I. All 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 that form no Community, or those that are Members of different Nations, whether 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 Con-

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, alludes 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. Wess. 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.
trovery 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. Cicero⁴ defines War a Dispute by force. But Custom has so prevailed, that not the 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 in that Respect) who dispute by Force of Arms. Which general Acceptation of the Word comprehends

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 Iliad.

——— 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. Obricht, 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.
all the kinds of War of which we shall hereafter treat, not even excluding single Combats, which being really ancietner 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 Duus. 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 7 Greek Word Πόλεμος, commonly used to signify War, expresses in its Original an Idea of Multitude. The ancient Greeks likewise called it Λύθι, which imports a Disunion of Minds; just as by the Term Důh, they meant the Dissolution of the Parts of the Body.

2. Neither 8 does the Use of the Word (War) contradict this larger Acceptation. For tho' sometimes we only apply it to signify a Publick

7. Our Author, giving the Etymology of Πόλεμος, derives it from Πόλις, 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 Λύθι dissolvente, quomodo & corporis dissolutio Důh. Here the Commentators are silent, not excepting Gronovius, a Critic by Profession; who only explains Důh 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 Λύθι ought to be repeated in this Place; but we find Důh 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 Δůλω. He took Důh in the Sense which some Lexicographers give to Λύθι, dolor; and at the same Time was thinking of Pla to’s Etymology of Λύθι, 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 Důh from Λύω 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, Hor ace B. I. Sat. III. v. 107. and Terence Eunuch. Act I.
Quarrel, this is no Objection at all, since 'tis certain, that the more emi-

9. 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. 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, 10
if every one were to do so, all Human Society and Intercourse must neces-
sarily be dis-solved. Florentinus 11 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 12 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 13 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, kaj ὑπεροξίχθιν, 14 by Preemi-
nence, as Aristotle terms it; as that of Parents and Children, Masters and Servants, King and Subject, 15 God and Man: So that which is just takes Place either among Equals, or amongst People whereof some are Governors and others governed, considered 16 as such. The latter, in my Opinion, may be called the a Right of Superiority, and the former the b Right of Equality.

eminence, 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.


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 Jurs, 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 Ziegl er 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.
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 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 Services of Lands, which are called real Rights, in Opposition to Rights, meerly personal, not because the first are not annexed to the Person, as well as the last, but because they are annexed only to him who possesses such or such a Thing. This moral Quality when 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. Civilians call a Faculty that Right which a Man has to his own; but we shall hereafter call it a Right properly, and strictly taken. Under which are contain’d, 1. A Power either over our selves, which is term’d Liberty; or over others, such as that of a Father over his Children, or a

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 Inst. Lib. I. Tit. III. De Jure Personarum, § I. 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. § 10.
Lord over his Slave. 2. Property, which is either compleat, or imperfect. The last obtains in the Case of Farms, for Instance, or Pledges. 3. The Faculty of demanding what is due, and to this answers the Obligation of rendering what is owing.

24. The Scholiast on Hor ace says the Word Jus is taken for Property or a Right to a Thing. Jus pro Domino. Grot ius.

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 Pufendor f. B. IV. Ch. IV. § 2.

26. Ut Usufructus, Jus Pignoris, says our Author. As these Words stand, they in-sinuate that the Usufructuary, and the Creditor have a Sort of Right of Property, though imperfect, the former to the Goods in his Possession by vertue 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 Pufendor f. 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. Creditum, Debitum, with the least Acquaintance, the Reader will perceive, is the basis of our whole Law of Credit and Debit, from the Earliest Times till this Day.
VI. Right strictly taken is again of two Sorts, either private and inferior, 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 excels the former. Thus a regal Power is above that of a Father and Master; a King has a greater Right in the Goods of his Subjects for the publick

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, perluf ourgiac (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 I. Num 3. Edit. Celles. Besides there is some-
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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 32 to satisfy his Creditors.

VII. Aristotle calls Aptitude or Capacity, ἀπίαντι2 Worth, or Merit: And Michael of Ephesus terms that which is called Equal or Right, according to that Merit, τὸ πρὸς ἀριθμὸν καὶ τὸ πρὸς ἐπείρον, Fit and Decent.

