SAMUEL PUFENDORF

On the Duty of Man and Citizen According to Natural Law

EDITED BY
JAMES TULLY
Associate Professor of Political Science and Philosophy,
McGill University

TRANSLATED BY
MICHAEL SILVERTHORNE
Associate Professor of Classics, McGill University

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I

On human action

1. By ‘duty’ [officium] here I mean human action in conformity with the commands of law on the ground of obligation. To explain this, one must first discuss the nature of human action and the nature of laws in general.

2. By ‘human action’ I do not mean any motion which has its origin in man’s faculties [facultas] but only such as is begun and directed by the faculties which the great and good Creator has given to mankind above and beyond the animals. I mean motion initiated in the light of understanding and at the command of will.

3. It has been given to man to become acquainted with the diverse multiplicity of objects that he meets in this world, to compare them, and to form new notions about them. But he has also the ability to envisage his future actions, to set himself to achieve them, to fashion them to a specific norm and purpose, and to deduce the consequences; and he can tell whether past actions conform to rule. Moreover, human faculties are not all in constant and uniform operation; some of them are aroused by an internal impulse and after arousal are brought under control and direction. Finally, a man is not attracted to all objects indiscriminately; some he seeks, others he avoids. Often, too, he checks a motion despite the presence of the object of action; and he often selects one of several objects before him, rejecting the rest.

4. The faculty of comprehension and judgement is called understanding [intellectus]. It must be taken as certain that any adult of sound mind has natural light enough to enable him, with instruction and proper reflection, to achieve adequate comprehension of at least
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the general precepts and principles which make for a good and peaceful life in this world; and to recognize their conformity with human nature. If this is not granted, at least in the court of man, men could hide all their wrongdoing behind a plea of invincible ignorance, since no one can be condemned in the court of man for violating a rule which is beyond his capacity to understand.

5. A man whose understanding is well informed on what is to be done or not done to the point that he knows how to give certain and incontrovertible reasons for his opinion, is said to have a right conscience. A man may, however, have a correct view of what is to be done or not done but be unable to ground it in arguments. He has acquired it perhaps from the general manner of life of his society, or from habit, or from the authority of superiors, and has no reason for taking a contrary view. Such a man is said to have probable conscience. Most men are guided by probable conscience; few have been given the gift of uncovering the causes of things. 1

6. Some find that quite often in particular cases arguments suggest themselves for both sides of the case, and they lack the strength of judgement to see clearly which have greater weight. The usual term for this is doubtful conscience. The rule here is: one should suspend action so long as the judgement as to good and bad is uncertain. For a decision to act before the doubt is removed involves either a deliberate or a negligent infringement of law.

7. Often too the human understanding takes the false for true; it is then said to be in error. Error is called invincible, when one can avoid falling into it by due care and attention; invincible, when one could not avoid it even by employing all the diligence which the conduct of social life requires. Invincible error usually occurs in particular matters and rarely over the general precepts for living, at least among those who have a sincere desire to cherish the light of reason and to follow what is fitting in their lives. For the general precepts of natural law are plain, and those who make positive laws should and usually do take particular care to make the laws known to their subjects. Hence this kind of error does not arise without supine neglect. But in particular cases it is easy for error about the object and other circumstances of the action to creep in unintentionally and without fault.

8. Ignorance is simply the absence of knowledge. Two forms occur,

which are distinguished by whether ignorance contributes anything to the action or not and whether its origin is involuntary or to some degree culpable.

In the first respect, ignorance is usually divided into efficacious ignorance and concomitant ignorance. It is efficacious if, in its absence, the action in question would not have been done; it is concomitant if the action would have been done anyway despite its absence.

In the second respect, ignorance is either voluntary or involuntary. It is voluntary ignorance when one has deliberately incurred it by ignoring the means of knowing the truth, or if one has allowed it to creep up on one by failing to show due diligence. It is involuntary ignorance when one does not know what one could not have known and was not obliged to know. The latter is itself twofold. For it may happen that one cannot now shed one's ignorance, however culpable it may have been to incur it in the first place. Or one may not be able to overcome present ignorance but not be to blame for having fallen into such a condition in the first place.

9. The other faculty which is seen to be peculiar to man as opposed to the beasts is called will. Man moves himself to action by means of the will, as by a kind of internal impulse [vel inrinnesui impulse], and chooses what most pleases him and rejects what seems not to suit him. Man owes to his will two things: first, that he acts of his own accord, that is, he is not determined to act by some internal necessity but is himself the author of his own action; second, that he acts freely, that is, when an object is set before him, he can act or not act, he can choose or reject it, or he can choose one of several objects set before him and reject the rest.

Some human actions are done for themselves, others because they help towards the achievement of something else; that is, some have the character of an end, others of a means. In the case of an end, the will is involved in the following way: it first approves of it when it is known, then sets itself effectively into motion to attain it, and strives, so to speak, towards it either with vigour or in a gentler fashion. On obtaining its end, it comes to rest and quietly enjoys it. Means, on the other hand, are first inspected, then those which are judged most appropriate are selected and finally put into action.

10. It is particularly because a man engages in his actions voluntarily that he is held to be the author of them; in the same way, the first

1 'error cognoscere causar'. Vergil, Georgics, 2.190.
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point to be noted about the will is that its spontaneity [spontaneitas] must be asserted without fail, at least in respect to those actions for which a person is normally held to account in the court of man. But where he has no spontaneity left to him at all, it is not the man himself but the one who put compulsion on him who will be held to be the author of the action to which the other unwillingly lends his limbs and strength.

11. Although the will always seeks good in general and avoids evil in general, yet one finds in individuals a great variety of appetites and actions. This comes from the fact that all goods and evils do not appear to a man in what one may call a pure state, but mingled together, good with evil, evil with good. And different objects particularly affect what one might call different parts of a man. For example, some affect the value which he puts on himself, some his external senses, some the self-love by which he seeks his own preservation. It is for this reason that a man perceives the first class as fitting [decora], the second as pleasant [lacuada], the third as useful [utilis]. Each of these draws a man towards itself, in accordance with the strength of the motion which it impresses on him. Moreover, most people have a particular inclination towards certain things and an aversion from others. And so it comes about, in regard to almost any action at all, that appearances of good and evil, of the true and the plausible, offer themselves at one and the same time, and people vary in their shrewdness and ability to tell them apart. It is no wonder then that one man is attracted to what another turns away from in horror.

12. But a man’s will is not observed to be always as it were poised in equilibrium on the brink of every action in such a way that its inclination in this or that direction proceeds from an impulse internal to itself after mature reflection on all points. Very often a man is tipped in one direction rather than another by what one might call external influences [momenta]. We will pass over men’s common proclivity to evil; this is not the place to expatiate on its origin and character. But in the first place, the particular disposition of a mind communicates a certain inclination to the will, by which some are rendered liable to a certain kind of action. This is seen not only in individuals but in whole nations. It seems to be produced by the character of the climate and of the earth, by the blending of humours in the body which arises from the seed itself, from age, food, state of health, way of life and like causes; as also by the conformation of the organs which the mind uses to perform its functions, and so on. Here we should note that if he takes the trouble, a man can, with due care, do a good deal to blunt the edge of his temperament and alter it; furthermore, that however much force may be attributed to it, one should not accept in the human court that it is powerful enough to compel him to violate the natural law, for human judgement pays no attention to evil desires which stop short of external action. And so however obstinately nature reasserts itself (though ‘expelled by the fork’), it can be prevented from producing vicious external actions. The difficulty of overcoming an inclination of that kind is outweighed by the splendour of the praise that awaits the victor in this contest. But if pressures of that kind so shake the mind that nothing can repress them and prevent them from bursting out, there is still a way for the pressure to be released, so to speak, without sin.

13. Frequent repetition of actions of the same kind very much inclines the will towards them; and develops a tendency which is called habit [consuetudo]. The effect of habit is that a certain action is done gladly and easily, so that in the object’s presence the mind seems to be as it were drawn towards it; and strongly regrets its absence. But one must note that there seems to be no habit which a man cannot cast off again if he puts his mind to it; and similarly no habit can distort a mind to the point that a man is not equal to curbing here and now at least the external acts towards which the habit inclines him. And because it was in the man’s power to contract or not contract a habit of that kind, it follows that, however much habit facilitates action, nothing is lost of the value of good actions, nor is the badness of evil actions diminished. In fact a good habit in a man enhances approval, a bad habit disgrace.

14. There is an immense distance between a mind at rest in quiet and tranquillity and a mind shaken by the peculiar motions which we call passions [affectus]. The rule for passions is: however strong they may be, a man can rise superior to them by the due use of reason and at least check them in their course before they issue in action.

Some passions are excited by an appearance [species] of something good, others by an appearance of something bad; they prompt us either to get a pleasing thing or to avoid an offensive thing. It is in accord with human nature that more goodwill or indulgence should

2 Horace, Epistles, 1.10.24.
be given to the latter passions than to the former, and all the more so the more dangerous and unendurable was the evil which aroused them. It is thought to be far easier to go without something good which is not absolutely essential to the preservation of our nature than to submit to an evil which threatens its destruction.

15. Finally, by analogy with certain illnesses which completely take away the use of reason permanently or temporarily, there is a common practice among some peoples of inflicting on themselves a kind of temporary illness which severely interferes with the use of reason. We refer to the intoxication brought on by certain kinds of substances -which people drink or smoke. These substances set up a violent motion in the blood and spirits which disorders and confuses them, and makes men prone to lust (above all) and anger, recklessness and immoderate mirth. Some men seem to be beside themselves, so to speak, with intoxication, and to put on an altogether different character from the one they have when sober. Intoxication does not always wholly incapacitate the use of reason, but as it is self-inflicted, it is apt to bring actions done under its influence into disfavour rather than favour.

16. Just as human actions are called voluntary insofar as they proceed from and are directed by the will, so actions which are knowingly undertaken in opposition to the will are called involuntary, taking this word in its narrower sense; for in a broader sense it also includes actions committed through ignorance. Here then ‘involuntary’ means the same as ‘compelled’, that is, when someone is constrained to move his limbs by a more powerful external principle provided that he gives evidence of his unwillingness and lack of consent by whatever signs he can but especially by physically struggling. ‘Involuntary’ is also applied, less properly, to situations where under the constraint of severe necessity something is chosen (and done) as the lesser evil from which in other circumstances, without the constraint of compulsion, one would have turned away in horror. Such actions are normally called mixed. They have this in common with spontaneous actions, that the will undoubtedly selects them as the lesser evil in the actual conditions; but as far as effect is concerned, they have something in common with involuntary actions, for it is usual either not to hold the agent responsible for them at all or to attribute to him less responsibility than in the case of spontaneous actions.

17. The particular characteristic of human actions initiated and directed by intellect and will, is that they may be imputed to a man, or that he may rightly be regarded as their author and obliged to account for them; and that their effects also redound to him. For there is no better reason why an action may be imputed to someone than that it originated with him, directly or indirectly, and that he was aware of it and willed it, or that it was in his power whether it would be done or not. Hence the primary axiom in moral discipline which look at the subject from the point of view of the human court is held to be: a man may be held accountable for those actions which it is in his power whether they are to be done or not. It comes to the same thing to say: any action which can be under human control and whose commission or non-commission is in his power may be imputed to him. Conversely, no one may be held to be the author of an action which was not in his power either in itself or in its cause.

18. From these premises we shall form some particular propositions which will define what may be imputed to each man or what actions and events each may be held to be the author of.

First, no actions done by others, no operation of any other things and no event can be imputed to a person except insofar as he can control them and is obliged to do so. For nothing is more common among men than that a person have the responsibility of directing another person’s actions. In this case if an action is done by the one party and the other party failed to do what it was in his power to do, that action will be imputed not only to the immediate doer but also to the person who failed to exercise proper direction so far as possible. However, this requirement has its limits and bounds, so that ‘possible’ is to be taken in the sense of moral possibility and with some reservation. For the liberty of the subject person is not abolished by the subjection of one person to another; he may still resist the other’s control and go his own way; and the conditions of human life do not allow one to monitor all of the other’s movements as if he were permanently attached to him. Consequently, if the person in charge has done everything that the nature of the charge laid on him permitted, and still the other person does something wrong, it will be imputed to the doer alone.

