The Rights of War and Peace

by Hugo Grotius

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Grotius's foundational treatise establishing natural law and the modern law of nations.

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The Principal Points relating to Government.

Written in L A 'T I N by the Learned

All the large Notes di Mx, J, E A R E E T R A C,

Professor of La w at Groningen, And Member of the Royal Academy of Sciences at Berlin,

Printed for W. Innys and R. Man by, J. and P. Knapton, D. Brown, T, Osborn, and E. Wicksteed.

■^ O look into the Manners of Antiquity^ and recover the Me- mory of frecediitg Ages, is an Entertainment of the higheft Pleafure and Advantage to the Mind, it eftabHfhes very laft-

ing Impreflions of Virtue in us, enlarges the Soul, and moves our Emulation to follow and excel the leading Charadters before us j when we are tracing the Exploits of fome Worthy of Old^ with what Delight do we purfue him in every Circumftance of Adion, we admire the Example, and tranfmit the Beauties of his Life into our own Condud by Pra&ice and Imitation ; for the Mind of Man is of a fearching Nature, very wide and extenjive in her Specula- tions ; and as fhe is blind to the Tranfaftibns of Futurity^ fo fhe receives a greater Luftre from the RejleEiion of Inftances that are fafl., than from the Rules of Wifdom^ or the Determination of the Schools : (piXodoCpioc ix 'KOi^oLhil^oiim-, Philofophy from Example, in the Opinion of the Hijlorian, advances human Life beyond the Power Thucydids$, of Precept^ or the DiftinEiions of Morality, it opens a large Scene for Objervation, it difplays all the Occurrences and Revolutions of Providence, how far Application and Indufiry improve the Abilities of the Soul, and offer us to the Notice of Mankind, and the Wonder of Pojierity.

This Life of GROTIU Sh not writ with a Defign to enlarge upon his Merit, or to adorn his Charader, who has left fuch Illuf' trious Teftimonies of his Learning, Zeal, and Piety, that the Letter'd World fubmits to his Authority, and reveres his Judg^nent fo much,

that his JVame will be venerable to /aiefi Ages : Our prefent Aim is only to reduce the Circumftances of his Life into fuch a Method as will fliew us by what Steps and Degrees he attained to fo high an Efteem, as to derive 2.n Hoj20ur upon the Century he lived in, and to recommend him as a Pattern to fucceeding Ages.

HUGO GROTIUS, in Dutch, de Groot, one of the greateft Men in Europe, was born at Delft the loth of April, 1583; where his Family had been Illufirious between Four and Five Hundred Years. He made fo early a Progrefs in his Studies, that he writ fome Verjes before he was iiine Years of Age ; and at Fifteen he had a great Underftanding in Philofophy, Divinity and the Civil Law ; but he was flill better skill'd in Philology, as he made it appear by the Commentary he writ at that Age upon Martianus Capella, a very difficult Author. So prodigious was his Memory, that being prefent at the Mufier of fome Regiments, he remembered the Names of every Soldier there. In the Year 1598 he accompanied the Dutch Embafiador,

the famous Barnevelt, into France, where Henry IV gave him feveral Marks of his Efleem ; he took there his Degree of DoBor of Law, and being returned into his Country, he applied himfelf to the Bar, and pleaded before he was Seve?iteen Years of Age ; he was not Twenty four Years old when he was made Advo- cate-General', he fettled 2A Rotterdam in 161 3, and was Penfionafj of that Town ; he would not accept of that Employment, but upon Condition that he fhould not be deprived of it ; for he forefaw that the Quarrels of Divines about the Dodrine of Grace, which formed already a thoufand FaEim^s in the State, would occafion many Re- volutions in the chief Towns ; he was fent into England in the fame Year, by reafon of the Mifunderftanding between the Merchants of both Nations ; he wrote a Treatife upon that Subjed, and called it Mare Liherum, or a Treatife fhewing the Right the Dutch have to the Indian Trade. He found himfelf fo far engaged in the Affairs which undid Barnevelt, that he was arrefted in Augufi i6i8, and condemned 'io perpetual Imprifonment the iSth Day of May 161 9, and to forfeit his Eflate ; he was confined to the Caftle of Lou- veflein the 6th of fune in the fame Year, where he was feverely ufed for above 1 8 Months ; from whence, by the Contrivance of Mary de Regelsberg his Wife, he made his Efcape, vi^ho having obferved that the Guards, being weary of fearching a large Trunk full of Books and Linnen to be wafhed at Gorcum, a neighbouring Town, let it go without opening it as they ufed to do, advifed her Husband to put himfelf into it, having made fome Holes with a Wimble in the Place where the fore-part of his Head vi^as, that he might not be ftificd. He followed her Advice, and was in that manner carried to a Friend of his at Gorcum ; from whence he went to Antwerp in the ufual "Waggon, after he had eroded the publick Place in the Difguife of a Joyner, with a Ruler in his Hand. That good Woman pretended all the while that her Husband was

very Sicl^, to give him time to make his Efcape into a Foreign Couti- try : But when fhe thought he was fafe, fhe told the Guards., laugh- ing at them, that the Birds were fied. At firft there was a Defign to Profecute her, and fome Judges were of Opinion jfhe fhould be kept in Prifon inftead of her Husband ; but by a Majority of Votes fhe was releafed, and praifed by every Body, for having by her Wit procured her Husband's Liberty. Such a Wife deferved not only to have a Statue erected to her in the Commo?iwealth of Learn- ings but alfo to be canonizd ; for we are indebted to her for fo many excellent Works publifhed by her Husband, which had never come .out of the Darknels of Louvejiein^ if he had remained there all his Life-time, as fome Judges appointed by his Enemies defigned it.

He retir'd into France., where he met with a kind Reception at Court, and had a Penfon afligned him ; the Dutch Embaffadors en- deavoured to prepofTefs the King againft him, but that Prince did not regard their Artifices, and gave a glorious Teftimony to the Virtue of that Illufirious Refugee, and admired the Virtue of the Man, who being fo ill ufed in his Country, never omitted ajt Oppor- tunity to advance its Interefi, and encreafe its Grandeur. He ap= plied himfelf very clofely to Study, and to compofe Booh, The firfi he publifhed after he fettled in France, was An Apology for the Magifirates of Holland, who had been turned out of their Places. The contrary Party was very much difpleafed with this Treatife, they thought GROTIU S made it appear that they Iiad aded a- gainft the Laws, and therefore they endeavoured again to ruin and defame him, but the Protedion of the French Court fecured him againft their Attempts.

He left France after he had been there Eleven Tears, and re- turned into Holland full of Hopes, by reafon of a kind Letter he received from Prince Frederick Henry, who fucceeded his Bro- ther in that Republick ; but

his Enemies prevented the good Ef- fects of that Letter, and therefore he was forced once more to leave his Country ; he refolved to go to Hamburg, where he ftayed till he accepted the Offers he received from the Crown of Sweden, in the Year 1634. Queen Chriftina made him one of her Counfellors, and fent him Embaffador to Lewis XIIL Having difcharged the Duties of that Employment about Eleven Years, he fet out from France to give an Account of his Embafly to the Queen of Swe- den ; he went through Holland, and received many Honours at Am- flerdam ; he lav/ Queen Chriflina at Stockholm, and after he had difcourfed with her about the Affairs he had been entrufted with, he moft humbly begged of her, that fhe would grant him his Dif- miffion. The ^ueen gave him no politive Anfwer when he asked leave to retire, which difpleafed fome great Men, who were afraid that fhe would keep him in her Council: He perceived their Difcontent, and was fo prefling to obtain his Difmiflion, that it

was granted him at laft. The ^een, upon his Departure, gave him feveral Marks of her great Efteem for him. The Ship on Board which he embarked was violently toft by a Storm on the Coafts of Pomerania ; G R 0 T I U S being fickj and uneafy in Mind, con- tinued to travel by Land, but his lllnefs forced him to ftop at Rofloch where he died in a few Days, on the 28 th of Augufi 1645. His Body was carried to Delft to be buried among his Anceftors ; he left behind him three Sons^ and one Daughter. The Daughter was married to a French Gentleman called Mombasy who was very much talk'd of, on Occafion of a Trouble he was brought into foon after the French had paffed the Rhine in the Year 1672. The eldefi Son and the youngefl pitched upon a Military Life, and died without being married. Th.t fecondy whofe Name was Peter de GroGty made himfelf illujirious by his Embajftes. The Eledlor Pa- latim being reftored to his Dominions by the Treaty of Munjier^ appointed him his Rejident in Holland : He was made Penjionary of the City of A^jifierdam in 1660, and difcharged the Duties of that Place with great Ability for the Space of Seven Tears. He was fent Embaffador to the Northern Crowns in the Year 1668. At a Year's End he went into France with the fame Charader, and acquitted himfelf in that Employment with great Dexterity and Wifdom. When the War was kindled 1672, he returned into his Country, and was deprived of his Office of Penjionary at Rotterdam^ which he had enjoyed ever fince his Return from his Embaffy into Sweden : He was deprived of it during the Popular Tumults, which occalioned fo many Alterations in the Towns of Holland. He re- tired to Antwerp^ and then to Cologne^ whilft the Peace was treating there, and aded for the Good of his Country as much as ever he could ; and yet when he returned into Holland he was accufed of a State Crime j the Caufe was tried and he was acquitted : He retired into a Country 'Houfey where he died at 70 Years of Age.

The Calumnies, malicioufly difperfed by the Enemies of GRO- TlUSy about his Deathy are irrefragably confuted by the Relation of the Minijler who attended upon him when he was dying. The Mini/hry called John ^uijlorpiusy was Profejfor of Di'umity at Rof- tock. His Relation imports, " That he went to G RO TIUS who " had fent for him, and found him almoft dying ; that he exhorted " him to prepare for Deathy in order to enjoy a more happy Life^ " to acknowledge his Sinsy and to repent of them ; that having men- " tioned to him the Publicany who confeffed himfelf a Sinnery and *' begged God\ Mercy, the fick Man anfwered, / am that Pub- " lican ; that he went on and told him he fhould have Recourfe " to 'Jefus Chrijly without whom there is no Salvation, and that *' GROTIU S replied, I place all my Hopes in Jefus Chriji a- *' lone ; that he repeated in a loud Voice a Prayer in High-Dutchy " and that the lick Man faid it foftly after

him with his Hands " joined j that having ended, he asked him whether he underftood

" him, and his Anfwer was, / underflood you very well ; that he con- " tinued to repeat to him fome Paffages of the IVord of God, which « dying People are ufually put in Mind of, and to ask him, Do you *' underftand me f and that GROTIUS anfwered, / hear your *' Voice^ but I do not miderfiand every thing that you fay ; that with '« this Anfwer the Tick Man loft his Speech^ and expired foon after." It were an abfurd thing to call in Queftion the Sincerity of ^ijlor- fius, nothing could move him to be falfe in his Account, and it is certain that the Lutheran Minifters were no lefs difpleafed than the Calvinifis with the particular Opinions of GROTIUS^ and there- fore the TeftuTiony of the Profeffor of Rofiock is an authentick Proof; and if fuch Evidence is not fufficient in Matters of Fad, we make way for Scepticifm, and it will be difficult to prove any thing. It is therefore an undeniable Cafe that GROT lU S hdng a dying, was affeded like the Publican mentioned in the Gofpel, he confefs'd his Faults, he was firry for them, and implord the Mercy of his heavenly Father ; that he placed all his Hopes in Jefus Chrijl alone ; that his lafi Thoughts were thofe that are contained in the Prayer of dying People, according to the Liturgy of the Lutheran Churches. The Refult of which is, that thofe who fay he died a Socinia?!, would be too gently ufed if they were only told, that they are guilty of a rafh Judgment ; they are Perfons prejudiced againft the Charadler of this Great Man, and therefore very unworthy of our Belief. Se- veral People have wondered that his Grand-Children did not ask Sa- tisfadion for this Injury done to his Me7nory^ and that they appear- ed lefs fenfible in this Point, than Ja7finius\ Relations upon {lighter Calumnies ; but fome Perfons highly approve their waving all Juri- dical Proceedings. There is a folid Anfwer to that ReJleBion upon our Author made by a Book entitled VEfprit de Mr. Arnauld ; and fmce the Accujer made no Reply to it, it is a plain Sign he has been convided of Calumny. The Apologijl for the Charader of GRO- TIUS begins thus, " But, Sir, what that Author and Father Si- " mon fay <?/ G R O T I U S, is nothing, if compared to what the " namelefs Author of the fcandalous Libel intitled I'Efprit de Mr. " Arnauld fays of him ; it is true, he fanders every Body in that " Book^ and the 7?ia?iifefl Lies that are in it, ought to make one dif- " believe every thing elfe 3 but hecaufe fome are fo weak, as to be im- pofed upon by his bold way of f peaking, becatfe fome of thofe to whom you fjew my Letters, entertain an ill Opinion of GROTIUS upon that Accoimt, you will give me leave to undeceive them. Per- " haps they will not be difpleafed to find an Author, for whom they " have fo great an Efteem, guilty of the 7nofl horrid Calumny that " ever was ; this will teach them, that one ought to fufpeSi thofe who *' appear fo zealous for Truth, and that fometimes a prodigious Ma- " lice and DetraEiion are concealed under the zealous Pretence of " defending the Church of God. Afterwards the Apologijl examines ** the four Accifatiom one after another \ I fhall not dwell on what