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 Grönovius. 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.

VII. (1) Ἀπίαντος. 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 Cicerō uses the Latin Word Dignitas, which answers to the Greek Ἀπίαντος, in a large Sense, including both perfect and imperfect Right: His Words are, Justitia est habitus animi, communi utilitatis conservata, suam cuique tribuens Dignitatem. De Invent. Lib. II. Cap. I. III. 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 e cuiusque) Ad Heren. Lib. III. Cap. II. Huber, in his Treatise De Jure Civitatis, and his Praelections, and in Pandects. quotes these two Passages wrong, as if he had read quae cuique jussum & dignitatem tribuit; and on the sole Authority of this false Quotation, he pretends that Cicerō expresses perfect Right by the Term Jus, and imperfect Right by Dignitas.

2. Cicerō 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.
VIII. Of Expletive and Attributive Justice not properly distinguished by Geometrical and Arithmetical Proportions, nor is this con-

VIII. 1. 'Tis expletive Justice, Justice properly and strictly taken, which respects the Faculty, or perfect Right, and is called by Aristotle sural-laktikh, 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 vertue of any Contract, and yet it is the Justice in question that gives me such a

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.

VIII. (1) Our Author's Criticism in this Place, has been justly censured, for the Word sural lagma, 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 sural lagmatia 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. Inst. tit. 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. § 1. 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 sural lagma 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 Nikaiosim or
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Right. Wherefore he also calls it more properly ἐπανορ-<6>τικήν, \(\text{ἐπανορ-}<6>\text{τικήν}\), corrective Justice. Attributive Justice, stiled by Aristotle διανοητήκη. \(\text{διανοητήκη}\) Distributive, respects Aptitude or imperfect Right, the attendant of those Virtues \(\text{Virtues}\) that are beneficial to others, as Liberality, Mercy, and prudent Administration of \(\text{Government}\). But whereas the same Philosopher

Difkaion, τὸ ἐν τιθέν τις ὄργασις διονυσίων τηκόν, Lib. V. Cap. V. and τὸ διονυσίων τηκόν. \(\text{τὸ διονυσίων τηκόν}\) is said to be Distributive of the common part, and is the same as the Distributive Justice of the former, or of the other, which is here a Detention of what belongs to another; a Man, and the Obligation of restoring, which he who has the Inequality subsisting in the Prejudice of the Proprietor, an Inequality which the Justice under Consideration requires to be redressed. To which it may be added, that Aristotelian'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 Frankfurt, Lib. I. Tit. I. § 15, &c.

2. \(\text{ἐπανορ-}<6>\text{τικήν}\) Ethic. Nicom. Lib. V. Cap. VII. p. 65. Edit. Paris. Vol. II. Or, as Aristotle more frequently calls it, \(\text{διονυσίων τηκόν}\).

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 Wace.
says, that Expletive Justice follows a simple Proportion, which he calls \textit{ārij nht īkhān} Arithmetical Justice; but Attributive, which he terms \textit{gw-meri rikhān} Geometrical, is regulated by a comparative Proportion, and which is the only Proportion 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

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 \textit{kēdōc} Gain, and \textit{zhnia} 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 \textit{Habitudinis comparatio}. Homer gives a pretty good Description of this Sort of Proportion, which commonly belongs to Attributive Justice, when he says,

\begin{equation}
\text{Eij ē nēn'sj lā wadwke, xēraia dexeiron dōken}
\end{equation}

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

The Passage of Cassiodorus is taken from his \textit{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 Juso'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 \textit{ēnēre he met on}, instead of \textit{ēdwe he gave}. 
Contract of Society, the Shares are made by a Comparative Proportion, and if only one Person be found worthy of a Publick Office, a simple Proportion is all that is necessary in disposing of it.

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 Euth. 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, (entobsurai ágmasi) 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 as to 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
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 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, ἃ τί ἄποτε μὲν καταστάνειν τὸ αύτὸν ὁμοτετοιχόν.

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 Justice 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 vii. 42 &c.
kr it he, &c. That 12 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 13 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. There is also a third Sense of the Word Right, according to which it signifies the same Thing 1 as Law, when taken in its largest Extent, as

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 Judic. 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 Chrysanthus. "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.