Similarly, now that men have ownership of the animals, whenever an animal’s action causes loss to a person, the owner will be held responsible if he has fallen short of the proper standard of care and custody.
Similarly a person may be held responsible for the misfortunes of others if he did not do what he could and what he should to remove their cause and occasion. For example, since men have it in their power to promote or suspend the operations of many things in nature, they will be held responsible for any advantage or loss, so far as their effort or neglect significantly contributed to the result.

Sometimes too, extraordinarily, a person is held responsible for events which are normally beyond human control, as when the deity has made a special disposition for a certain person.

Apart from these and similar cases, it is enough to be able to account for one’s own actions.

19. Second, there are personal defects which it is not in a man’s power to acquire or not to acquire. He cannot be held responsible for these except insofar as he did not take pains to make up a natural defect or to supplement the native powers which he does have. For example, no one can give himself a keen mind or a strong body and therefore no one can be held responsible on this score except so far as he has or has not neglected to develop these powers. So too it is not the rustic but the town-dweller and the courtier who are censured for bad manners. So it has to be seen as absolutely absurd to criticize people for qualities which are not in our power, such as being short, having a bad figure and so on.

20. Third, one cannot be held responsible for actions done through invincible ignorance. For we cannot direct an action when the light of understanding does not show the way, assuming that the man could not get such a light for himself and it was not his fault that he could not do so. Moreover in social life ‘can’ is understood in a moral sense as the degree of capacity, cleverness and caution which is commonly judged sufficient and which rests on probable reasons.

21. Fourth, neither ignorance nor mistake about the laws and the duty laid on us releases us from responsibility. For he who makes the laws and lays duties upon us should, and normally does, ensure that they are brought to the attention of the subject. And the laws and the rules of duty should be, and normally are, suited to the subject’s understanding; and everyone should take pains to get to know them and remember them. Hence he who is a cause of ignorance will be obliged to answer for the actions which result from that ignorance.

22. Fifth, if by no fault of his own a man does not have the opportunity to act, he is not held responsible for not acting. Opportunity seems to include four elements: (1) that the object of the action is at hand; (2) that there is a convenient place available where we cannot be impeded by others or in some way harmed; (3) that a suitable time is available at which we do not have more pressing business to attend to, and likewise that the time is good for others involved in the action; and finally, (4) that our natural powers of action are adequate. Since action is impossible without these conditions, it would actually be absurd to hold that a person has the responsibility to do something which he has no opportunity to do. For example, a doctor cannot be accused of idleness if no one is sick; a poor man has no opportunity to be generous; a man who has been refused a post for which he properly applied cannot be accused of hiding his talent; and to whom much has been given, of him much will be required; we cannot suck and blow at the same time."

23. Sixth, a person cannot be held responsible for not doing what exceeds his powers, and which he is unable with those powers to bring about. Hence the common phrase: there is no obligation to do the impossible. However, one must add the proviso that he not have weakened or destroyed his power to act by his own fault. For this case can be treated in the same way as if he still had his powers, since otherwise there would be an easy way of avoiding even the slightest obligation by deliberately spoiling one’s power to act.

24. Seventh, a person cannot be held responsible for what he does or suffers under compulsion, assuming that avoidance or escape were beyond his powers. We may be said to be compelled in two ways: (1) when a stronger party uses force to make our limbs do or suffer something; (2) if a more powerful person threatens us at close quarters with some serious harm (and has the ability to carry out his threat right away) if we do not make a move to do something or abstain from doing it. For in this case, unless we are expressly obliged to redeem by our suffering what should be inflicted on another, it is he who lays this necessity upon us who will be taken as the originator of the crime; and we can no more be held responsible for that act than a sword or an axe for a killing.

25. Eighth, those who do not have the use of reason are not held responsible for their actions. For they are unable to discern clearly what is to be done and to compare it against a rule. This is the case

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with actions of infants before the use of reason begins to show itself with any degree of clarity. Scolding or smacking children for something they have done is not intended as if (in human justice) they have deserved punishment properly so called, but purely as a means of correction and discipline, so that they will not be a nuisance to others by such behaviour or develop bad habits. Similarly in the case of the insane, the mentally disturbed and the senile, their actions are not regarded as human, since their illness arose through no fault of their own.

26. Ninth (and finally), a person cannot be held responsible for what he imagines he is doing in dreams, except insofar as by dwelling with pleasure on such things during the day he allows images of them to make a deep impression on his mind. But not much attention is usually paid to them in human judgement. For in other ways, too, imagination [phantasia] in sleep is like a boat adrift without a helmsman, so that it is not in a man’s power to control what kind of fancies it will produce.

27. In discussing responsibility for another person’s actions we must be quite clear that it sometimes happens that an action is not imputed to the actual doer at all, but to another person who used him merely as an instrument. It is more usual, however, for the action to be the joint responsibility of the doer and of the other person who contributes to it by action or omission. There are three major forms of this. Either the other person is held to be the principal cause of the action and the doer the secondary cause; or both are equally responsible; or the other person is the secondary and the doer is the principal cause.

Into the first category fall those who incited the other person to action by their own authority; those who gave the necessary consent without which the other person would not have acted; those who could and should have prevented it and did not do so.

Into the second category fall those who commission or hire someone to commit a crime; those who aid and abet; those who provide refuge and protection; those who when they could and should have offered help to the victim, did not do so.

Into the third category one may put those who give special advice; those who give assent and approval to a crime before it is done; those who encourage wrongdoing by the examples they give, and the like.

2

On the rule of human actions, or on law in general

1. Human actions arise from the will. But the acts of will of an individual are not consistent in themselves; and the wills of different men tend in different directions. For mankind to have achieved order and decency therefore, there must have been some rule to which those wills might conform. For otherwise if each man, amid so much liberty to will and such diversity of inclinations and desires, had done whatever came into his mind without reflective reference to a fixed rule, the result would inevitably have been great confusion among men.

2. This rule is called law [lex]. Law is a decree by which a superior obliges one who is subject to him to conform his actions to the superior’s prescript [praescriptum].

3. To understand this definition better, one must answer these questions: what is obligation? what is its origin? who can incur obligation, and who can impose obligation on another?

Obligation is commonly defined as a bond of right by which we are constrained by the necessity of making some performance. That is, obligation places a kind of bridle on our liberty, so that, though the will can in fact take different directions it yet finds itself imbued by it with an internal sense (so to speak), so that it is compelled to recognize that it has not acted rightly if the subsequent action does not conform to the prescribed rule. Consequently, if anything bad happens to a man for that reason, he judges that he deserves it, since he could have avoided it by following the rule, as he should have done.

4. There are two reasons why man is fit to incur obligation: (i) he has a will capable of moving in various directions and so able to conform
to the rule; and (2) he is not free from the authority of a superior. For there is no expectation of free action where an agent's powers are tied by nature to a uniform mode of behaviour; and it is pointless to prescribe a rule to one who can neither understand nor conform to it. It follows therefore that one is capable of obligation if he has a superior, if he can recognize a prescribed rule and if he has a will which is capable of taking different directions, yet (when a rule has been prescribed by a superior) is imbued with the sense that it may not rightly deviate from it. With such a nature, it is evident, man is endowed.

5. An obligation is introduced into a man's mind by a superior, by one who has not only the strength to inflict some injury on the recalcitrant, but also just cause to require us to curtail the liberty of our will at his discretion. When a person in this position has signified his will, fear tempered by respect [reverentia] must arise in a man's mind [animus] — fear from power, respect from reflection on the reasons which ought to induce one to accept his will even apart from fear. For anyone who can give no reason except more strength why he will impose an obligation upon me against my will can indeed terrify me, so that I think it better [satis] to obey him for the time being to avoid a greater evil, but when the threat is gone, nothing any longer prevents me from acting at my discretion rather than his. On the other hand, if a person has reasons why I should obey him but lacks the strength to inflict injury on me, I can disregard his orders with impunity, unless one more powerful than he comes to assert the authority I have flouted.

The reasons which justify a person's claim to another's obedience are: if he has conferred exceptional benefits on him; if it is evident that he wishes the other well and can look out for him better than he can for himself; if at the same time he actually claims direction of him; and, finally, if the other party has voluntarily submitted to him and accepted his direction.

6. For the law to exert its force in the minds to whom it applies, there must be knowledge of who the legislator is and of what the law itself is. For no one will offer obedience not knowing whom he should obey or what he is obliged to do.

It is very easy to know the legislator. For natural laws, it is clear by the light of reason that their author is the author of the universe. And as for the citizen, he cannot fail to know who has authority over him.

On the rule of human actions

How natural laws become known will be explained presently. Civil laws reach subjects' notice by promulgation plainly and openly made. In promulgating a law one should make two things particularly clear: first, that the author of the law is he who holds sovereign power in the state, and secondly, what is the meaning of the law. The first point is made clear when the sovereign promulgates it with his own voice or by attaching his signature to it, or by having his delegates do these things for him. It will be in vain to call in question their authority, if it is clear that this is a function of the office they hold in the state and that they are regularly employed for this purpose; if those laws are applied in the courts; and if they contain nothing that derogates from the sovereign power. For the meaning of the law to be correctly grasped, those who promulgate it have a duty to be as perspicuous as possible. If anything obscure does turn up in the laws, a clarification must be sought from the legislator or from those who have been publicly appointed to render judgement in accordance with the laws.

7. Every complete law has two parts: the one part in which what is to be done or not done is defined, and the other which declares the punishment prescribed for one who ignores a precept or does what is forbidden. For because of the wickedness of human nature which loves to do what is forbidden, it is utterly useless to say 'Do this!' if no evil awaits him who does not, and similarly, it is absurd to say, 'You will be punished', without first specifying what deserves the punishment.

So then the whole force of the law consists in making known what the superior wants us to do or not to do and the penalty set for violators. The power of creating an obligation, that is, of imposing an internal necessity, and the power to compel or to enforce observance of the laws by means of penalties, lie properly with the legislator and with him to whom the protection and execution of the laws is committed.

8. A duty imposed on someone by law should be not only within his power but also of some use to him or to others. On the one hand, it is absurd and cruel to attempt to require something of someone under threat of penalty, if it is and always has been beyond his powers. Likewise, it is unnecessary to curtail the natural liberty of the will if no use is to come of it for anyone.

9. Although a law normally embraces all the subjects of the legislator to whom the substance of the law applies, and whom the legislator did
not specifically exempt, nevertheless it sometimes happens that a particular person may be specially exempted from the obligation of a law. This is called 'dispensation'. The power of granting a dispensation belongs only to him who has the authority to make and unmake laws. One must be careful that one does not, by indiscriminate granting of dispensations, without serious cause, undermine the authority of the laws and give an opening to envy and indignation among the subjects.

10. Equity is very different from dispensation. It is a correction of the law where law is deficient through its universality; or a skilful interpretation of the law by which it is shown from natural reason that some particular case is not covered by a general law since an absurd situation would result if it were. Not all cases can be foreseen or expressly provided for because of their infinite variety. Hence judges, who have the task of applying the general provisions of a law to particular cases, must except from the law the sort of cases that the legislator would have excepted if he had been present or if he had foreseen such cases.

11. From their relation to and congruence with a moral rule human actions acquire certain qualities and denominations.

Those actions for which the law makes no provision in either way are said to be licit or permitted. One must admit however that sometimes in civil life, where not every detail can be exactly as it should be, some things are said to be licit because they are not penalized in human courts, though in themselves they are repugnant to natural goodness.

Actions in accordance with law are called good [bonus]; contrary to law bad [nata]. For an action to be good, it must be totally in accordance with law; for an action to be bad, it need only be deficient at a single point.

12. Justice is sometimes an attribute of actions, sometimes of persons. When justice is ascribed to a person, it is usually defined as a constant and unremitting will to render to each his own. The just man is defined as one who delights in doing just actions or strives after justice or attempts in everything to do what is just. The unjust man, by contrast, is he who neglects to render each his own, or who thinks that the criterion should be not his duty but his own immediate advantage. Consequently some of a just man's actions may be unjust and vice versa. For the just man does justice because of the law's command and injustice only through weakness; whereas the unjust man does justice because of the penalty attached to the law and injustice through the wickedness of his heart.

