. §5.*

1

*Lib. XIII. Cap. XXIX. p. 345. Edit. H. Steph.*

2.

*Si quis hoc rebellandi, &c. Lib. II. Cap. XXIII.*

3.

*Itaque corpus dumtaxat suum, &c. Lib. XXVII. (Cap. XVII. Num. 13.)*

4.

*Propterea quod omnes, &c. Orat. pro P. Quint. [Cap. II.]*

5.

*Tertium est tempus, &c. Orat. pro Qu. Ligario, Cap. II.*

6.

*Residui omnes abierunt innoxii, &c. Lib. XXI. Cap. XII. p. 307.* The Historian adds immediately after, that this Emperor who was of a mild and merciful Disposition acted in this manner from the Motive of Equity: *Id enim aequitate pensata statuerat placabilis Imperator & Clemens.* Thucydides makes Cleon the Athenian say that he pardoned those, whom the victorious Arms of the Enemy had compelled to revolt, *Lib. III. (Cap. XXXIX.)* This is what Paulus the Lawyer [in treating another Subject] calls: *Contemplatio extremae necessitatis.* Recept. Sentent. *Lib. V. Tit. I. § 1.* And certainly nothing is stronger than Necessity, as Synesius said: Ἰσχυρὸν ἀνάγκη πρᾶγμα, καὶ βίαιον. Juvenal, speaking of the *Calaguritani* a People of Spain, who were reduced in a Siege to eat human Flesh, maintains, that Men and Gods ought to pardon them upon account of the Extremity to which their City was reduced:

- —— *Quis nam hominum veniam dare, quisve Deorum,*
- *Viribus abnueret dira atque immania passis.*

*Sat. XV. 102, 103.* See Cassiodorus upon what Famine is capable of reducing Men to do, *Var. Lib. IX. Cap. XIII.* The Emperor Pertinax, to excuse *Laetus the Praefectus Praetorio*, and some others, who had been the Instruments in *Commodus*, his Predecessor's Crimes; said, that they had been compelled to obey him; but that since they were at Liberty to speak and act, they had shewn of what Sentiments they had always been: *Nec parendi scis necessitatem, &c.* (*Capitolin. in Pertin. Cap. V.*) *Cassius Clemens* justifies himself to *Severus* thus: "I knew, says he, neither you nor *Piscennius Niger*: But finding myself in the midst of his Party, I did what Necessity obliged me to do: I obeyed him, who was in the actual Possession of the Empire, not with design to make War against you, but to expel *Julian*."

Xiphilin. in *Sever.* The Emperor *Aurelian* having entered *Antioch*, where many People adjoined *Zenobia* against him, published an Edict, by which he granted a general Amnesty to all those who had escaped, regarding all that was past as the Effect of Necessity, rather than a Disposition to revolt. (*Zosim. Lib. I. Cap. LI.*) The General *Belisarius* forgave the *Africans*, because they had submitted to the *Vandals* only through Force. *Procop. Vandal. Lib. I. (Cap. XX.)* Totilas, as the same Historian relates, tells the *Neapolitans* that he knew they were under the *Romans* only out of Necessity. *Gotthic. Lib. III. (Cap. VII.)* Nicetas, or the Person who continues his Work, informs us, that the Emperor *Henry*, the Brother of *Baldwin*, caused the Inhabitants of a certain City to be put to the Sword, like an Herd of Beasts, and not a Multitude of *Christians*; and with so much the greater Cruelty, adds he, because they had submitted to the *Blachi* thro' Force, and not Persuasion. *Grotius.*

b

*Ad Lib. I. Cap. 55.*

7.

*P. 299. A. Edit. H. Steph.*

8.

*Lib. IX. Cap. XVII.*

9.

*Arrian. De Exp. Alexandr. Lib. I. Cap. XVIII. Edit. Gronov.*

10.

*Lib. XIII. Cap. XXVII. p. 344. Edit. H. Steph.*

11.

*Nec postea pacem Tyranni, &c. Lib. XXV. Cap. XXIX. Num. 3.*

12.

*Veniamque his, qui superfuerunt, &c. Lib. XXVIII. Cap. IV. Num. 13.*

1

Dionysius Halicarnassensis lays down as a Maxim, that whatever is involuntary deserves Pardon. *Antiq. Rom. Lib. I. (Cap. LVIII.)* Procopius says, that when any Man is injured, either thro' Ignorance or Forgetfulness, the Sufferer ought to forgive the Offence. *Gotthic. Lib. III. (Cap. IX.)* *Grotius.*

2.

*Ver. 157, 186.*

3.

*Delinquitur autem aut proposito, &c. Digest, Lib. XLVIII. Tit. XIX. De Poenis, Leg. XI. § 2.*

4.

*Sed in omni injustitia &c. De Offic. Lib. I. (Cap. VIII.)* Seneca says, that an upright Judge often chooses to acquit a Person, tho' accused and convicted of having done ill, if his Repentance gives Reason to conceive good Hopes of him; and he finds his Fault did not arise from a confirmed habit of Wickedness. He will even punish (adds he) sometimes great Crimes with less Rigour than small ones, if the former have been committed, not out of Cruelty but Weakness, and the latter are the Effect of concealed and inveterate Malice. He will not punish the same Fault alike, if of two Criminals the one has been guilty through Negligence, and the other by premeditated Design. *Dimitit saepe eum, &c.* De Ira, *Lib. I. Cap. XVI.* Grotius.

5.

*De Legib. Special. Lib. II. p. 791. B. Edit. Paris.*

6.

See what we have said above, *B. II. Chap. XX. § 29.* and in this *Chapter, § 29. Alcidas,* the *Lacedaemonian General,* having caused many Prisoners to be put to Death, the Embassadors of *Samos* represented to him, that he called himself the Deliverer of *Greece* with a very ill Grace, whilst he put Persons to Death, who had not taken Arms against him, nor were his Enemies; because if they had joined the *Athenians,* they had been reduced to do so by Necessity. Thucydid. *Lib. III. (Cap. XXXII.)* St. Chrysostom says that Enemies themselves know how to pardon Enemies, tho' they have suffered ever so great Injuries by them, when the latter have acted involuntarily. *De Provident.* V. The *Misimians,* as Agathias relates, believed themselves not entirely unworthy of Pardon, and the Clemency of the *Romans,* because they had only committed the Offences, that had induced the latter to turn their Arms against them, out of brutal Rage occasioned by having been unjustly treated in several Respects. *Lib. IV. Cap. VI.*

7.

*P. 449. B.*

8.

*P. 524. The Passage is quoted above, B. II. Chap. XX. § 29. Num. 2.*

9.

*Lib. IV. Cap. XCVIII.* See what is said in Deuteronomy, *Chap. XXII. Ver. 26.* in regard to a Maid ravished in the Country and the Rabbi Maimonides, *Duct. Dubitant.* III. 41. Grotius.

10.

*Ne adpellarent consilium, quae vis ac necessitas adpellenda esset. Lib. VII. Cap. XX. Num. 5.*

11.

*Factum Phocensium, &c. Lib. VIII. Cap. I. Num. 10.*

12.

Our Author repeats these Words without saying from which Work of the *Greek* Orators he takes them. I am almost certain that there is no such Sentence in Isocrates ; and I believe one Name is put here for another. Since I wrote this I am convinced of the Truth of my Conjecture, and have found the Thought, and even the Words in a Passage of Porphyry, to which our Author refers in *B. II. Chap. XX.* § 29.

*Note 4.*

13.

*Orat Leuctric.* II. p. 145. C. Vol. II.

14.

*De Vit. Sophist.* Lib. II. Cap. XV. § 2. p. 596. *Edit. Olear.*

15.

*Ethic. Nicomach.* Lib. V. Cap. XI. On the Contrary *Cleon*, to render the Cause of the *Mitylenians* odious, said, that they had with premeditated Design, laid Ambuscades for the *Athenians*, and in consequence deserved no Pardon, which is due only in Cases, where People act involuntarily, *Lib. IV. Cap. XL.* Philo the Jew praises his Nation, for their making a Difference, when they punished Injuries done them, between such as are used to commit Insults upon others, and those who observe a quite different Conduct. For, adds he, it is brutal and barbarous to kill without Mercy all who come in the Way, without distinguishing those who have had little or no Share in the Offence. *De constit. Princip.* (p. 734. B.) Grotius.

16.

*Orat. de laud. Valent. Imp. Seneca* observes, in speaking of *Jupiter's* Thunderbolts, that if the Antients believed that God sometimes threw small ones, it was to instruct those who are charged with the Care of Punishing, and fulminating, to use that Expression, against the Crimes of Men, that they are not always to strike in the same Manner: That there are Cases wherein the Whole is to be broken, others in which slightly hurting is sufficient, and some where only shewing the Bolt is enough. *Illos vero altissimos viros, &c.* *Natur. Quaest. Lib. II. Cap. XLIV.*

17.

Such was *Trajan*, one of the best of the *Roman* Emperors. Xiphilinus gives him this Praise, in his Life, (p. 230. *Edit. Rob. Steph.*) Herodian also says in praise of *Marcus Antoninus*, that he was the only Emperor who applied himself to Philosophy, in which he shewed the Progress he had made, not by his Discourse, or the vain Ostentation of Science, but by the Gravity of his Manners, and the Regularity of his Life. (*Lib. I. Cap. II. Num. 6. Edit. Boecler.*) *Macrinus*, another *Roman* Emperor, observed the Laws more exactly than he was acquainted with them. Xiphilinus, *in ejus vit.* (p. 342.) GOD grant us such good Princes in these Days! Grotius.

18.

*De Bell. Jud.* Lib. V. Cap. XIII. (VI. 5. *Latin.*) p. 912. B. The Emperor gives this as a general Maxim, that when a single Person has committed the Offence, it is necessary to punish him really; but when a Multitude are criminal, it suffices to menace them. So that we see our Author does not exactly give the Sense of the *Jewish* Historian.

a

*See Gaius, De pace publ. 1. 2. c. 9. n. 18.*

b

Lib. 9. c. 85.

1

In all the Editions before mine they are called *Principes Ardeae*; that is to say, the principal Persons in the City, instead of the Ringleaders of the Insurrection. But I believed, that the Copists or Printers had left out the Word *seditionis*, from its Likeness to *securi*, which follows; tho' our Author never perceived it, as has happened to him in other Instances. However it was, the Original is, *Romanus Consul [M. Geganius] Ardeae turbatas seditione res, principibus ejus motus securi percussis, bonisque eorum in publicum Ardeatum reductis, composuit*. Lib. IV. Cap. X. Num. 6.

2.

*Oppido recepto Levinus, &c. Idem. Lib. XXVI. Cap. XL. Num. 13.*

3.

*Atellaque & Calatia, &c. Ibid. Cap. XVI. Num. 5.*

4.

*Quoniam auctores defectionis, &c. Ibid. Lib. VIII. Cap. XX. Num. 11. and Cap. XXI. Num. 10.*

5.

*Vicit sententia lenior, &c. Idem. Lib. XXVIII. Cap. XXVI. Num. 3.*

6.

*Supplic. ver. 878, 879.*

7.

*Lib. III. Cap. XXXVI.* The Sense of the last Words is clear; but there is some Difficulty in the Expression: Upon which the Reader may, if he pleases, consult a Note of the late Mr. Perizonius, in Aelian, *Var. Hist. III. 43. Note 4. p. 288.*

1

*Heic ignoscendi ratio queritur, &c. Lib. II. Cap. XVII.*

2.

*Hostes dimittet salvos, &c. De Clement. Lib. II. Cap. VII.*

3.

*Poenitebatque [Cerites] populationis, &c. Lib. VII. Cap. XX. Num. 2.* This is what the Historian says, and it appears by the Sequel, the Cerites excused themselves by saying, that having only given

Passage to the *Tarquinians*, some Peasants purely by their own Authority, had joined them, in order to go and plunder the Lands of the *Romans*. Those Kinsmen, of whom our Author speaks, were therefore the *Tarquinians*. But a faulty Punctuation in all the Editions, not excepting the first, had so much disfigured the Passage, that it made the *Phoceans*, a People of *Greece*, the Relations of the *Cerites*, a People of *Etruria*. In this Supposition, the learned Gronovius criticises our Author in this Place, and he takes great Pains to discover the Origin of a Fault which he finds in the following Period. This is one of the Places wherein the first Edition has been of most Use to me, and might alone shew how necessary it was to compare the Text with that Edition, and the others of antient Date. In the Margin there was *Appian. Syr.* That Citation being omitted, I know not how, in all the Editions I have seen, after the first, prevented Gronovius from consulting the Historian from whom our Author had extracted the Fact, and whose Passage being found, immediately shews the faulty Punctuation, which ought to be placed to the Account of the Printers or Copists. See Note 6. of this Paragraph. So that the Fault of our Author consists in his not having perceived, that, contrary to his Intent, they had put *quod fuerint auxilio consanguineis Phocensibus Chalcidensibus, & aliis, qui, &c.* instead of *quod fuerint auxilio consanguineis. Phocensibus, Chalcidensibus & aliis, &c.* as I have printed it in my *Latin Edition*.

#### 4.

Isocrates says, that a conquered Prince ought sometimes to be pardoned, who did not know the Justice of the Conqueror's Cause. The Passage has been translated by Ammianus Marcellinus. *Ut Isocratis memorat pulchritudo; cuius vox est perpetua docentis, Ignosci debere interdum armis superato Rectori, quam justum quid sit ignorantis.* Lib. XXX. (Cap. VIII.) Grotius.

I do not know whether the Passage of the *Greek Orator* is to be found amongst the Remains of his Works. At least the Words which the learned Valois cites from the *Oratio Panathenaica*, are entirely foreign to the Subject.

#### 5.

Appianus Alexandrinus says this of the General *Manius Acilius Glabrio*. De Bell. Syr. p. 160. (98. Edit. H. Steph.) See Note 4. above.

#### 6.

*Orat. Leuctr.* II. p. 135. bc Vol. II. Edit. Paul. Steph.

#### 7.

*Partâ autem victoriâ, &c.* De Offic. Lib. I. Cap. XI.