IX. (1) In this Sense Horace says,

Jur a inventa metu injusti fateare necesse est.
Lib. I. Sat. III. v. 3.

and

Jur a neget sibi nata.
Art. Poet. v. 122.

On which Words the Scholiast says I learned it contemntr. Grotius
being a Rule of Moral Actions, obliging us to that which is good and commendable. I say, obliging for 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 properly speaking an Action of the Law, but a meer In-


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 indispensible 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.


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 indispensible 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 indispensible 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, forbad 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 Immunity: Or they relate
action, 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 of other

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. Porsonius.
Virtues; tho' otherwise, whatever is conformable to this Right, may also, in a larger Acceptation, be termed 7 Just. Of this Right, thus taken, the best Division is that of 8 Aristotle, into Natural and Voluntary which he commonly calls Lawful Right; the Word Law being taken in 9 its stricter Sense: Sometimes also 10 an Instituted Right. We find the same Difference among the Hebrews, who when they speak distinctly, call the Natural Right דתים Precepts, and the Voluntary Right מ القاهرة Statutes; the former of which the Septuagint call δικαιώματα, and the latter ἐν δικαιοσύνη.

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 Φυσικόν, and Δίκαιον Ρομανικόν, as making part of what he calls Δίκαιον πολιτικόν 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.


11. Thus Maimonides, in his Guide to the Doubtful, Lib. III. Cap. XXVI. Gratiani, 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.

X. (I) 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 ancient Common-wealth, Lib. II. § 16. See a Fragment of Ciceron’s Treatise De Republica, 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. Gratiani
Suitableness or Unsuitableness to a reasonable Nature, 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 Obligatory or Unlawful, and must, consequently, be understood

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
to be either com-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

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 soever 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 endow'd us with it, is at the Bottom nothing but Ourselves. Now no Man can impose on himself an indispensible 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 anything to himself.... The Word O we 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 indispensible 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
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 <II> Nature is not repugnant; as some 
Things, we have now said, are called Just, because they have no Injustice

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 
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 Transla-
tion 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.
in them; and sometimes by the wrong Use of the Word, * 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 * 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 * Paulus the Civilian infers, that * Theft is forbid by the Law of Nature: Ulpian, that it is * Dishonest by Nature: And * Euripides calls it Hateful to GOD, as you may see in these Verses of Helena,

5. Our Author, in another Part of this Work, mentions Concubination, 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. 1.) 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.


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 Ciceron, said, There is no Injustice in seeking one's 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. XLIII.

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.
5. As for the Rest, the Law of Nature is so unalterable, that God himself cannot change it. For tho' the Power of God be infinite, yet we may say, that there are some 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 should not be Evil. And this is Aristotle's Meaning, when he says, εἰς ἴσην ἱκονομασίαν αἱ, &c. Some Things are no sooner mentioned than we discover Depravity in

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 Ones-
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, Οὐκ ἀρκεῖ τὸ δάνειον ἂν ἐπέλθῃ τοῦ ἀπὸ ἔλεος, ἀλλὰ διὰ προσεγέρας καὶ τὸ ἐπί μένιν ἐπὶ τὸ δάνειον καὶ μὴ διὰ τῆς ἰσχύος. Non sufficit, &c. \(^\text{15}\) 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 \(^\text{16}\) 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, \(^\text{17}\) every Man had naturally a full Power to use what-

\(^\text{15}\) This Example is employed, B. I. C. VII. by way of Comparison, in relation to a very different Subject.

\(^\text{16}\) 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.

\(^\text{17}\) This is treated of in B. II. C. II. § 2.
ever came in his Way. And before Civil Laws were made, every one was at Liberty to right himself by Force.

XI. 1. But that Distinction, which we find in the Books of the Roman Laws, of immutable Right into such as is 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 general Maxims, as Hesiod has well observed,

_Tónico ἀρχηγόποις nómen, &c._

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

18. See B. I. C. III. § 1, 2. and B. II. C. XX. § 8.
XI. (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 Cicer o, 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.