13. Justice as an attribute of actions is simply the appropriate fitting of actions to persons. And a just action is one which is done to the person to whom it is appropriate to do it by deliberate choice or with knowledge and intention. Thus the major difference in the case of actions between justice and goodness is that goodness denotes merely conformity with the law whereas justice involves in addition a relationship to those in respect of whom the action is done. This is also the reason why justice is said to be a virtue in respect of another person.

14. There is no agreement on the divisions of justice. The most widely accepted is the division into universal and particular. Universal justice is said to be doing duties of any kind to other people, even such duties as could not be claimed by force or by launching an action in the courts. Particular justice is doing to another precisely those things which he could have demanded of right; it is usually subdivided into distributive and commutative. Distributive justice rests on an agreement between society and its members about pro rata sharing in loss and gain. Commutative justice, by contrast, rests on a bilateral contract particularly concerned with things and actions relevant to commerce.

15. Now that we know what justice is, we can easily infer the nature of injustice. We must notice that the kind of unjust action which is done by deliberate design and which violates what is due to another by perfect right or which he possesses by perfect right (no matter how obtained), is properly called a wrong. There are three kinds of wrong: if a person is denied what he might demand in his own right (not due, that is, merely on the basis of humanity or a similar virtue); or if he is deprived of what he held in his own right, a right valid against the depriver; or if an injury is inflicted on another which we do not have the authority to inflict. Wrong also requires deliberate design and malice on the part of the agent. In the absence of malice, an injury to another is called an accident or fault [culpa], and the gravity or mildness of the fault depends upon the degree of carelessness or negligence which was the cause of the damage to the other party.

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1 Cf. Justinian, Institutes, 1.1 pt., Digest, 1.1.10.
16. With respect to its author, law is divided into divine and human; the one was made by God, the other by man. But if it is viewed in the light of whether it has, or has not, a necessary and universal congruence with men, it is divided into natural and positive. Natural law is law which is so congruent with the rational and social nature of man that there cannot be a good and peaceful society for the human race without it. Hence too it can be traced out and known by the light of man's native reason and by reflection on human nature in general. Positive law is law which does not derive from the common condition of human nature, but proceeds solely from the will of the legislator, although it ought not to be without its own rationale and usefulness which it creates for certain men or for a particular society.

Of divine law, one kind is natural, the other positive. But all human law, strictly so called, is positive.

3

On natural law

1. What is the character of natural law? What is its necessity? And in what precepts does it consist in the actual condition of mankind? These questions are most clearly answered by a close scrutiny of the nature and character of man. Just as one makes great progress towards an accurate knowledge of civil laws by first achieving a good understanding of the condition of a state and the customs and occupations of its citizens, so if one first takes a view of the common character and condition of mankind, the laws on which man's security rests will easily become clear.

2. In common with all living things which have a sense of themselves, man holds nothing more dear than himself, he studies in every way to preserve himself, he strives to acquire what seems good to him and to repel what seems bad to him. This passion is usually so strong that all other passions give way before it. And if anyone attempts to attack a man's safety, he cannot fail to repel him, and to repel him so vigorously that hatred and desire for revenge usually last long after he has beaten off the attack.

3. On the other hand man now seems to be in a worse condition than the beasts in that scarcely any other animal is attended from birth with such weakness [imbecillia]. It would be something of a miracle, if he came through to maturity without the help of other men, since even now when so many things have been discovered to relieve men's needs, a careful training of several years is required to enable a person to get his food and clothing by his own efforts. Let us imagine a man coming to adult years without any care and fostering from other men. He would have no knowledge except what has sprung by a kind of
spontaneous generation from his own intelligence. He would be in solitude, destitute of all the help and company of others. Evidently, one will scarcely find a more miserable animal, without speech presumably and naked, who has no resource but to tear at grass and roots or to pick wild fruits, to slake his thirst at the spring or river or from the puddle in his path, to seek shelter in caves from the assaults of the storm or to protect his body as best he may with moss or grass. Time would pass most tediously with nothing to do; at every noise or approach of another animal he would start in terror; and would at last die of hunger or cold or in the jaws of a wild beast.

By contrast, all the advantages that attend human life today derive from men's mutual assistance. There is nothing in this world, save the great and good God Himself, from which greater advantage can come to man than from man himself.

4. But this animal which is so mutually helpful suffers from a number of vices and is endowed with a considerable capacity for harm. His vices render dealing with him risky and make great caution necessary to avoid receiving evil from him instead of good.

In the first place, he is seen to have a greater tendency to do harm than any of the beasts. For the only things by which beasts are carried away are desires for food and sex, both of which they can themselves satisfy with little effort. And when these desires are laid to rest, they are not easily stirred to anger or to harm others unless provoked. But man is an animal ready for sexual activity on any occasion and tickled by the itch of lust much more frequently than would seem necessary for the preservation of the species. His belly too wants not only to be satisfied but to be titillated, and often has an appetite for more than it can naturally digest. Nature has provided that the beasts should not need clothes; but man delights in being clothed for ostentation as well as from necessity. Many other passions and desires are found in the human race unknown to the beasts, as, greed for unnecessary possessions, avarice, desire of glory and of surpassing others, envy, rivalry and intellectual strife. It is indicative that many of the wars by which the human race is broken and bruised are waged for reasons unknown to the beasts. And all these things can and do incite men to inflict harm on each other. There is moreover in many men a kind of extraordinary petulance, a passion for insulting others, at which others cannot fail to be offended and to gird themselves to resist, however restrained their natural temper, in order to preserve and protect their persons and their liberty. Sometimes too men are incited to mutual injury by want and because their actual resources are not adequate to their desires or their need.

5. Men's capacity for mutual infliction of injury is also very powerful. For though unlike the beasts they are not formidable for teeth or hooves or horns, yet the dexterity of their hands can be developed into a most effective instrument of harm, and their mental ingenuity facilitates attack by cunning and stratagem where open assault is out of the question. And so it becomes very easy to inflict death, the worst of man's natural evils.

6. Finally, one must recognize in the human race, by contrast with any individual species of animals, an extraordinary variety of minds. Animals of the same species have virtually identical inclinations, are led by similar passions and appetites. But among men there are as many humours as there are heads, and each man loves his own. Men are not all moved by one simple uniform desire, but by a multiplicity of desires variously combined. In fact, one and the same man is often observed to be different from what he had been, and to recoil in horror from what he once coveted. There is no less variety in men's occupations and habits and in their inclinations to exert their powers of mind, as may be observed nowadays in the almost unlimited kinds of life men choose. For these reasons careful regulation and control are needed to keep them from coming into conflict with each other.

7. Man, then, is an animal with an intense concern for his own preservation, needy by himself, incapable of protection without the help of his fellows, and very well fitted for the mutual provision of benefits. Equally, however, he is at the same time malicious, aggressive, easily provoked and as willing as he is able to inflict harm on others. The conclusion is: in order to be safe, it is necessary for him to be sociable; that is to join forces with men like himself and so conduct himself towards them that they are not given even a plausible excuse for harming him, but rather become willing to preserve and promote his advantages [commodo].

8. The laws of this sociality [socialitas], laws which teach one how to conduct oneself to become a useful [commodum] member of human society, are called natural laws.

9. On this basis it is evident that the fundamental natural law is: every man ought to do as much as he can to cultivate and preserve sociality. Since he who wills the end wills also the means which are indispens-
able to achieving that end, it follows that all that necessarily and
normally makes for sociality is understood to be prescribed by natural
law. All that disturbs or violates sociality is understood as forbidden.

The rest of the precepts may be said to be no more than subsump-
tions under this general law. Their self-evidence is borne in upon us
by the natural light which is native to man.

10. Though these precepts have a clear utility, they get the force of
law only upon the presuppositions that God exists and rules all things
by His providence, and that He has enjoined the human race to
observe as laws those dictates of reason which He has Himself pro-
mulgated by the force of the innate light. ¹ For otherwise though they
might be observed for their utility, like the prescriptions doctors give
to regulate health, they would not be laws. Laws necessarily imply a
superior, and such a superior as actually has governance of another.

11. The demonstration that God is the author of natural law rests on
natural reason, provided that we confine ourselves to man’s present
state, disregarding the question whether his primeval condition was
different and how the change came about.

Man’s nature, then, is so constituted that the human race cannot be
secure without social life and the human mind is seen to be capable of
ideas which serve this end. It is also clear not only that the human
race, like other creatures, owes its origin to God, but also that
whatever its present condition, it is encompassed by the government
of God’s providence. It follows that God wills that a man should use
for the preservation of his nature the powers within him in which he is
conscious of surpassing the beasts; and that he also wills that human
life be different from their lawless life. Since he cannot achieve this
except by observance of natural law, it is also understood that he is
obligated by God to observe it as the means which God Himself has
established expressly to achieve this end, and which is not a product
of man’s will and changeable at his pleasure. For he who obligates one
to an end is held also to have obligated one to take the means
necessary to that end.

It is also a sign that social life has been imposed upon men by
God’s authority, that the sense of religion or fear of the Deity is not
found in any other living creature; this sense does not seem to be

On natural law

intelligible in a lawless animal. This is the origin of that quite delicate
sense in men who are not wholly corrupted, which convives them
that when they sin against natural law, they offend Him who has
authority over men’s minds, and who is to be feared even when there
is nothing to be feared from men.

12. The common phrase that law is known by nature should not be
taken, it seems, as implying that there are inherent in men’s minds,
from the moment of birth, actual, distinct propositions about what is
to be done and what avoided. It means partly that law can be explored
by the light of reason, and partly that at least the common and
important precepts of natural law are so plain and clear that they meet
with immediate assent, and become so ingrained in our minds that
they can never thereafter be wiped from them, however the impious
man may strive wholly to extinguish his sense of them, to lay to rest
the stirrings of his conscience. On this ground, too, it is said in the
Holy Scriptures to be ‘written in the hearts of men’.
² Since we are
imbued with a sense of them from childhood on by the discipline of
civil life, and since we cannot remember the time when we first took
them in, we think that we had a knowledge of them already in us when
we were born. It is the same thing as we all experience with regard to
our native language.

13. Perhaps the duties imposed on man by natural law are most
conveniently divided in accordance with the objects on which those
duties are to be exercised. On these lines they form three principal
divisions. The first teaches, on the basis of the dictate of right reason
alone, how one should behave towards God; the second towards
oneself; the third towards other men. The precepts of natural law
regarding others are derived primarily and directly from sociality,
which we have laid down as the foundation. The duties towards God
as Creator also can be deduced, indirectly, from that source, insofar
as the ultimate sanction of duties towards other men comes from
religion and fear of the Deity, so that a man would not even be
sociable if he were not imbued with religion, and because reason
alone in religion extends no further than to religion’s capacity to
promote the tranquillity and sociality of this life; for so far as religion
procurers the saving of souls, it proceeds from a particular divine

¹ promulgatus: cf. 1.2.16 on positive legislation.
² Epistle of Paul to the Romans, 2:15.
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On man's duty to God, or on natural religion

1. So far as man's duty to God can be traced out on the basis of natural reason, it has no more than two articles: first, to have right notions of God, and secondly, to conform our actions to His will. Hence natural religion consists of theoretical propositions and practical propositions.

2. Of all the notions which everyone must hold about God, the first is a settled conviction that God exists, that is, that there really is a supreme and first being on whom this universe depends. This has been most plainly demonstrated by philosophers from the subordination of causes which must find an end in some first thing, from motion, from reflection on the fabric of the universe, and by similar arguments. Claiming not to understand these arguments is no excuse for atheism. For since this conviction has been a constant possession of the whole human race, anyone who wished to overthrow it would not only have to produce a solid refutation of all the arguments which prove God's existence, but also come forward with more convincing reasons for his own position. At the same time, since the salvation of the human race has been believed hitherto to depend on this conviction, he would also have to show that atheism would be better for the human race than to maintain a sound worship of God. Since this cannot be done, we must heartily detest and severely punish the impiety of all who make any attempt whatever to shatter that conviction.