« he fays upon the firft Head, viz. That GROT'IUS was a violent " Arminian. G R O T 1 U S, y^j/j our Author^ in the fecond Place, " was a Socinian, as appears from his enervating the Proofs of " Chrifis Divinity. Sir, deftre your Frie7'ids to read G R O T i U S' j-. " Annotations upon the Paffages of St. Mark and St. John which I " have mentioned to you, a7id if they do not fay that it is an abomi- " nabie Calumny, / am willing to be accounted a mofl wicked Ca- " lumniator. See aljo the DXLVIIIth Letter among the Literae Ec- " clefiafticje & Theologicse." I JJjould be too long fyjuld I me7ttion what he fays upon the third Head, I fhall only fet down this Pajfage out of it, " When Mr. Arnauld lays fomething that is iftjurious

to " the Reformed, the Author of the Libel exclaims violently againft " him,' and Mr. Arnauld is then an unfincere Man, an unfair Ac- *' cufer, an Infamous Calumniator ; but vi^hen he fays fomething that " may ferve this Satyrical Writer to inveigh againft thofe whom he " hates, every thing is then right, it ferves him to fill up his Page^ " and to prevent his being placed among the little Authors^

I muft not forget that Mr. Arnauld blames the Lutheran Minister for not asking G ROT'IU S in what Communion he would die, this is a material Thing, fays Mr. Arnauld, " with relpe-fl to a Man " who was kno'w?2 to have had no Communion a long time with any ** Proteftant Church, and to have confuted in his laft Books mofi of *' the Dodrines that are common to them. Whereupon the Apo~ " /(?g-//? fays, that Mr. Arnauld and the Author of the Libel do " wrongly fancy, that a Man has no Religion when he joins with " none of the FaSiions that condemn Ma?ikind, and each of which " pretends to be the only Church of Chrifl. GROTIU S abftain- " ed from communicating with the Protejlants, as well as with the " Papijls, becaufe the Communion, which was appointed by Chrifl " as a Symbol of Peace and Concord among his Difciples, is ac- " counted in thofe Societies a Sign of Difcord and Divifon." .

^luiflorpius aded the Part of a wife Man in not asking him what Communion he would die in, fince he faw him dying in the Com- munion of Jefus Chrifl, by Virtue of which we are faved, and not by Virtue of that of the Bifhop of Rome, or of the feveral Proteftant Societies.

Without enquiring whether i^uiflorpius was in the Right or the Wrong for not asking fuch a Queftion, we obferve, that a Man who believes the Fundamental Doctrines of Chriftianity, but forbears re- ceiving the Communion, becaufe he looks upon that Aftion as a Sign that one damns the other Chrifiian Seds, cannot be accounted an Atheifl, but by one who has forgot the Notions of Things or Def7ii- tions of Words ; nay, we go farther, and maintain it cannot be de- nied that fuch a Man is a Chrifiian ; we allow you to fay, that his believing all the SeSis that receive the Gofpel to be in the way to Sal- vation is an Herejy ; we allow you to aflert, that it is a pernicious and dangerous Dodlrine ; notwithftanding which, can it be faid that 2 thofe

thofe who believe that ye/us Chrijl is the Eternal So7t of God^ coef- fential and confubjiantial wit Jo the Father, that he died for us^ that he fits at the right Hand of God his Father ; that Meft are faved by Faith in his Death and Interceffto7i ; that one ought to obey his Pre- cepts.^ and repent of ofte's Sins, &c. we fay, can it be affirmed that fuch People are not Chriflians f No Man of Senfe can afiirrn it ; but none would be more unreafonable in afierting fuch a thing than the Author of VEfprit de Mr. Arnaiild, fince he publifhed another Book, wherein he fhews that all thofe who believe the Ftmda?nental Points, belong to the true Church, whatever SeB they fnay be of. We omit feveral other Maxims advanced by him, whereby it appears, that one may be faved in all Religions ; we only mention fuch Doc- trines as he cannot deny, and according to which he ought to ac- knowledge, that GROTIU S, v/ho believed the FimdamentalJyoc- trines, without approving Cahmiifm or Popery, &c. in every thing, was a Member of the true Church.

We fuppole that what has been delivered may be of fufficient Force to overthrow the Calumnies that have been raifed againft our Author, in refped" to his Principles in Religion ; we fhall now take a fhort Survey of the moft eminent Books that were publifhed from him.

During his Stay at Paris^ before he was EmbaiTador of Sweden, " he tranflated into Latin Profe his Book concerning the Tj-uth of " the Chrifiian Religion, which he had writ in Dutch Verfe, for the *' Ufe of the Seamen who travelled into the Indies, that they might " have fome Diverfion in finging fuch a pious Poem." Thus du Maurier fpeaks of it j but he is very much to blame for giving iuch a mean Notion of the Authors Delign, for GROTIUS al,:jed at a nobler End ; he had a Mind to enable the Dutchj who &a.yel to the Indies, to promote the Converfon of the Infidels j this is the Charader he gives of it himfeli, My Refolution was to do fomeihinfr of Advantage to all my Country?ne7t, but efpeciallv for Seamen, that in all their Leifure they have Aboard, they may ufe their Time with Profit to themf elves, and not loiter away their Hours as fome do. And therefore beginning with a Panegyrick upon my own Nation, which infinitely excels all others in this Art ; / encouraged the^n, that they would improve their Art, not only for their Benefit artd Gain, but that they would regard it as the Mercy of Heaven, and ufe it for the propagating of the Chrifiian Religion. It is an Excellent Work, and the Notes upon it are very learned. It was tranflated into Englifh, French, Dutch, German, Greek, Perfian, and Arabick ; but we do not know whether all thofe Tranflations have been publifhed ; the Greek was not printed in the Year 1637. In the Year following GROTIUS mentions the Perfiati Tranflation only, as a Book which the Pope\ Miffionaries had a Mind to pubhili. My Book, fays he, concernifig the Truth of the Chrifiia?i Religion, that is ac counted^ Socinian by fome, is fo far from having that Chara&er here^ that it is to be turned by the Popes Miffionaries into the Perfian 4 Tongue^

Tongue., to convert^ by the Favour of God, the Mahometans who are in that Ki?tgdom. In the Year 1641, an Englijhman^ who had tranflated that Book into Arabick, was defirous his Tranflatioii fliould be printed in England. There came a very learned Englijh- man to me within thefe few Days, fays he, who lived a long time in the Turkijh Dominions, and tranflated my Book of the Truth of the Chriftian Religion into Arabick^ and will endeavour, if he can, to have it piiblifhed in England : He thinks no Book more profitable, either to inftrud the Chriflians of thofe Parts, or to convert the Ma- hometafu that are in the Turkip^ Perfian^ Tartarian, Punic, or In- dian Empire. That Tranflation made by the famous Dr. Edward Pocock, was printed at London in the Year 1660, There are three German Tranflations of that Work, two in Profe, and one in Verfe, and two French Tranflations in Profe.

GROTIUS' writ an Hiflory of the Low-Countries-, it contains an Account of what happened in the Netherlands from the De- parture of Philip 11. It is divided into Annals and Hiflory, the Annals comprehend fve Books ; the Hiflory contains eighteen, and begins in the Year 1588. Cafaubon^ who had read fomething of it in the Year 161 3, fpeaks well of it in a Letter written from Lon- don to Thuanus. The Judgment of the Author of the Parrhafa?2a runs thus, " We may add to Polybius, a famous Hiftorian among " the Moderns, who though he had been a Sufferer by the Injufice ^" of a great Prince, relates his noble A£iio?is as carefully as any *' other Hiflorian, and fpeaks of him according to his Merit, without *' faying any thing, whereby it jnay appear that he had Reafon to " complain of him ; / mean the inco?nparable HUGO GROTIUS, *' who fpeaks in his Hiflory of the Netherlands of Prince Maurice ^ • " de Naffau, as if he had never been ill treated by him; this is a " remarkable Infiance of Impartiality, which jheivs that it is not " impofftble to overcome ones Paffion, andfpeak well of ojtes Enemies, " as fever at People fancy, who judge of others by ther/ifelves." The Author who obferves this fin^ PalTage in

GROTIU S's Hiflory, did it not out of Flattery, for he blames him afterwards for a thing that deferves to be blamed; he does not approve GROTIU S\ Style, and fhews thereby that he is a Man of a good Tafte. " None, " fays he, of thofe who fpoke well at Athens, and at Rome, expref- " fed himfelf fo obfcurely in Converfation, as Thucydides and Ta- *' citus did in their Hiftories ; doubtlefs they had a Mind to raife " themfelves above common Ufe, and thereby they fell into that " Obfcurity for which they are juflly reproved. It cannot be de- *' nied they have an afFeded Style, and that they hoped to recom- " mend their Hiftories as it were by a manly Eloquence, whereby " it feems that many things are expreffed in few Words, and raifed " above the Capacity of the Vulgar ; I cannot apprehend why fome " learned Men undertook to imitate them, as HUGO GRO TIUS, " and Dionyfus Voffius in his Tranflation of Rheide\ Hiftory, and 3 " how

« how they could reUili fuch a Style ; for certainly good Thoughts " need not be obfcure to be approved by good Judges ; and when « a Reader is obliged to ftop continually, in order to look for the *' Senfe, he does not think himfelf in the leaft obliged to an Hifto- " rian who gives him the Trouble ; this is the Reafon why fome <' Hiftories, though excellent as to the Matter, are read by few " People ; whereas if thofe Hiftorians defigned to write for the Inftruc- *' tion of thofe who have a fufficient Knowledge of the Latin *' Tongue to read a Hiftory with Pleafure, they fhould endeavour " to make themfelves eafily underftood, and ufeful to as many Peo- " pie I ever they could. The more a Hiftory deferves to be read " by reafon of the Events contained in it, the more it deferves to be " of a general Ufe; the Authority of the Ancients who negleded *' the Clearnefs of the Style, cannot juftify the Moderns, who have " imitated them contrary to the Reafons I have mentioned, or rather " contrary to good Senfe. There is nothing in 'Tacitus that lefs de- " ferves to be imitated, than his too concife, and confequently ob- " Icure Style; I am forry GROTIU S was one of thofe who did " not avoid it, it makes the Tranflation of his Writings more diffi- ** cult, and his Thoughts more obfcure."

But his Book Of the Rights of War and Peace was the Majier-piece of his Works, and therefore deferves a more particular Account ; it was printed at Paris in 1625, and dedicated to Lewis Xill. " King " Guftavus of Sweden having read and admired it, refolved to make *' ufe of the Author, whom he took to be a great Politician by rea- " fon of that Work ,• but that Prince having been killed ac the " Battle of Lutzen in the Year 1632, Chancellor Oxenfiern, accord- ** ing to his own Inclination, and the Defign of the idte King Guf- *' tavus-i nominated him to be fent Embaffador into France " Co- lomies fays, " It is believed that GROTIUS exhaui^ed his Parts *' upon that Book, and that he might have faid of it what Cafaubon " faid of his Commentary upon Perfeus^ in a Letter to Mr. Perillan " his Kinfman, which is not printed, in Perfeo omnem ingejiii cona-' " turn effudimus'-y and indeed* that Work of GROTIU S is an ex- *' cellent Piece, and I do not wonder rhat it has been explained in

" fome German Univeriities." Here follows the Judgment which

M. Bignon^ that unblamable Magiftrate, makes of that Book in a Letter to GROTIUS, dated the 5th of March, 1633. " I had *' almoft forgot, fays he, to thank you for your Treatife De Jure Belli, *' which is as well printed as the Subjedl deferves it ; I have been " told that a great King had it always in his Hands, and I believe it " is true, becaufe a very great Advantage muft accrue from it, fince " that Book fhews, that

there is Reafon and Juftice in a Subjed:, " which is thouglit to confift only in Confulion and Injuftice ; thofe " who read it will learn the true Maxims of the Chriflia?i Policy, " which are the folid Foundations of all Governments; I have read " it again with a wonderful Pleafure." They did not make the

fame Judgment of it at Rome, where it was placed among prohi'oited Books the 4th of February 1672. M. Chauvm^ Memorial concern- ing the Fate and Importance of that Work is fo curious, that we cannot forbear tranfcribing fome things out of it. It informs us that GROTIUS undertook to write that Book at the Solicitation of the famous Peireskius. He himfelffays fo^ in a L,etter he writ to him, njoheji he prefented him with the Copy of that Work. " The Sub- ' jedl of it was thought to be fo important and ufeful, that it ' gave Occafion to make a particular Science of it ; for the Explica- ' tion of which, fomx Profeffors have been appointed on purpofe in ' the Univerfities. Charles Lewis^ Eledlor Palatine^ did fo highly ' value that Book, that he thought fit it fhould ferve as a Text to < the Dodrine concerning the Right of Nature, and the Law of Na- tions, and in order to teach it he appointed M. de Puffendorfm. the Univerfity of Pleidelberg ; and in Imitation of that Prince, the like Settlements have been made in other Univerfities. It does not appear that any Body criticized upon this Work of GROTIUS during his Life-time ;" but when he was dead it occafioned many Difputes, and was publifhed over all the World of Letters, and com- mented upon by the mofl; learned of all Nations. It came out at laft, cum Not is Variorum^ by which means our Author^ within 50 Years after his Death, obtained an Honour, which was not befkow- ed upon the Ancients till after many Ages.