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 entirely 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 transgress 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.
Cicero in his first Book of Offices remarks, that we do not say Horses and Lions have any Justice. And Plutarch, in the Life of Cato the Elder, ἱμάτω τάνατος, &c. We by Nature observe Law and Justice, only towards Men. And Lactantius, in his fifth Book, We find that all Animals, destitute of Wisdom, follow the natural Bias 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. 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, Toēgār γένουται μνάρη και πως τις διάφορος τις. 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 Justice be attributed to brute Beasts, it is improperly, and only on the Account of some Shadow or Resemblance of Rea-

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 Aristotelē, 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.


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 Statu. 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 be guilty of a Murther.
son 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. 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, yet with very great Probability, conclude 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 commend'd.

Führn o'dài'ti, &c.

2 That which is generally reported amongst many Nations is not entirely vain.

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 Peripatetics said, The Lion seems to be angry. Porphyr. De non esu Animalium, Lib. III. p. 309. Edit. Lugd. 1620. Grotius.

XII. (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.
That which universally appears to be so, said Heraclitus, determining lógoτ bônqón, Common Reason to be the surest Mark of Truth. And Aristotle, kráist on párte, &c. "Tis the strongest Proof, if all the World agree to what we say. Cicero, The World, because false Reports always make some Impression, and prejudice the Person to whose Disadvantage they are spread. Ou pántan ápò lútai, Are not entirely without Effect.


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 soever 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 Rhetoric 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 Style, 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.


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 Disputat. Lib. I. Cap. XIII.
Consent of all Nations is to be reputed the Law of Nature. So Seneca, 8 What all Men believe must be true. Likewise Quintilian, We allow 9 that to be certainly true which all Men agree in. I with some Reason said, By the most civilized Nations; for as 10 Porphry well observes, τινα των ἕνων, &c. Some People are savage and brutish, 11 whose Manners cannot, with Truth and Justice, be reckoned a Reproach to human Nature in general. And Andronicus Rhodius, παρῶν ἐρωπός, &c. That Law 12 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. 13 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, ἀντρωπός ουσίαν ἐν ἑαυτῷ, 14 Man is by 15 Nature a mild Creature. And

8. Epist. CXVII.
11. Just in 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 warns us against forming a Judgment of Things from the Opinion of such as have a corrupt Mind. In his Homily on the Divinuity of Jesus Christ. Grotius.
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.
elsewhere, δαιμονία, &c. 16 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. The other kind of Right, we told you, is the 2 Voluntary Right, as being derived from the Will, and is either Human or Divine.

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 1 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 2 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

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 Tamelessness. Of the Immortality of the World, p. 945. Grotius.


XIII. (I) 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.

XIV. (I) The Author follows Aristotle in the Addition of this Epithet. That Philosopher considered Civil Society, as a perfect Society, autárkh, 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 shown in the proper Place. The Sovereign in this Case can only lay a Restraint on that Authority, as far as the Publick Good requires.
what war is, and what right is

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.


5. B. III. Chap. VII, IX.

6. Orat. I XXVI. De Consequentiae
XV. The Divine voluntary Law (as may be understood from the very Name) is that which is derived only from the \(^2\) 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 \(^2\) 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 \(^3\) the Creation of Man.

XV. (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 Ciceró 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, suppose 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 I. on B. II. Chap. V. § 13 that the Consequence drawn from Levit. XVIII. 24. &c. is not well founded. Others, (as Mr. Hochstetter, Professor at Tubingen, in his Collegium Pufendorfianum, Evertit III. § 19.) point to the Prohibition given to
Secondly, Upon the Restoration of Mankind 4 after the Flood. And thirdly, Under the Gospel, in that more perfect re-establishment

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
by CHRIST. These three Laws do certainly oblige all Mankind, as soon as they are sufficiently made known to them.

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, must submit to the Yoke of the Mosaic Law: For a Law 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 Murthersers 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 misunderstood, some Lawyers, as the late Mr. Cocecius, 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 Jurisagratiandi Principis Evangelici in causis Homicidi. in which he opposes this Error. See also the following Chapter, § 5 num. 3.

5. See the following Chapter, § 6 num. 2.

XVI. (I) 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 Scholastic Divinity. They need not have given themselves so much Trouble, had they but considered, that the Question concerning the Salvation of the Pagans ought
obliges only those, to whom it is given. And to whom that Law is given, itself 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.