3. The second notion is that God is the Creator of this universe. For since it is self-evident that all this world did not come into existence of itself, it must have a cause and that cause is what we call God.
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It follows from this that it is an error to prattle about nature (as people do from time to time) as the final cause of all things and all effects. For if the word 'nature' is meant to be taken as the causal efficacy and power of action which is observed in things, it surely gives evidence of its author, God; so far is nature's power from being support to any argument in denial of God. If, however, by 'nature' is meant the supreme cause of all things, it is a kind of fastidious profanity to avoid the plain, accepted term, God.

It is also an error to believe that God is among the objects accessible to the senses, and particularly the stars. For in all these things their substance proves that they are not primary but derived from another.

They too have an unworthy conception of God who say that He is the soul of the world. For soul of the world, whatever it may actually be, denotes a part of the world; but how could a part of a thing have been its cause, i.e. something prior to it? If on the other hand by soul of the world is meant that first, invisible something on which the force and motion of everything depends, this is to substitute an obscure, figurative expression for a plain word.

It is also obvious from this very point that the world is not eternal. For this is incompatible with the nature of anything that has a cause. Whoever asserts that the world is eternal, denies that it has any cause and so denies God Himself.

4. The third notion is that God exercises direction over the world as a whole and over the human race. This is clearly evident from the admirable and unchanging order seen in the universe. The moral effect is the same whether one denies that God exists or denies that He has concern for human affairs, since both opinions utterly undermine all religion. For there is no reason to fear or to worship a being who however excellent He may be in Himself; is unmoved by concern for us and neither can nor will confer either good or evil upon us.

5. The fourth notion is that no attribute which involves any imperfection is compatible with God. For since He is the cause and origin of all things, it would be absurd to say that any creature of His could form the conception of a perfection which is not in God. Moreover, since His perfection exceeds in infinite ways the intellectual capacity of so mean a creature, it will be appropriate to use negative rather than positive terms to express His perfection. Hence one must never assign to God attributes that denote anything finite or determinate, because there could always be found something greater than anything finite. And every determination and figure involves boundaries and circumscription. In fact, one must not even say that He is distinctly and clearly understood or conceived by our imagination, or by any faculty of our soul, for whatever we have the capacity to conceive clearly and distinctly is finite. And we do not have a full conception of God in our minds simply because we speak of Him as infinite, since 'infinite' properly speaking does not denote anything in the object, but only the incapacity of our minds, as if we were saying that we do not grasp the greatness of His essence. Hence it is not correct to say that He has parts or that He is a whole, since these are attributes of finite things; nor that He exists in a certain place, since this implies bounds and limits to His greatness; nor that He moves or is at rest, since both imply existence in space.

Thus one cannot properly attribute to God anything that denotes pain or passion, for instance, anger, repentance or pity (I say 'properly' since when such things are attributed to God in Scripture, it is done in terms of human feeling [anthropopathos] to represent the emotion not the effect). The same is the case with whatever implies the want or absence of any good, e.g., desire, hope, craving, sexual love. They imply a lack, hence an imperfection, since desiring, hoping and craving can only be understood as directed towards what one lacks or does not have.

Similarly in the case of intellect, will, knowledge and activities of the senses, such as sight or hearing; when these are attributed to God, they must be taken to be attributed in a mode far more sublime than that in which they exist in us. For will is rational desire, and desire presupposes absence and lack of the relevant object. Also intellect and sensation in men involve an impression made by objects on the organs of the body and powers of the soul, which is an indication of a dependent and therefore less than perfect power.

Finally, it is also inconsistent with divine perfection to say that there is more than one God. For apart from the fact that the wonderful harmony of the world argues a single governor, God would actually also be finite if there were several gods of equal power not dependent on Him. The existence of more than one infinite would involve a contradiction.

All this being so, the courses most consistent with reason in the matter of the attributes of God, are: either to use negative terms, e.g.
infinite, incomprehensible, immense, eternal, that is, lacking beginning and end; or to use superlatives, e.g. best, greatest, most powerful, most wise, etc.; or to use indefinite terms, e.g. good, just, creator, king, lord, etc., not so much with the intention of actually saying distinctly what He is as of finding some kind of expression to declare our admiration and obedience; for this is the sign of a humble mind, of a mind that offers all the honour of which it is capable.

6. The practical propositions of natural religion are partly concerned with the internal, partly with the external, worship of God.

The internal worship of God is to honour Him. Honour is a conviction that power and goodness are united in someone. The human mind should naturally conceive the highest possible reverence for God in consideration of His power and goodness.

It follows from this that one should love Him as the author and giver of every good; one should hope in Him as the one on whom all our future felicity depends; one should acquiesce in His will since of His goodness He does all things for the best, and gives us what is most for our good; one should fear Him as most powerful, to offend whom is apt to incur the greatest evil; and one should offer Him in all things the most humble obedience as Creator, lord and governor, the greatest and the best.

7. The external worship of God consists particularly in the following:

(1) To give thanks to God for all the many good things men receive from Him.
(2) To express His will by their actions as far as possible, or obey Him.
(3) To admire and celebrate His greatness.
(4) To offer prayers to Him to obtain what is good and ward off evil; for prayers are signs of hope, and hope is an acknowledgement of His goodness and power.
(5) To swear by God alone (when the occasion requires) and keep one’s oath scrupulously. This is what is demanded by God’s omniscience and power.
(6) To speak respectfully of God; for this is a sign of fear; and fear is a confession of power. It follows from this that we should not use the name of God rashly and in vain; for both show lack of respect. One must not swear where there is no need; for that is to swear in vain. One must not engage in curious and insolent disputes about the nature and government of God; for this is

simply to attempt to reduce God to the petty measure of our own reason.

(7) Likewise, to offer to God only what is excellent of its kind and fit to show Him honour.

(8) Likewise, to worship God not only in private but also openly and publicly in the sight of men. For to keep anything hidden is as if one is ashamed of doing it. By contrast public worship not only testifies to our devotion but also stimulates others by example.

(9) Finally, to make every effort to observe the laws of nature. For slighting the authority of God is the highest of all insults; but obedience is more acceptable than any sacrifice.

8. For it is certain that the effect of this natural religion, when understood in a precise sense and in the light of man’s present condition is confined to the sphere of this life; it has no effect on winning eternal salvation. For human reason left to itself is quite ignorant that the depravity seen in man’s faculties and inclinations is the result of human fault and merits God’s indignation and eternal death. Hence too the need of a Saviour, the need of His work and merit, and of the promises which God has made to the human race and all that flows from that, are unknown to human reason, although it is clear from Holy Scripture that these are the only means by which eternal salvation comes to man.

9. It would further be worthwhile to weigh up a little more distinctly the usefulness of religion in human life, to establish that it really is the ultimate and the strongest bond of human society.

For in natural liberty, if you do away with fear of the Deity, as soon as anyone has confidence in his own strength, he will inflict whatever he wishes on those weaker than himself; and treat goodness, shame and good faith as empty words; and will have no other motive to do right than the sense of his own weakness.

The internal cohesion of states also would be perpetually insecure if religion were abolished; fear of temporal punishment would certainly not suffice to keep the citizens to their duty, nor loyalty pledged to their superior, nor the glory of being faithful to their allegiance, nor gratitude that his sovereign power protects them from the miseries of the natural state. For without religion the saying would apply, “He who knows how to die cannot be forced.” 1 For those who

1 Cf. Seneca, Heroules furesus, 426.
do not fear God have nothing worse to fear than death, and anyone who had the courage to despise death could make any attempt he pleased against the government. And there might always be reasons why he would wish to do so. He might wish for instance to avoid the disadvantages he perceives himself to suffer from being ruled by someone else; or he might aim to win for himself the advantages he sees falling to the possessor of power, particularly since he may easily persuade himself that he has a right to do so, either because the present sovereign seems to be running the country badly or because he expects to govern far better himself. An opportunity for making such an attempt might easily arise: if the king fails to protect his own life with sufficient care (and who will “guard the guardians themselves” in such a state of affairs?), or if there were a major conspiracy, or if in a condition of external war he made the enemy his ally. There is the further point that citizens would be very ready to inflict injury on each other. Since judgement is given in courts of law on the basis of actions and what can be proved, crimes and misdemeanours of a profitable nature that could be committed in secret and without witnesses, would be taken as evidence of smart thinking on which one could pride oneself. And no one would practise works of mercy and friendship unless he had assurance of glory or reward. And as no one could be certain of another’s good faith if there were no divine punishment, men would live in anxiety, a perpetual prey to fear and to suspicions that they would be deceived or wronged by others. Rulers as well as subjects would be disinclined to do great and glorious things. For without the bond of conscience rulers would treat all their duties, and justice itself, as available for a price, and would look to their own interest in everything and oppress their citizens. Living in constant fear of rebellion, they would realize that their only hope of security lay in making their citizens as weak as possible. The citizens for their part, fearing oppression by their rulers, would be constantly on the watch for opportunities of revolt, and would equally distrust each other and live in mutual fear. On even the smallest quarrel, husbands would suspect that their wives would use poison or some other clandestine means of death against them, and wives would suspect their husbands. A similar danger would threaten from their dependants. For since without religion there would be no conscience,

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On duty to oneself

1. Self-love is implanted deep in man; it compels him to have a careful concern for himself and to get all the good he can in every way. In view of this it seems superfluous to invent an obligation of self-love. Yet from another point of view a man surely does have certain obligations to himself. For man is not born for himself alone; the end for which he has been endowed by his Creator with such excellent gifts is that he may celebrate His glory and be a fit member of human society. He is therefore bound so to conduct himself as not to permit the Creator’s gifts to perish for lack of use, and to contribute what he can to human society. So, by analogy, though a person’s ignorance is his own shame and loss, yet the master is right to flog the pupil who neglects to learn such skills as his capacity allows.

2. Furthermore, man consists of two parts, soul [anima] and body. The soul has the function of ruler, the body of servant and instrument; consequently we employ the mind [animus] for government and the body for service. We must care for both, but particularly for the former. Above all the mind [animus] must be formed to accept social life with ease; it must be steeped in a sense and a love of duty and goodness. Every man must also receive some education in accordance with his capacity and fortune, so that no one shall be a useless burden on the earth, a problem to himself and a nuisance to others. He must also choose in due time an honest way of life in accordance with his natural bent, his mental and physical abilities, the condition of his birth, his fortune, his parents’ wishes, the commands of the civil rulers, opportunity or necessity.

3. Since the mind depends upon support from the body, we must strengthen and preserve the powers of the body with appropriate food and exercise. We should not weaken them by intemperance in food or drink or by unseemly and unnecessary toil or by any other means. For the same reason we must avoid gluttony, drunkenness, excessive sex, and so on. Further, since powerful and disordered emotions not only drive a man to disturb society, but also do harm to him as an individual, an effort must be made to restrain the emotions so far as possible. And since many dangers can be repelled if faced with spirit, one must reject unmanliness and strengthen the mind against the fear of danger.

4. No one gave himself life; it must be regarded as a gift of God. Hence it is clear that man certainly does not have power over his own life to the extent that he may terminate it at his pleasure. He is absolutely bound to wait until He who assigned him this post commands him to leave.

Yet it may be quite correct for a man to choose what will probably shorten his life in order to make his talents more widely available to others. For he can and should exert himself to serve the needs of others; and a certain kind or a certain intensity of labour may so wear out his strength as to hasten the onset of old age and death earlier than if he had lived a gentler life.

Again, since a citizen must often risk his own life to save the lives of many others he may be ordered by his legitimate ruler under threat of the severest penalties not to avoid danger by flight. He may also take such a risk of his own accord provided that there are not stronger arguments against it and there is reason to expect that his action will result in safety for others and that they deserve to be saved at so high a price. For it would be stupid to add one’s own death to that of another for no good reason, or for an outstanding individual to die for a man of no value. In general, however, there seems to be no precept of nature that one should prefer another’s life to one’s own, but other things being equal, each may put himself first.