#### 8.

Plutarch gives us this Saying of *Ptolomy*'s, when he sent back the Baggage and Prisoners to *Demetrius*, after having defeated the latter in a Battle near *Gaza*. In Vit. Demetr. p. 891. A. Vol. I. Edit. Wech.

#### 9.

*Lib. III. Cap. VI. Num. 9. Edit. Boecler.*

#### 10.

*Erat obscuritas quaedam, &c. Orat. pro Marcell. Cap. X.*

11.

*Etsi aliquâ culpâ tenemur erroris humani a scelere certâ liberatisimus. (Ibid. Cap. V.)* So Thucydides lays down as a Maxim, *καὶ ἔνγγνώμη, &c. Lib. I. Cap. XXXII.* Grotius.

12.

*Neque enim ille [Dejotarus] odio tui progressus, sed errore communi lapsus est. Orat. pro Reg. Dejot. Cap. III.*

13.

*Cetera multitudo vulgi, &c. Orat. I. ad Caesar. De Rep. ordinand. Cap. XXXIV. Lib. VI. Fragm. Edit. Wass.*

14.

*Scribis enim, acrius, &c. Cicero, Epist. II. ad Brut. See Bembo, Hist. Lib. IX. Grotius.*

1

*Theodorick, King of the Goths, said, that the most successful Wars he had made, were those in which he had used Moderation in Victory. Moderation, adds he, is a continual Victory to him who knows how to manage it. Illa mihi feliciter bella provenerunt, quae moderato fine peracta sunt, Is enim vincit adsidue, qui novit omnia temperare. Cassiodorus, Var. II. 41. Grotius.*

2.

*Et ignoscendo Populi Romani magnitudinem auxisse, &c. Orat. I. Philipp. Fragment. I. 13.*

3.

*Verum ita majoribus placitum, &c. Annal. Lib. XII. Cap. XX. Num. 4.*

4.

*Muliebre est, furere in ira: Ferarum vero, nec generosarum quidem, praemordere & urgere projectos. Elephanti Lionesque transeunt, quae impulerunt. De Clement. Lib. I. Cap. V.*

5.

*Aeneid, Lib. X. ver. 528, 529.*

6.

*Item: Bene maiores nostri, &c. Lib. IV. Cap. XVI.*

7.

*Cautior licet sit, qui devinctos, &c. (Panegyr. Vet. VI. Cap. X. Edit. Cellar.) I am far from approving the Revival of the Custom the Orator speaks of. We see however that Joshua caused the Kings he had*

taken to be put to Death. Josephus, *Antiq. Jud.* Lib. V. Cap. I. *Cajus Sossius*, having defeated *Antigonus* King of the *Jews*, caused him to be whipped, being fastened to a Cross. Dion Cassius, who relates this, (*Lib. XLIX. p. 463. D. Edit. H. Steph.*) adds wisely, that no conquered King had ever been used so by the *Romans*. There is the same History in Josephus, *Antiq. Jud.* Lib. XV. (Cap. I.) Eutropius tells us, that *Maximianus Herculius* [or rather *Constantine*] having made the Kings of the *Franks* and *Germans* Prisoners, exposed them to fight with wild Beasts, in the magnificent Games he had prepared to exhibit. *Qui [Constantin.] in Galliis, &c.* Lib. X. (Cap. II. Num. 9.) See what Ammianus Marcellinus says of one of the Kings of the antient *Germans*, who was hanged, *Lib. XXVII. (Cap. II.) Theodorick*, King of the *Wisigoths*, caused *Athiulphus*, King of the *Suevi*, who had settled in *Spain*, to be put to Death, as Jornandes tells us, in his History of the *Goths*, (Cap. XLIV.) These Examples ought to teach Kings to be moderate and discreet in Prosperity, and to reflect, that when God pleases, they are subject, as well as others, to the most unhappy Vicissitudes of human Events; in a Word, that according to *Solon's* Thought, which *Croesus* called to mind in a like Danger, nobody can be deemed happy before Death. Grotius.

The last Fact is related by Herodotus, *Lib. I. Cap. LXXXVI.* As to *Antigonus*, King of the *Jews*, his Head was cut off by the Order of *Mark Antony*, whose Lieutenant *Sossius* was in *Syria*, and who, in favour of *Herod*, did not reserve that unfortunate Prince for the Day of his Triumph; and it is in this Kind of Death by which no conquered King had ever been punished before, that Strabo, whose Words Josephus has preserved, makes the Novelty of the Example consist, as appears also by Plutarch, *Vit. Anton. p. 932. C.* As to the Words of the antient Panegyrist, in which our Author corrects the manifestly corrupt Reading: The same had been done before him by the Jesuit Julius Caesar Boulanger, in his Book *De Spoliis bellicis, trophyis, arcubus triumphalibus, & pompa triumphi*, Cap. XXVIII. p. 76. *Edit. Paris. 1610.* which is followed by the later Editions. The learned Civilian Peter du Faure, in his *Semestria*, Lib. II. Cap. III. p. 35. proposes another, which is not so natural. Gronovius is also for having *calcat* Stratos, instead of *calcat* Iratos, read in the Beginning of the Passage.

## 8.

*De Bell. Jud. Lib. VII. p. 979. E. F.*

## 9.

*Tamen quum de Foro in Capitolium, &c. In Verr. Lib. V. Cap. XXX.*

## 10.

He was the Bastard of *Eumenes*, King of *Pergamus*, and, notwithstanding the Will of his Brother *Attalus*, the legitimate Son, who had appointed the *Roman* People his Heirs, had taken Possession of the Crown. But he reigned in such a Manner that he was afterwards acknowledged lawful King, as Justin insinuates, *Quum multa secunda praelia adversus civitates, quae metu Romanorum se ei tradere nolebant, fecisset; justus Rex jam videratur, &c.* Lib. XXXVI. Cap. IV. Num. 7. So that the Remark made here by Gronovius, in Vindication of the antient *Romans*, is not entirely just. See Velleius Paterculus concerning this Prince's Death, *Lib. II. Cap. IV.* And Eutropius, *Lib. X. Cap. I.*

## 11.

See upon the Death of this King of *Numidia*, Livy, *Epitom.* Lib. LXVII. and Eutropius, *Breviar.* Lib. IV. Cap. XI. in fin.

## 12.

Or rather *Artavasdes*, for so the *Roman Authors* write this King of *Armenia*'s Name. Here the learned Gronovius remarks with Reason, that *Mark Antony* caused *Artavasdes* to be put to Death, by his own Authority, and without the Senate's Approbation, after having taken him by Treachery, and led him in Triumph, not at *Rome* but *Alexandria*. Tacitus exclaims highly against that Perfidy. *Infida [Armenia] ob scelus Antonii, qui Artavasden Regem Armeniorum, specie amicitiae inlectum, dein catenis oneratum, postremo interfecerat*, Annal. Lib. II. Cap. III. Num. 2. See Velleius Paterculus, Lib. II. Cap. LXXXII.

### 13.

The Historians do not agree about the Manner of this Prince's Death, who was King of Part of *Numidia*. Several make him die near *Rome*, before the Day of the Triumph, [at *Tibur* or *Tivoli*. See Livy, at the End of the thirtieth Book. *Cap. ult. Num. 4.*] Polybius on the contrary says, that he was led in Triumph. Appianus Alexandrinus relates, that he died of a Distemper, whilst they were debating what to do with him. [*De Bell. Punic.* p. 15. *Edit. Steph.*] Grotius.

Polybius says, that this conquered Prince died in Prison some Days after having been led in Triumph. *Lib. XVI. Cap. XII.* Silius Italicus seems to insinuate that only the Effigy of *Syphax* was carried in Triumph, *Punic.* Lib. XVII. ver. 630. where the Reader may see Cellarius's Note, and that of Mr. Drakenberg, the last Edition.

### 14.

He was a King of *Illyria*. See Livy, *Lib. XLV. Cap. XLIII.*

### 15.

He was the Son of the King of *Numidia*, and part of *Mauritania*. *Julius Caesar*, in the room of his Father, who was killed in a single Combat, led this young Prince, then an Infant, in Triumph. See Plutarch, in *Caesar.* p. 733. and Appianus Alexandrinus, *De Bell. Civ.* Lib. II. p. 491. *Edit. H. Steph.* His Life was not only spared, but he was so well educated, that he became more celebrated for his Writings than his Birth, and the Shadow of Royalty conferred on him by *Augustus*. See upon that Head the Treatise of Vossius, *De Historic. Graecis*, Lib. II. Cap. IV.

### 16.

A petty King of the antient People of *Great Britain*.

### 17.

Where he speaks of the Destruction of *Corinth*, *De Offic.* *Lib. I. Cap. XI.* and *Lib. III. Cap. X.*

### 18.

*Excerpt. E.* *Lib. XXXI.*

### 19.

*Vit. Agid.* p. 804. E.

### 20.

21.

*Alexander, quamquam belli, &c. Lib. IX. Cap. I. Num. 22.*

a

Chap. 1. of this Book, § 4. Num. 5.

1

In the latter Part of this Passage, read ἀνατίοις instead of ἐναντίοις, as in the Editions. *Lib. V. Cap. XI. Grotius.*

1

*Puerum aetas excuset, Foeminam sexus. De Ira, Lib. III. Cap. XXIV.* The Lion, when enraged, falls upon Men rather than Women, and does not hurt Children but when pressed with extreme Hunger, as an antient Naturalist observes. *Etubisaevit [Leo] &c. Pliny, Lib. VIII. Cap. XVI.* Horace representing Achilles, as a Warrior void of Pity, that did not spare even Infants, without excepting those in their Mother's Womb; professes by a lively Exclamation, that he looks upon this as an horrible Excess of Fury.

- *Sed palam captis gravis, heu nefas heu!*
- *Nescios fari pueros Achivis*
- *Ureret flammis, etiam latentes*
- *Matris in alvo.*

*Lib. IV. Od. VI. ver. 17. & seqq.* An antient Scholiast observes upon this Passage, how much the Poet expresses his Dislike of such Barbarity, [Heu nefas] *Dolenter exclamat in saevitiam Achilles, qui si per Apollinem vivere licuisset, adeo saevus erat, ut nec infantibus, nec in utero gestantibus pepercisset.* Philo the Jew says, that it was a Rule of War with his Nation, to release the Maids and Wives taken Prisoners, without doing them any Hurt, and he gives this Reason for it; that it would have been great Inhumanity to have destroyed with the Men that Sex, which their natural Weakness made incapable of War. *De Princip. constitut.* (p. 734. A. B. *Edit. Paris.*) He observes elsewhere, that between Persons at Years of Discretion, a thousand specious Reasons may be found to justify Quarrels and Enmity; but that as to Infants lately come into the World, Malice itself cannot make those innocent Creatures guilty of any Thing, with the least Appearance of Reason. *De special. Leg.* Lib. II. (p. 795. D.) Josephus speaking of *Manahem*, who, after taking the City of *Thapsus*, spared not even the Infants, calls that the utmost Excess of Cruelty and Barbarity. That Usurper, adds he, treated the People of his own Nation in a Manner that would have been unpardonable, even tho' he had to do with conquered Strangers. *Antiq. Jud.* Lib. II. (Cap. XI. p. 320. D.) The same Jewish Historian informs us, that *Judas Maccabaeus* having taken the Cities of *Bosra* and *Ephron*, put all the Males to the Sword, with all those who were capable of bearing Arms. [*Ibid.* Lib. XII. Cap. XII. p. 417. B. G.] In another Place he calls the Fury of *Alexander*, surnamed the *Thracian*, an inhuman Revenge, in causing the Wives and Children of the Jews to be put to Death with them, and before their Eyes. [*Lib. XIII. Cap. XXII. p. 461. C.*] Agathias makes this Reflection upon the *Romans*, whatever just Reason they might have for punishing the *Missipians*, they were inexcusable, for having been so unmerciful to murder the Children at their Mother's Breasts, and who, consequently, could have no Share in their Father's Crimes: Nor did such Cruelty remain unpunished: (*Lib. IV. Cap. VI.*) Nicetas, or the Person who

continues his History to the Reign of *Henry*, condemns in stronger Terms a like Excess of Hostility, committed by the *Scythians*, in taking the City of *Atyra*. They spared, says he, not even Infants at the Breast; those young Plants were cut down like Grass, or tender Blossoms, by those merciless Victors, who did not know that it is sinning against Nature, and violating the common Right of Men, to extend Rage beyond Victory, and to act with Fury against a reduced Enemy. (*In Vit. Balduin.* Cap. IX.) See also what Bede says, *Lib. II. Cap. XX.* concerning the Cruelty of *Carevolla*; and the merciful Orders given by Queen *Elizabeth*, according to Cambden, upon the Year 1596. (p. 668.) Simler recites a good Law instituted by the Swiss, [which prohibits the doing any Injury to the Women, unless a Woman has furnished the Enemy with Arms, thrown Stones, or exercised some other Act of Hostility. *De Rep. Helvet.* Lib. II. p. 302. *Edit. Elzevir.*] Grotius.

2.

*Num quis irascitur, &c. De Ira Lib. II. Cap. IX.*

3.

*Pharsal.* Lib. H. ver. 108.

4.

*Sunt & belli, sunt pacis jura, &c.* [Lib. V. Cap. XXVII. Num. 7.]

5.

*Vit. Camill.* p. 134. B.

6.

In the Passage of that Historian, which our Author has in View, the Reading is *integra dignitate*. The Whole is as follows, *Eam namque vir sanctus & sapiens veram sciebat victoriam, quae, salva fide, & integra dignitate, pareretur.* Lib. I. Cap. XII. Num. 6. It relates to *Camillus* also, who would not take the Advantage of a Schoolmaster's Treachery.

7.

*Puellis, ut saltem parcerent, orare instituit; a qua aetate etiam hostes iratos abstinere, &c.* Lib. XXIV. (Cap. XXVI. Num. 11.)

8.

*Trucidant inermes juxta armatos, foeminas pariter ac viros, usque ad infantium caedem ira crudelis pervenit.* Lib. XXVIII. Cap. XX. Num. 6.

9.

*Lib. I. Sylv. VI. ver. 53.*

10.