Thus have we given the Hijlory of this great Man., taken from the beft Accounts that have contributed to derive his Memory to our Times 5 but as an Improvement of his Characfter receive the Teftimony of Salmajius^ one of his Enemies, in a Letter to him, Tou have laid but a f mall Obligation upon the Cardinals^ and upon my f elf likewifey by beflowing a Title upon me-, which is peculiar to the mofl eminent GROTIUS; for why fl:)ould I not call him fo^ whom I had rather refembky than enjoy the Wealthy the Purple^ and Grandeur of the Sacred College f

THIS Book prefumes, moft illuftrious Prince, to intitle itfel'f to Your great Name, from a Confidence, not of itfelf, or its Author, but of the Subjeft Matter of it, which is Justice; a Virtue in fo diftinguifliing a Manner Yours, that by it, both from Your own Merits, and the general Confent of Man- kind, You have acquired a Title worthy fo great a King^ and are now every where known by the Name of J U S T, no lefs than that of L E WIS. It was the Height of Glory to the Roman Generals, to be firnamed from fome of their conquered Coun- tries, as Crete, Numidia, Africa, Afia, and the like. But how much more glori- ous Your Sirname, by which you are declared the irreconcileable Enemy, and perpe- tual Conqueror, not of any Nation or Man, but of Injuftice ? It was efteemed a great thino- among the Egyptian Kings, for one of them to be ftiled, the Lover of his Fa- ther, another the Lover of his Mother, another of his Brother. But how far (liort thefe of Your Name, which comprehends not only thofe, but eveiy thing elfe that can be conceived beautiful and virtuous ? You are JUST, as you honour the Me- mory of the great King your Father by imitating him : JUST, as You inftru(n: your Brother by all imaginable Methods, but none more than that of Your own Example : JUST, as You procure the greateft Matches for Your Sifters : JUST, as You revive the Laws almoft dead, and, to the utmoft of Your Power, oppofe the growing Wickednefs of the Age : J U S T, but at the fame time Merciful too, as You deprive Your Subjeds, whom the Ignorance of Your

Goodnefs had caufed to tranfgrefs the Bounds of their Duty, of nothing but the Liberty of offending, nor ufe any Violence to thofe who differ from You in Matters of Religion : JUST, and at the fame time Compaflionate, as you relieve by Your Authority opprefled Nations, and diftrefled Princes, and controul the exorbitant Power of Fortune. Which fingu- kr Beneficence in You, as near the Divine as Human Nature can admit, obliges me even in this publick Addrefs to return You my private Thanks. For as the coeleilial Bodies not only influence the great Parts of the Worid, but alfo fufier their Virtues

to be communicated even to every individual Animal ; fo you, like a Star of mofl benign Influence to the Earth, not contented to have raifed up dejefted Princes, or given Succour to Nations, have condefcended to give Protection and Comfort to me alfo, when ill-treated by my Native Country. To Your publick Aftions You have, to compleat the Meafure of Juftice, added fuch Innocence and SancT:ity of Life, as' deferves the Admiration, not of Men only, but of the bleffed above. For who of the meaneft People, or even of thofe who have fequeftred themfelves from the; Con- verfation of the World, attains to that Perfecftion of Purity and Virtue, as you whom the Splendor of Fortune expofes daily to innumerable Charms of Vice ? But how great is it to attain that in a multiplicity of Bufinefs, in a Crowd, in. a Court amongfh fo many fo various Exam^ples of Vice, which others fcarce are able, often are not able to do in Solitude ? This is to merit the Name not of JUST only, but of Saint alfo, and that in this Life, which the Piety of the Age attributed to your Anceftors Charles the Great, and Le-wis, only after their Deaths : This is to deferve the Tide of mojl Chrijiian, not by Defcent, but your own proper Right. But as there is no part of Juftice which does not belong to You, fo that which concerns the Subjed: of this Book, viz. the Affairs of Peace and War, is properly Yours, as you are a King, and efpecially as King of France. Vaft is Your Dominion, which extends from Sea to Sea, and comprehends fo many fpacious and happy Provinces j but it is a greater Dominion than this, not to defire others Dominions. Worthy is this of Your Piety, worthy of Your h^h Pitch of Grandeur, not to attempt the Invafion of any Man's Right by Force of Arms, or the Alteration of ancient Limits ; but together with War, to carry on Negotiations of Peace ; nor to begin it, but with a Defire of bringing it to a fpeedy Conclufion. When it fhall pleafe God to call You to his Kingdom, which alone is better than that which You now pofTefs, how becoming, how glorious, how joyful to the Confcience will it be for You to be able to fay with Boldnefs j This Sword, received from thee for the Safeguard of Juflice, I reflore again pure, innocent, ftained with no Man's Blood rafhly fhed ? Thus it fhall be, that the Rules which we now feek for in Books, fhall hereafter be learned from Your Aftions, as the rriofl perfeft Pattern. Which thing itfelf, though of great Impor- tance, yet the Chriftian World prefumes to require fomething flill greater from you ; that is, that Wars every where ceafing. Peace may be reftored, not only to Civil States, but to the Churches ; and our Age fubmit itfelf to be modelled after the Pat- tern of the Apoftolical Age, in which all unanimoufly acknowledge the Chriflian Faith to have been true and uncorrupted.

The Minds of Men, now grown weaiy of Diflention, are encouraged to hope for this, as the Effeft of the Friendfhip lately contracted, and by the happy Marriage of Your Sifler confirmed, between You and the King of Great Britain, a Prince emi- nent for his great Wifdom and ardent Love for the Peace of the Church. A Work indeed of vaft Difficulty, by reafon of the growing Animofity of Parties : But of two fuch great Kings nothing is Worthy but what is Difficult, and to all others imprafti- cable. The God of Peace and Juftice grant to Your Majefty, moft Juft and Peace- able Prince, together with all other Happinefs, the

Honour of accomplifhing this gaeatWork. MDCXXV.

Concerning the Certainty of Right in general; and the Dejtgn of this

^H E Civil JLaw, whether that of the Romans, or of any other People, jnany have un- i. The LAW dertaken, either to explain by Commentaries^ or to draw up into fhort Abridgments : oiHsxions. But that Law, which is common to many Nations or Rulers of Nations, whether derived from Nature, or infiituted by Divine Commands, or introduced ' by Cuftom and tacit

Confent, few have touched upon, and none hitherto treated of univerfally and methodically ; tho'

it is the Intereft of Mankind that it fhould be done.

II. Cicero ' rightly commended the Excellence of this Science, in the Bufinefs of Alliances, 'Treaties, Conventions between States, Princes, and foreign Nations, and in fhort, in all Af- fairs that regard the Rights of War and Peace. And Euripides prefers this Science before the of War and Knowledge of all other Things, whether Divine or Human, when he jnakes Helen fay thus to Peace. Theonoe :

* 'Twould be a bafc Reproach To you, who know th' Affairs prefent and future Of Men and Gods, not to know what Juftice is.

III. And indeed this Work is the more neceffary, fince we findfome, both in this and informer Some think Jges, fofar defptfing this Sort of Right, as tf it were nothing but an empty Name. The Saying ^^^^^^, ^^°^^ o/'Euphemus in Thucydides is almoji in every ones Mouth, ' To a King or Sovereign City, no- j^^j^-g

I. (i) The Author here means what he calls the Lain cf Nations, which he diftinguifhes from the Lww of Na- ture as making a feparate Clafs. But in this he is mif- taken ; as is acknowledged by moft, who have purfued this Study. See Note 3. on 5. I. Chap. I. § 14.

II. (i) This is not Cicero's Senfe. The Words here quoted only fignify that Pompey, of whom he is fpeaking, was very well verfed in Alliances, Treaties, and Conventions made, concluded, and formed, be- tween States, Princes, and foreign Nations, i^c. Equi- dem contra exijiimo, Judices, quutn in omni genere ac iiarie- tate Artium, etiam illarum, qiue fine fununo otio non facile difcuntur, Cn. Pompeius excellat, singularem quam-

DAM LAUDEM EJUS ET PR.ffiSTABILE MESSE SCIEN- TIAM in foederibus, paSionibus, conditionibtis Populorum, Regum, exterarum Nationum : in omni deiiique Belli Jure ac Pads. Orat. pro L. Corn. Balbo, Cap. VI.

This Theonoe was an Egyptian Prieftefs, who dealt in Di- vination. Helen does not here defign to prefer the Knowledge of what is juft and unjuft, to that of all things human and divine, as our Author pretends. The Poet only intimates, that we ought to join the Study of Moralit}' with the Study of Religion. In this Senfe the Verfes here quoted may very juftly be underftood as addreifed to all employed in the publick Miniftry of

Religion, either to remind them of their Duty, or re- prove them for the Faults committed in the Difcharge of it, which has been but too often the Cafe at all Times. See what I have faid on this Subjeft in my Preface to PuFENDORF, \ J, is'c.

III. (i) Thefe Words occur in the fixth Book of that Hillorian. [Chap. LXXXV. Edit. Oxon.) We find the fame Maxim in the fifth, where the jthenians, wh.ote Power was then very confiderable, fpeak thus to the Mdians. For you cannot but kno-iu that, according to the common Notions of Mankind, Jujiice is regulated by the equal NeceJJities of the Parties ; and that thofe 'who are ifi'vefled ivith a fuperior Po'wer, do all they fad pojjible, nvhile the Weak are obliged to fubmit . (Chap. LXXXIX.) Grotius.

The former of thefe Paflages is not properly applied. It may be obferved that the Word here ufed is a^a^fov, which fignifies unreafonahle, not unjuft. Befides, it ap- pears from the Sequel of the Difcourfe that the Quellion does not here turn on what is juft, or unjuft. Hsrino- crates, the Syracufan Embaflador, had remonftrated to the Camari-nians, that there was not the leaft Probability, that the Athenians would, after the Reduftion of Chalets, grant the Leontines their Liberty, who were Inhabitants of the fame Country. Chap. LXXIX. To which Euphe- rnus replies, that the Athenians had an Intereft in making that Diftindlion, and fhews how they would find their Account in it. So that aPiofof in this Place fignifies, ijohat is not conformable to the Rules of good Policy, and is the fame as a» hhtfoi in Chap. LXXVI.

ibing is mjufi that is profitable. Not unlike to which is this, ^ 'J'hat amongst the Great the fironger is thejufler Side -, and, that no State can be governed ^ -without Injujlice. Befides, the Difputes that happen between Nations or Princes, are commonly decided at the Point of the Sword. Now, it is not only the Opinion of the Vulgar, that War is a Stranger to all Jujlice; but many Sayings uttered by Men of Wifdom and Learning, give Strength to fuch an Opinion. And indeed, nothing is more frequent than the mentioning of Right and Arms, as oppofite to one another. Thus Ennius *,

They have recourfe to Force of Arms, not Law.

And Horace ' thus defcribes the Fiercenefs o/" Achilles :

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

Another Latin Poet ^ introduces another Conqueror, who entering upon War, fpeaks in this Manner, .; Now, Peace and Law, I bid you both farewell.

Antigonus, ' though old, laughed at the Man, who prefented him with a Treatife concerning Juflice, at the very Time he was befieging his Enemies Cities. And Marius faid ^ he could not hear the Voice of the Laws for the ' clafhing of Arms. Even the '° modeft bafhful Pompey " coidd have the Face to fay. Can I think of Laws, who am in Arms ?

IV, Among Chrijlian Writers we find many Sayings of the fame hind ; let that o/Tertullian fuffice for all ; ' Fraud, Cruelty, Injuftice, are the proper Bufinefs of War. Now they thai are of this Opinion, will undoubtedly object againji me that of the Comedian,

I You that attempt to fix by certain Rules Things fo uncertain, may with like Succefs Strive to run mad, and yet preferve your Reafon.