Nevertheless, whoever terminates or throws away his life of his own accord must be regarded without fail as violating natural law, whether he is driven by the common troubles of human life, or by resentment at sufferings which would not have made them objects of scorn to human society, or by fear of pains (where others might have profited from his example if he had borne them with courage), or in an empty display of faith or fortitude.
5. But though self-preservation is commended to man by the tenderest instinct and by reason, it often seems to conflict with the precept of sociability. This happens, for example, when our safety is endangered by another man so that we cannot avoid death or serious injury without injuring him in warding him off. We must therefore discuss the use of moderation in defending ourselves against others.

Self-defence, then, occurs either without injury to the party threatening us, when we make sure that an attack on us would be risky or dangerous to him, or with injury or death. There is no doubt that the former is legitimate and free of all wrong.

6. But a question may be raised about the latter, because the loss to the human race is equal whether the assailant dies or I do; and because there will in any case be loss of a fellow man with whom I am obliged to practise social life; and because violent self-defence seems to create more turmoil than if I either take flight or patiently offer my body to the attacker.

But these points do not succeed in rendering this kind of defence illegitimate. If I am to deal in a peaceful and friendly manner with someone, he must for his part show himself fit to receive such duties from me. Now the law of sociability intends men’s safety; it must therefore be so interpreted as to cause no harm to the safety of individuals. Hence when another intends my death, there is no law that bids me sacrifice my own safety, so that his malice may be able to rage unchecked. If anyone is hurt or killed on such an occasion he can only blame his own wickedness which placed that necessity on me. For otherwise, all the good things which nature or industry have gained for us would be given to no purpose, if we could not resist with force anyone who unjustly attacked us; and good men would be exposed as ready spoil to the wicked, if they really ought never to meet them with force. Therefore a complete ban on self-defence by force would be the death of the human race.

7. One should not, however, always take extreme measures when injury is threatened. First try more cautious remedies: for example, to block the attacker’s approach, or to shut oneself up in a protected place, or to warn the attacker to desist from h is fury. It is the mark of a prudent man also to show patience at a slight injury if it is conveniently possible, and to give in a little on his own right rather than expose himself to greater danger by an ill-timed show of force, especially when the object sought is easily restored or made good.

However, when my safety cannot be achieved by this or similar means, I may proceed even to extremes to achieve it.

8. To make a clear judgement as to whether a man is within the bounds of innocent self-defence, one must first know whether he is in natural liberty not subject to any one at all, or whether he is subject to civil government.

In a state of natural liberty when a man sets out to inflict an injury on another, is untouched by repentance and refuses to give up his wicked attempt and to resume peaceful relations with me, I may even go so far as to kill him in warding off his attack. I may do this not only if he seeks my life, but also if he attempts to wound or merely hurt me, or even to steal my property without harming me physically. For I have no guarantee that he will not pass from these to greater injuries; and he who professes himself an enemy is no longer protected by any right which would prevent me from repelling him by any means whatsoever. And in fact human life would be unsociable, if one could not employ extreme measures against anyone who persisted in a series of small injuries. For these would have the effect that moderate men would always be the prey of the worst.

In this state, moreover, I may not only repel the immediate danger, but after doing so may pursue the attacker until I have a guarantee from him for the future. This is the rule of the guarantee: if anyone who has attempted an injury repents of his own accord, seeks pardon, and offers reparation for loss, I am obliged to accept his word and resume friendly relations. For it is a firm sign of a change of heart to repent of one’s own accord and seek pardon. But if he does not show a change of heart until his means of resistance have run out, it seems hardly safe to trust his bare promise. One must remove from such a man the means of doing harm or put some restraint on him, to prevent him becoming formidable again in future.

9. But those who are subject to civil government are only justified in using violence in self-defence when time and place do not allow appeal to the assistance of the magistrate to repel an injury by which life or some irreplaceable good, as valuable as life itself, is thrown into immediate danger. But this is confined to repelling the danger; vengeance and a guarantee against attack in the future must be left to the judgement of the magistrate.

10. I may engage in defence against an attempt on my life, whether it is motivated by malice or made in error — for example, if a man
attacked me in a fit of madness or because he took me for someone else with whom he was on terms of enmity. For it is enough that the other has no right to attack or to kill me, and that there is no obligation on my part to submit to death for no reason.

II. With regard to the time within which defence may rightly be made, this is what we must hold. Where both parties are in natural liberty, though they may and should presume that others will observe the duties of natural law towards them, yet because of the wickedness of the human heart, they should never feel so secure that they do not surround themselves in good time with innocent defences, for example by erecting obstacles to the approach of those who have hostile designs; by collecting arms and men; by forming alliances; by keeping a good watch on others’ movements, and so on. But this suspicion which arises from men’s common wickedness does not justify me, under cover of self-defence, in taking the initiative in conquering another by force, not even if I see his power growing inordinate, especially when he has increased it by innocent industry or by the kindness of fate without oppressing others.

If someone displays the capacity and the will to do harm not against me but against a third party, I may not immediately take the initiative of attacking him in my own name, unless it is a case of being bound by treaty to give help to a party unjustly attacked by a stronger power. It is in my interest to do this all the more promptly if it is probable that after conquering the other, he will turn on me and use his first victory as a means to the next one.

When it is quite clear that he is engaged in planning violence against me, even though he has not fully revealed his design, I shall be justified in immediately initiating self-defence by force, and in seizing the initiative against him while he is still making preparations, if there is really no hope that a friendly warning would induce him to drop his hostile design, or if such a warning would damage my own position. Hence the aggressor will be taken to be the party which first conceived the intention to harm the other and prepared himself to achieve it; but the goodwill of being a defender will go to him who by moving quickly got the better of an opponent who was rather slow to get ready. For to have the name of defender it is not necessary to suffer the first blow or merely to elude and repel the blows aimed at one.

12. In states, by contrast, self-defence is not given such a broad scope. For it is never permitted in a state to get in the first blow against a fellow citizen, even though I am aware that he is preparing to use force against me or is broadcasting outrageous threats. Rather he will have to be brought before our common ruler, and guarantee be sought from him. Only when a man is already being attacked by another and is reduced to such straits that he has no chance of imploring the aid of the magistrate or of his fellow citizens, may he meet the violence of his assailant with extreme measures, and not with the intention of getting revenge for the injury by killing, but because his life cannot be saved from imminent danger without such a killing.

This is how one may determine the moment when one may first kill another in one’s own defence with impunity: when the attacker, making obvious his intention to seek my life and equipped with strength and weapons to injure, is already within range to do harm and inflict actual injury, taking into account the distance I need, if I prefer to attack first rather than be attacked. But a modest excess would not be a matter of concern in a human court because of the mental turmoil that such great danger causes.

The period of innocent self-defence lasts until the assailant has been driven off, or has withdrawn freely, either because he was touched by repentance in the moment of action or because he has not succeeded in his attempt, so that he cannot do any more harm for the present and I have an opportunity to get to a safe place. For vengeance for injury and guarantee for the future belong to the office and authority of the civil government.

13. Despite the dictum that one is not justified in resorting to killing when the danger can be averted in a milder manner, it is not usual to be scrupulous about details because of the mental turmoil caused by imminent danger. For a person panicking in such danger cannot carefully look around for all the ways of escape as one might who considers the situation with a calm mind. Hence, although it is reckless to leave a safe place of one’s own accord to meet a challenger, yet, if my attacker catches me in an open spot, I am not positively obliged to flee, unless there happens to be a refuge in the neighbourhood to which I can withdraw without danger, and even then I am not always obliged to retreat. For even in that case I would have to expose an unprotected back, and in both cases there would be the risk of a fall, and when one has once lost his footing, it is not easy to recover it.

Further, one is not barred from the plea of self-defence because he
has chosen to appear in public to go about his business, when he would have been safe from danger if he had remained at home. But he does not enjoy the same plea if he presents himself to take part in a duel to which he has been challenged and is so hard-pressed that he can only avoid being killed by running his opponent through. For since the laws forbid one to put oneself in that danger, it is not accepted as an excuse for killing.

14. In defence of his limbs a man is allowed the same as in defence of his life; consequently he would be held innocent who killed a violent assailant, whose intention perhaps was merely to mutilate a limb or to inflict a severe wound. For it is natural for us to flinch right away from mutilation and serious wounds; and mutilation, particularly of one of the major limbs, is sometimes held to be not much less serious than the loss of life itself. In fact, it is never clear in advance whether death may not follow a mutilation or wound; such forbearance goes beyond men's normal fortitude, and the laws do not generally bind one to show such forbearance, especially for the benefit of an evil man.

15. What one may do to protect life, one is also usually judged to be entitled to do in defence of female virtue. No greater insult can be offered to a good woman than to attempt to take from her against her will that in whose integrity chiefly lies the reputation of her sex, and to put her in the position of being forced to raise a child of her own blood for an enemy.

16. Among those who live in natural liberty the defence of property extends to the killing of the attacker, provided the property is of some value. For we certainly cannot preserve our lives without property; and a wrongful attack on property reveals as hostile an intention as an attack on our lives.

On the other hand, this is not normally allowed in states, where stolen goods can be recovered with the help of the magistrate, except in the case where one who has come to steal our goods cannot be brought to justice. In view of this, it is lawful to kill burglars by night and robbers.

17. So much for self-defence on the part of those who are wrongfully attacked without provocation. By contrast, one who has done previous harm to another is barred from defending himself and doing further harm to the other in his defence, until certain conditions have been fulfilled. He must be moved to repent and must have offered repar-

ation for the damage he has done and a guarantee that he will do no harm in future; and the injured party must have refused his offer in the savagery of his heart and insist on obtaining vengeance with his own hand.

18. Finally, self-preservation is valued so highly that it is held to exempt a man in many cases from the obligation of the common laws, if that is the only way it can be secured. For this reason, 'necessity', it is said, 'knows no laws'.

Since man values his own preservation so highly, one does not readily presume that any obligation has been imposed on him which should take precedence over his own safety. Admittedly, not only God but also the civil government may impose on us, where the gravity of the matter requires it, so strict an obligation, that we must face death rather than be at all deficient in our duty. But legal obligations are not presumed to be always so strict. For those who made the laws and those who have introduced customs have certainly wished to promote men's security or convenience in this way; hence they are usually thought to have had the condition of human nature before their eyes, and how man cannot but avoid and avert what tends to his own destruction. Consequently laws, particularly positive laws, and all human customs are generally regarded as making an exception of the case of necessity, or as not imposing an obligation whose fulfillment would entail, distress destructive of human nature or beyond the capacity of normal human nature to endure, unless this is included in the law, either expressly or by the nature of the activity. Hence necessity does not cause the law to be directly broken, nor cause wrong to be permitted; rather it is presumed, from the benevolent intention of the legislator and taking account of human nature, that the case of necessity is not included in the general scope of the law. This will be made plain by one or two examples.

19. One has normally no right over one's own limbs, to mutilate or destroy them at will; one may, however, amputate a limb infected with an incurable disease to save the rest of the body, to prevent infection of parts that are still healthy or to stop the use of the other limbs from being impeded by a useless appendage.

20. If in a shipwreck more men have leapt into a lifeboat than it can carry and the lifeboat does not belong to one of them by any particular right, it seems one should draw lots as to who should be thrown
overboard, and anyone who refuses to take his chance in the lottery may be tossed out in any case without reference to the draw, on the ground that he intends the death of all of them.

21. If two men are in immediate danger of both perishing, one is allowed to do anything to hasten the death of the other (since the other would perish anyway) in order to save himself. For example, suppose I as a swimmer had fallen into deep water with someone who could not swim, and he clung about me and held me, but I had not the strength to get him out of the water as well as myself, I may use force to disengage him from me, to prevent my being drowned along with him, even though I might have held him up somehow for a little while.

Similarly in a shipwreck, suppose I have got hold of a plank which cannot carry two, if someone swims up with the intention of getting on to the plank with me, thus destroying both of us together, I may use any amount of force to keep him away from the plank.

Similarly when an enemy who is threatening death is pressuring upon two persons who are fleeing, the one may leave the other in danger of his life, either by closing a gate behind himself or by breaking down a bridge, if both cannot be saved together.