Ner. *Quod parcis hosti. Prae. Femina hoc nomen capit?* Octav. (ver. 864.) For this Reason *Tucca* and *Varus* were for striking out of the *Aeneid*, the Verses where *Aeneas* deliberates whether he shall kill

*Helen. Grotius.*

The Passage begins at the 567th, and ends at the 588th Verse. *Jamque adeo super unus eram, &c.* *Talia jactabam & furiata mente ferebar.* The Reader may see the Notes of Father Catrou, the last French Translator.

11.

*Bellum cum captivis & foeminis gerere non soleo: Armatus sit oportet, quem oderim.* Lib. IV. (Cap. XI. Num. 17.)

12.

*Contra Gryphus orare, &c.* Lib. XXXIX. Cap. III. Num. 7.

13.

The Historian makes *Arminius* say this in Regard to Women with Child. *Non enim se proditione, &c.* Annal. Lib. I. Cap. LIX. Num. 4.

14.

*Efferatam crudelitatem suam, &c.* Lib. IX. Cap. II. Num. 4.

15.

*Lib. XIII. (Cap. LVII. p. 360. Edit. H. Steph.)*

16.

*Et in sexum, cui bella parcunt, in pace saevitum,* (Cap. XXIX. Edit. Cellar.)

17.

*Thebaid. Lib. V. ver. 258, 259.*

1

*Atque haec tamen hostium, &c.* Lib. XXVIII. Cap. XXIII. Num. 1.

2.

This Reflection the Jewish Historian ascribes to *Vespasian* and *Titus*, who, notwithstanding the Instances of the People of *Alexandria* and *Antioch*, would not deprive the *Jews* settled in those two Cities of the Rights and Privileges they had enjoyed till then. Those of that Nation, said they, who took up Arms against us, have been sufficiently punished by the unfortunate Event of their Rebellion: For the Rest, who have done no Ill, it would be unjust to deprive them of what they possess. *Antiq. Jud.* Lib. XII. Cap. III. p. 398. D.

3.

*Et Dictator [Camillus] &c.* Livy, Lib. V. Cap. XXI. Num. 13.

4.

This merits particular Observation. The Security of Persons of this Kind, and of all others, whose Manner of Life has in itself no Relation to the Business of War, is founded upon the Supposition that they act nothing in any Manner against an Enemy. But if an Ecclesiastick abandons his Prayer-Book, to enter into the Councils of Princes, if he is the first Promoter of a War, and even takes the Field, and commands Troops, either directly or indirectly, he deserves to be spared the less, as he acts contrary to the Engagements of his Character. See Felden's Note upon this Place; and what is observed above, concerning the *Canons* prohibiting Ecclesiastics to carry Arms. *B. I. Chap. V. § 4. Note 2.* and *B. II. Chap. I. § 13. Note 5.*

5.

The Rabbins say, that *Hyrcanus*, at the very Time he besieged *Jerusalem*, sent Victims into the Temple. Procopius praises the *Goths*, for having spared the Priests of the Churches of St. *Paul* and St. *Peter*, which were at some Distance from *Rome*. Gothic. *Lib. II. (Cap. IV.)* See the Supplement of Charlemagne to *The Law of the Bavarians and Lombards*, *Lib. I. Tit. XI. Num. 14. Grotius.*

6.

*Quaest. Graec. XXI. p. 296. C.*

7.

Servius informs us, that in *Italy* they paid this Regard to Priests and Priestesses, as well as to old Men, *Quia vatem. Nam eam defendebat a bellis, si non aetas, saltem religio Sacerdotis. Ad Aeneid. Lib. VII. (ver. 442.) Grotius.*

The Passage of Servius does not relate to the Safety of Priests in Time of War; but he means that their Character excuses them from being concerned in Affairs of War. The Reader need only see the Sequel of the Discourse in the Verses of the Poet, to be assured that this must be the Commentator's Sense. As to the Greek Proverb, which our Author repeats, he took it from Suidas, at the Word Πυρφόρος. According to that Lexicographer, to express that no Quarter was given to any one, it was usual to say, *that not a single Priest had escaped*, that is not one of those who marched in the Front of the two Armies. They carried a Torch in their Hands, as the Scholiast upon Euripides informs us in the *Phoenissae*, Ver. 1386. from whence they were called Πυρφόροι, *Fire-bearers*: And in Consideration of their Character, no Hostility was exercised against them. Erasmus, in his *Adages*, upon the Proverb, *Ne ignifer quidem reliquus est factus*, cites Eustathius in this Place, in *Iliad*, *Lib. XII. Ver. 73. See also the Commentators upon Pollux, Lib. VIII. § 116. Edit. Amst.*

8.

*Geogr. Lib. VIII. (p. 358. Edit. Casaub. Paris.) See also Polybius, Hist. Lib. IV. (Cap. LXXIII.) and Diodorus Siculus, Excerpt. Peiresc. (p. 225.) Those who went to Combat in the Olympick, Pythian, Nemeian, or Isthmian Games, enjoyed also an entire Security in Time of War. Thucydid. Lib. V. and VIII. Plutarch, Vit. Arat. (p. 1040. B.) Grotius.*

9.

*Conversi, Converts*, which is not so common and intelligible in the Sense it is here used as *Lay Brother*, which is also derived from the Latin *Frater laicus*. These are Persons, who retire into

Convents, but are not in Orders, do not sing in Choirs, nor make the Vow of Poverty. Our Author stiles them *Penitents*, because they were originally secular Persons converted, who engaged in that way of Life by way of Penance. See the Authors cited here by Gronovius.

10.

*Innovamus, ut Presbyteri, Monachi, Conversi, Peregrini, Mercatores, Rustici, euntes vel redeuntes, vel in agricultura existentes & animalia, quibus arant & semina portant ad agrum, congrua securitate laetentur. Decretal. Lib. I. Tit. XXXIV. De Treuga & Pace, Cap. II.*

1

See the Canon cited in the last Note of the preceding Paragraph.

2.

*Lib. II. Cap. XXXVI. p. 86. Edit. H. Steph.*

3.

*Quaest. Graec. p. 295. B.*

4.

He offered the King of Assyria to spare his Husbandmen, provided that on his Side he did no Hurt to the Husbandmen of those Provinces that had engaged in his Party. *Cyrop. Lib. V. Cap. IV. § 12. Edit. Oxon.*

5.

*Voc. βελισάριος. Grotius.*

1

See the Canon cited, § 10. Note 10.

a

*Ch. 10. § 1. Note 1.*

1

*Et in mancipio cogitandum est, non quantum illud impune pati possit, sed quantum tibi permittat, aequi bonique natura: Quae parcere etiam Captivis & pretio paratis, jubet. De Clement. Lib. I. Cap. XVIII.*

b

*Sect. 9. of this Chapter, Note 8.*

2.

*Hostem pugnantem necessitas, &c. Ad Bonifac. Epist. CCV. Gratian, in repeating this Passage, says in*

the beginning, *necessitas deprimat*, and not *perimat*, (Caus. XXIII. Quaest. I. Can. III. ex *Epist.* CCVII.) *Epaminondas* and *Pelopidas*, when they gained a Victory, never put any of the Conquered to Death, nor deprived any City of its Liberty: So that it was said of them, had they been present, the *Thebans* would never have treated the *Orchomenians* as they did: This Plutarch tells us, *Vit. Marcell.* (p. 316. D.) *Marcellus* acted with the same Lenity, at the taking of *Syracuse*, as the same Historian testifies, *Ibid.* (p. 308. D.) See also what he says in the Life of *Cato Uticensis*, (p. 787. C. D.) Tacitus says of *Primus Antonius*, and *Varus Arrius*: Quos [Primum Antonium Varumque Arrium] *recentes*, *clarosque rerum fama, &c.* Hist. Lib. V. (Cap. XXXIX. Num. 4.) *Cabades*, King of *Persia*, having taken the City of *Amida*, as his Troops made a great Slaughter of the Inhabitants, a Priest represented to that Prince, that it was unworthy of a King to massacre the Conquered. Procop. *Persic.* Lib. I. (Cap. VII.) The Author who relates this says elsewhere, that it is a vile Action to discharge one's Fury upon Prisoners of War. Lib. II. (Cap. IX. in the Speech of *Cosroez* to the *Roman* Embassadors.) See also, in the same Historian, the fine Speech of *Belisarius* to his Soldiers, after the taking of *Naples*. *Gothic.* Lib. I. (Cap. IX.) When Somebody advised the Emperor *Alexis* to put his *Scythian* Prisoners to Death, he replied: That the *Scythians*, tho' *Scythians* were however Men: And their having been our Enemies does not make them unworthy of our Compassion. Anna Comnena, (Lib. VIII. Cap. IV.) Nicephorus Gregoras says, that whatever is done in the heat of Fight is excusable in some manner, because at that Time Men are not their own Masters, and act with a blind Impetuosity: But that when the Danger is over, and the Mind in its natural Situation has Time and Liberty to examine all Things aright, if they do not restrain their Power, it is a sign they pay no regard to what Decency requires, and trample upon all Consideration of Duty, Lib. VI. (p. 92. Edit. Colon. 1616.) See another Passage of the same Historian, which we have cited in a Note at the End of the seventh Chapter of this Book, and what Chalcocoynolas says of a certain laudable Custom amongst the *Poles*, Lib. V. The Emperor Julian, in his Praise of *Constantius*, to give an Idea of a good Prince says, that when he had gained a Victory he put an immediate stop to the Slaughter, convinced that it was infamous to deprive People of their Lives, when they defended themselves no longer. (*Orat.* p. 86. C. Edit. *Spanheim.*) Grotius.

3.

*De Agesil.* Cap. I. § 21. Edit. Oxon.

4.

*Lib.* XIII. (Cap. XXIV. p. 434. Edit. H. Steph.)

5.

*Lib.* XVII. (Cap. XIII. p. 568.)

6.

*Numidae puberes interficti, &c.* Bell. Jugurth. Cap. XCVI. Edit. Wass.

7.

*Instit. Divin.* Lib. V. Grotius.

8.

*Orat.* II. De Pace, (p. 80. C. Vol. II.)

9.

Ver. 965, 966.

10.

*Lib. XII. Cap. LXXXII. p. 328.*

11.

*Lib. XIII. Cap. XXVI. p. 344.* Capitolinus praises the Emperor *Marcus Antoninus* for observing the Rules of Equity even with regard to his Prisoners of War: *Aequitatem etiam circa captos hostes custodivit*, Cap. XXIV.

12.

See Note (1) on this Paragraph.

13.

Our Author makes this Reflection after Albericus Gentilis, (*De Jure Belli*, Lib. II. Cap. XVI. p. 344.) The latter alledges two Examples of this Kind, the one taken from Buchanan, and the other from Paulus Jovius. In the first, we see, in the Reign of *Robert I. King of Scotland*, the Earl of *Mar*, having almost as many Prisoners as Troops of his own, contented himself with making them swear, that they would lie still, when the two Armies came to Blows, and should continue Prisoners even tho' the *English* should be strong enough to set them at Liberty. *Rerum Scotic.* Lib. IX. p. 320. *Edit. Amstel.* 1643. The Historian makes many Reflections in the same Place upon the Generosity and Humanity with which the Prisoners were treated. As to that of Paulus Jovius, he speaks of the Duke *D'Anguien*, who after the Battle of *Cerisoles* released all the Prisoners, to rid his Camp of useless Mouths, that consumed his Provisions; and required only from them, that the *Spaniards* should return into *Spain*, and the *Germans* into *Germany* by the Way of *France*. *Hist. Lib. XLV. seu ult. circa init. p. 267. Vol. III. Edit. Basil.* 1556.

1

The *Romans* informed the *Persians* besieged in the Citadel of *Petra*, that resolved as they seemed to perish, they chose rather to preserve their Lives, out of a Compassion worthy of *Romans* and Christians. *Procop. Gothic.* Lib. IV. (seu *Hist. Miscell.* Cap. XII.) See Serranus in the Life of *Francis I.* and in that of *Henry II. Grotius*.

2.

*De Expedit. Alexandr.* (Lib. I. Cap. IX.)

3.

*Cap. LVIII. Edit. Oxon.*

4.

*Lib. XI. in fin.*

5.

Νόμος ἐστὶ τοὺς ίκέτας σώζειν ἐν τοῖς πολέμοις.

6.

*Ad haec Caesar respondit, Se magis consuetudine suâ, quam merito eorum, civitatem [Atuaticorum] conservaturum, si prius, quàm aries murum attigisset se dedidissent, &c. De Bell. Gall. Lib. I. Cap. XXXII.*

7.

*Et cum iis, quos vi deviceris, consulendum est, &c. De Offic. Lib. I. Cap. XI.*

8.

See on that Head the Passages cited by Selden, *De Jure Nat. & Gent. secundum discipl. Hebr.* Lib. VI. Cap. XV. *in fin.* Our Author observes here in a short Note, that *Scipio Aemilianus*, at the Time he was preparing to destroy *Carthage*, made Proclamation, that whoever would, might quit it with Safety. He cites Polybius to prove this in general, without referring to any Passage. But I can find nothing like it in that Historian, and am very much mistaken, if our Author had not in his Thoughts what he had read in Florus, upon the Summons made to the *Carthaginians*, when the *Romans* had resolved that they should quit their Country: *Tum evocatis principibus, si salvi esse vellent, ut migrarent finibus, imperatum*, Lib. II. Cap. XV. Num. 8. And perhaps his Memory at the same Time had recalled a confused Idea of the Proposals, *Scipio* caused to be made to *Asdrubal* by *Gulussa*, as Polybius relates, *Excerpt. Peiresc.* p. 178. from whence arose this mixture of two Facts, and the confounding of two Authors.

1

*Quod aspernati sunt victores, quia trucidare deditos saevum, &c. Annal. Lib. XII. Cap. XVII. Num. 2.*

2.

The Passage is cited in Note 6. upon § 13. of this Chapter. The other which our Author cites is: *Alios item non armatos, neque in praelio belli jure, sed postea supplices, per summum scelus interfectos.* Orat. de Rep. ordin. Cap. XXXVI. Edit. Wass.

3.

In the beginning of § 10.

4.