TheExiftence V. But fmce it would be a vain Undertaking to treat of Right, if there is really no fuch

of Right af- tJsifig . i(^iii ig neceffary, in order to fhew the Vfefulnefs of our Work, and to eftablifh it on

^g^'" yo/f^ Foundations, to confute here in a few Words fo dangerous an Erro^. And that we may not

engage with a Multitude at once, let us affgn them an Advocate. And who more proper for this

the Objefti- Purpofe than Carneades, who arrived to fuch a Degree of Perfection, (the ut?noJi his Se£} aimed

at,) that he could argue for or againfi Truth, with the fame Force of Eloquence ? This Man

having undertaken to difpute agaitfi Juflice, that kind of it, efpecially, which is the SuhjeSl of

this Treatife, found no Argument fironger than this. [Laws (fays he) were inflituted by Men

2 The Words here ufed by the Author, are taken 9 The Inhabitants of Argos being ingaged in a Dif- from Tacitus. Id in fummd fartuna aquius, qmd'vaU- pute with the Lacedemonians about fome Lands, and the dius. Annal. Lib. XV. Cap. I. former having fupported their Claim with the bell

3 The Author alludes to a Fragment of the fecond Reafons, Lyfander drew his Sword, faying : He, nvho is Book of Cicero's Treatife De Republicd, preferved by Mafier of this, reafons heft about the Boundaries of Lands. St. AuGusTiN ; where Scipio, on the contrary, main- Yx.xsTP.v^c^^i Apophthegms, p. 190. The fame Author, tains, that it is impoflible to govern a State well, with- in the Life o(Crefar, p. 725. Tom. I. relates that Metel- out obferving the Rules of Juftice with the utmoft Ex- lus, Tribune of the People, oppofing that General for adnefs. De Ci'vit. Dei. Lib. 11. Cap.XKl. taking Money out of the publick Treafury, and alledg-

4 This Fragment, which may be feen in Cicero's ing fome Laws againft that Praftice, C^yJz;- replied, that Oration for Murtsna, Cap. XIV. is more entire in Au- the Lavjs mufi gi've Place to the Exigencies oftVar. LUS Gellius, i/i. XX. Cap.X. SENECAinhisfourthBookZ)^5ra9?(rz«,Cap. XXXVII.

obferves, that Princes make many Grants, nvithout enquir- Non ex jure matiu confertum, fed mage ferra ing into the Reafonablenefs of the Demand, efpecially duriji^^

Rem repctunt, regttumque petunt, iiadunt folidd aii. a War, nvhen ajuji and equitable Man is not able to gratify

fo 7nany PaJJions fupported by Force. He adds, that it is net But the Poet fpeaks only of Civil Laws ; and fets vio- poffble to be at the fame Time an honeji Man, and a goad lent JWeafures, the diftinguifhing Charadlerifticks of General. Grotius.

War, in Oppofition to the legal Proceedings, ufed for 10 He was very apt to blufh, efpecially when he was

compofmg Differences in Times of Peace. The fame obliged to appear in the AiTembly of the People. See is to be obferved of fome of the following PafTages. Seneca's eleventh Epiftle, and Gronovius's Note

6 LucAN puts this Speech into the Mouth of Julius 1 1 Plutarch, in the Life oi Pompey, relates the Mat- Cafar on his paffing the Rubicon. ter thus. The Mamertines pretending to be independent

7 Plutarch De fortuna Alexand. Mag. p. 330. on Pompey, by Virtue of an old 5cOT«a Law, that Gene- Tom. II. Edit. IVech. ral broke out into the following Expreffion : Willyouftill

8 He fpoke of the Civil Laws. The Words here re continue to alledge the Laius againji us, 'while ntse haiie our ferred to are that General's Anfwer on Occafion of his Sivords by our Sides ? Quintus Curtius obferves that being blamed for conferring the Freedom of Rome on a ffar in'verts e'ven the Lanvs of Nature. Lib. IX. (Cap. IV» thoufand valiant Soldiers, who had fignalized them- Num. 7.) Grotius.

felves in the War againft the Cimbri, without the Au- IV. (i) This Paffage is taken from the ninth Book

thority of any Law. See the Paffage at Length in of his Treatife againft the Jews.

Flvtakch's Apophthegms, p. 202. Tom. II. See like- 2 Terence in his £»»af^,AftI, Scenel, Ver. i6,i;ff.

wife the Life <jf Marius by the f. '-.e A'.ithor ; and V. (i) In Lactartius, Jn/iit. Di-vin. Lib. V. Ca.p.

Valerius Maximus, Lib. V. Cap. II. Num. B. XVI. Num. 3. Bdil. Cellar,

for the fake of Inter ejl ; and hence it is that they are different, not only in different Countries, according to the Diverfity of their Manners, hut often in the fame Country, according to the 'Times. As to that which is called Natural Right, it is a mere Chimera, Nature prompts all Men, and in general all Animals, to feek their own particular Advantage : So that either there is no Juftice at all, or if there is any, it is extreme Folly, becaufe it engages us to procure the Good of others, to our own Prejudice.

VI. But what is here f aid hy the Philofopher, and by the Poet after him;

Bv naked Nature ne'er was underftood What's Juft and Right.

inuji hy no Means he admitted. For Man is indeed an Animal, but one of a very high Order, and that excells all the other Species of Animals much more than they differ from one another ; as the many Anions proper only to Mankind fujjiciently demonjlrate. Now among§l the Things pecu- liar to Man, is his Defire of * Society, that is, a certain Inclination to live with thofe of his own Kind, not in any Manner whatever, but peaceably, and in a Community regulated according to the heft of his Underfianding ; which Difpofition the ' Stoicks termed 'Oimmirn \ Therefore the

2 The natural Inclination of Mankind to live in So- ciety is a Principle which has been admitted by the Wife and Learned of all Ages. Aristotle advances it in all his Books of Morality and Politics. Man, fays he, is a fociahk Animal in regard to thofe, to 'whom he is related hy Nature. There is therefore fuch a Thing as Sa- tiety, and fome'what that is juji, C'ven independently ofivhat •we call Civil Society. Eudem. Lib. VII. Cap. X. p. 280. Edit. Parif. The fame Philofopher obferves elfewhere, that Man is by Nature more ftrongly

inclined to So- ciety than Bees, or any other Animals, which are ob- ferved to flock or herd together. Polit. Lib. I. Cap. II. p. 298. And this he proves from the Confideration of Man alone being in PoiTeffion of the Ufe of Speech. See Note 3 on the yi Section of Chap. I. Book VII. of PoF- Endorf's Laiu of Nature and Nations. Cicero, rea- foning on the Principles of the Stoicis, lays it down for a certain Faft, that iio Man t/jould chufe to Bve in ab- foliite Solitude, even though he 7night enjoy an Infinity of Plea- furcs. From which he immediately infers, that ive ivere horn for Society. To this he adds, that as ive make Vfe of our Limbs, before ive have learnt vohat ivas the De- fign of Nature in furnifhing us ivith them ; fo ixie are natu- rally formed for civil Society ; 'without which there ivould be no Room for the Exercife of Jufiice or Goodnefs. De finib. Bon. & Mai. Lib. III. Cap. XX. See alfo Lib. V. Cap. XXIII. and De Officiis, Lib. I. Cap. IV. VII, and XLIV. Seneca, De Bcnef. Lib. VII. Cap. I. and Epift. XCV. p. 470. Diogenes Laertius, Lib-VU. ^ 1 2 3 . and the Paffages quoted in Nate (6) on the follow- ing Paragraph. And here I cannot conclude this Note without a beautiful Paflisge takeri out of Epictetus's Difcourfes, coUefted by Arrian, in which we have an excellent Argument ad homi?icm againft fuch as deny the natural Inclination of Men to Society. The Stoick Phi- lofopher thus attacks his Antagonilb. " Epicurus, " while he is endeavouring to deftroy the Principle of " natural Society, reafons on the very fame Principle. " Suffer not yourfelves to be impofed on, fays he ; be- " ware of lUufion. Take my Word for it, there is " naturally no fuch Thing as Society amongft reafon- " able Creatures ; thofe, who affirm there is, only abufe " your Credulity. But, we may afk him, how does this " concern you ? Leave us in quiet Pofleffion of our Er- " ror. What Damage will you fuffer, if all but you " and your Followers fliould be perfuaded that there is " a natural Society amongil Mankind, and that we " ought to do all in our Power for its Support ? Why " fo much Concern for us ? What can induce you to " light up your Lamp, and fpend whole Nights in Study " for our Sakes ? Why are you at the Pains of compo- "■fing fo many Books ? You will tell us, it is with a " View of undeceiving us in this Particular, That the " Gods tnfereji themfelves in our Affairs ; and that Hap- " pinefs effentially confijis in fomething elfe than Pkafiire.

" But what is it to you whether others form a

" right Judgment on thefe Points or not ? What tie is " there bet.veen you and us ? What Intereft have you " in what regards us ? Have you any Compaffion for " the Sheep, becaufe they fubmit to be fhorn, milked " aad llaughtered ? Ought not you to wi&, that Men,

" inchanted and lulled to lleep by the Stoicks, would " as tamely deliver up themfelves to the Diredlion of

" you and your Companions } In Ihort, what was

*' it that deprived £//>«««« of his Reft, and engaged him " to write all he publiflied ? Nature, without doubt, " that moft powerful Principle of human Motions, which " ftrongly influenced him, and forced his Obedience, " in fpite of all the Refiftance he could make, fuch is

" the invincible Force of human Nature ! — As it is

" neither poffible nor conceivable that a Vine fhould " flioot like an Olive-tree, and not according to the Im- " pulfe of its own Nature, and fo vice verfa ; fo neither " is it poffible for Men to be entirely free from human " Motions. If you caftrate a Man, you cannot extin- " guifti all carnal Inclinations and Defires in

him. Thus " Epicurus, as much as in him lies, has cut off all the " Relations of Hufband, Mafter of a Family, Citizen " and Friend, but the Inclinations of human Nature " are ftill entire in him. It vi'as no more in his Power " to diveft himfelf of thofe, than it was in that of the " wretched Academicks to throw away or blind their " Senfes, though no Set of Men ever took fo much " Pains to do it." Differt. Lib. II. Cap. XX. p. 201, (^c. Edit. Colon. 1 59 1. The late Ijord. Shaftefhury has reafoned in the fame manner, but with a lively Turn, which gives his Piece the Air of an Original, againft Hobbes, who with ftill more Warmth than his Mafter Epicurus, undertook to perfuade the World that all Men are by Nature fo many Wolves cne to another. See that Lord's EJfay on theUfe of Raillery, &c. /. 64, £5' feq. print- ed at the Hague in the Year 1710.

3 " We have, fays St. Chrysostom, Horn. XXXII, " ad Roman, a certain natural Affeftion one for another, " which fubfifts even amongft Beafts." See what the fame Father fays farther on the firft Chapter to the Ephe-

Jians, where he affirms that Nature has furnilhed us with the Seeds of Virtue. To all this let us add the Words of that great Philofopher, the Emperor Antoninus. " It has long fmce been (hewn that we are born for So- " ciety. Is it not evident that Things which are lefs " perfeft were made for the Ufe of the more perfeft, " and that thofe which have greater Degrees of Per- " feftion were defigned for the Service one of ano- " ther.'" Lib. V. § 16. Grotius.

4 'OiJttis'in;. The Author, in the preceding Note, alledges no other Authority but that of St. Chryso- stom J for the Word in queftion does not occur in the Paffage quoted from Antoninus. In the following Paffage of Porphyry the Term is ufed precifely in re- gard to the natural Sociability of Man. Taj;« fiAv xj

srs?, &c. De Abfiin. Anim. Lib. I. p. 13. Edit. Ltigd. 1620. See alfo Lib. II. p. 159. Lib. III. /. 294, 328. and Plutarch, De Stoicorim Repugn, p. 1308. Tow. II. Edit. Wech. Antoninus ufes the Adverb qikiIuc, in the fame Senfe. Lib. IX. § i. And Arrian has the Verb ii^nSSt,. Differt. Epia. Lib. III. Cap. XXIV. They all feem to have copied Aristotle in this Particular, who fays"l^« ^"aV t<?, k^ a TOii •nr^atai;, a; 'OIKE'ION isjTa; ai/ifuTe®' aiifusa xj fi^.or. Ethic. Nicom. Lib. VIII. Cap. I.

Saying, that every Creature is led by Nature to feek its own private Advantage, exprejfed thus univerfatty, mufi not be granted.

Vll. For even of the other Animals there are fame that forget ' a little the Care of their own Tntereft, in Favour * either of their young ones, or thofe of their own Kind. Which, in my Opinion, proceeds from ' fome extrinfick intelligent Principle, becaufe they do not Jhew the fame Difpofiiions in other Matters, that are not more difficult than thefe. The fame may he faid of Infants, in whom is to befeen a Propenfity to do Good to others, before they are capable of In- ftru£fion, as Plutarch * well obferves ; and Compaffion likewife difcovers itfelf upon every Occa- fion in that tender Age. But it mufi be owned that a Man grown up, being capable of ailing

VII. (i) It is an old Proverb that a Dog luill.not eat Dog's FkJ}}. Varro De Ling. Lat. Lib. VI. p. 71. Edit. H. Steph. See likewife Erasmus's y&'<?^/«. Juvenal remarks that Tigers live peaceably together, and that the wildeft Beafts fpare thofe of their ovvn Species.

■ Cognatis maculis Jimilis fera ■ hidica Tigris agit rabida cum Tigride pacem Perpetuam : fteiiis inter fe cowvenit urjls.