22. Necessity justifies the indirect exposure of another person to risk of death or severe injury, provided that it was not our intention to harm him, but only to do for our own safety an act which might cause him harm; provided also that we would have preferred to handle our emergency in some other way, and that we minimize the actual injury as much as possible. For example, suppose I am being pursued by a stronger man than myself who intends my death, and by chance someone meets me in a narrow way by which I must flee; if he does not give way after a warning, or if there is no time or the spot is too narrow for him to give way, I may knock him flat and pursue my flight across his prostrate body, though in all probability he is likely to be badly hurt by the blow. (There would be an exception to this if I were bound to him by a particular obligation, so that I ought to incur danger on his behalf of my own accord.) But if the man who blocks my flight cannot get out of the way despite a warning, for example, if he is an infant or a cripple, there will at least be some excuse for the pursued, if he attempts to jump over him to avoid getting involved in a delay and so exposing his body to his enemy. On the other hand, if someone wilfully and unkindly obstructs me and refuses to clear the path of my flight, he may be hit and flattened directly. And those who

receive injury by such accidents should bear them as fated misfortunes.

23. Anyone who through no fault of his own is in extreme want of food or clothes to protect him against the cold and has not succeeded by begging, buying or offering his services in persuading those who have wealth and abundance to let him have them of their own accord, may take them by force or stealth without committing the crime of theft or robbery, especially if he has the intention of repaying their value when he has the opportunity. For a rich man ought to help someone in that kind of necessity as a duty of humanity. Though what is due on the basis of humanity may absolutely not be taken by force in normal circumstances, still extreme necessity has the effect of providing a right to such things no less than to things which are due on the basis of perfect obligation. However, the necessary conditions are: that the man in want first try all other ways to satisfy his needs with the consent of the owner; that the owner is not now caught in and not soon likely to fall into equally dire straits; and that restitution be made, especially when the other's fortunes do not allow him to make a free gift of his aid.

24. Finally, an emergency affecting our own property seems to give one leave to destroy another person's property. The conditions are: that the danger to our property is not our fault; that it cannot be removed in a more convenient way; that the other man's property which we are destroying is not more valuable than ours which we are saving; that we pay the value of that property, if it would not otherwise have perished, or make up some part of the loss if his property would otherwise have perished or its loss saves ours. This is the principle of equity which maritime laws follow. Thus if a fire has broken out and is threatening my house, I may pull down my neighbour's house; the condition is that those whose houses are saved in this way make good the neighbour's loss pro rata.
6

On the duty of every man to every man, and first of not harming others

1. We come now to the duties which a man must perform towards other men. Some result from the common obligation by which the Creator has willed that all men be bound as men; others derive from a particular custom which has been introduced or accepted, or from a particular adventitious state. The former are to be shown by every man to every man, the latter only towards certain men on the basis of a particular condition or state. Hence you may call the former absolute, the latter hypothetical.

2. First among the absolute duties is the duty not to harm others. This is at once the most far-reaching of all duties, extending as it does to all men as men, and the easiest, since it consists of mere omission of action, except insofar as passions in conflict with reason must sometimes be restrained. It is also the most essential duty, since without it human social life would be utterly impossible. For I can live at peace with a man who does me no positive service, and with a man who does not exchange even the commonest duties with me, provided he does me no harm. In fact, this is all we desire from mankind at large; it is only within a fairly small circle that we impart good things to each other. By contrast, there is no way that I can live at peace with one who does me harm. For nature has implanted in each man such a tender love of himself and of what is his, that he cannot but repel by every means one who offers to do harm to either.

3. This duty affords protection not only to what we have from nature, as life, body, limbs, chastity, liberty, but also to what we have acquired on the basis of some institution and human convention. Hence this precept forbids that anything which is ours by legitimate title be taken, spoiled, damaged or removed from our use in whole or in part. By this precept all crimes are understood to be forbidden by which harm is inflicted on another, as, killing, wounding, beating, robbery, theft, fraud and other forms of violence, whether inflicted directly or indirectly, in person or through an agent.

4. From this it follows that harm inflicted on one man by another, or loss of any kind caused in any way, must be made good so far as possible by the person who may rightly be held responsible. Otherwise the precept that one should not be harmed will be empty if when a man has in fact been harmed, he has to absorb the loss without recompense while the culprit enjoys the fruit of his crime in security and without making restitution. Again, without the necessity of making restitution, men in their wickedness will not refrain from harming each other; and the one who has suffered loss will not readily bring himself to make peace with the other as long as he has not obtained compensation.

5. Though the concept of loss properly belongs to harm to property, we take it here in a broad sense as signifying all harm, spoiling, curtailment or removal of what is ours, or usurpation of what we ought by perfect right to have had, whether it was a gift of nature or assigned to us by a supervening human act or law, or finally the omission and refusal of some payment that another party was obliged to make to us on a basis of perfect right. But if what is usurped was due only by an imperfect obligation, it is not considered to be a loss requiring compensation. For it would be inappropriate if I considered it a loss and demanded compensation for not having received what I could expect from another only as a voluntary favour, and which I could not treat as my property before I had actually received it.

6. The term loss applies not only to harm, destruction or theft of our property, but also to the fruits that arise from the property, whether they have already been collected, or are only anticipated (provided that the owner was intending to collect them). In this case the expenses which would have been necessary for collecting the fruits are deducted. The value of the expected fruits is higher or lower as they are nearer or farther from the end of their probable growth.

Finally, any loss which arises subsequently as by natural necessity from an act of harming is treated as part of a single loss.

7. One can inflict loss on another, not only directly oneself, but also by means of others.
If one has inflicted loss directly, another man can be held partly responsible for it, because he has contributed to the fact either by positive action, or by failing to do what he should have done.

Sometimes where more than one person has conspired in the same fact, one is held to be the principal cause, the other an accessory; sometimes all are on an equal footing.

In this case, one must note that those persons are held liable to make reparation for the loss who really were a cause of the loss and contributed significantly to the total loss or part of it. But a man will not be held liable to make reparation for a loss (even if he has committed some crime in the course of that act), where he did not play any real part in the action which gave rise to the loss, nor caused it to be done, nor profited from it subsequently. Examples are those who rejoice in the misfortunes of others, those who approve or excuse the damage after it is done, those who express a wish for it beforehand, and those who during its commission endorse and applaud it.

8. When several men have conspired in a single act resulting in a loss, the primary responsibility lies with the party to whom the others on it either by command or by some other means involving compulsion. The actual perpetrator of the crime who could not refuse his services will have the role only of an instrument.

Anyone who has participated without compulsion in the commission of a crime, or anyone who has committed a crime himself, will be held primarily responsible; secondarily, others who contributed anything to it.

If several men in conspiracy have committed a crime, each one is responsible for all of them, and all for each one; so that if all are caught, each individual must contribute a proportionate part to make good the loss. If only one is caught and the rest escape, he will be obliged to pay for all of them. When some of those caught are unable to pay, those among them with wealth will be liable for the whole sum. But if several participate in the same crime without conspiracy, and it can be clearly discovered how much each contributed to the loss, each will be obliged to make compensation only for what resulted from his own action. And if one pays the whole sum, the rest will no longer be liable for restitution of loss.

9. The obligation to make restitution for loss arises not only from harm done with intentional malice but also from harm done by negligence or by easily avoidable fault, without direct intention. For it is

On the duty of every man to every man

not the least important element in sociality to act with such caution that our behaviour is not dangerous or intolerable. There is also often a particular obligation compelling one to employ a strict standard of care, and even the lightest fault may be enough to require restitution. This is not the case, however, if the nature of the business does not admit of a very strict standard of care; or if the fault is rather in the one who suffers than in the one who inflicts loss; or if great confusion or the circumstances of the case do not allow a high degree of carefulness, for example, if a soldier brandishing his weapons in the heat of battle wounds the comrade next to him.

10. A man who does harm by accident and without fault on his part is not obliged to make reparation. Since nothing has been done for which he could be held responsible, there is no reason why he rather than the sufferer should pay for the mischance.

11. It is also agreeable to natural equity that if loss is occasioned to another by my slave, without fault on my part, I either make it good or surrender the slave to the injured party. For a slave is naturally in any case liable to make good any loss he causes. But he has no goods of his own, from which reparation could be made, and secondly his body belongs to his owner. The fair thing, therefore, is for the owner either to make good the loss or to surrender the slave. Otherwise a slave would have licence to harm anybody as he pleased, if restitution could not be obtained either from himself because he has nothing (not even himself), nor from his owner. No matter how much his owner may beat or imprison him in punishment for his mischief, that gives no satisfaction to the victim.

12. It seems reasonable that the same thing hold good of animals in my possession. When they have caused loss to another, without fault on my part, if they were acting spontaneously and contrary to the nature of the species, the owner should make good the loss or surrender the animal. For if I had been harmed by an animal in its natural liberty, I could always do something to make up my loss by capturing or killing it; it does not seem that this right can have been taken away simply because the animal is now owned by someone. And since the owner gets profit from the animal, and the restitution of loss takes precedence over the acquisition of profit, there is clearly a legitimate claim against the owner of an animal to make good the loss, or if it is not worth that much to him, to surrender it for the offence.

13. To sum up, one who has caused loss to another without inten-
tional malice is bound to offer reparation and to give evidence that there was no malice in his action, so that the victim will not regard him as an enemy and attempt retaliation. However, one who has harmed another maliciously is not only obliged to offer reparation of his own accord, but also to evince repentance for his actions and seek pardon. In turn, if the victim obtains reparation, he is obliged to grant pardon to one who seeks it in penitence and to return to good terms with him. Anyone who refuses to be content with reparation and repentance, and insists in any case on seeking vengeance on his own account, is merely gratifying the bitterness of his own heart and destroying peace among men for no good reason. On this ground vengeance too is condemned by natural law, since its only aim is to give trouble to those who have done us harm, and to console our hearts with their pain. It is the more appropriate that men forgive each other’s offences, the more frequently they violate the laws of the supreme Deity and have themselves daily need of pardon.

7

On recognizing men’s natural equality

1. Man is an animal which is not only intensely interested in its own preservation but also possesses a native and delicate sense of its own value. To detract from that causes no less alarm than harm to body or goods. In the very name of man a certain dignity is felt to lie, so that the ultimate and most effective rebuttal of insolence and insults from others is ‘Look, I am not a dog, but a man as well as yourself.’ Human nature therefore belongs equally to all and no one would or could gladly associate with anyone who does not value him as a man as well as himself and a partner in the same nature. Hence, the second of the duties of every man to every man is held to be: that each man value and treat the other as naturally his equal, or as equally a man.

2. This equality among men consists not only in the fact that the physical strength of adult men is nearly equal to the extent that even a relatively weak man can kill a stronger man by taking him by surprise or by use of cunning and skill in arms, but also in that one must practise the precepts of natural law towards another and one expects the same in return, even though he may be better provided by nature with various gifts of mind and body; his superiority does not give him licence to inflict injuries on others. On the other hand neither the scanty provision of nature nor the niggardliness of fortune in themselves condemn one to have less access to the enjoyment of the common law than others. But what one may require or expect from others, the same, other things being equal, they should have from him; and any law [ius] that a man has made for others, it is particularly fitting that he follow himself. For the obligation to cultivate social life with others lies on all men equally; and it is not allowed to one more
than any other to violate natural laws where another person is con-
cerned. There is no lack of popular sayings illustrating this equality:
for example we are all descended from the same stock; we are all
born, nourished and die in the same manner; God has given no man a
guarantee of lasting and unshakeable good fortune. Likewise the
Teaching of Christianity is that God's favour is won not by noble birth
or power or wealth, but by sincere piety, which may exist as well in the
low-born as in the highly-placed.
3. It follows from this equality that he who wants to use the services
of others to his own advantage must be ready to make himself useful
to them in return. For anyone who requires others to serve him, but
expects to be free of demands from them, surely regards others as not
equal to himself.