*Qui [C. Popilius] deditis, contra jus ac fas bellum intulisset, &c. Lib. XLII. Cap. XXI. Num 3.*

5.

*Vit. Brut. p. 996. A.* I do not know, why our Author translates the Word περιπτευσε by *equitatu circumdedit*. It only signifies, that *Brutus* rode about on all Sides to give Orders to his Troops not to charge the Enemy, and not that he invested them with his Cavalry.

1

Our Author here had Albericus Gentilis in View, *De Jure Bell.* Lib. II. Cap. XVIII. where that Lawyer adds some other Cases. But I find no Example of this, unless that of Subjects, who have unjustly taken Arms against their lawful Sovereign, without any plausible Reason whatsoever, may be intended. See below, *Chap. XIX. § 6. Num. 1.* It was principally for this Reason, that in the War of the Peasants of *Germany*, which began in 1525. Count *Truchses* punished with an exemplary Death most of the Rebels, whom he had reduced to surrender. See the History of that Insurrection by Peter Gnodal, *p. 292. & seq. Edit. Basil. 1570.*

2.

As the *Thebans* did when besieged by *Alexander the Great*, (Diod. Sicul. *Lib. XVII. Cap. IX.* and *XIII.*) and the *Athenians*, besieged by *Sylla*. Plutarch, *De Garrulitate*, Vol. II. p. 505.) Gronovius gives us the first of these Examples. The latter had been cited before by Albericus Gentilis, (*ubi supra*, *p. 377.*) where the Reader may find several others. See also Dissertation XIX. of Obrecht, intitled, *Hostis deditius, § 24.*

3.

So *Julius Caesar* caused *Publius Ligarius* to be put to Death, who was perjured and perfidious. Hirtius, *De bello Africano*, Cap. LXIV. See other Examples in Albericus Gentilis, *p. 379. & seq.*

4.

See also Albericus Gentilis here, *p. 382.*

5.

Examples of this may be found in the same Author, *p. 383. & seq.*

a

*B. 2. ch. 21. § 18.*

6.

*Orat. II. De Pace, p. 75. C. Vol. II.*

7.

He calls this the most inhuman of *Timoleon's* Actions, who might if he had pleased have prevented that unjust Punishment. *Vit. Timoleont.* p. 252. C. See also Dion's Life, *p. 983. E.* and Diodorus Siculus, *Biblioth. Lib. XIV. Cap. XLVII.*

8.

Polyaen *Strateg.* Lib. IV. Cap. III. Num. 30.

9.

*De Exped. Alex. Lib. I. Cap. XX.*

10.

*Lib. XIV. Cap. CXIII. p. 453. Edit. H. Steph.*

11.

*Pharsal. Lib. VII. Ver. 312. & seq.*

12.

*Iliad* Lib. XXIII. Ver. 176. Servius observes, that the Custom of putting Prisoners of War to Death upon the Tombs of the bravest Warriors, seemed in process of Time to have something cruel in it: *Sane mos erat in sepulchris virorum fortium captivos necari: Quod postquam crudele visum est, placuit, &c.* In Aeneid. X. (Ver. 519.) Grotius.

See the *Parrhasiana* of Mr. Le Clerc, Vol. I. p. 12, 13.

a

*See B. 2. c. 13. § 4.*

1

*In singulos severitas Imperatoris, &c. De Ira, Lib. II. Cap. X.* The Scholiast upon Juvenal cites a Passage from Lucan, where he says, that Crimes committed by a Multitude pass with Impunity:

- ◦ —— *Quidquid multis peccatur inultum est.*

[*Pharsal. Lib. V. Ver. 260.*] *Livia*, the Wife of *Augustus*, represented, that if every Thing were to be punished as it deserved, the greatest Part of Mankind would be destroyed. *Apud Xiphilin. ex Dion. Cass. (p. 87. Edit. Rob. Steph.)* St. Austin says, that Crimes committed by a few Persons should be punished with Rigour: But when a Multitude are criminal, they should be instructed rather than commanded, and Reprimands preferred to Menaces: *Non ergo aspere, quantum existimo, &c. Epist. LXIV. See Gaius, De Pace publica, Lib. II. Cap. IX. Num. 37. Grotius.*

2.

*Pharsal. Lib. II. Ver. 198. & seq.*

3.

*Ne autem nimium multi poenam capitis subirent, ideo illa sortitio comparata est. Orat. pro Client. Cap. XLVI.* See what I have said in my *Dissertation upon the Nature of Chance*, § 20.

4.

*Neque quisquam te ad crudeles poenas, aut acerba judicia, invocat, quibus civitas vastatur magis, quam corrigitur, &c. Orat. II. Ad Caesar. De Republ. ordinand. Cap. XL. p. 119. Edit. Wass.*

a

*B. 2. ch. 21. § 2. B. 3. ch. 2. § 6.*

1

See above, *Chap. IV.* of this Book, § 14. and Albericus Gentilis, *De Jure Belli*, Lib. II. Cap. XIX. p. 395.

2.

*Neque se in obsides innoxios, sed in ipsos, si defecerint, saeviturum: Nec ab inermi, sed ab armato hoste poenas expetituru*m. Livy, *Lib. XXVIII. Cap. XXXIV. Num. 10.* The Emperor Julian made the same Declaration as Eunapius relates, *Excerpt. Legat. I.* (p. 213. Edit. Commelin.) Grotius.

3.

Some Persons, who had hid themselves to avoid being sent as Hostages, were punished for it as Nicetas informs us, *Lib. II (Cap. VII. in Vit. Isac. Angel.)* Grotius.

4.

*Apud Regem Etruscum, non tuta solum, sed & honorata virtus fuit: Laudatamque virginem parte obsidum se donare dixit*, *Lib. II. Cap. XIII. Num. 9.* See what will be said below, *Chap. XX. § 54.*

1

These are Arrian's Words, *De Expedit. Alex. Lib. I. Cap. XXII.* Grotius.

2.

Sallustius duces laudat, qui victoriam incruento exercitu deportarent, Ex Servio, in *Aen. XI. Frag.* p. 102. Edit. Wass.

3.

*Rari excursus & fortuita pugna.* German. (*Cap. XXX. Num. 5.*) Plutarch blames *Demetrius*, for exposing his Soldiers, rather for the sake of acquiring Glory by Combats, than any real Advantage. *Demetr.* p. 908. C. Grotius.

## **BOOK III: CHAPTER XII: *Concerning Moderation in regard to the spoiling the Country of our Enemies, and such other Things.***

[I. *What Spoil is just, and how far.*] I. 1. That one may destroy the Things of another without the Imputation of Injustice, one of these three Things should necessarily go before. 1. Either such a Necessity as may be supposed to have been excepted in the primitive Establishment of Property. As when a Man, purely for his own Safety, shall throw the Sword of another Person, which a Madman was going to seize on, into a River; yet in that very Case he lies under an Obligation to make Satisfaction for it to the full Value; as I have<sup>a</sup> shewed in another Place, according to the most reasonable Opinion. 2. Or some Debt arising from an Inequality, that so what is wasted may be reputed, as taken in Satisfaction of that Debt, for otherwise it could not be lawful. 3. Or some Injury, that may merit such a Punishment, or which such a Punishment does not proportionably exceed. For as a judicious<sup>b</sup> Divine well observes, there is no manner of Justice, that a whole Kingdom should be laid waste, for the driving away of a few Cattle, or the burning of some Houses. Which is also allowed by *Polybius*,<sup>1</sup> who would not have the Rigour of War be exercised *without Controul*, but just so far, that Wrongs and Punishments may be equally balanced: And for these Reasons, and with these Limitations, it may be done without Injustice. [650]

[1458]

2. But unless it be for some Advantage, it would be very foolish to do another a Damage, without any Profit to ones self. Wherefore wise Men always propose to themselves some Advantage thereby, the principal whereof *Onosander* has observed,<sup>2</sup> *Let him destroy, burn, and lay waste his Enemy's Country: For the want of Money and Provisions shortens the War, as Plenty lengthens it.* To which agrees that of *Proclus*,<sup>3</sup> *It is the Duty of a good General to straiten his Enemies as much as possible.* And thus says *Curtius of Darius*,<sup>4</sup> *He expected that he should be overcome by Famine, having nothing to sustain him, but what he could get by Spoil and Plunder.*

3. And that Waste and Desolation cannot be condemned, which quickly forces an Enemy to Peace: This way of making Wars did *Halyattes* use against the *Milesians*, the *Thracians* against the *Byzantians*, the *Romans* against the *Campanians*, *Capenates*, *Spaniards*, *Ligurians*, *Nervians*, and *Menapians*. But if we rightly weigh the Matter, such Things are for the most Part managed rather out of Spite than wise Counsel: For very often either those inducing Reasons cease, or there are others more powerful, that advise to the contrary.

[1459]

[II. *No wasting of Things that may be profitable to us, and out of the Enemy's Power.*] II. 1. This happens first, when we have got such Possession of a Thing belonging to the Enemy, that he cannot any more enjoy the Fruits of it. To which the divine Law<sup>1</sup> does properly refer, which allows wild Trees and unfruitful to be cut down, to make Fortifications and Engines of War; but those that bear Fruit to be preserved for Subsistence, giving this Reason, because Trees cannot, as Men may, rise up in Arms against us. Which<sup>2</sup> *Philo*, by a Parity of Reason, extends also to fruitful Fields; [1460] and by a pathetical Fiction introduces the Law itself thus speaking to those who ought to observe it. *Why are you angry with Things inanimate, particu - [651] larly those that are mild, and yield grateful Fruit? Do they, like Men, discover any hostile (or disobliging) Intentions against you? Do they deserve to be entirely rooted up, for what they do, or threaten to do against you? But they are very beneficial to the Conqueror, and afford a large plenty of Things immediately necessary, and even contribute to our*

*Pleasures; Men do not only pay Tribute, but even Trees, and that of more Value in their proper Seasons, and also such as Man cannot live without.* And *Josephus*<sup>3</sup> to the same Purpose says: If Trees could speak, they would cry out, and reproach us with Injustice, for making them suffer the Punishment [1461] of War, who were no Occasion of it. And hence it is, in my Opinion, that the *Pythagoreans* have derived their Maxim,<sup>4</sup> *That we ought not to destroy or hurt a cultivated Plant or Fruit-Tree.*

2. And *Porphyry*<sup>5</sup> describing the Manners of the *Jews* (in his fourth Book of not eating living Creatures) esteeming their Custom to be (I suppose) the best Interpreter of their Law, enlarges it even to all Beasts serviceable to Husbandry, for he says *Moses* commanded to spare also these in War. But their *Talmud* Writings, and *Hebrew* Interpreters extend it yet farther,<sup>6</sup> declaring that this Law ought to reach to every Thing that may be destroyed without Cause, as the burning of Houses, the spoiling of Eatables and Drinkables. The wise Moderation of *Timotheus* the Athenian General agreed with this Law, who (as *Polyaenus*<sup>7</sup> relates it) *would not suffer a House or Village to be destroyed, or a Fruit-Tree to be cut down.* There is a Law also in *Plato*,<sup>8</sup> in his fifth Book *De Republica*, *forbidding to waste Lands or burn Houses.*

3. Much less ought it then to be allowed after a compleat Victory. *Cicero*<sup>9</sup> blames the destroying of *Corinth*, though they had in a gross Manner abused the *Roman* Embassadors. And in another Place<sup>10</sup> he calls that War, horrid, abominable, and spitefully malicious, which was made<sup>11</sup> against Walls, Houses, Pillars and [652] Gates. *Livy* much commends [1462] the Mercy of the *Romans*, at the taking of *Capua*, that they did not exercise their Cruelty<sup>12</sup> on the innocent Houses and Walls, by burning and demolishing them. *Agamemnon* says in *Seneca*,

- ◦ *13E quidem fatebor (pace dixisse hoc tuâ*  
◦ *Argiva tellus liceat) affligi Phrygas*  
◦ *Vincique volui: ruere, & aequari solo*  
◦ *Etiam arcuisse. — — —*
- ◦ *'Tis true, the Trojans (and I hope my Country*  
◦ *Forgives my Clemency) I thought to conquer;*  
◦ *But to apply th' Extremities of War,*  
◦ *Or raze their City, this I ne'er intended.*

4. Indeed holy Writ informs us, that some Cities were by GOD's especial Command entirely rased, *Joshua* vi. even against that general Law which we have mentioned, the Trees of the *Moabites* were ordered to be cut down, *2 Kings* iii. 19. But that was not done in Hatred to the Enemy, but in just Detestation of their Impieties, which were either publickly [1463] notorious, or esteemed worthy of such Punishment in the Sight of GOD.