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 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 Mosaic 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 Indigenerous Laws.
But among the Hebrews themselves there always lived some Strangers, eusebeicai sebomenoi ton jebon, Pious Persons, and such as feared GOD, as the Syropheneician Woman, Matt. xv. 22. And Cornelius, Acts x. 2. one twm sebomenwn yEll hwnn of the devout Greeks, Acts xvii. 4. in the Hebrew, twm wysj the Righteous amongst the Gentiles, as it is read in the Talmud, Title of the King, and he who is such a one is called in the Law gbr "b a Stranger simply, Lev. xxii. 25. or, bç wwr g a Stranger, and a

3. (Eusebeicai f oboomenoi ton jebon not sebomenoi, as our Author, who has taken this from the Epithet given to Cornelius the Centurion, Act s x. 2. This Sort of Strangers are likewise called simply, yoi sebomenoi yEll hne, Greeks who feared or adored (GOD) Act s 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 so little Attention.

4. And Tit. De Synedrio, Cap. XI. Grot ius. 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 Melchizedek, 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 entirely 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 Mosaic Ceremonies, they were absolutely obliged to renounce Pagan Idolatry, and make a Profession of the same.
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 7 to the Strangers that dwelt among them, Deut. xiv. 21. There are only 8 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 9 never

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, Act s 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 allledge 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
submitted to the Levitical Law, to worship GOD in the Temple at Jerusalem, and to offer Sacrifices; but yet they were obliged to stand in a particular Place, separate from that of the Israelites. 1 Kings viii. 41. 2 Mace. iii. 35. John xii. 20. Acts viii. 27. Nor do we find that Elisha

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 congruebant; 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 xlv. 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 Mosick Laws were impracticable to the Generality of other People; as those relating to the
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 12 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 13 Herodotus, 14 Strabo, 15 Phi-<20>lo, 16 Justin, 17 Origen, 18 Clemens Alexandrinus,

First-Fruits, Tenths, 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.


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.


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
Epiphanius, St. Jerom, and Theodoret) were probably descended from Ismael, Esau, or the Postery 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 fol-

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 the 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 Postery, 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 Wagen sei, 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 Postery were obliged by the Law of Circumcision, and that the Jews forced the Idumeans to observe that Ceremony.


21. In his third Question on Exodus.

22. Those Ethiopians whom Erodotus ranks among the circumcised, seem to have descended from the Postery 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 Marshal 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. 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 Ptolemy’s with Letters, but
lowing 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 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 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, Ananiasthe Jew, in the History of Josephus, did very well instruct Izates Adiabenus, (25 Ta-


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 of Soul, by Force of Instruction and Practice: So that what the Gregian 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. 1. 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 Adiabenan Prince, who was converted to Judaism, with his Mother Helen
citus calls him Ezates) that GOD might be rightly worshipped, and 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 qdx yrg Proselytes of Righteousness) enjoyed the same Rights and Privileges with the Israelites, (Numb. xv.); and partly, that 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 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 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 Restauration. The Advantage which we who are Strangers have obtained by the Coming of CHRISt, does not then consist in being

26. Tryphon the Jew, making some Abatement in this Point, owns to Just in Martyr, that if he persisted in that Manner of philosophizing, he had some Hopes left of a better State. Grotius.

27. Thus Just in 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.
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. Since then the Mosaic 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 injoined 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 bare Fact, and signifies the Removal only of Hindrances,

XVII. (I) 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. Astherefore 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
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, 2 the Case is entirely different: But it seldom happens that there is Occasion to draw that Consequence with Certainty; 3 for the Terms

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 Mat t. v 21, &c.


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, Evod. xvii. 2 3. Permission is given to kill a Thief in the Night.
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

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. xvi. 17. forbids Kings to multiply Wivestohimself, 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.
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 general, or in 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, 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 more eminent Degree, than under the State of the Hebrew

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 Mosick 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.


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. Irenæus, Lib. IV. Cap. XXVI. The Author of Sancrosanctae
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 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 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.