Hence those who readily allow all men what they allow themselves
are the best fitted for society. By contrast, they are altogether unsocial
who suppose themselves superior to others, demand total licence for
themselves alone and claim honour above others and a special share
of the world's goods, when they have no special right above others.
Hence this too is among the common duties of natural law, that no
one require for himself more than he allows others, unless he has
acquired some special right to do so, but allow others to enjoy their
own right equally with him.
4. The same equality indicates how one should proceed when a right
has to be distributed among others, namely to treat them as equals
and to favour neither party over the other beyond the merits of the case.
For otherwise the party slighted feels himself wronged and
insulted, and diminished in the dignity given him by nature.

Hence it follows that common property is to be distributed among
equals in equal portions. When the thing does not admit of division,
those whose right to it is equal should use it in common as much as
each wants, if there is enough of it. If there is not enough, they should
use it in a prescribed manner, and in proportion to the number of users.
One can devise no other way of observing equality. But if the
object cannot be divided or held in common, they should use it in
turn, or if even this will not work, or if an equivalent cannot be given
to the rest of them, the thing will have to be assigned to one of them
by lot. For in such cases, no more satisfactory solution can be found
than chance; for it obviates the sense of contempt and leaves the
dignity of the loser intact.

5. One sins against this duty through pride. In pride one prefers
oneself to others for no reason at all or no good reason, and looks
down on them as unequal to oneself. We say 'for no reason'. For
when a person has duly won the right to put himself above others, he
is justified in exercising and protecting his right, though without
empty scorn or contempt of others. So, from the opposite angle, one
is justified in giving another the precedence and honour which is his
due. In general, a certain honest humility is the constant companion
of true good breeding. It consists in reflection on the weakness of our
own nature, and on the mistakes we could have made or will make in
future, which are no fewer or smaller than others may make. The
result is that we do not put ourselves above anyone, considering that
others may use their free will as well as we and equally have this
power. The right use of his free will is the one thing a man may call
his own; it is the only thing on which he may value or despise himself.
To set a great value on oneself without cause is truly a ridiculous
fault, both because it is stupid in itself to have a high idea of oneself
for nothing, and because it takes other people for fools as if they
would put a high value on you for no reason.
6. It is a still greater wrong to give signs of contempt for others by
deeds, words, looks, laughter or slighting gesture. This sin is to be
regarded as worse, in that it vigorously excites the hearts of others to
violent anger and desire for revenge. In fact there are many men who
would prefer to expose their lives to instant danger, to say nothing of
disturbing the public peace, rather than let an insult go unavenged.
The reason is that fame and reputation are sullied by insult; and to
keep their reputation intact and unsullied is very dear to men's hearts.
On the common duties of humanity

1. The third of the duties owed by every man to every man, to be performed for the sake of common sociality, is: everyone should be useful to others, so far as he conveniently can. For nature has established a kind of kinship among men. It is not enough not to have harmed, or not to have slighted, others. We must also give, or at least share, such things as will encourage mutual goodwill.

   We are useful to others, either in an indefinite way or in a definite way; and it either costs us something, or it costs us nothing.

2. Someone is being useful to others in an indefinite way when he develops his mind and body to be a source of actions useful to others, or if he makes discoveries by the acuteness of his intellect for the betterment of human life. Hence they are thought to sin against this duty who learn no honest skill but passing their lives in silence, regard their mind as no more than salt to preserve them from decay, mere numbers 'born to consume the fruits of the earth'. So do they who are content with their ancestral wealth, and believe they are justified in devoting themselves to idleness, because the industry of others has already assured their livelihood. So too do they 'who hoard the wealth they have won not setting aside a portion for their kin'. Likewise those who, like pigs, give no one pleasure except by dying, and others of that sort, useless burdens on the earth.

3. To those who set themselves to do good to the human race, others owe duty not to be grudging nor to put obstacles in the way of their splendid endeavours. Then, even if they have no other way of repaying them, they will at least be extolling their memory and advancing their fame, which is the chief reward of toil.

4. It is thought to be a particularly odious act of ill will and inhumanity not to make freely available to others those good things which we can offer them without loss, labour or trouble to ourselves. Such things are normally recognized as beneficial and harmless; that is, things that help the recipient without burdening the giver. Thus I should not refuse freely running water, I should let anyone take a light from my fire, give honest advice to one who is deliberating and be kind enough to show the way to one who is lost. Similarly, if one no longer wants to keep something, because he has too much or because it is too much trouble to maintain it, why not choose to leave it intact to be useful to others (provided they are not enemies), rather than let it be spoiled? Again, it is not right to destroy food when we have had enough, or to stop up or conceal a spring of water when we have drunk our fill, or to destroy navigation guides or road signs after we have made use of them. In this category too are small gifts given to the needy by the wealthy, and kindness shown to travellers for good reason, particularly if they are involved in an accident, and things of this kind.

5. It is a higher degree of humanity to give something to another freely from extraordinary benevolence, if it involves expense or labour to give it and it relieves his needs or is exceptionally useful to him. Such services are called benefits in a paradigmatic sense and are the fittest material for winning a reputation if duly governed by magnanimity and good sense.

   The amount of these benefits and their distribution depend on the condition of the giver and of the recipient. The caution to be observed here is that our generosity should not actually do harm to those whom we think we are helping and to others; that our kindness should not exceed our capacity; that we should take into account each man's dignity and should give above all to those who are deserving; and that we should give where our help is needed and with due regard for the degree of personal relationship. One must also take note of what each most needs and what he could or could not get with or without our help. And the way in which the gifts are given adds much to the benefits, if we give with a cheerful demeanour, promptly and with expressions of goodwill.

6. In return a man who has received a benefit should be grateful; this

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2. Horace, Epistles, 1:2.27.
3. Vergil, Aeneid, 6:610f.
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is how he shows that he appreciated it, and for this reason he has goodwill for the giver and seeks an opportunity to make an equal or larger repayment, as he can. For it is not necessary for us to return the exact value that was given; often willingness and effort help to fulfill the obligation. It is assumed that there is nothing which would negate the claim to have done someone a benefit. For I owe nothing to someone for pulling me out of the water if he threw me in in the first place.

7. But the more apt a benefit is to attach a man's heart to the giver, the keener is the obligation for the recipient to return the favour. At least we should not allow one who had enough confidence in us to go ahead and confer a benefit on us to be worse off for it, nor should we accept a benefit unless we plan to ensure that the giver will not have cause to regret his gift. For if there was a special reason why we particularly did not wish to be obligated, we should have tactfully refused the offer. And certainly, apart from the necessity of returning a favour, it would be irrational for anyone rashly to throw away his property and to confer a benefit which he sees will bring no return. In this way all goodwill and confidence among men would be abolished, and with them all benevolence, and there would be no freely given assistance and no initiative to earn gratitude.

8. Although an ungrateful heart is not an offence in itself, still a name for ingratitude is regarded as baser, more odious and more detestable than a name for injustice. For it is felt to show a thoroughly low and mean spirit to reveal oneself as unworthy of the judgement which another man had made of one's sense of honour; and to let it be seen that one cannot be moved to conceive a sense of humanity by benefits which soften even the beasts.

However, no action is given in the law courts for mere ingratitude, or when one simply forgets a benefit and neglects to return it, given the opportunity to do so. For the best feature of a benefit would be lost if an action were given, for example, for recovery of a sum of money; it would immediately turn into a loan. And though it is a most honourable thing to return a favour, it ceases to be so markedly honourable if it is compulsory. Finally all the law courts together would scarcely be adequate to handle this one law because of the very great difficulty of weighing the circumstances which heighten or lessen the benefit. The very reason why I conferred the benefit (that is, why I did not stipulate for repayment of what I had given) was that the

On the common duties of humanity

other person might have the opportunity of showing that he returned the favour from a love of goodness, not from fear of punishment or compulsion; and that I for my part might be seen to have gone to this expense not in hope of gain but as an act of humanity, since I did not want to take security for repayment. And anyone who not only fails to repay a benefit but actually returns his benefactor evil for good should be punished for this action; the severity of his punishment should accord with the extent of the ingratitude he has shown.
9

On the duty of parties to agreements in general

1. Agreements [pacta] form a kind of bridge between the absolute and the hypothetical duties. For all duties, apart from those already discussed, seem to presuppose agreements, whether express or tacit. This then is the place to discuss the nature of agreements and what should be observed by those entering into them.

2. It is quite clear that men had to enter into agreements with each other. For although duties of humanity pervade our lives, there is no way that one could derive from that source alone every benefit that men might legitimately expect to receive from each other to their mutual advantage. In the first place, not everyone has such goodness of heart that from sheer humanity he would be willing to give others whatever would do them good without looking for an equal return. Again, benefits we might derive from others are often such that we cannot without a feeling of shame require them to be simply given to us. Often too it is not appropriate to our person or position to be beholden to another for such a kindness, so that just as the other is unable to give, so we are unwilling to accept, unless he takes something equal from us in return. Finally, it happens from time to time that others are simply not aware how they may serve our ends.

It was therefore necessary for men to make agreements with each other so that the duties which they perform for each other (and this is the advantage of sociality) might be performed more frequently and in accordance with what one might call fixed rules. This is particularly true of the mutual provision of the sort of things which a man could not surely count on getting from others on the basis of the law of humanity alone. Hence a prior determination had to be made as to what one man should do for another and what he should expect in return and might claim in his own right. This is done by means of promises and agreements.

3. The general duty imposed by natural law in this matter is that every man must keep his faith given, or fulfil his promises and agreements. For without this, we would lose most of the possible advantage of mutual exchange of services and things. And if there were no necessity to keep promises, one would not be free to form one's plans with confidence in the aid of other men. Moreover, justified causes of conflict and war are likely to be generated from the deception of trust. For when I make a performance on an agreement, if the other party breaks faith, my property or effort is lost to me. And even if I have yet performed nothing, it is still a nuisance that my plans and purposes are upset, since I could have arranged my affairs some other way, if he had not interfered. It also hurts my dignity to be made a fool of because I believed the other to be a good, reliable man.

4. One must also take note that what is due on the basis of the duty of humanity alone, differs from what is due on an agreement or on a perfect promise, above all in the following point. It is indeed right to make requests on the basis of humanity and honourable to grant them, but I may not compel the other party to performance by force either on my own part or on the part of a superior, if he neglects to perform of his own accord; I may only complain of his inhumanity, of his boorishness or insensibility. But I may resort to compulsion when what is due by a perfect promise or agreement is not freely forthcoming. Hence we are said to have an imperfect right [ius imperfectum] to the former, a perfect right [ius perfectum] to the latter, and similarly to be imperfectly obligated in the former case, perfectly obligated in the latter.

5. We pledge our faith either by a solitary or 'unilateral' act or by a reciprocal or 'bilateral' act. For sometimes one person alone binds himself to perform something; sometimes two or more people oblige themselves to do something. The former act is called a gratuitous promise, the latter an agreement.

6. Promises may be divided into imperfect and perfect. It is the former when we who promise do indeed intend to be obligated, but do not give a right to the other party to require performance or do not intend to be compelled by force to fulfill our promise. For example, I may couch my promise as follows: 'I have solemnly resolved to do this
or that for you, and I beg you to believe me.' For in this case I seem to
be obligated rather by the law of veracity than by that of justice, and I
prefer that the motive of my doing my duty seem to be my own
constancy and dignity, rather than the other man's right. This is the
case with the promises of powerful or influential men, by which they
commit themselves not by words of honour, but in earnest, to a
recommendation, an intercession, promotion or vote. Such a man by
no means intends these things to be required of him as of right, but
desires them to be wholly imputed to his humanity and veracity. So
that the gratitude for the duty he has done may be the greater, the less
compulsion there is in it.
7. It is a perfect promise, however, when I not only intend in fact to
be obligated, but also confer a right upon another to demand what I
promised as quite simply owed to him.
8. Our unconstrained consent is most particularly required, if our
promises and agreements are to oblige us to give or do anything where
we previously had no obligation, or to refrain from doing something
which we could previously do of right. For since the fulfilment of any
promise or agreement is associated with some burden, the most
relevant reason why we may not rightly complain of it is that we freely
consented to something which we could have avoided.
9. Consent is usually expressed by signs, such as spoken words,
writing and nods. But it sometimes happens that it is plainly inferred
without these signs from the actual nature of the transaction and other
circumstances. For instance, sometimes silence taken together with
certain particular circumstances has the force of a sign which expresses
consent. Hence too the category of tacit agreements, that is, when
our consent is not expressed by signs of the kind that are normally
accepted in human communication, but is plainly inferred from the
nature of the transaction and other circumstances. So too a principal
agreement often has attached to it a tacit agreement which flows from
the very nature of the transaction. And it is quite normal that in
agreements certain tacit exceptions and necessary conditions are to be
understood.
10. To give clear assent, a person needs the use of reason to the
extent that he understands whether the transaction in question suits
him, and whether he can perform his part, and after giving it thought,
can express his consent by adequate signs.