[III. *If there be probable Hopes of a speedy Victory.*] III. 1. This will likewise happen, where the Possession is yet in Dispute, if there be great Hopes of a speedy Victory, of which those Lands and Fruits will be the Reward. Thus *Alexander the Great*, as *Justin* relates it, hindered his Soldiers from wasting *Asia*,<sup>1</sup> declaring to them, that they should spare their own, *and not destroy those Things, which they came to possess.* Thus *Quintius*, when *Philip* overrun *Thessaly*, wasting it with Fire and Sword, exhorted his Soldiers (as *Plutarch*<sup>2</sup> informs us) to march thro' the Country, as if it were now entirely their own. *Croesus*<sup>3</sup> advising *Cyrus* not to give up *Lydia* to be plundered by his Soldiers, tells him, *You will not ruin my Cities, nor my Lands, they are no longer mine, they are now become yours, they will destroy what is yours.*

2. They who do otherwise, may apply to themselves the Words of *Jocasta* to *Polynices* in *Seneca*'s

- - *4Patriam petendo perdis: Ut fiat tua,*
  - *Vis esse nullam: Quin tuae causae nocet*
  - *Ipsum hoc, quod armis uris infestis solum*
  - *Segetesque adultas sternis, & totos fugam*
  - *Edis per agros: Nemo sic vastat sua.*
  - *Quae corripi igne, quae meti gladio jubes,*
  - *Aliena credis.*
- - *You ruin your Country whilst you seek it; to make it yours*
  - *Its Being you destroy; it defeats your Claim [653]*
  - *[1464]*
  - *To level, thus in Arms, the ripen'd Harvest;*
  - *Is Fire and Sword, the Vengeance of an Enemy,*
  - *Applied to Spoil and Ravage what's ones own?*
  - *No, our deadliest Foes we thus afflict.*

To the same Sense are the Words of [5Curtius](#), *Whatsoever they did not waste, they owned to be their Enemies*. Agreeable hereunto is that which *Cicero*, in his Letters to *Atticus*, says against the Design that *Pompey* had formed of taking his Country by Famine. Upon this Account *Alexander the Isian* blames *Philip* (in the 17th Book of *Polybius*) whose Words [Livy6](#) has thus rendered: *Philip dared not engage in a fair Field-fight, nor come to a pitch'd Battle, but flying away burned and plundered Cities; so that the Conquered rendered useless to the Conquerors what should have been the Recompence of Victory. But the old Kings of Macedon did not use to do so, they used to come to a fair Engagement, to spare Cities as much as possible, that they might have the more wealthy Dominion. For it is not a strange Conduct, to make War in such a Manner, that at the same Time, we dispute the Possession of a Thing, we leave nothing for ourselves but War.*

**[IV. If the Enemy can be supplied otherwise.]** IV. 1. In the third Place, this happens, if the Enemy can be supplied elsewhere, either by Sea or Land. *Archidamus* in *Thucydides*,[1](#) in his Speech to dissuade his Subjects the *Lacedemonians* from a War with *Athens*, puts this Query, What Hopes had they to succeed in the War, whether, because they excelled in Number of Soldiers, they pretended to waste the *Athenian Lands*? But consider (says he) they have other Countries under their Dominion, (meaning *Thrace* and *Ionia*) and they might easily supply themselves by Sea, with whatsoever they wanted. Wherefore in that Case it were best to protect Husbandry even in the Frontiers of each Side: Which we have lately seen practised in the Wars of the *Low-Countries*, by paying Contributions to both Parties.

[1465]

2. And this is agreeable to the antient Custom of the *Indians*, among whom, as *Diodorus Siculus*[2](#) relates, *Husbandmen are indemnified and as it were sacred, so that they follow their Labour even close by the Camp, and near the Troops*. And he adds, *They do not burn the Enemies Lands, nor cut down the Trees*. And again, *No Soldier will willingly wrong Husbandmen, but esteeming them as common Benefactors, forbear doing them any manner of Injury*.

3. *Xenophon*[3](#) informs us, that it was agreed between *Cyrus* and the *Assyrian King*, *That the Husbandmen should enjoy Peace, and that War should be made only against those that were in Arms*. Thus *Timotheus*, as *Polyaenus*[4](#) relates, *Let out the fruitfullest Lands of the Country where he had entered with his Army*: Nay, (as *Aristotle*[5](#) adds) *sold the very Corn to his Enemies, and with that Money paid his own Soldiers*. Which *Viriatus* also practised in *Spain*, as *Appian* witnesseth. And this

very Thing we have seen done in the aforesaid *Low-Country War*, with great Prudence and Profit, to the Admiration of all Foreigners.

4. These Customs do the Canons, which are full of Lessons of Humanity, propose to our Christian Imitation, as being obliged to, and professing more Humanity than others; therefore they<sup>6</sup> enjoin us to put not only the Husbandmen beyond the hazard of War, but also their Cattle with which they plow, and their Seed which they carry to the Field; it is undoubtedly for the same Reason that the Civil Law<sup>7</sup> forbids [1466] [654] to take in pawn any Thing belonging to Agriculture. And it was formerly prohibited among the *Phrygians* and *Cyprians*, afterwards<sup>8</sup> with the *Athenians*, and then the *Romans*, to kill a plowing Ox.

[V. *If the Things be of no Use for War.*] V. There are some Things of that Nature, that they can no way contribute either towards the making or maintaining of a War, which Things even common Reason will have spared during a War. To this Purpose is the Speech of the *Rhodians* to *Demetrius, the Taker of Towns*, with regard to the Picture of *Ialysus (one of the Founders of their Nation)* translated by A. *Gellius*.<sup>1</sup> *What Reason can you have to desire to destroy so excellent a Piece, † by burning our Houses? For if you vanquish us, and take the City, this Picture will also be entirely your own; but if you are forced to raise the Siege, pray consider, what a Disgrace it will be to you, because you could not overcome the Rhodians, you must needs make War with Protogenes a dead Painter.* *Polybius*<sup>2</sup> called it an Act of extream Madness to destroy those Things, which by being destroyed do not weaken the Enemy, nor advantage the Destroyer. Such are Temples, Portico's, Statues, and the like. *Cicero*<sup>3</sup> much commends *Marcellus*, because *he took such a particular Care to preserve all the Buildings of Syracuse both publick and private, sacred and prophane, as if he had been sent with an Army, rather [1467] to defend than take the City.* And the same Author<sup>4</sup> again, *Our Ancestors used to leave to the Conquered, what Things were grateful to them, but to us of no great Importance.*

[VI. *This especially ought to take in Things sacred, or thereto belonging.*] VI. 1. But as this Maxim ought to be observed in regard to publick Ornaments, for the Reason aforesaid, so more especially in regard to Things dedicated to sacred Uses, for, although these also (as we have said<sup>a</sup> elsewhere) are in some Sort publick, and therefore by the Law of Nations may be damaged or destroyed with Impunity, yet if no Danger can arise from the preserving of such Buildings, and their Appurtenances,<sup>1</sup> the [1468] Reverence due to holy Things may be a sufficient Plea, especially with those who worship the same GOD according to the same Law, tho' they may differ in Opinions and Ceremonies. [655]

[[2.]]<sup>†</sup> *Thucydides*<sup>2</sup> says, it was a Law observed by the *Greeks* in his Days, *When they invaded the Lands of an Enemy, they mutually spared holy Places.* When *Alba* was destroyed by the *Romans*,<sup>3</sup> *Livy* says the Temples were preserved. And *Silius* [[4]] in his 13th Book thus writes of the *Romans* taking *Capua*.

- - *Ecce repens tacito percurrit pectora sensu*
  - *Religio, & Saevas componit Numine mentes,*
  - *Ne flamمام taedasque velint, ne templα sub uno*
  - *In cinerem sedisse rogo.*
- - *Religion, by insensible Degrees*
  - *Steals on the Mind, and sooths the Breasts of Conquerors,*
  - *Lest in the universal Wrack of Cities,*
  - *The Temples of the Gods fall undistinguish'd.*

The same *Livy*<sup>5</sup> tells us, it was objected to *Q. Fulvius* the Censor, *That he had involved the People of Rome in the Crime of Sacrilege, by the Destruction [1469] of Temples, as if the immortal Gods were*

*not the same in all Places, but that they of one Place should be honoured, and adorned with the Spoils of those of another.* But *Marcius Philippus* being arrived at *Dius*, caused the Troops to encamp near the very Temple of that City, in order to secure it and all that was in it from Hostilities. *Strabob* writes, that the *Tectosages*, who with others had robbed the Temple of *Delphos*, to appease the injured God, did consecrate those Spoils, with some Addition, when they returned Home.

3. To come now to the *Christians*. *Agathias* relates, that the *Franks* spared the Temples of the *Greeks*, as being themselves of the same Religion with them. Nay, it was customary to save the Persons of Men in respect to Churches, which (not to quote Examples of Heathen Nations, whereof there are many, for Writers<sup>6</sup> call this Custom, *A Law amongst the Grecians*) St. *Augustin* thus commends<sup>7</sup> *in the Goths, when they took Rome. The<sup>8</sup> Churches consecrated to (the Memory of) Martyrs and Apostles, [1470] in that general Devastation, secured all those that fled to them for [656] Refuge, whether Natives or Foreigners. So far the Rage of the Enemy extended without Controul, but here the Fury of Slaughter stopt; to these Places did the compassionate Soldiers convey their Prisoners, whom they had spared even without the Bounds of these Sanctuaries, from the Fury of their own Companions, that had less Tenderness than themselves; and they who other ways were inhumanly cruel, as soon as ever they came near any of those Places, where they were forbid to make use of their Right of War, immediately restrained their Eagerness to kill, and their Desire of making Prisoners.*

[VII. *Also burial places*] VII. 1. What I have said of sacred Things, the same may also be understood of Sepulchres, and even of Monuments that have been erected in Honour of the Dead. For even those (tho' the Law of Nations hath not exempted them from the Fury of the Conqueror) cannot be violated without Breach of common Humanity. The Lawyers maintain<sup>1</sup> that whatever engages a religious Respect to burial Places, ought to be of very great Weight. There is a pious Saying of *Euripides* in his *Troades*, in regard to Sepulchres, as well as sacred Things,

- ◦ *Μῶρος δὲ θνητῶν ὅστις ἐκπορθεῖ πόλεις,*  
◦ *Ναούς τε τύμβους θ' ιερὰ τῶν κεκυρκότων,*  
◦ *'Ερημίᾳ δοὺς αὐτὸς ὕστερον.*
- ◦ *Whoever ravages the silent Dead,*  
◦ *Or impiously profanes their sacred Urns,*  
◦ *Unwise I'll call him; for he ne'er reflects,*  
◦ *That his own Dust may once be so disturb'd.*

[1471]

*Apollonius Tyaneus*<sup>3</sup> thus interpreted the Fable of the Giants fighting against Heaven, *ὑβρίσαι εἰς τοὺς νεώς αὐτῶν, καὶ τὰ ἔδη, That they violated the Temples and Habitations of the Gods.* *Hannibal* is called sacrilegious by *Statius*,<sup>4</sup> for burning the Altars of the Gods.

2. *Scipio*, at the taking of *Carthage*, presented his Soldiers with large Donatives, *χωρὶς τῶν εἰς τὸ Απολλόνειον ἀμαρτόντων*, says *Appian*,<sup>5</sup> *Except those who had profaned the Temple of Apollo.* The Trophy erected by *Mithridates*, *Caesar* (as *Dion*<sup>6</sup> relates) *durst not demolish, as consecrated to the Gods of War.* *Marcus Marcellus*<sup>7</sup> (as *Cicero* observes in his fourth Oration against *Verres*) would not out of Conscience touch those Things which Victory had rendered profane. And the same Author<sup>8</sup> adds, that there were some Enemies, who in War observed the Right of Religion, and of Customs. And he in another Place calls the Acts of Hostility which *Brennus* exercised against the Temple of *Apollo*, an<sup>9</sup> abominable War. *Livy*<sup>10</sup> calls the Action of *Pyrrhus* in plundering the Treasure of [1472] *Proserpine*, vile and insolent against the Gods. So does *Diodorus*<sup>11</sup> that of *Himilco*, *ἀσέβειαν, καὶ εἰς θεοὺς ἀμαρτημα, [657] impious, and sinful against the Gods.* The same *Livy*<sup>12</sup> terms the War of

*Philip execrable, as if made against both the coelestial and infernal Deities; nay, he calls it Madness and a Series of Crimes. And *Florus* on the same,<sup>13</sup> Philip, contrary to the Right of Victory, vented his Cruelty on the Temples, Altars, and even the Sepulchres of the Dead. *Polybius*<sup>14</sup> speaking of the same, passes this Judgment, Who can call it any Thing else but an Act of downright Madness, to destroy those Things which can be of no Advantage to us, nor Prejudice to our Enemies, particularly Temples, Images, and such like Ornaments? And here he doth not permit the Law of Retaliation, as a sufficient Excuse.*

[**VIII. The Advantages mentioned, which arise from this Moderation.**] VIII. 1. Tho' it be not properly my Design to enquire, what it is advantageous to do or not to do, but to reduce the extravagant Licence of War to what natural Equity allows, or what is best among Things lawful; yet Virtue itself, little esteemed in this Age, ought to forgive me, if, whilst she is by [[sic: for]] herself neglected, I endeavour to render her valuable on the account of her Advantages. First then, Moderation observed in preserving those Things which do not lengthen out the War, takes from the Enemy a powerful Weapon, Desperation. *Archidamus* thus speaks in *Thucydides*,<sup>1</sup> Look upon the Enemy's Country as an Hostage, and so much the surer the better it is cultivated, and with the more Reason to be spared, [1473] lest Despair should render the Enemy more invincible.<sup>2</sup> The same was the Advice of *Agesilaus*, when against the Opinion of the Achaeans, he gave the Acarnanians free Liberty to sow their Corn, saying, the more they sowed, the more desirous they would be of Peace. And to this Purpose in the Satyr,

- <sup>3</sup>*Spoliatis arma supersunt.*
- *The Plunder'd still have desperate Arms.*

*Livy* tells us, when the *Gauls*<sup>4</sup> had taken *Rome*, their chief Commanders would not let all the Houses be burnt; that what they left standing of the Town, might be as a Pledge to bend the Minds of the Besieged.

2. Besides, the sparing of an Enemy's Country during a War, looks as if we were pretty confident of Victory. And Clemency is of itself proper to soften and pacify the Minds of Men. *Hannibal* (according to<sup>5</sup> *Livy*) wasted none of the Lands of the *Tarentines*, not out of Moderation, either in General, or *Soldiers, but to gain the Tarentines to his Party*. For the same Reason did *Augustus Caesar*<sup>6</sup> forbear plundering *Pannonia*. *Dion* gives the Reason, *He hoped to win them without Blows*. And *Timotheus* by doing what we have before mentioned of him, proposed to himself (as *Polyaenus*<sup>7</sup> relates) among other Things, *to gain the Affections of his Enemies*. *Plutarch*<sup>8</sup> speaking of the Moderation of *Quintius*, and the *Romans* that were with him (in *Greece*) adds this, *They quickly reaped the Benefit of this Forbearance, for as soon as he came into Thessaly, the [1474] Cities readily yielded to him. The Greeks also which dwelt within the Thermopylae, earnestly desired his coming; and the Achaeans renouncing the Friendship of Philip, immediately confederated with the Romans against him*. *Frontinus*<sup>9</sup> informs us, that a City of the *Lingones* having escaped the plundering they were afraid of, in the War made by *Domitian*, under [658] the Conduct of *Cerealis*, against *Civilis* the *Batavian*, and his Associates; *Because beyond their Expectation, they had lost nothing of their Goods, submitting to his Obedience, they furnished him with 70,000 Men well armed*.