PuiLo, the Jevj, has a beautiful Paflage to this Pur- pofe. AddreiTing himfelf to Men in regard to the Duties of the fifth Commandment, " At leaft, fays he, imi- " tate the Behaviour of fome brute Beafts, which know " how to make an affeflionate Return for Favours re- " ceived. Dogs keep the Houfe, and even expofe their " Lives in Defence of their Matters, when in imminent " Danger. It is faid that Shepherds Dogs go be- " fore the Flocks and fight till they die, rather than " fufferany of their Cattle to be loft. Is it not moft " Ihameful that Man fhould be outdone by a Dog in " Point of Gratitude, the tameft and moft civilized " Creature, by the moft brutal of Beafts \ But if the " Conduct of terreftrial Animals is not fufficient for our " Inftruilion, let us pafs on to the Confideration of the " Birds of the Air, and learn our Duty from them. " The Storks, when rendered incapable of flying by " Age, ftay in their Nefts, whilft their Young traverfe " Sea and Land in queft of Food for them. The old " ones, erjoying a Repofe fuitable to their Age, live in " Plenty and Pleafure, whilft the young ones fupporting " the Fatigue of their Courfe cheerfully, with the Sa- " tisfaftion they find in acquitting themfelves of their " Duty, and the comfortable Expeftation of the fame " AfTiftance in their old Age, perform this neceffary " Office at a proper Time, in return for the Treatment " they have received. Thus the fame Birds feed their " Young whilft unfledged, and their Parents when in " the Decline of Life. Thus they are taught by Na- " ture to provide with Pleafure for the Suftenance of " thofe, from whom they received it, when not able to " take Care of themfelves. Is not this fufiicient to con- " found fuch as fhew no Concern for their Parents, and " neglefl thofe who alone, or at leaft preferably to all " others, have a Right to their Afliftance ? efpecially " when they confider that in this Cafe they only re- , " turn what they have received. For all that Children " call their own is received from their Parents, who ei- " ther gave the Things themfelves, or put their Chil- " dren in a Condition of acquiring them." See con- cerning the particular Care of Pigeons about theii* Young, Porphyry De non efu Animalium, Lib. III. And as to certain Fiflies, called Scari and Sauri, which fhew a Concern for thofe of their own Species, Cassiodo- Rus Far. Lib. XI. Cap. XL. Grotius.

In regard to the Fifties our Author mentions, they feem to exprefs a Concern for their Species in the fol- lowing Inftances. When one Saurus fees another taken by a Hook, he gnaws the Line, in order to fet him at Liberty, and fometimes fucceeds in the Attempt. And it is no uncommon Thing to obferve feveral of them unite in a Body to deliver a Captive ; fo that if it endea- vours to efcape by the Tail, as he ufually does, they affift him to the utmoft of their Power. If he puts out his Head, one of them prefents his Tail, that he may taften on it, and thus difmgage himfelf, while the other throws himfelf forward and drags him along. In which, as Elian obferves, " they aft like Men, and " praftife the Laws of Fricndfhip, which they learn only

" from Nature." Hifi. Animal. Lib. I. Cap. IV. See alfo Pliny's Nat. Hift. Lib. XXXII. Cap. II. Ovid's Ha- lieutic. Fragm. Ver. 13. t3°r. Plutarch, De Solertid Animalium. Tom. II. p. 977. C.

2 Gronovius on this Place brings the Example of Hens which feed their Chickens, and Cocks which feed the Hens out of their own Mouths. Every one has obferved thisPraftice, as well as the Ardour, with which the wildeft Beafts expofe their own Lives in Defence of their Young ; and the Abftinence of Hounds, which bring the Game to their Mafters. Nor are we lefs ac- quainted with the Fervour, with which Bees and

Pif- mires unite their Labours for the Good of their re- fpeftive Communities, as remarked by the fame Anno- tator from Cicero and Quintilian. The Words of the former in the 19th Chapter of his 3d Book De Fini- bus Bonorum l^ Malnrum, are ; " Even Bees, Pifmires " and Storks, do fome Things for the Sake of others. " This Union is much ftronger among Men ; we are " therefore formed by Nature for Society, mutual AfTif- " tance, and living in Community." The latter in his Injiit. Orat. Lib. V. Cap. XI. p. 303. Edit. Ohrecht. gives this Direftion : " If you prefs a Concern for the " Commonwealth, you may fhew how thofe little dumb " Creatures, the Bees and Pifmires, labour for the com- " mon Good." Several of thofe who have undertaken to criticize, or comment on our Author, have given his Thoughts a Vv-rong Turn in this, and many other Places. The Weaknefs of their Criticifm fufficiently appears from this fmgle Confideration ; that our Author only affirms that the Principle of Sociability has fo real a Foundation in the Nature of Man, that we find fome faint Tracks of it even amongft irrational Animals, in regard to thofe of their own Species. He does by no means pretend either that there is any Right common to Men and Bealts, or that any certain Confequences can be drawn from the Aftions of Brutes, for proving any one particular Thing conformable or contrary to the Law of Nature. See what he fays Book I. Chap. I. § II. and my Remark in the Notes on Pufendorf's Laitj of Nature and Nations, Book II. Chap. III. § 2.

3 See the PaiTage of Fufendorf, referred to in the preceding Note. By this intelligent and exterior Prin- ciple our Author means God himfelf ; as appears from his Treatife Oft}ie 'Truth of the Chriflian Religion 5 where he exprefles himfelf more clearly ; but ftill he does not give us a more juft and philofophical Idea of the Thing. Lib. I. § 7. Confult Mr. Li Clerk's Note on that Piece, p. 1 3 . of the laft Edition of Amferdam, 1717.

4 I know of no other Place in Plutarch, where that Philofopher fpeaks of this natural Propenfity or Inclination of Children, but in his Account of his little Daughter, who, he tells us, was fo furprifingly fweet tempered and benevolent, that file exprefled a Defire tliat her Nurfe fhould give the Breaft not only to other children, but even to her Puppets and Play-things, Ihar- ing with others, whatever v;as moft agreeable to her- felf. Confol. ad Uxorem. p. 608. Tom. II. Edit. Wech. But he is not there fpeaking of the common Inclination of all Children : On the contrar}', he feems to attribute fomething particular to his little Girl, as a Reafon for being more fenfibly afflefted by her Death. As to the Thing itfelf, I think it very probable that, though the Principles and Maxims of the Law of Nature cannot be deduced from the Behaviour of Children, at an Age when their Inclinations aft with moft Freedom, which our Author indeed does not infinuate, there is ftili great Room to believe, that notwithftanding the infinite Di- verfity of Tempers, fuch Difpofitions as are contrary to Humanity, are rather the Refult of a bad Education and Cuftom, than gf a natural and invincible Inclination ;

in the fame « Manner with refpeSl to Things that are alike, has, befides an exquifite Befire * of Society, for the Satisfa£iion of which he alone of all Animals has received from Nature a -pecu- liar Injirument, viz. the Ufe of Speech -, I fay, that he has, heftdes that, a Facidty of knowing and a£iing, according to fame general Principles ; fo that what relates to this Faculty is not com- mon to all Animals, but properly and peculiarly agrees to Mankind.

VIII. This Sociability, which we have now defcribed in general, or this Care of maintaining peculiar to Society ' in a Manner conformable to the Light of human Underftanding, ^ is the Fountain of Man, proper-Right, p-operly fo called ; to which belongs the Abftaining [from that which is another's, and ^/^^"d ftriftly

fo that it may be maintained that all Men, even before they arrive to Years of Difcretion, have the Seeds of Sociability, which confequently are founded in human Nature, and have no Dependence on a View of Intereft, which is all our Author defigns to advance.

5 Whereas Beafts aft in a certain and uniform Man- ner only in regard to one Thing, to which they are impelled, or from which they are diverted by their natu- ral Inftinft.

6 The Emperor Marcus Antoninus obferves that " whenever Man, who is born with a Difpofition to " do good Offices, exerts an Aft of Beneficence, he does " no more than what he was formed for by Nature." Lib. IX. § 42. He alfo afferts that " we may fooner " find a terreftrial Body entirely feparated from all that " is terreflrial, than a Man divided from all other Men." Ibid. § 9. NicETAS Choniates, one of the Writers of the Byzantine Hijiory, fays, " Nature has engraved " and planted in us a fort of Sympathy for one another " as Members of the fame Family." See St. Augustine De DoBrina Chrijiiana, Lib. III. Cap. XIV. Grotius.

The Earl of Shaftesbury proves the Exiftence of this natural and fecial AfFeftion, from the Love of our Country, a Pafiion, which is found in fome Degree in the Hearts of all Mankind. See To/n. III. of his Charallerijiicks, printed in 1727. p. 141, i?V. The Ar- guments of that ingenious and penetrating Author are too long to be inferted here. But we have another Paf- fage much ftiorter in the fame Volume, p. 220, 221. which contains a remarkable Refleftion. " Well it is ■" for Mankind, fays he, that, though there are fo many «' Animals, who naturally herd /or Company s Sake, and '" mutual AffeBion, there are few, who_/ir Coifveniency, " and hy NeceJJity, are obliged to a ftrift Union, and ■" kind of confederate State. The Creatures, who ac- ■" cording to the CEconomy of their Kind, are obliged «' to make themfelves Habitations of Defence againft ** the Seafons and other Incidents, they, who in fome « parts of the Year are deprived of all Subfiftence, and " are therefore neceffitated to accumulate in another, " and provide withal for the Safety of their collefted *< Stores, are by their Nature indeed as ftriflly joined «' and endowed with as proper AfFeftions towards tlieir " Community, as the loofer Kind, of a more eafy Sub- " fiftence and Support, are united in what relates mere- " ly to their Offspring, and the Propagation of their " Species. Of thefe thoroughly-ajffociating and confede- '" rate Animals, there are none, I have ever heard of, ♦' which in Bulk or Strength exceed the Beaver. The " major Part of thefe political Animals and Creatures of " a joint Stock, are as inconfiderable as the Race of Ants " or Bees. But, had Nature afligned fuch an CEconomy " as this to fo puiflant an Animal, for Inftance, as the '" Elephant, and made him withal as prolifick as thofe *' fmaller Creatures commonly are, it might have gone " hard perhaps with Mankind ; and a fingle Animal, " who by his proper Might andProwefs has often decid- ■" ed the Fate of the greateft Battles, which have been ■" fought by human Race, ftiould he have grown up " into a Societ)', with a Genius for Architefture and " Mcchanicks proportionable to what we obferve in ■" thofe fmaller Creatures ; we fhould with all our in- " vented Machines, have found it hard to difpute with " him the Dominion of the Continent."

VIII. (i) Hence it appears that our Author does not mean that bare natural Inftinft in the Rule of the Law of Nature ; but that he adds Reafon for the Direftion of fuch Inftinft, without which it might mifguide us, and induce us to confult only our private Intereft. Hence it is alfo that he elfewhere makes what belongs to the Law of Nature conlift in a necejfary Conformity to, or Diffbrmity from A reasonable and sociable Na-

ture, Book I. Chap. I. § 12. Num. I. So that it is ri- diculous to objeft, as Caspar Ziegler has done, that the Dejtre of Society, ivhich Grotius lays doivn as the Foundation of the Lai)j of Nature, might be gratified, though a Man nuere united in Society and Friend/hip ivith one Nation only, or e'ven ivith one Jingle Family : and that Highivaymen and Pyrates have alfo their Societies, Sec. For Reafon, which is peculiar to Man, and which is more natural to him than the Defire of Society, of which we find fome Traces in Beafts, clearly teaches us that it is not proper to confine Sociability and Affeftioa to a fmall Number of Perfons, or to one fingle Com-' munity ; but that it ought, in fome Manner or other, to extend to all Men, or to all of our own Species ; on whom it is equally diffufed by Virtue of the Defign of Nature, and on the Account of their being naturally all alike and equal. I Ihall not here enlarge on this Subjeft, but refer the Reader to the Explication and Defence of the general Principle of Sociability, in my Notes on Pufendorf's Laiv of Nature and Nations, Book II. Chap. III. So that, on the whole, a Man muft be very wrong headed, who will hereafter expofe himfelf by ftarting and multiplying frivolous Difficulties againft a Truth, which when well underftood, leaves no room for any plaufible Objeftion.

2 Seneca makes an excellent Application of this Principle; " That a Sentiment of Gratitude, fays he, " is a Thing valuable in its own Nature, appears from " the odious Charafter which Ingratitude bears in the " World, there being nothing fo deftruftive of Con- " cord and the Union of Mankind, as this fhameful " Vice. In reality, on what does our Security depend, " but on the mutual Exchange of good Offices ? Cer- " tainly nothing but this Commerce of Benefits can " make Life commodious, and put us in a Condition of " guarding againft unforefeen Infults and Invafions. " How miferable would Mankind be, if every one lived " apart, and had no ReflTource, but in himfelf? So " many Men, fo many Perfons expofed every Moment " to be the Prey and Viftims of other Animals : Blood " continually ready to be fpilt, in a Word, Weaknefs " itfelf. Other Animals are ftrong enough to defend " themfelves. All fuch as are defigned for a wander • " ing Life, and whofe natural Ferocity doth not allow " them to go in Bodies, come into the World armed, " as I may fay. Whereas Man is defencelefs on all " Sides, having neither Claws nor Teeth to make him " formidable. But in Society with his like he finds the " wanted Succours. Nature to make him amends, has " furniftied him with two Things, which from weak " and miferable as he would have been, render him " very ftrong and powerful ; I mean, Reafon and a Dif- " pofition to Society. So that he, who when alone was " not able to refill any other, by this Union becomes " Matter of all. The Difpofition to Society gives him " the Dominion over all the Animals, not even excepting " thofe bred in the Sea, which live in another Element. " It is Society alfo that furnilhes him with Remedies " againft Diftempers, Affiftance in his old Age, Relief " and Comfort in the midft of Sorrows and Affliftions. " This is what puts him in a Condition of defying For- " tune, if I may ufe the Expreffion. Take away the " Difpofition to Society, and you will at the fame Time " deftroy the Union of Mankind, on which the Prefer- " vation and Happinefs of Life depend. Now to main- " tain that Ingratitude is not a deteftable Vice and " what ought to be avoided for its own Sake, but only " on the Account of its pernicious Confequences, is no " better than deftroying the

Difpofition to Society."' De Benefic. Lib. IV. Cap. XVIII. Grotius.