It follows that the promises and agreements of infants, as well as of
the demented and the insane (except when their insanity is punctu-
ated by lucid intervals), are void.
The same pronouncement is to be made also on those who are
drunken, if the drunkenness has got to the point that their reason is
plainly overwhelmed and put to sleep. For it cannot be taken for true
and deliberate consent, if a man veers towards something (however
violently) under the influence of a momentary and unconsidered
impulse, or gives out certain signs which would express consent in
other circumstances, at a time when his mind has been unhinged as
by a drug. It would also be shameless to try to extract such a promise,
especially if fulfilling it would be a great burden. If anyone has taken
advantage of that sort of drunkenness, and has smartly elicited a
promise by waiting till the other party was easy of access, he will be
liable to a charge of deception and fraud. But anyone who after
shaking off his intoxication confirms what he did in drunkenness will
certainly be obligated, not so much for what he did when drunk as for
what he did when sober.
11. One cannot define precisely by natural law how long the infirmity
of reason lasts in children (this is an impediment to contracting an
obligation), since judgement matures earlier in some than in others.
One must assess it on the basis of daily actions in each case. However,
in most states the civil laws have laid down a uniform age in this
matter. There is also a salutary tradition in some places that it is
necessary to employ the authority in contracting obligations of other
men of greater prudence, until the impulsive carelessness of youth
can be regarded as cooled down. For people of this age, even when
they understand the business on hand, are often carried away by
attacks of impetuosity, they show little foresight, make promises
lightly, are full of hope, keen to get a reputation for generosity, prone
to the ostentatious cultivation of friendships and incapable of dif-
fidence. And so there is usually a suspicion of fraud about anyone who
battens on the easy-going manners of people of that age and seeks to
gerich by young people's spending, which in the weakness of their
judgement they do not know how to foresee or calculate.
12. Consent is also impeded by mistake. These are the rules to
notice:

(1) When I have made a promise upon a mistaken assumption and if
I would not have made the promise except for that assumption,
there will naturally be no force in the promise. For a promisor consents upon an assumption, and if the assumption is not so, the promise too is null.

(2) If I have been induced by a mistake to make an agreement or contract, and I discover it while the situation is unchanged and before any performance has been made, it would of course be fair to allow me the opportunity of changing my mind, particularly if I openly declared on entering into the agreement the cause which motivated me, and the other party suffers no loss from my change of mind or I am prepared to compensate him. But when the situation is no longer unchanged and when the mistake has only surfaced after the agreement has been fulfilled, either in full or in part, he who made the mistake will not be able to retract from the agreement, except insofar as the other party is willing to do him a favour from simple humanity.

(3) When a mistake has occurred concerning the actual object of the agreement, the agreement is defective, not so much because of the mistake, but because it has failed to satisfy the conditions of an agreement. For in agreements the object about which the agreement is made and its qualities must be known; without this knowledge there cannot be taken to be a clear consent. Hence when the defect is discovered, the party that would have suffered injury can retreat from the contract, or compel the other party to make good the defect or even to pay for the loss caused by any wrongdoing or negligence on his part.

13. But if there has been inducement by fraud or wilful deceit to make a promise or an agreement, the situation is as follows:

(1) If a third party has employed fraud, without collusion of the party with whom we are making the agreement, the transaction will stand. We shall however be able to reclaim from the perpetrator of the fraud the benefits we would have had if we had not been deceived.

(2) If anyone has caused me by deliberate fraud to give a promise or make an agreement with him, I have no obligation to him at all on this basis.

(3) If anyone has entered into an agreement of his own accord and with clear and deliberate intent, but fraud has occurred in the actual transaction, with regard for example to the object or to its qualities and value, the agreement will be to this extent vitiated, so that it will be at the discretion of the defrauded party either to dissolve it completely or to demand compensation for the loss.

(4) Things which are not of the essence of the transaction and which have not been expressly mentioned do not vitiate an act which has been properly drawn up in other respects, even though perhaps one of the parties silently thought of them while making the agreement or his belief was artfully sustained until the contract was concluded.

14. Fear, occurring in the context of promises and agreements, is taken in two senses: (1) as probable suspicion that we shall be deceived by the other party, either because vice of that kind is an integral part of his character or because he has given pretty clear indications of his evil intent; (2) as strong mental terror arising from a threat to inflict serious harm, if we do not give a promise or make an agreement. In the case of the former kind of fear, we must understand as follows:

(1) He who relies on the promises and agreements of a man whose regard for trust is worth nothing acts imprudently indeed, but the agreement is not rendered invalid for that reason alone.

(2) When an agreement has been made, and no new indications emerge of intended deception, withdrawal from the agreement will not be allowed on the pretext of defects known before the agreement was made. For a cause which did not prevent one from making an agreement ought not to prevent one from fulfilling it either.

(3) When clear indications emerge after an agreement has been made that the other party is planning to dupe me after I have performed my part of the bargain, I cannot be compelled to perform, until I have been given legal guarantees against that deception.

15. On the other kind of fear these are the rules to be noticed:

(1) Agreements entered into through fear inspired by a third party are valid. For in this case there is certainly no defect which would prevent the other party from acquiring a right against me on the basis of the agreement. And to have removed the fear which the third party threatens certainly deserves compensation.
(2) Agreements entered into from fear of or respect for a legitimate power or in consideration of the authority of those to whom we are most closely bound are valid.

(3) Agreements to which a man is compelled by force on the part of the person to whom he makes the promise or agreement are invalid. For the wrong which the other party does to me by the infliction of unjustified fear renders him incapable of claiming his right from me on the basis of that act. And since one is obliged in any case to make good a loss one has caused, the cancelling of my obligation is understood as his compensation of me for not giving the restitution which he should have given.

16. Consent must be mutual not only in agreements, but also in promises. Consequently, not only the promisor but also the recipient of the promise must consent. For when the latter does not consent, or when he has declined to accept the offered promise, the object of the promise remains with the promisor. For he who offers another something of his own does not intend to force it upon him against his will nor to render it ownerless. Consequently, if the other party does not accept, the promisor loses no part of his right to the object he has offered. But if there has been a prior request, it will be held to be still in effect unless expressly revoked; and that counts as a prior acceptance. This is on the condition that the offer corresponds to the request; if it is different, express acceptance is required, because it is often not to my advantage to accept anything but exactly what I have requested.

17. Concerning the subject-matter of promises and agreements, the requirements are that what we promise or agree to should not be beyond our power, and that we are not forbidden to do it by any law. Otherwise our promise is either foolish or immoral.

It follows that no one can oblige himself to what is impossible for him to perform. If, however, something which was thought to be possible at the time of entering into the agreement is subsequently made impossible by circumstances which do not imply fault on the part of the person entering into the agreement, the agreement will be void, provided no action has taken place upon it. When there has already been some performance by the other party, what has been advanced or its equivalent must be restored. If this cannot be done, every effort must be made to ensure that the other party suffers no loss. For in an agreement our first concern is its expressed purpose; when we cannot attain that, payment of an equivalent is sufficient; we must at least take every precaution not to suffer loss.

But he who has diminished his ability to perform by fraud or gross negligence is not only obliged to make every effort to perform, but will also be subject to a penalty as a kind of supplement.

18. It is also obvious that we cannot be obliged to perform an illegal act. For no one can validly bind himself further than he has the power. And he who forbids an action by law assuredly takes away the power of undertaking and of accepting an obligation to perform such a thing. It is in fact a contradiction to be under a binding obligation which has the force of law to do an action which by the same laws may not be done. Hence it is wrong to make a promise to do something illegal, but it is doubly wrong to fulfill it.

It also follows from this that one ought not to keep promises which will be harmful to the person to whom they are made since it is forbidden by natural law to inflict harm on another even at his own misguided wish.

If therefore an agreement has been made on an immoral matter, neither party will be bound to fulfill it. And if one party has committed an immoral act in pursuance of an agreement, the other will not be obliged to pay the price they had agreed. However, if any payment has been made for this purpose, it cannot be reclaimed, unless there also happens to be fraud or unjust enrichment.

19. Finally, and patently, promises and agreements about other people's property are void, insofar as they are subject to the direction and discretion of another's will and not our own. However, if I have made a promise to do my best to see that another person does something (where it is assumed that I am unable to command him by authority), then I am obliged to take every morally possible step to induce him to do it; and by morally possible I mean whatever the promisee can decently ask of me and that I, with respect for civility, can do.

But also I cannot make a valid promise to a third party concerning property and actions of mine over which someone has already acquired a right, except perhaps in anticipation of the expiry of his right. For he who has already transferred his right to another by prior promises or agreements has assuredly no further such right left to confer on a third party. Moreover all promises and agreements could
easily be made useless, if one were allowed to enter into an agreement containing provisions which were contrary to a prior agreement and an obstacle to its fulfilment. This is the foundation of the old saying: prior in time is prior in law.

20. Beside all this, it is most important to notice that promises are couched either in pure and absolute terms or subject to a condition, meaning by the latter that the validity of the promise is conditional upon some event which depends on accident or human will.

Conditions are either possible or impossible. The former are subdivided into accidental or fortuitous, whose occurrence or non-occurrence is not in our power; discretionary or arbitrary, whose fulfilment or non-fulfilment is in the power of the recipient of the promise; and mixed, whose fulfilment depends partly on the will of him to whom it is given, partly on chance.

Impossible conditions are either physically such or morally; that is, there are certain things which nature prevents us from doing and certain things which law and morality forbid us to do. If we follow the natural simplicity of interpretation, an impossible condition negates a statement of promise. However, it may be legally possible, in a case where such a promise is appended to a serious transaction, to deem that it is not so appended, to prevent people from being cheated by means of acts that cannot result in anything.

21. Finally, we make promises and agreements not only in person, but also by means of others whom we appoint as messengers and interpreters of our will. When they have done in good faith what we mandated them to do, we have a valid obligation to those who have dealt with them as with our representatives.

22. And so we have done with the absolute duties of man as well as with those duties which form as it were a bridge to the others. All other duties presuppose either the introduction among men of some human institution which rests upon a general agreement, or some particular human state [status]. We specially notice three such human institutions: language-use, ownership of things and their value, and human government. We must expound each of these institutions and the duties to which they give rise.

10

On the duty of men in the use of language

1. Everyone knows how useful, how simply necessary, an instrument of human society language [sermo] is. Indeed, it has often been argued, on the basis of this faculty alone, that man is intended by nature to live a social life. The legitimate and profitable use of language for human society is based upon this duty prescribed by natural law: no man should deceive another by language or by other signs which have been established to express the sense of his mind [sensum animi].

2. A more profound grasp of the nature of language requires a knowledge of the double obligation incurred by using it whether in speech or in writing. The first is that users of any given language [lingua] must employ the same words for the same objects following the usage of that language. For since neither sounds nor particular letter-shapes naturally signify anything (for if they did, all languages or forms of writing would necessarily converge), the use of a language would become meaningless if everyone could give an object any name he wanted. To prevent this, it is necessary for a tacit agreement to be made among users of the same language to denote each thing with one particular word and not another. For without an accord on the consistent employment of sounds, it is impossible to understand from what someone says the sense of his mind. By virtue of this agreement everyone is obliged to use words in his common discourse in the sense they bear in the accepted usage of that language. It follows from this too that, although the sense of a man’s mind may be at variance with