3. Contrary Counsels have met with contrary Success. *Livy*<sup>10</sup> gives an Instance in *Hannibal*, *Giving himself up to Covetousness and Cruelty, he destroyed what he could not keep, that he might leave nothing to the Enemy but wasted Lands. And this Counsel was wretched both in the beginning and in the End. For he not only lost the Affections of those whom he thus barbarously used, but of all others also, who were afraid of being exposed to the like Desolation*.

4. I readily agree to what has been observed by some Divines, that it is the Duty of supreme Powers, and of Commanders who desire to be thought *Christians* by GOD and Man, to prevent the merciless plundering of Towns, and the like Acts of Hostility, as cannot be done without infinite Loss to Multitudes of innocent People, and be but of little Advantage in regard to the principal Affairs of War. Such Sort of Violence is almost always contrary to Christian Charity, and commonly to Justice itself. There is certainly a greater Bond among Christians, than there was formerly among the *Grecians*, in whose Wars it was enacted by a Decree of the *Amphictyones*,<sup>11</sup> that no *Grecian* City should be pillaged. And some antient Writers<sup>12</sup> affirm, that *Alexander the Macedonian* repented of nothing more than his destroying of *Thebes*.

## Endnotes

a

B. 2. ch. 2. § 9.

b

Vict. *de Jure bel.* n. 52. and 56.

1

Our Author has already recited the Passage of that Historian, which he has here in View, in the preceding Chapter, § 8.

2.

*Stratagem.* Cap. VI. (p. 15. *Edit. Rigalt.* 1590.) Grotius.

The Reader upon this Passage of Onosander's may see the Note of John Chokier, p. 18, 19, of his Edition in 1610, but especially the full Part of Janus Gruterus's Dissertations, printed as a Supplement to the Edition of Regault in 1604 with this Title: *Varii discursus, sive prolixiores Commentarii ad aliquot insigniora loca Taciti atque Onosandri*. Our Author perhaps might have made Use of this Collection: For almost all the Passages which he cites in this Chapter, are in it, (p. 138. & seq.) with others in a much greater Number than in Albericus Gentilis, *De Jure Belli*, Lib. II. Cap. XXIII.

3.

Philo *Judaeus* insinuates that it is customary to ravage the Lands of the Enemy, that the Want of Necessaries may reduce them to surrender. *De vit. contemplat.* (p. 891. D. E.) The same Author speaking of the Ravages occasioned by an Irruption of the Enemy, says it is a double Misfortune to those who are exposed to it, as their Friends on the one Side suffer by Famine, and the Enemy on the other profits by the abundance of Provisions he carries off. *De Diris*, (init. p. 930. A. *Edit. Paris.*)

4.

*Quippe credibat [Darius] inopiâ debellari posse nihil habentem nisi quod rapiendo occupasset.* Lib. IV. Cap. IX. Num. 8.

1

There is great Reason to believe, that the Law regards only the Siege of the Cities, which were in the Land of *Canaan*, intended for the Abode of the *Israelites*, as Mr. Le Clerc observes. So that it was not out of Consideration for the Conquered, that the Law-giver prescribed the Moderation here meant; since the Conqueror not only might, but was bound in Duty to put all to the Sword, without Distinction of Sex or Age, in the Cities of the seven Nations devoted to utter Extirpation; and in regard to the more remote Places, all the Favour the Besieged had to hope for, was that their Women and Children should be reserved for Slavery: Besides, it is doubtful, whether the male Infants were not included in the general Term of *Males*, for whom there was no Quarter, Ver. 13. What Probability is there then, that GOD should have in View any respect to the Goods of these People, over whose Lives he had given the *Israelites* such power. This does not hinder however, in my Opinion, but that a good Argument may be drawn from hence to our Author's Purpose. For if the Creator and supreme LORD of Mankind did not approve, that the *Israelites* should lay waste without Necessity the Lands of the People, against whom he had armed them in an extraordinary Manner, and had made them as it were the Executors of his terrible Judgments; much more would he not approve our doing so in ordinary Wars, often unjust, and undertaken without much Necessity, and wherein the Party, who boasts the most of the Justice of his Cause, is sometimes in the wrong.

## 2.

*De creation. Magistrat.* (p. 734 C) There is another Passage of that Jewish Author, which tho' long, merits a Place here. Moses, says he, *Extends Moderation and Lenity so far, that next to rational Creatures he makes Beasts the Object of it; and after them, even Plants; of which we must now speak, as we have sufficiently explained what regards Men and all animate Beings. The Lawgiver then forbids the cutting down of any Fruit Tree, the reaping of Fields of Corn before the Season, in a Word the spoiling of any of the Fruits of the Earth: And that in order that Mankind might have not only allowance of Food, and Things necessary for Life, but also of those for Pleasure. The Provision of Grain is indeed necessary for the Subsistence of Man, and the infinite Variety of Fruits, which the Trees bear, contributes to his Delight: Which Fruits also at certain Times of Dearth, may supply the Place of the most necessary Aliments. But Moses goes farther: He even forbids wasting the Lands of an Enemy. He enjoins us to abstain from cutting down the Trees upon them, holding it unjust to discharge the Resentment, with which we are animated against Men, upon innocent Things. Besides which, it was his Design to teach us not only to think of the present, but extend our Views to the future, and to consider that in the Vicissitudes, to which all human Things are liable, it might easily happen, that those who are to Day our Enemies will to morrow be our Allies, by the Effect of an happy Conference. Now in this Case, it would have been cruel to deprive our Friends of necessary Things, of which they might not have made Provision for the future. The Antients have indeed said with great Reason, that we ought to live with our Friends in such a Manner, as if we were not ignorant that they might one Day become our Enemies, and on the contrary that we ought so to act in regard to those with whom we are at Variance, as if we had Reason to hope for a Reconciliation. By the first a Resource is preserved for our own Security, and we guard against having Causeto repent too late of our too great Facility in discovering more, than is proper, by our Actions and Discourse. A most important Maxim, which states ought also carefully to observe; in providing during Peace for what is necessary in War, and during War for what regards Peace: So that, on the one Side, they do not confide too much in their Allies, as if no Change could happen, to induce them to become Enemies, and on the other, not entirely despair of an Enemy, as if it were not possible for him to become a Friend. But tho' we ought not to do any Thing in favour of Enemies, in hopes of a Reconciliation, we should not therefore vent our Rage upon Plants and Trees. Nothing of that Kind is at War with us: On the contrary all such Things are at Peace, and conduce to our good. Fruit Trees especially and cultivated Plants are very necessary to us, as their Fruits serve for our Nourishment, or something equivalent to it. We ought not therefore to make War upon what neither would nor could do us any*

*Hurt. We ought not to cut down, burn, or root up Things, which Nature herself takes care to form and raise by the Waters with which she moistens them, and the Temperature of the Seasons, which she regularly brings on, in order that each revolving Year should pay tribute to Men, as to so many Kings. That wise and good Mother gives perpetual Force and Vigour not only to Animals, but Plants, especially such as are cultivated, that require the greatest Care, and are not so fruitful as those that are wild,* De Humanitate, (p. 712, 713.) Grotius.

3.

He extends the Prohibitions of that Law so far, that he does not seem to except even the Case, wherein no other Wood could be found for forming the necessary Machines of War. *Antiq. Jud. Lib. IV. Cap. VIII. p. 130. B.*

4.

*De Vit. Pythagor. § 99. Edit. Kuster.* See also Diogenes Laertius, *Lib. VIII. § 23.*

5.

That Philosopher speaks of the Sect of the *Essenes* in particular. *De abstin. Animal. Lib. IV. p. 394. Edit. Ludg. 1620.*

6.

On the contrary, they are for having this Exception added: Unless the Fruit Trees are in Suburbs, or hinder shooting and throwing Darts against the Enemy. Grotius.

See the learned Selden's Treatise, *De Jure Natur. & Gent. secundum discipl. Hebraeorum*, Lib. VI. Cap. XV.

7.

*Strateg. Lib. III. Cap. X. Num. 5.*

8.

*De Repub. Lib. V. p. 471. A. Vol. I. Edit. H. Steph.*

9.

*Nolle Corinthum [Funditū sublatam.] De Offic. Lib. I. Cap. XI.* See also *Lib. III. Cap. XI.*

10.

*Sed quid ego vestram crudelitatem, &c. Orat. pro domo sua. Cap. XXIII.*

11.

There is a remarkable Letter of *Belisarius* on this Subject to *Totilas*, Gothic. III. *It was formerly esteemed an Effect of the Wisdom and Genius of great Politicians, to raise noble Structures; and to destroy them after they were built, the Part of Fools, not blushing to transmit to Posterity Tokens and Monuments of their Folly. It is manifest, that Rome is the biggest and most beautiful City of all the World (or that the Sun be holds) and that it could not arrive to that Greatness and Splendor, by the*

*Labour of one single Man, nor in a short Time; but many Kings, and Emperors, an infinite Number of illustrious Persons, many Ages, and a prodigious Mass of Treasure, had drawn thither, as other Things, so also the most curious Artificers in the World. Thus Rome was formed by little and little, such as you now see it, full of the Monuments which each of those that contributed to its Improvement, has left of his Wisdom and Ingenuity. Wherefore to ruin or destroy it, would be injurious to Mankind of all Ages; to rob our Ancestors of the Memory of their just Praise; and future Ages the Pleasure of so glorious a Sight. Since Things then are thus, consider that one of these two must certainly happen; either you will be conquered or Conqueror in this War. If you be Conqueror, then by destroying the City, you destroy not what is another's, but your own; and by preserving it, you will enjoy the most beautiful Possessions in the World: On the other Side, if you should be vanquished, the preserving the City of Rome will be a great Argument to incline your Conqueror to shew Mercy to you, but if it be destroyed your Affairs will be lost beyond any Hopes of Mercy. And you will not only get no Advantage by doing it, but you will have such a Name from all Mankind, as such a Fact deserves. So it is in your Will to have Fame make her Report of you; for as the Actions of great Men are, so is their Reputation. See the Law of Frederick I. in Conrad. Abbot of Ursperg, and concerning Frederick Count Palatine, Melancthon's Chronide. Grotius.*

12.

*Ita ad Capuam res compositae, &c. Lib. XXVI. Cap. XVI. Num. 11, 12.*

13.

*Troad. Ver. 276. & seq.*

1

*Inde hostem petens milites, &c. Lib. XI. Cap. VI. Num. 1.*

2.

*Vit. T. Quint. Flamin. p. 371. So Gelimer, and the Vandals under his Command when they besieged Carthage, avoided plundering, and laying waste the Country, preserving it as their own, as Procopius informs us, *Vandalic.* Lib. II. init. (Cap. I.) Helmoldus has a Reflection to the same Effect: *Nonne terra quam devastamus, nostra est; & populus, quem expugnamus, populus noster est? Quare ergo invenimur hostes nostrimet, & dissipatores vectigalium nostrorum?* Lib. I. Cap. LXVI. See something of the same Kind in Bembo, *Hist.* Lib. IX. (Fol. 149. Ver. 1. Edit. Venet. 1551.) and in Paruta, *Lib.* VI, concerning the *Germans.**

3.

*Herodot. Lib. I. Cap. LXXXVIII.*

4.

*Phoeniss. (sive *Thebaid.*) Ver. 558. & seq. Edit. Gronov.*

5.

*Nullum desperationis illorum magis indicium esse, quam quod urbes, quod agros suos urerent: Quidquid non corrupserunt hostium esse confessi. Lib. IV. Cap. XIV. Num. 2.*

6.

*In bello non congregandi* [Philippum] *aequo campo, &c.* Lib. XXXII. Cap. XXXIII. Num. 11, 12.

1

*Lib. I. Cap. LXXXI.*

2.

*Lib. II. Cap. XXXVI.* p. 86. *Edit. H. Steph.* Cap. XL. p. 88.

3.

*Cyrop.* Lib. V. Cap. IV. § 13. *Edit. Oxon.*

4.

*Stratag.* (Lib. III. Cap. X. Num. 9.) Plutarch says the same Thing of the *Megarians*, Quaest. Graec. (XVII. p. 295. B.) *Totilas*, when he marched to besiege *Rome*, hurt none of the Peasants of *Italy*: On the contrary he commanded them to till the Land as before, paying him the ordinary Contributions. Procop. *Gothic.* Lib. III. Cap. XIII. Cassiodorus says, it is the highest Praise to those who defend a State by Arms, to act in such Manner during a War, that the Husbandmen should not discontinue their Labours in the Field: *Defensorum maxima laus est, &c.* Var. *Lib. XII. Cap. V.* Grotius.

5.

*Oeconomic.* Lib. II. p. 507. A. Vol. II. *Edit. Paris.*

6.

See the Canon cited at the End of § 10. in the preceding Chapter.

7.

Besides the Advantage of Agriculture, Regard was had also to the Interest of the Revenue, which required, that the Debtors to it should not be rendered incapable of paying the Taxes in due Time: *Exsequutores, a quocumque judice dati, ad exigenda debita ea quae civiliter poscuntur, servos aratores, aut boves aratorios, aut instrumentum aratorium, pignoris caussa de possessionibus non abstrahant, ex quo tributorum illatio retardatur.* Cod. *Lib. VIII. Tit. XVII.* Quae res pignori obligari possunt, &c. *Leg. VII.* See Cujas, *Observ.* IV. 20.

8.

Aelian. *Var. Hist.* Lib. V. Cap. XIV. See also Columella, *De Re Rust.* Lib. VI. *Princ.* Porphyrius, *De non esu Animal.* Lib. II. (p. 173, & seq.) This was also the Custom in *Peloponnesus*, as Varro informs us, *De Re Rustica.* Lib. II. (Cap. V.) In regard to the *Romans*, see Pliny, *Hist. Natur.* Lib. VIII. Cap. XLV. Vegetius, *De arte Veterinaria*, Lib. III. Grotius.