3 Porphyry, Of Abjiinence from Animals, Book III.

Juftice confifts in this, the Abftaining from what is ano-

the Reftitulion of what we have of another's., or of the Profit -we haUe made by it, the Obliga- tion of fulfilling Profjiifes, the Reparation of a Damage done through our own Default, and the Merit of Punifljment among Men.

IX. From this Signification of Right arofe another of larger Extent. For by reafon that Man above all other Creatures is endued not only with this Social Faculty of which we havefpoken, but Ukewife with Judgment to difcern 'Things ' pleafant or hurtful, and thofe not only prefent but future, andfucb as may prove to be fo in their Confequences ; it muft therefore be agreeabk to human Nature, that according to the Meafure of our Underftanding we fjjould in thefe Things

follow the DiSfates of a right and found Judgment, and not be corrupted either by Fear, or the Allurements of prefent Pleafure, nor be carried awa'^ violently by blind Paffion. And whatfo- ever is contrary to fuch a Judgment " is Ukewife underjlood to be contrary to Natural Right, that is, the Laws of our Nature.

X. Jnd to this belongs a ' prudent Management in the gratuitous Diftributton of Things that

properly belong to each particular Perfon or ^ Society, fo as to prefer fometimes one of ' greater

before one of lefs Merit, a Relation '^ before a Stranger, a poor Man before one that is rich,

and that according as each Man's Aclions, and ' the Nature of the Thing require; which many

both of the Ancients and Moderns take to be" a part of Right properly and firiSily fo called ;

when notwithftanding that Right, properly fpeaking, has a quite different Nature, ftnce it con-

ftjls in leaving ^ others in quiet Poffejfion of what is already their own, or in doing for them what

ther's, and the doing no Injury to thofe that do none to us. Grotius.

IX. (i) Indicium ad aftimanda quts deleBant aut mcent

. ^ qua in utrumvis poffunt ducere. Thefe Words

Mr. Barbeyrac renders chafes agreables i^ defagre-

ables, &c. On which Occafion he profefles to follow the Author's Senfe, rather than his Expreffion, The Word deleBant, fays he, is not direftly oppofed to noceyit ; and I fufpeft fome OmiiTion in the Text ; though the Paffage appears the fame in all Editions of this Work. It is probable, continues our learned Commentator, that Grotius wrote, or defigned to write, ^i<s dekc- tant AUT DOLOREM CREANT, qua jwjant, aut mcent. Sec. and that the Words here given in the Roman Cha- radter being left out, he did not obferve the Omiflion in reading over this Place.

2 It is evident that this includes thofe Duties of Man in regard to himfelf, which are enjoined him even by the Frame of his Nature, and which may be feen at large in Pufendorf's Laiu of Nature and Nations, Book II. Chap. IV.

X. (i) St. Ambrose treats of this in his firft Book Of Offices. Grotius.

Our Author probably had his Eye upon Chap. XXX, where that Father treats of Beneficence, and fpeaks, as ufual, in a loofe and confufed manner of the Rules to be followed in the prudent Management of the Good we do to others.

Our Author fpeaks here of fuch Rewards as are given by the State, or thofe who reprefent it, to Perfons diftinguiflied fay their Merit ; as alfo of the Collation of publick Offices. For they who receive the former, or are placed in the latter, had no full Right to demand them, nor to claim confiderable ones as their due, how great foever their Merit may be, or how glori- ous foever the Aftions are, which recommended them. -ht&BookW. Chap. XVII. §2.

3 This Maxim is always to be obferved by thofe, whofe Bufinefs it is to difpofe of publick Employs. But it does not always take Place in private Liberali- ties and the Services we do one another ; the Ties of Blood, a preffing Neccflity, and other fuch Confidera- tions, fometimes require the Preference of a Perfon, otherwife of lefs Merit. See a beautiful Paflage of Cicero to this Purpofe, quoted at large in my Pufendorf's Laiu of Nature and Nations,^ookIll. Chap. III.

4 This takes Place, all Things elfe being equal. For it would be a miftaken piece of Charity to beftow a publick Employ on one who is in great Neceffity, to the Prejudice of another, much more capable of difcharging the Obligations of fuch a Poft. In that Cafe, a Regard to the Poverty of the Candidate, would be a Refpeft of Perfons as culpable as that of a Judge, who fhould on that Confideration pronounce Sentence in Fa- vour of a poor Man, contrary to Law and Equity ; which is exprefly forbid by the Law of Mofes, Exod.

xxiii. 3. on which Place fee the Note of Mr. Le Clerc.

5 Much Judgment and Circumfpeftion are to be ufed in this Particular ; and it is difficult to lay down any general Rules in Relation to it, becaufe the Pradlice of this Duty is diverfiiied by an infinite Variety of Circumitances. Mr. Buddeus has written an ufeful Differtation on that Subjeft, intitled, De Comparatione Obligationum, qua ex di'verfis haminum fiatibus oriimtur j it was printed in 1704, among the SeleBa Juris Natura: Jif Gentium.

6 The Author fpeaks of fuch as follow Aristotls, and make the Diftribution in Queftion belong to diflributi--M Jujlice, according to that Philofopher's Accepta- tion of the Term, who reckons it part oi pri'vate or rigorous Jujlice, by Virtue of which a Man may make a rigorous Demand of what is his Due. See the folr lowing Note, and what the Author fays. Book I. Chap. I.

7 Since it confijls in leaving others in quiet Poffefpon of luhat is already their oivn, or in doing for them ivhat in StriBnefs they may demand. This is the Senfe of the ■ Author's concife Expreffions : Ut qua jam funi altertus, alteri permittantur, aut impleantur. It is probable that he had written or defigned to write, aut <ivJE alterI debentur, impleantur, as I have obferved in my Edi- tion of the Original. A ftw Examples will

explain his Meaning. When we forbear ftriking, wounding, robbing, injuring or defaming any one, we only /ea've him in quiet Foffefjlon of ivhat ivas his oivn ; for the good Condition of his Limbs, his Goods, and Reputa- tion, are aftually his ov/n, and no Man has a Right to difpoifefs him of them, while he has done nothing to deferve fuch Treatment. When we repair the Da- mage he has fuftained in his Perfon, Goods, or Re- putation, whether defignedly or through Inadvertency, we reftore what we had taken from him, and what was his own, ivhich he had a JiriB Right to demand. When we keep our Word to him, when we perform our Promife, or make good an Engagement, we do not indeed reftore, what he was once in aftual Pofleffion of ; but we perform ivhat he might firiBk require at out- Hands. All this relates to the Laiu of Nature, taken in the firiB and proper Senfe of that Term ; not to mention' the Punijhment of the Guilty, of which our Author feems not to defign to fpeak in this Place ; though he ranks it in the fame Clafs, as we have feen § 8, and as we fhall Ihew in our latt Note on BooA I. Chap. L. § 5. When the Sovereign refufes to beftow an Employment on one of his Subjedts, who is worthy of it, or prefers one lefs capable of difcharging the Duty, or does not reward the Perfon according to his Merit, he does in- deed offend againft the Laiv of Nature, taken in an im- proper, and lefs cxtenfiqje Se?fe, according to our Author's Ideas ; but he does that Subjeft no Wrong, properly fpeaking, becaufe he had no full and rigorous Rights to demand the Employment, or the Reward. The fame

XI. And indeed, all iJOe have 7iow /aid would take place, ' though we jhould even vrayit iahat without the greateft JVickednefs cannot be granted, that there is 7to God, or that he takes no Care of human Affairs. 'The contrary of which appearing ' to us, partly from Reafon, partly from a perpetual Tradition, which many Arguments and Miracles, attefted by all Ages, fully confirm ; it hence follows, that God, as being our Creator, and to whom we owe our Being, and all that we have, ought to be obeyed by us in all Things without Exception, efpecially fince he has fo many Ways /hewn his infinite Goodnefs and Almighty Power ; whence we have Room to con-\ elude that he is able to beftow, upon thofe that obey him, the greateft Rewards, and thofe eternal too, fince he himfelfis eternal ; and that he is willing fo to do ought even to be believed, efpecially if he has in exprefs Words proniifed it ; as we Chrijlians, convinced by undoubted Teftimonies, believe he has.

XII. And this now is another Original of Right, befides that of Nature, being that which ■ proceeds from the free Will ' of God, to which our Vnderfianding ijtfallibly affures us, we ought to be fiibjeSl : And even the Law of Nature itfelf, whether it be that which confifis in the Main- tenance of Society, or that which in a loofer Senfe is fo called, though it flows frotn the internal Principles of Man, may notwithfianding be jujlly afcribed ^ to God, becaufe it was his Pleafure that thefe Principles fhould be in us. And in this Senfe Chryfippus ' and the Stoicksyafi, that the Original of Right is to be derived from no other than Jupiter himfelf; from which Word Jupiter it is probable * the Latins ^a'y^ it the Name Jus.

XIII. There is yet this farther Reafon for afcribing it to God, that God by the Laws which he has given, has made thefe very Principles more clear and evident., even to thofe who are lefs capable offtri£l Reafoning, and has forbid us to give way to thofe impetuous ' Paffions^ which^

is to be faid of thofe, who refufe Relief or Afliftance to the poor and miferable, not in extreme Neceffity j for in that Cafe they have a ftridt Right to demand what they want, as we fhall fee in the proper Place. The

learned Gronovius, prepofleffed with Aristotle's Ideas, and not giving due Attention to the Matter, and the Sequel of our Author's Difcourfe, widely mif- takes his Meaning, and perplexes the Queftion both here and elfewhere ; in which he has been faithfully followed by Mr. De Courtin.

XI. (i) This Aflertion is to be admitted only in the following Senfe : That the Maxims of the Law of Nature are not merely arbitrary Rules, but are founded on the Nature of Things ; on the very Conftitution of Man, from which certain Relations refult, between fuch and fuch Aftions, and the State of a reafonable and fociable Creature. But to fpeak exadtly, the Duty fend Obligatiotj, or the indifpenfible Neceifity of conforming to thefe Ideas, and Maxims, neceifarily fup- pofes 'a fuperior Power, a fupreme Mailer of Mankind, who can be no other than the Creator, or the fupreme Divinity. We fhall treat of this Subjedl more largely in the fourth Note on Book I. Chap. I. § lo.

2 The Reader may fee on that Subjeft the excellent Treatife of our Author, Concerning the Truth of the Chrif- tian Religion.

XII. (i) For this Reafon, according to the Senti- ment of Marcus Antoninus, every Man, who com- mits an Aft of Injuftice, renders himfelf guilty of Im- piety. 'O d^xm aa-iZa. Lib. Hi. § 1. Grotius.

This Paffage is beautiful, but ill applied. The Au- thor ought to have placed it among thofe quoted in the following Note. In Reality, he is here talking of Voluntary Divine Laiv, as he himfelf calls it. Book I. Chap. I. § 15. or of that, which, being in its own Nature indifferent, becomes juft or uiijuft, becaufe God hath commanded or forbidden it. This is evident from the very Terms he employs, and the Sequel of the Difcourfe ; for he calls the Will, which is the Source of this Right, a free or arbitrary Will; and afterwards obferves, as it were occafionally, that the Laiv 0/ Na- ture, of which he has been laying the Foundation, may be alfo confidered as flowing from the Divine Will, becaufe it ivas his Pleafure to eftablijh fuch interior Prin- ciples in Men ; or that his Nature (hould be framed in the Manner it is. Our Author's Meaning therefore in this Place is, that even though there were no Natural Right, or though the Frame of our Nature did not of itfelf engage us to aft in fuch or fuch a manner, yet upon the Acknowledgment of a Deity, of whofe Exiftence we cannot reafonably be ignorant or doubt- ful, we muH likewife own ourfelves obliged to obey him, whatever he commands, even though his Laws had no other Foundation but his abfolute and arbitrary

Will. Thus we fliould always find a Source 6f Right there ; for that God, who has fo clearly revealed himfelf to Men in the Books, which we call the Holy Scriptures, has there prefcri bed them a Set of Laws entirely like thofe, which we fay were impofed on them by the Frame of their own Nature. But it may be farther faid that the Law of Nature, though fufScient- ly founded in itfelf, does likewife derive its Origin from God, independently of Revelation, as it was his Pleafure, &c. This I take to be the Meaning of our Author, and the Connexion of his Difcourfe, which does not appear at firfl Sight. The Impropriety of this Quotation will appear ftill more from the Words immediately following, which it is not aniifs to prpj duce. The Emperor gives a Reafon for what he had advanced, wz. that every Injuftice is a real Impiety. For, fays he, uni'verfal Nature having made reafonable Creatures for one another, that they may afjift one ano- ther, according to the Merits of each Individual, and do no Hurt to others ; he 'who difobeys her Will, is manififily guilty of Impiety againjl the moji antient Di-vinity. Many Pa- gan Authors have alfo

acknowledged that the Law of Nature is a divine Law. See fome Paffages alledged in my Remark on Pufendorf, Boo-kll. Chap. IV. § 3. Num. 4.