Scripturae, among the Works of St. Athanasius, writing of Mat t. 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.
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. 1. But this Question, as well as those which follow, is to be first ex-
amined 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 πρῶτα 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. 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.

I. (1) Cicer o 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 Pufen-
dorf R. II. Chap. III. & 14.
2. After that follows, (according to the same Author) 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 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 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 Deviation from it is a Vice: And

2. As every other Nature only then shows 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. Seneca, 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 moment: Nec enim omnia, quaedam
Pro vita facienda putat ———

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 Inconvenience 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.
sometimes it has 6 a large Extent; so that if one follows it, he does some-
thing 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 Extrem 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 re-
moved from both. The last Sort of Decorum is most commonly the Sub-
ject of Laws both Divine and 7 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

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 Circum-
stances; 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 posi-
tive 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
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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, 8 understand some Way of Fighting, which they learnt no where but from Nature. So, in a Fragment of Ovid's 9 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 10 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

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 Martialis, III. Epigr. 58. v. 2.

Vitulusque inermi frante 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 show 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 Statuibus, Hom. XI. This passage agrees with that quoted from Galen in the Text. Gratius.
an Animal by Nature fitted for Peace and War; that he is not indeed born with Arms, but with Hands proper to make and to use Arms, so that we see the very Infants defend themselves with their Hands, without being taught. So 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, that is, which invades another’s Right: For the Design of Society is, that every one should quietly enjoy his own, with the Help, 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 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

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 Animá, p. 296. Edit. Paris. Grotius.
14. See Pufendorf, B. II. Chap. V. § 1.
15. De Offic. Lib. III. Cap. V.
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 16 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 17 again, What can be opposed to Force, but Force? And in Ulpian, 18 To repel Force by Force is naturally lawful. So in Ovid, 19

Armaque in armatos sumere jura sinunt.

The Laws permit us to take Arms against those who are armed to attack us.

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,

17. Epist. ad Famil. Lib. XII. Ep. III.
as \(1\) Berosus and \(2\) 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 \(3\) 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,

II. (1) See Josephus Antiq. Jud. Lib. I. Cap. VIII. where he quotes the Passage of that profane Historian.


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 saith 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 alluded 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.
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. 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, ² 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 ² fair and honest.

And again, This Reason hastaught 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, ³ Natural Reason allows us

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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. 108. IV
to defend ourselves against Danger. And Florentinus the Lawyer, that It is but just, that whatever anyone does in defence of his Body, should be held lawfully done. 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 before) are not susceptible of Right, but have only some slight Resemblance of it, we distinguish between the Attack and the Defence. When Ulpian had said, that An Animal 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-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. 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.

6. See § 11. of Chap. I.
7. Digest. Lib. IX. Tit. I. Leg. I. § 3. II.
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.
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, 1 Hermogenianus declares, that Wars were 2 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 3 fully explained. By the Law of Nations, (says Livy) 4 it is allowed to repel Force by Force. And Florentinus 5 declares it to be allowed by the Law of Nations to repel Violence and Wrong, and to defend our Lives.

IV. (1) Digest. Lib. I. Tit. I. De Justitia & Jure. Leg. V.

2. Cornelius Nepos, in his Life of Themistocles, 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 II. and § 23. Note 3. from which it appears, that Florentini, 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 I. 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.
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 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 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, 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
Man should suffer himself as much Evil, as he has caused (to others); according to that which is called The Law of Rhadamanthus.

To suffer what one has done, is Just and Right.

And Seneca the Father expresses it thus, 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 Touching of Murderers should be avoided, but that their Lives should be spared. As Plato also appointed in his Laws; and Euripides informs us, that it was practised by the old Greeks, in these Verses,

Kal wojent o, &c.

Our Fathers, in antient Times, had wisely ordered, that whoever embued his Hands in the Blood of another, should not appear in the Sight of anyone 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, * It

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5. Contactum ac commercium. The Author here alludes to the Defilement or Uncleaness, 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. I. Cap. VI. But these confused and obscure Ideas were not in Being in Cain's Time.


*In Lib. III. De Bell. Pelopon. § 45. Edit. Oxon. Servius, on 1 B. of Virgil's Aenid v. 136-140 observes that All the Punishments inflicted by the Antients were