1

*Mittunt Rhodii ad Demetrium, &c.* Aul. Gell. *Noct. Attic.* Lib. XV. Cap. XXXI. See Pliny upon this Head, *Hist. Natur.* VII. 38. XXXV. 10. and Plutarch. *Vit. Demetr.* (p. 898. E.) The Letter of *Belisarius*,

which we have given above, § 2. Note 11. includes the same Thought. Grotius.

†

[[This is misprinted “Peace” in the original, and corrected by hand in some copies.]]

2.

The Passage will be cited below, at the End of § 7.

3.

*Itaque aedificiis omnibus, &c.* In Verr. Lib. IV. Cap. LIV.

4.

*Apud eos autem quos, &c.* Ibid. Cap. LX.

a

*Ch. 5. of this Book.* § 2.

1

It is, according to Polybius, a Sign of excessive Folly to insult the Divinity, because you are angry with Men. *Excerpt. Peiresc.* That Author is in the Right: For, as the Emperor *Alexander Severus* said, it were better to pay the Divinity a religious Worship, whatever it be, in a Temple, than to give the Place to People, who make a Victualling-house of it: *Quum Christiani quemdam locum, qui publicas fuerat occupassent, contra Popinarii dicerent, sibi cum deberi, rescriptsit, Melius esse, ut quomodocunque illic Deus colatur, quam Popinariis dedatur.* Lamprid. *Alex. Sever.* (Cap. XLIX.) The famous *Hannibal* spared the Temple of *Diana* at *Saguntum*, out of Respect for Religion: *Cui [Templo Diana] pepercit religione inductus Hannibal, &c.* Pliny, *Hist. Natur.* Lib. XVI. Cap. XL. Appianus *Alexandrinus* makes *Brutus* say, that it was the Custom of the *Romans* to leave even their foreign Enemies the Temples of their Gods. *De Bell. Civ.* Lib. III. (p. 516. *Edit. II. Steph.*) Plutarch relates, that the *Amphyctyons* objected to *Sylla*’s Manner of treating them, the Moderation of *Flaminus*, *Manius Aquilius*, and *Paulus Aemilius*, the first of whom, when he had drawn *Antiochus* out of *Greece*, and the two others, after having conquered the Kings of *Macedonia*, not only spared the *Grecian* Temples, but adorned and enriched them with magnificent Presents. *Vit. Syll.* (p. 459. C. D.) The same Author praises *Agesilaus* for a like Respect to sacred Places: And before him, the *Latin* Author, who had writ the Life of that famous King of *Lacedaemonia*, affirms the same of him, and also that he held it Sacrilege to hurt those who had taken Refuge in Temples, and there by implored the Protection of the Gods: *Tamen ante tulit irae religionem.— Itaque praedicabat, mirari se, non sacrilegorum numero haberri, qui supplicibus Deorum nocuissent; aut non gravioribus poenis adfici, qui religionem minuerent, quum qui fana spoliarent.* [Cornelius Nepos, *Agesil.* Cap. IV.] See also Vitruvius, *De Architec.* Lib. II. (Cap. VIII.) Dion Cassius, *Lib. XLII.* Plutarch, *Vit. Caesar.* (p. 720.) J. Brodæus, *Miscell.* Lib. V. (Cap. XXIX.) *Gabaon*, King of the *Moors*, tho’ a Pagan, disproved the Conduct of the *Vandals*, who profaned the Churches of the *Christians*, and made them make Amends for their Irreverence. He hoped, that the Impiety of those People would be punished by the God of the *Christians*, whoever he were; as Procopius informs us, *Vandalic.* Lib. I. (Cap. VIII.) *Chosroez*, King of *Persia*, tho’ no more a Christian than the other, spared the Church of the *Christians* at *Antioch*. Idem, *Persic.* Lib. II. (Cap. IX.) The Emperor *Justinian*, having found amongst the Spoils taken from the

*Vandals*, the Things, which *Vespasian* had formerly taken out of the Temple at *Jerusalem*, and *Gizerich* had afterward carried from *Rome* into *Africa*, did not dare to keep them, and sent them back to *Jerusalem* to be placed in the Church of the Christians. *Idem*, *Vandalic. Lib. II. (Cap. IX.)* The Rabbi Benjamin, in his *Itinerary*, relates the Respect which the *Mahometans* have retained for the Place where the Bones of *Ezechiel*, and the three Companions of *Daniel* were buried. *Grotius.*

I do not find in any Part of *Polybius*, the exact Words cited by our Author in the beginning of this Note. But there is the same Sense in two Passages of the *Excerpta Peiresciana*, p. 66. and 169.

1.

[[Paragraph number missing in text, supplied from Latin edition.]]

2.

*Lib. IV. Cap. XCVII.*

3.

*Templis tamen Deum (ita enim edictum ab Rege fuerat) temperatum est, Lib. I. Cap. XXIX. in fin.*

4.

*Punic. Lib. XIII. Ver. 316. & seq. Edit. Drakenborg.*

5.

*Et obstringere religione Populum, &c. Lib. XLII. Cap. III. Num. 9.*

b

*Geogr. l. 4. p. 188. Ed. Par. Casaub.*

6.

*Diod. Sicul. Lib. XIX. Cap. LXXII. p. 705. Edit. H. Steph.*

7.

*Testantur hoc Martyrum loca, & Basilicae Apostolorum, quae in illa vastatione urbis ad se configuentes, suos, alienosque receperunt. Huc usque cruentus saeviebat inimicus: Ibi accipiebat limitem trucidationis furor: Illo ducebantur a miserantibus hostibus quibus, [qui must undoubtedly be read in this Place: For St. Austin distinguishes between those, who were moderate, and the less merciful; and Orosius, who relates the same Fact, *Lib. VII. Cap. XXVIII.* confirms this manner of reading:] Etiam extra illa loca pepercabant, ne in eos incurrentes, qui similem misericordiam non haberent: Qui tamen ipsi alibi truces, atque hostili mare saevientes: Posteaquam ad loca illa veniebant, ubi fuerat interdictum, quod alibi jure belli licuisset, tota saeviendi refraenabatur immanitas, & captivandi cupiditas frangebatur.* *De Civit. Dei. Lib. I. Cap. I.* *Isidorus has copied this Passage in *Chronic. Goth.* upon the Year 447.* The Fact happened under *Alarick*, an *Arian Prince*, of whom Cassiodorus has preserved another memorable Action, by which he signalized himself upon the same Occasion. It was this; when the consecrated Vessels taken out of the Church of *St. Peter* were brought to him; he asked what they were, and upon being informed, he ordered them to be carried

back into the Church by the same Persons, who had taken them out of it: *Nam, quum Rex Alaricus, &c. Var. Lib. XII. Cap. XX.* Grotius.

If Gronovius may be believed, whose Note the Reader may see, there is nothing to be corrected in the Passage of St. Austin.

#### 8.

The *Goths*, who besieged *Rome* under King *Vitiges*, spared also the same Churches, as Procopius informs us, *Gothic.* Lib. II. Cap. IV. Even the *Barbarians*, not Christians, found an Asylum in these sacred Places. See Zosimus, *Lib. IV. Cap. XL.* in regard to the *Tomitani*. The *Swiss* have a good Law upon this Head, recited by Simlar, *De Rep. Helvet.* (p. 302. Edit. Elzevir.) See also Nicetas, in the History of the Emperor *Alexis Comnenus*, (Cap. IV.) and the Place where that Historian blames the *Sicilians* for having profaned the Churches of *Antioch*. In Andronic. (Cap. IX.) Grotius.

#### 1

*Nam summam esse rationem, quae pro religione facit.* Digest, *Lib. XI. Tit. VII. De Religiosis & sumptibus funerum, &c. Leg. XLIII.*

#### 2.

*Ver. 95. & seq.*

#### 3.

Philostrat. *De Vit. Apoll. Tyan.* (Lib. V. Cap. XVI. Edit. Olear.) Thus Diodorus Siculus explains another antient Fable in this Manner, I mean that of *Epopeus*. Grotius.

It was in the *Excerpta*, published by Henry de Valois, our Author found the Passage he speaks of. But the Fable, which the Historian explains, is not there: He only relates that *Epopeus*, King of *Sicyone*, destroyed Temples and Altars: And he calls that, making War upon the Gods. The Passage is: "Οτι Ἐπωπεὺς βασιλεὺς, &c. p. 221.

#### 4.

- *Praecipue quum sacrilegus* [Hannibal] *face miscuit arces*
- *Ipsius*
- [Herculis]

*Sylv.* Lib. IV. *Sylv.* VI. Ver. 82. Our Author, who does not mark the Place from whence he took these Words, probably quoting by Memory, changes *arces* into *aras*, and makes the Poet say: *Deum face miscuit aras.*

#### 5.

*De Bell. Punic.* p. 83. Edit. II. Steph.

#### 6.

*Lib.* XLII.

7.

The Passage has been cited above, *Chap. V.* of this Book, § 2. Note 2.

8.

A little before: *Quae [aedes Minervae] ab eo [Verre] sic spoliata atque direpta est, non ut ab hoste aliquo, qui tamen in bello, religionis & consuetudinis jura retineret, sed ut a barbaris praedonibus vexata esse videatur.* In *Verr. Lib. IV. Cap. LV.*

9.

*Quod contigisse Brenno dicitur, ejusque Gallicis copiis, quum fano Apollonis Delphici nefarium bellum intulisset.* De *Divinat. Lib. I. Cap. XXXVII.*

10.

*Qui [Pyrrhus] quum ex Sicilia rediens Locros classe praetervehernetur, inter alia foeda—facinora—thesauros quoque Proserpinae intactos ad eam diem, spoliavit—Quae tantâ clade edoctus, tandem Deos esse superbissimus Rex, pecuniam omnem conquisitam in thesauros Proserpinae referri jussit,* Lib. XXIX. Cap. XVIII. Num. 4, 6.

11.

*Lib. XIV. (Cap. LXIV. p. 430. Edit. H. Steph.)*

12.

*Adeo omnia simul divina humanaque jura polluerit, ut priore populatione cum infernis Diis, secunda cum Superis, bellum nefarium gesserit.* Lib. XXXI. Cap. XXX. Num. 4. *In Deos superos inferasque nefanda ejus scelerata, &c.* Ibid. Cap. XXXI. Num. 3. Praebuit huic furori materiam, &c. Cap. XXVI. Num. 11.

13.

*Quum ille [Philippos] ultra jus victoriae in templo, aras, & Sepulcra ipsa saeviret,* (Lib. II. Cap. VII. Num. 4.) Polybius relates, and at the same Time condemns in the strongest Terms, a like Action of *Prusias, King of Bithynia.* The Passage is in Suidas, at the Word Προυσίας, and in the *Excerpta Peiresciana*, (p. 169. Edit. Paris. p. 1468. Edit. Amstel.) Grotius.

14.

*Lib. V. Cap. XI.*

1

*Lib. I. Cap. LXXXII.*

2.

Xenoph. *Hist. Graec.* Lib. IV. (Cap. VI. § 13. Edit. Oxon.) Plutarch also mentions this in his Life of *Agesilaus*, (p. 608. B.) Grotius.

3.

Juvenal viii. 124.

4.

*Et non omnia concremari tecta, &c.* Lib. V. Cap. XLII. Num. 2.

This is an Imitation of the Passage in Thucydides, cited in Note 1. of this Paragraph, as Matthias Berneger pretends in his *Observationes Miscellae*, published at Strasburgh in 1669. Obs. XII. where he says many Things, and alledges many Authorities entirely the same as in this Place, without however quoting our Author, who had writ long before him.

5.

*In Tarentino domum agro pacatum, &c.* Lib. XXIV. Cap. XX. Num. 10.

6.

*Lib.* XLIX. p. 472. D. E. Edit. H. Steph.

7.

*Strateg.* Lib. III. Cap. X. § 9.

8.

*Vit. Flamin.* p. 371. D.

9.

*Auspiciis Imperatoris Caesaris Domitiani, &c.* *Strateg.* Lib. IV. Cap. III. Num. 14.

10.

*Praeceps in avaritiam & crudelitatem, &c.* Lib. XXVI. Cap. XXXVIII. Num. 3, 4.

11.

This the Orator Aeschines informs us: *De male obita legat.* p. 262. A. Edit. Basil. 1572.

12.

See Plutarch, in the Life of that famous Conqueror, *p.* 671. *B.*

## **BOOK III: CHAPTER XXV: *The Conclusion, with Admonitions to preserve Faith and seek Peace.*** ↵

[**I. Admonition to Princes to keep their Faith.**] I. 1. And here I hope I may make an End; not that I have said all that might have been said, but that which hath been said may be enough to lay a Foundation, on which if any other will build a more stately Fabrick, I shall be so far from [736] envying him, that I shall heartily thank him. Yet before I dismiss my Reader, as before, when I treated of the Design of undertaking War, I brought some Arguments to persuade all Men, to the utmost of their Power, to prevent it. So now I shall add some few Admonitions that may be of Use, both in War and after War. These Admonitions regard the Care of preserving Faith and seeking Peace. We ought to preserve our Faith for several Reasons, and amongst others, because without that we should have no Hopes of Peace.<sup>1</sup> *For by Faith, (says Cicero) not only every State is preserved, but that grand Society of all Nations is maintained. If this be taken away, says Aristotle rightly, All human Correspondence ceases.*

2. Therefore the same *Cicero*<sup>3</sup> calls it detestable to break Faith, the Observation of which is the Bond of human Life, and, as *Seneca*<sup>4</sup> says, *Faith is the most sacred Good of the rational Soul.* Which Sovereign [1639] Princes ought the more solemnly to keep, by how much they offend with more Impunity than others. Wherefore take away Faith,<sup>5</sup> they will be like wild Beasts, whose Rage all Men dread. Justice indeed in other Parts, has often something that is obscure, but the Bond of Faith is self-evident, and to that End do Men engage their Faith in their Dealings, that all Doubts may be removed.

3. How much more then does it concern Princes religiously to observe their Faith, first for the sake of their Conscience, then for that of their Reputation, on which depends the Authority of their Government. Let them not then doubt, but that they who endeavour to instill into them the Art of Deceiving, practise the same they teach. Their Practices cannot possibly prosper long, which render Men unsociable to Men, and hateful to GOD.