2 " When I fpeak of Nature, fays St. Chrysostom, " on I Cor. xi. 3. I mean God ; for he is the Author " of Nature." And Chrysippus e.xpreffes himfelf thus. " For it is not pofllble to £nd any other Prin^ " ciple or Origin of Juftice, than Jupiter and univerfal " Nature ; for there we muft always begin, whenever " we defign to treat of Good and Evil." Book III. Of the Gods. Grotius.

This laft Paffage cited from a Stoick, whofe Works are not extant, though he publifhed a great Number, is preferved by Plutarch, in his Treatife De Stoico- rum repugnantiis, p. 1035. Tom. II. Bdit.Wechel.

3 See the preceding Note. Cicero alfo maintainsj that the wifell and moll learned Men have been of Opinion that the Source of all Law and Juftice is to be fought for in the Divinity. See his Treatife de Legibus, Lib. 11. Cap. IV. and Lib. I. Cap. V, VII, X.

4 Perhaps, it might be rather faid that as OJfum has been converted into Os, fo Juffum has been changed in- to Jus, Gen. Jufis, which was afterwards made Juris, as Papijii was turned into Papirii. See Cicero Ep. ad Fflra. Lib. IX. Ep. XXI. Grotius.

XIII. (i) Diforderly Paffions are condemned through the whole Scripture, efpecially in the New Teftament, which forbids us, under very fevere Penalties,^ to allow ourfelves to be hurried away by thofe blind Motions. The Apoftle St. John includes them all un- der three Heads, the Lujt of the Flejh, the Lufi of the Eyes,' and the Pride of Life, 1 Ep. Chap. 11, Ver, 16. that is,

contrary * to our own Intereft, and that of otherSy di'uert us from following the Rules of ReafoH and Nature ; for as they are exceeding unruly, it was neceffary to keep a ftri^i Hand over thenit and to confine them within certain narrow Bounds.

XIV. Add to this, that facred Hifiory, beftdes the Precepts it contains to this Purpofe, affords no inconfiderable Motive to focial AffeElion, fence it teaches us that all Men are defcended from the fame frjl Parents. So that in this Refpe5i alfo may he truly affirmed, what Florentinusyazi in another Senfe, "That ' Nature has made us all akin : Whence it follows, that it is a Crime for one Man to a^ to the Prejudice of another.

XV. Among fi Men, Parents ' are as fo vianyGods * in regard to their Children : 'flserefore the latter owe them an Obedience, not indeed unlimited, but as extenfive ' as that Relation requires, and as great as the Dependence of both upon a common Superior permits.

2 Human. XVL Again, fence the fulfilling of Covenants belongs to the Lav: of Nature, (for it was ne-

ceffary there Jhould be fome Means of obliging Men among thetnfelves, and we cannot conceive any Civil of every other more conformable to Nature) from this very Foundation ' Civil Laws were derived. For State. . tJjofe ^Jjo had incorporated themfelves into any Society, or fubjeUed themfelves to any one Man.,

or Number of Men, had either exprejly, or from the Nature of the Thing muji be underfeood to have tacitly promifed, that they would fuhnit to whatever either the greater part of the Society, or thofe on whom the Sovereign Power had been conferred, had ordained.

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

I Intereft, that Spring of Juft and Right. Creech.

if we fpeak accurately, is not true-, for the Mother of Natural Law is human Nature itfelf, which, though even the Neceffity of our Circumfeancesfljould not require it, would of itfelf cre- ate in us a mutual Defer e of Society : And the Mother of Civil Law is that very Obligation which arifes from Confent, which deriving its Force from the Law of Nature, Nature may be called as it were, the Great Grandmother of this Law alfo. But to the Law of Nature Profit is annexed : For the Author of Nature was pleafed, that every Man in particular * fhould be weak of himfelf, and in Want of many Things neceffary for living commodioufly, to the End we might more eage^iy affect Society : Whereas of the Civil Law Profit was the Occafion ; for that entering into Society, or that Subjection which we fpoke of, began firft for the Sake of fome Ad' vantage. And beftdes, thofe who prefcribe Laws to others, ufually have, or ought \ to have, Re-^ gard to fome Profit therein.

XVIII. But as the Laws of each State refpeSt the Benefit of that State ; fo amongft all or fnofi: States there might be, and in Fa£i there are, feme Laws agreed on by common Confent,

Of Nations ; which refpe£i the Advantage net of one Body in particular, but of all in general. And this is

ofallormoft what is called the Law of Nations, ' when ufed in Diftinclion to the "^ Law of Nature. This States.

in the Language of the Philofophers, fenfual Pleafure. Relation between Parents and their Children is next to

Cinietoufncjs, and Ambition. that between God and Men ; fecunda poji Deum fasdera-

2 In the Original it is quite the reverfe : ^i nobis tio. Plato calls Fathers and Mothers Images of the

ipjts, quique aliis confulunt. But though all the Editions I Di'vinitj. De Legib. Lib. XL (p. 930, 931. Tom. 11.

have feen, and even that of 1632 read it fo, it is evi- Edit. H. Steph.) Parents are to be honoured like the Gods,

dently faulty. It Ihould be read male confulunt, as I according to Aristotle. Ethic. Nicomach. Lib. IX.

have correfted it in my Edition of the Original, where Cap. II. Grotius.

the Reader may fee the Reafon why the Word fupplied The Paffage here quoted out of Hierocles, is not in

is here abfolutely neceffary. his Commentary on the Golden Verjes. They occur in

XIV. (1) Bigeft. Lib. I. Tit. I. De Jujlitia ^ Jure. STOB.aEus, Serm. LXXVII. where he fays a Man would Leg. III. The Ideas of the Stoicks, and fuch was this 7iot commit a Miftake, ivho Jhould call them (Parents) Gods Lawyer, concerning the Origin of Mankind, were very of a fecond Clajs, and terreftrial Deities. P.ig. 461. £rf/V. confufed ; and though they introduced the Divinity, it Wechel.

was in a very different Manner from what Moses ufes in 3 See below ^oo,^ I. Chap.W. §6. Num.2.

his Hiftory of the Creation. See Justus Lipsius's XVI. (i) So that the C;to7 /.axf, though no kind of

Phyfulog. Stoic. Lib. III. Differt. IV. The Kindred, Law is in itfelf more arbitrary, is at the Bottom no

which they conceived as fubfifting among Men, did not more than an Extenfion of Natural Law, a Confequence

confift in their confidering all Mankind as defcended of that inviolable Law of Nature, that eveiy one is obliged ^

from the fame Father and the fame Mother ; but only to a religious Performa?ice of his Promifc.

in the Conformity of their Nature, and the Principles

or Materials of which they thought them compofed. "KSIW. if) AtqueipfaUtilitasJufli prop} mater, ^ ^qui.

See Marcus Antoninus, Booill. § i. and Gata- Horat. Lib. 1. Sat. III. Ver. 98.

XV. (i) The Author here paffes almoft imperceptibly Upon whichPlace, anancientCoromentatoronHoRACE, to another Species of Voluntary Laiv, which however is whether Acron or any other Grammarian, makes the founded in Nature ; it is what a Father and a Mother following Remark. " The Poet here oppofes the Te- prefcribe to their Children ; for Children are obliged " nets of the Stoicks ; for his Defign is to prove that to obey their Parents, becaufe they gave them Birth ; " Juftice is not Natural, but derived from Intereft." in which Adlion, though the Hufband and Wife are no See what St. Augu.stin fays againft this Opinion, De more than blind Inftruments, they in fome Meafure Doflrina Chrijiia?ia, Lib. III. Cap. XIV. Grotius. imitate God. 2 Ibid. § 8. Note 2.

2 Hierocles, in his Comment on Pythacoras's 3 See Pufendorf, BookVll. Chap. IX. § 5.

Golden Verfes, fays that a Father and a Mother are /cr- XVIII. (i) See Book 1. Chap. I. §14.

rejirial Gods. Philo, on the Decalogue, calls them "m- z For thefe two Names are fometimes confounded.

Jible Gods, 'who imitate the unoriginated God, in producing See what I have faid on Pufendorf, &ffi 11. Chap.Wl.

li'uing Creatures. Pag. 761. Edit. Paris. St. Jerom § 23. Note 3. (Ep. XLVII. Tom. I. p. 224. Edit. Bafil,) fays that the

pari of Law Carneades omitted, in the Divifian he made of all Law into Natural and Civil of each People or State ; zvhen notwithflanding, fince he was to treat of the Law which is between Nations {for he added a

Difeourfe concerning tVars and Things got by War) he ought by all means to have mentioned this Law.

XIX. But it is ahjurd in him to traduce juflice with the Name of Folly. ' For as, accord- ll. Objefti- ing to his own Confejfion, that Citizen is no Fool, who obeys the Law of his Country, though out ofons confuted; Reverence to thdt Law he tnujl and ought to pafs by fome things that might be advantageous to ^^^^^^ "°' himfelf in particular : So neither is that People or Nation fooliflj, who for the Sake of their ° ^' own particular Advantage, will not break in upon the Laws common to all Nations ; for the fame ' Reafon holds good in both. For * as he that violates the Laws of his Country for the Sake of fome

prefent Advantage to himfelf, thereby faps the Foundation of his own perpetual Interefl, and at the fame Time that of his Pojlerity : So that People which violate the Laws of Nature and Nations, break down the Bulwarks of their future Happinefs and Tranquillity. ^ But befides, though there were no Profit to be expebled from the Obfervation of Right, yet it would be a Point ofWifdom, not of Folly, to obey the Impulfe and Dire£iion of our own Nature.

XX. Therefore neither is this Saying iiniverfally true^ ,

' 'Twas Fear of Wrong that made us make our Laws. C r e e c Hj

which one in Plato exprefjes thus, ' The Fear of receiving Injury occafioned the Invention of Laws, and it was Force that obliged Men to praSiife Juftice. For this Saying is applicable only to thofe Confiitutions and Laws which were made for the better Execution of Juflice : Thus many, finding themfelves weak when taken fingly and apart, did, for fear of being opprejfed by thofe that were ftronger, unite together to ejlablifh, and with their joint Forces to defend Courts of Ju- dicature, to the End they might be an Overmatch for thofe whom fingly they were unable to deal with. And now in this Senfe only may be fitly taken what is faid. That Law is that which the ftronger pleafes to impofe ; by which we are to underfland, that Right has not its Effect external- ly, unlefs it be fupported by Force. Thus Solon did great Things, as he himfelf boafted,

' By linking Force in the fame Yoke with Law.

' XXI. Tet neither does Right lofe all its EffeB, by being deflitute of the Jjfiftance of Force. JuftJce trlngs For Juftice brings Peace to the Confidence ; Injuftice, Racks and Torments, fuch as Plato ' de- Pf^'^s 5° ^^® fcribes in the Breafts of Tyrants. Juftice is approved of, Injuftice condemned by the Confent of all good Men. But that which is greate/i of all, to this God is an Enemy, to the other a Patron, who does not fio wholly refierve his Judgments fior a fiuture Lifie, but that he ofiten makes the Ri- gour of them to be perceived in this, as Hiftories teach us by many Examples t

XIX. (i) Add to all this what Pufendorf fays 3 'Oftff ^'il» rt >^ i'iicv trvia^fkiirm. Plut. in Solotn

II. Chap. III. § 10. Tom. I. p. 86. Edit. Wechel. To the fame Furpofe

2 The Emperor Marcus Antoninus makes a judi- OVid : cious Ufe of this Comparifon. E-very Jdion of yours,

luhich has not a near or remote Relation to the Publick Good, In caufaqiie 'valet, caufamque tuentihus amis.

as its End, dejirojs the Harmony and Uniformity of Life : It ,»

is feditious, like that of a Citizen, -who by forming Cabals, That is, " He has a good Right, and his Right is fupported

breaks the Union of the State. Book IX. § 23. And in " ly Arms." Metam. Lib. VIII. Ver. 59. Grotius. znother Fhce he fa.ys. He luho di-vides himfelf from another. See Pufendorf, Book I. Chap. VI. § 12. In the

cuts himfelf off from all human Society. Book XI. § 8. In Paflage from OVid, where Scylk, the Daughter of Ni-

Reality, as the fame Emperor elfewhere obferves, what fus, fpeaks of Minos, King of Crete, the common

is ufeful to the whole Swarm, is ufeful to each particular Pointing, which our Author follows, is not juft. The