[**II. The Design of War to settle a firm Peace.**] II. Further, it is impossible that we should have a quiet Conscience, and a just Confidence in the Protection of Heaven, unless we aim at Peace in every Thing we do throughout the whole Course of a War. For it was very truly said of *Salust*,<sup>1</sup> *That wise Men, for the sake of Peace, make War.* To which agrees the Opinion of St. *Augustine*,<sup>2</sup> *We seek not Peace, to [1640] make War; but we make War, in order to establish Peace.* Aristotle himself often condemns those Nations that make War their chief End. Violence is in itself brutish, which is yet most eminent in War; wherefore it ought to be the more carefully tempered with Clemency and Humanity, lest by too much imitating Beasts, we absolutely forget the Man.

[**III. Peace to be embraced, tho' with Loss, especially among Christians.**] III. A safe and honourable Peace then is not too dearly bought, at the Expence of forgiving Offenders, Damages, and Charges, especially among Christians; to whom our LORD bequeathed Peace, as his last Legacy, whose best Expositor St. *Paul*, *Rom. xii. 18. Would have us live peaceably with all Men, as far as in us lies.* A good Man unwillingly enters into a War, nor is willing to push it to the utmost, as *Salust*<sup>1</sup> tells us. [737]

[**IV. Peace is profitable to the Conquered.**] IV. This Reason alone might indeed be sufficient; but very often our own Interest requires it. First, when we are weaker than our Enemy, because it is dangerous to contend long with one more mighty; and here, [1641] as at Sea, we must by some Loss redeem a greater Mischief, without listening to revenge or hope, bad Counsellors, as *Livy*<sup>1</sup> rightly calls them;

which<sup>2</sup> Aristotle thus expresses, *It is much better to part with some of our Substance to those that are stronger, than being overcome to perish with all we have.*

[V. *And to the Conqueror.*] V. Yea, and to the stronger Party Peace turns to account; because as the same Livy most truly says,<sup>1</sup> Peace is glorious and advantageous, when we give it in our Prosperity; it is better and safer, than a hoped-for Victory. For we must consider, that the Success of War<sup>2</sup> is uncertain. Aristotle says,<sup>3</sup> *We must remember how many and unforeseen Changes happen in War.* Diodorus<sup>4</sup> in an Oration for Peace blames those, *Who boast of their great Exploits done in War, as if it were not usual for Fortune to favour [1642] sometimes one Side, sometimes another.* And<sup>5</sup> the bold Attempts of de- [738] sperate Men are as much to be feared, as the most violent Bitings of<sup>6</sup> dying Beasts.

[1643]

[VI. *And to those whose Affairs are doubtful.*] VI. But if both Parties think they are of equal Strength then (in the Opinion of<sup>1</sup> Caesar) it is the fittest Time to treat of Peace, whilst each Party has a good Opinion of his own Strength.

[VII. *Peace once made to be religiously kept.*] VII. But Peace being made, whatever the Conditions be, they ought to be punctually observed, on account of<sup>†</sup> the Faith given, the Obligation of which I have proved to be sacred and indispensable. And we ought to be very careful to avoid not only Perfidiousness, but whatsoever may exasperate the Mind. For what<sup>1</sup> Cicero said of private Friendship, may be fitly applied to publick. That all the Duties of Friendship are to be observed religiously at all Times, but especially when it has been renewed by a Reconciliation.

[VIII. *The Author's Wish, and the Conclusion.*] VIII. May the ALMIGHTY then (who alone can do it) impress these Maxims on the Hearts of Christian Powers; may he enlighten their Minds with the Knowledge of every Right,<sup>1</sup> Divine and Human, and inspire them with the constant and dutiful Sense of their being the *Ministers of Heaven*, ordained to govern *Men; Men*, for whom, of all his Creatures,<sup>2</sup> GOD has the greatest *Regard and Affection.*

## Endnotes

1.

*Nec enim ulla res vehementius rempublicam continet, quam fides.* De Offic. Lib. II. (Cap. XXIV.)

2.

*Rhetor.* Lib. I. Cap. XV. p. 545. B. Vol. II. *Edit. Paris.*

3.

*Aequa enim perfidiosum & nefarium est, fidem frangere, quae continet vitam, &c.* [Orat. pro Q. Rosc. Comoed. Cap. VI.]

4.

*Fides sanctissimum humani pectoris bonum est, &c.* Epist. LXXXVIII. p. 390. *Edit. Gron. Maj.*

5.

The Emperor *Justinian*'s Embassadors said to *Cosroez*, King of *Persia*, according to Procopius : "If we did not speak to yourself, O King, we should never have believed, that *Cosroez*, the Son of *Cabades*, could have entered the *Roman Territories* in Arms, without regard to the Oath he had lately taken, that is to say, what is deemed amongst Men the most certain and most sacred Pledge of Promise given; and in Breach besides of Treaties, which are the sole Resource of those, who, from their bad Success in War, are not secure for the future. Is not this changing human Life into that of wild Beasts? For if Confidence be no longer to be reposed in Treaties, Wars must necessarily be eternal; and War without End, makes Men renounce all Sentiments of Humanity." *Persic.* Lib. II. (Cap. X.) Grotius.

1

*Postremo sapientes, pacis causâ, bellum gerunt, laborem spe otii sustentant.* Orat. I. *Ad Caesar.* De Rep. ordinand. Cap. XL.

2.

*Non enim pax quaeritur, ut bellum excitetur: sed bellu mgeritur, utpaxadquiratur.* Epist. *Ad Bonifac.* CCVII. This Passage with many other Thoughts, which follow and precede it, is repeated in the *Canon Law*, Caus. XXIII. Quaest. I. Can. III. I find something like it in Plato. That famous Pagan Philosopher says, that a good Legislator ought so to conduct the Affairs of War that all Things may tend to Peace, rather than direct the Affairs of Peace by the Views of War. *De Legibus*, Lib. I. p. 628. E. Vol. II. *Edit.* H. Steph. Long Time after a Platonick Philosopher, who lived under the first *Roman Emperors*, inculcated strongly the same Maxim, by declaring in the Preface to a Work, intended to establish the Principles of the military Art, that this Book ought to be regarded as an offering to Peace, *p. 2.* See the Note of Nicholas Rigault upon it.

1

*Vir boni est, initia belli invitum suscipere, extrema non libenter persecui.* In this Manner our Author expresses the Passage, which he ascribes to Sallust, (*apud Sallustum legimus*, says he) but without marking the Place, or putting the Words in *Italick Characters*. I can find no such Passage in the two perfect Works of that Historian, nor in his Fragments: Neither does Mr. Wasse's *Index*, which is very ample, and sufficiently exact, give any Light concerning it; tho' there are Expressions in this Passage, which he undoubtedly would not have failed to observe. I almost believe, that our Author, deceived by his Memory, or otherwise, has cited this Author for some other. What might have given Occasion for it, is a fine Passage in the History of the War against *Jugurtha*, where there is something that relates to this Place, which the Reader will not be offended at my repeating. It says, that War is easily entered into, but as hard to be got out of again; that the beginning and end are not in the same Person's Power: That any Coward may begin it, but to conclude it, depends upon the Victor's Pleasure: *Omne bellum sumi facile, ceterum agerrume desinere: non in ejusdem potestate initium ejus & finem esse: incipere, cuivis etiam ignavo licere; deponi, quum victores velint.* Cap. LXXXV. *Edit.* Wass.

1

It is in the seventh Book in an Harangue, wherein *Titus Quintius*, constituted General against his Will by the seditious Soldiers, exhorts them to Peace and Submission: *Pacem, etiam qui vincere possunt, volunt, quid nos velle oportet? Quin omissis irâ & spe fallacibus auctoribus nos ipsos nostraque omnia cognitae permittimus fidei.* Cap. XL. *in fin.*

2.

The Passages cited here, and in the following Paragraph, by our Author, without saying from what Work they are taken, are both in the Rhetorick addressed to *Alexander*. Cap. III. p. 616. C. Vol. II. Edit. Paris.

1

It is in the Speech of *Hannibal* to *Scipio*: *In bonis tuis rebus, nostris dubiis, tibi ampla ac speciosa danti est pax—Melior tutiorque est certa pax, quam sperata victoria*. Lib. XXX. Cap. XXX. Num. 18, 19.

2.

*Quum tuas vires, tum vim fortunae, Martemque belli communem, propone animo*. Livy, ubi supr. Num. 20.

3.

*Rhetic. ad Alexand.* Cap. III. p. 616. Philo maintains, that Peace, tho' very disadvantageous, is always better than War. *De Constit. Princip.* (p. 733. D. Edit. Paris.)

4.

In the Oration recited by Diodorus Siculus, from which our Author says he took this, without specifying the Place, or even the Book, it is not the Speaker that blames a presumptuous Confidence, founded upon good Success: On the contrary, the Speaker, that is to say an Athenian Demagogue, named *Cleophon*, exhorting the People, not to Peace but War, amongst other Reasons employs that, which he knew was very proper to animate the Multitude. The opposite Reflection is the Historian's own, who did not think fit to relate more of it than this Passage. *Bibl. Histor.* Lib. XIII. Cap. LIII. p. 356. *Edit. H. Steph.*

5.

There is an antient Greek Verse that says, the Den of a Lion even dying is dangerous:

- Δειναὶ γὰρ καὶ κοῖται ἀποιχομένοι λέοντος.

Grotius.

Mr. Barbeyrac in his *Additions and Corrections* says: After this Note was printed I found the Greek Verse by Accident in Plutarch, towards the End of the Life of *Marius*, p. 432. C. Edit. Wech. Where there are two Words differently placed from the Manner in which our Author here repeats them.

- Δειναὶ γὰρ κοῖται καὶ ἀποιχομένοι λέοντος.

Besides the Word ἀποιχομένοι is translated *absent*, and not *dying* by the *Latin* Interpreter, and two *French* Translators; which at first seems to agree very well with the Sequel of the Discourse. So that Grotius's Application would not be just, or else we must say, that citing by Memory, he had forgot the Sense of the equivocal Word ἀποιχομένοι in the Place from which he took it. However when I examine well the Circumstances of *Marius*'s Condition, who is said to have heard some Voice perpetually resounding this Verse in his Ears; our Author seems to have had good Reasons for explaining ἀποιχομένοι by *even dying*: Which we should find if we had the antient Poet, from whom this Verse had probably passed into a Proverb. In the Terror and extraordinary Agitation of

Mind, in which *Marius* was, he did not consider *Sylla* as absent, to whom the ἀποιχομένοι ought to be applied, according to the Sense commonly given to that Word: On the contrary, he represented that young and vigorous Army, as present, and at the Gates of *Rome*, from the News he received of his approach. I therefore imagine, that he applied the Greek Verse to himself, and that he took it at the same Time as a Presage of his approaching Death, and an Exhortation to perish like an old Lion, as he was. The Word ἀποιχόμενος is often applied to those who die, especially in the Poets: And I find an Example very like this in an antient Oracle repeated by Lucian, in which a Wolf is spoken of:

- Μιμεῖσθαι χρὴ πότμον ἀποιχομένοιο Λύκοιο.

*De Mort. Peregrin.* Vol. II. p. 579. *Edit. Amstel.* Mr. Dacier makes the chief Point of the Application of the Greek Verse consist in *Rome*'s being the Country of *Sylla*. But that Circumstance did not make it more terrible to *Marius*, than before: It was the present Situation of Affairs, and especially the Augmentation of *Sylla*'s Power, from the Victories he had lately acquired, which terrified *Marius*, and would have frightened him any where else. So that this Observation of the new Translator is no better than many others of his, for Instance, that which he makes a little lower, (*Vol. IV. p. 188. Edit. Amstel.*) upon Plato's thanking his good Genius, for having occasioned his being born a *Man and not a Beast*. If ever Commentator endeavoured to find, *Nodum in scirpo*, it was certainly in this Place.

## 6.

Gronovius properly refers us here to this Passage of Florus : *Sed ut quammaximè mortiferi esse morsus solent morientium bestiarum: sic plus negotii fuit, semirutâ Carthagine, quam integrâ.* Lib. II. Cap. XV. Num. 13. And Freinsheimius cites one from Seneca upon it, *Excerpt. Controv.* Lib. IX. Controv. VI.

## 1

*Hoc unum esse tempus de pace agenda, dum sibi uterque confideret, & pares ambo viderentur.* De Bell. Civil. Lib. III. Cap. X.

## †

[[In the original text at this point there is a footnote number that is not keyed to any footnote and is apparently a misprint.]]

## 1

It is in a Fragment of his Oration for *Gabinius*: *Ego, quum omnes amicitias tuendas semper putavi summâ religione & fide, tum eas maximè, quae essent ex inimicitiis revocatae in gratiam.* Apud Hieronym. *Apolog. adv. Ruffin.* Lib. I. init. p. 196. D. Vol. II. *Edit. Basil.* 1537.

## 1

Our Author, as the learned Gronovius remarks here, uses the express Terms of the Prayer of *Tiberius* to the Gods, according to Tacitus : *Hos [Deos precor] ut mihi, ad finem usque vitae, quietam & intelligentem humani divinique juris mentem duint, &c.* Annal. Lib. IV. Cap. XXXVIII. Num. 4.

## 2.

So St. Chrysostom says, *Serm. De Eleemosyna.* Grotius.

The famous Socrates often spoke of the Love, which the Gods had for Mankind, φιλανθρωπία, as appears from the Memoirs, which Xenophon has left us of his Discourses and Actions. See for Instance, *Lib. IV. Cap. III.* Edit. Oxon. Simplicius, in his Commentary upon Epictetus, says, that Man is a Possession of GOD, neither vile nor contemptible; and uses that Reason to prove, that GOD cannot neglect to take Care of him, as of his Creature. In *Cap. XXXVIII. p. 239. Edit. Ludg. Batav.* That Philosopher Reasons upon a Principle, which Plato had long before laid down, which is, that Man is a Kind of Possession peculiar to GOD, whom consequently he loves. In *Phaedone*, Vol. I. p. 62. B. *Edit. Hen. Steph.* I cannot conclude my Notes better than with these fine Passages, which are the more remarkable, as they are taken from Heathen Authors, whose Authority in this Point is of more Weight, than that of a Father of the Church.