Bee. Grotius. laft Words of it are to be joined to the Beginning of the

The Author, who probably trufted his Memory on next Verfe, and read thus : this Occafion, has mifquoted the fecond of thefe Paf-

fages ; for inftead of o'Kk t5{ Koumiai; UTsTrinlaXf, he • caufamque tuentihus armis :

writes b' ^ot»1«i fiD kJ o'^a (pi/Aa iytoxixd^Sai, i. e. wa/? Ut puto, wincemur.

neceffarily bi cut off from the muhole Body of Mankind. The

Miiftake was occafioned by the laft Words immediately That is, " And it is my Opinion ive fhall be overcome by

preceding the former Sentence, and making part of a " the Superiority of his Arms, -which fa'vour the Juftice of

Comparifon; which the Author forgetting, and con- " his Caufe ." See Mr. Wurman's Edition, publiihed in

founding with what follows, has changed ipura, the '713- Word in the Original, into (piXa. The whole Paflage XXI. (i) See Gorgias, Tom I. p. 524, 52;, and

runs thus : A Branch broken off from tlie Branch to luhich Book IX. of Plato's Republic. Tom. II. p. 579. Taci-

it grew, mufi neceffarily be broken off from the nvhole Tree; Tus produces that Philofopher's Thought on Occafion

fo likewife a Man, &c. The laft Paflage is in Book VI. of the Remorfe of Confcience, with which Tiberius was

§ 54, and ftands thus : tFiat is not good for the Sivarm, tortured. Thenvijeft of Men had good Reafon for affirming

is not good for the Bee. that if the Souls of Tyrants could be cxpofed to Vienv, ive

Jhould fee them under 'violent Racks and Tortures ; for as

XX. (i) Jura in'venta metu injufti fateare neceffe eft. the Body is torn -with t4"hips, fo is the Mind ivith Cruelty,

HoRAT. Sat. III. Ver. III. Lufi, and Male- Adminifiration. Neither the Splendor of the

Imperial Dignity, nor Retirement, could fecure Tiberius, or

2 Book II. Of the Common-Wealth, Tom. II. p. 359. hinder him from confefflng the Torments of his Soul, and in-

Edit. H. Steph. See likewife Gorgias, Toot. I. /. 483, terior Puni/hment of his Crimes. Anlials, Book W.

and Pufendorf, Bookl. Chap. VI. § 10. Ciap.Vl. .

Equally con- cerns private Perfons, Na- tions, and Ru lers of Nati- ons.

XXII. But whereas many that require Jufiice in private Citizens, make no Account of it in a whole Nation or its Ruler ; the Caufe of this Error is, f.rft, that they regard nothing in Right hut the Profit arifmg from the FraElice of its Rules, a Thing which is vifible with Refpeff to Citizens^ who^ taken ftngly, are unable to defend theinfelves. But great States, that feem to have within themf elves all things necefjary for their Defence and Well-being, do not feem to the'mr to ft and in need of that Virtue which refpe£fs the Benefit of- others, and is called Jufiice.

XXIII. But, not to repeat what has been already faid, namely^ that Right has not Interefi: merely for its End ; there is no State fo firong or well provided, but what may fometimes fiand in need of Foreign Affiflance, either in the Bufinefs of Commerce, or to repel the joint Forces of feveral Foreign Nations Confederate againft it For which Reafon we fee Alliances defir^d }>y the mofi powerful Nations and Princes, the whole Farce of which is defrayed by thcfe that cm- fine Right within the Limits of each State. So true is it, that the Moment we recede from Right, ' we can depend upon nothing.

XXIV. If there is no Community which can be freferved without fome Sort of Right, as Ariftotle ' proved by that remarkable ^ Inftance of Robbers, certainly the Society of Mankind, or of feveral Nations," cannot be without it ; which was ohjerved by him who faid, ' That a bafe Thing ought not to be done, even for the Sake oj ones Country. Ariftotle ^ inveighs feverely

XXII. (l) ^c^forasfpeaat. Gronovius obferves, that our Author here makes Ufe of an Expreffion of A-PULEIus, Book II. Of Moral Philofcphy, (p. 15, l6. Edit, Ehnenhorfi) where that Platonifi, treating of the

Virtues according to the Notions of his School, fays, that VFhen Juftice is ad'vantageous to the PoJJiJor of ttmt Virtue, it ii termed Benevolence ; but 'when it extends to Ihe Intereft of others, it is properly called Juftice. The Commentator, who produces this Paffage, nught h;ive gone higher, and difcovered the Source from which both AruLEius and Grotius derived this Diftinfti- on. Cicero, m. Book \\ oi \\\% Republic , {ij^. Justice regards luhat is nvithout us ; it is diffufcd and e.xfenji've. And in this he only follows Aristotle, '.yhofe Words are thefe : The Jtift Man afls for the Benefit of others ; and it is for this Reafan that ivefaj fujlice is a Good belong- ing toothers. Ethic. Nicom. Lib.V. Cap. X.p. 6y. Ed. Parif. • XXIII. (i) The Words here ufed are taken from a Pafiage in one of Cicero's Epiftles, which our Author quotes in his Note on the next Paragraph. They do not relate to Right in general, but to Civil Laws only. The fame is to be cbferved of the Paffage in the Oration for Ceciaa, to which Gronovius refers us in this Place, as if the Author had it in View, and it exadtly exprefled his Thought.

XXIV. (i) I am very much mifcakcn, if the Author has not put the Scholar's Name for that of the Mailer. I am induced to think fo, not only becaufe he has not fpecified the Place of Aristotle either in the Margin, or the following Note, where he has thrown together feveral PafTages of other Authors to the fame Purpofe ; but alio becaufe I never faw that Philofqpher quoted for the Obfervation in Queftion ; nor do I remember to Lave found this Thought in any of his Moral or Politi- cal Works. On the contrarj', the Commentators have, quoted Plato, on a well-known Pafl'age of Cicero, where the fame Remark is very finely turned ; fo that it is furprizing that Grotius takes no Notice of either of thofe two great Writers. The Grecian Philofopher fpeaks thus : Do you imagine that a City, an Army, a Gang of Thicwes or Highivaymen, or any other Body of Men, united in an unjuji Defgn, could e'ver fucceed in their Enter- prizes, if tlyey dealt unjujlly vjith one another. No certainly, replied the other Perfon in the Dialogue. De Rep. Lib. I. p. 351. Edit. Steph.

Such is the Force of Juftice, fays Cicero, that even they that Ifje by their Crimes cannot Jubfift, ivithout praffif- ing fome Sort of Juftice among then^fehes : For if anf one of thofe, rvjho rob in a Gang, defrauds or robs his Companion, he is no longer alloi<;ed a Place even in that infamous Society. A^ Chief of the Pyrates, 'who does not make an equal Dif- tribution of the Eootf, is either killed or ahandofied by, his Men. It is cuen faid that Highnvaymen hai'e a Set pf Laivs, to 'which they fubmit, and 'vjhich they obfer've. De OfRc. I^ib., II. Cap. XI.

2. St. Chry -oftom has the fame Obfervation. But you rwillajk ho'w Pligh'u-aymen li've peaceably together ; and 'when this is the Cafe ? Certainly, 'when they do not a£l like Rob- bers ; for if in the Dftribution ofi/:hat they get, they do not ohferve the Laivs of Juftice, and give e'very one his Share,

you "Jjill then fee them quarrel and fight 'with one another. In Eph. iV. Plutarch having fet down Pyrrhus'i Ex- preffion, that he would leave his Kingdom to that of his Sons, who!'.:- Sword IhpulJ be fliarpeft, cornpares it with a Verfe in the Phenicia:! Women of Euripides. (Ver. 68.) Thei di'vide my Eft ate 'with ajharp SiMord- To which he adds this Exclamation : So vnficiable qnd brutal is the Paftlon of A'varice ! In the Life of Pyrrhus, Tom. I. p. 388. Edit.tVcch. CiGERofays, We can Imuc no cer- tain Dependence an any Thing, 'when Jtftice is difregarSsd. Ep. ad Fam Lib. IX. Ep. XVI. Polybius obferves that the Diffolution of the Society of Villains and Robbers, ii chief.' onuing to unfjft Pradices among themfehes, and their not being true one to another. Chap. XXiX. Grotii?*.

3 I'he Author probably had his Eye upon a Paflbge of Cicero, where that great Orator and Philofppher propofes this Qiieftlon : Whether the Intere/1 of e^ Commnk' nity moft conformable to the La'W of Nature is always to be preferred to Moderation and Modefty ; he anf.vers ilj the- Negative ; For, fays he, there are fame Things fo Jhame-

ful and criminal, that a. 'wife Man 'will not do them erven for the Prefer'vation of his Coimtry. De 0:ffic. lAb. I. Cap. XLV. He afterwards aflerts, that by good luck it can never happen that the Intereft of the State (hould re- quire fuch Things to be done, which ought to be well obferved. Grotius.

4 The Paffage here alledged is in the feventh Book of Aristotle's Politicks, Chap. II. p. 427. See alfp his Rhetorick, Book I. Chap. III. p. 519. Tom. II, Edit. Paris, 1629. For the better underftanding his Thought, it is to be obferved that he is oppofmg the. Opinion of fuch as maintain that good Policy requires; making Conquefts, and extending them as far as pofTible, at the Expence of the Liberty of the neighbouring Peo- ple. The Philofopher, amongft other Reafons againft' this way of thinking, urges that " // does not become an " able Adminiftrator of the. State, and a wife Legiflator, " to do any thing which is not lawful, or agreeable. to " the Rules of Civil Society. But, fays he, it' is unlaw- " ful, and contrary to the Rules of Civil Society, to de- " fire to have the Command of others at any Rate, juft- " ly or unjuftly ; and Conquefts may be unjuft. This " way of reafoning holds good in regard to otl^er. " Sciences. For. Example, it is not the Bufinefs of a " Phyfician or a Pilot to ufe Perfuafion or Force indifr " ferently in their rcfpeftive Profeffions. But, adds " Aristotle, the Generality of Mankind give into. " this Miftake, that political and defpotick Govern- " ments are but two Names for the fame Thing : They, " make no Scruple of doing that to others, which they,. " look on as unjuft, and prejudicial in regard to them- " felves. They are willing to fubmit only to thofe'.' " who command them with Juftice ; but when it comes " to their turn to command, they gives themfelves no " Concern about the Juftice of the Aftion." On read- ing thefe Words, one would conclude that Aristotle entertained very juft Ideas of the natural Quality of each Man in particular, and Nations in general. But, it ap- p';?rs from- the Sequel, that he was of Opinion that fome. Men, and even fome People, vjeix naturally Sk'ues, on

-againjl thofe ^ who, though they would not have any to govern amongH: themfelves, hut 'he^wat ■ has a Right to it, yet in regard 'to Foreigners are not concerned whether their JSiigns bejujl or mnjuft.

XXV. A Spartan King having faid, ' that is the moft happy Commonwealth, whofe Bounds Govem&. were determined by Spear and Sword ; the fame Pompey, whom we , lately mentioned on the ^^^^^ ' contrary Side, correcting that Maxim /aid. That is happy indeed, which has Jujlice for its Boun- daries. For which he might have ufed the Authority of another Spartan King *, who preferred Juftice before ' militarj Fortitude, for this Reafon, that Fortitude ought to he regulated h.y fame

fcrt ofjufiice : And that if all Men were Juft, they would have no Occafion for that Fortitude. The Stoicks defined* Fortitude it f elf to he the Virtue that contends for J uf ice, Themiftius, in his Oration to Valens, fays very elegantly, that Kings, who condu^ themf elves by the Rules^ of JVifdom, take Care, not only of the Nation whofe Government they are entrujied with, hut of all MaJtkind ; and are, as he expreffes himfelf, not (piMfAoixi^ova Friends to the Macedonians only, or <piAopai|M«<cu to the Romans, hut <piA«'v6^aj5roj ' to all Men without Exception. Nothing elfe made the Name of Minos odious to Pofterity,

® hut his confining Equity within ihe Limits of his own Empire.

XXVI. But fo far muft we he from admitting the Conceit of fame, that the Obligation of ^nd War ,• all Right ceafes in War ; that on the contrary, rio War ought to he fo much as undertaken hut for '^^""^"^ '^^■^ the obtaining of Right ; nor when undertaken, ought it to he carried on beyond the Bounds of '^'^ °^ ^*^^*'°' Jujlice and Fidelity. Demofthenes ^ faid well, that War is made againjl thofe who cankot he rejirained in a judicial Way. For judicial Proceedings are of Force againB thofe who are fen-

fible of their Inability to oppofe them ; but againjl thofe who are or think themfelves of equal Strength, Wars are undertaken ; hut yet certainly, to render IVars jufl, they are to be waged ^uitb no lefs Care and Integrity, than judicial Proceedings are ufually carried on.

XXV II. Let it he granted then, that ' Laws mufl he ftlent in the midjl of Arms, provided they are only thofe Laws that are Civil and Judicial, and proper for Ti'rhes of Peace ; hut nit

whom he thought War might be made without any other Reafon ; and he makes ufe of the Comparifon of a Hunter, who is not indeed allowed to take or kill Men for Food or Sacrifice, but may lanx'fidlj piirfue fiich Aiiimals as are imld and proper for the Puifofes defigned. Se6 what i have faid on this Philofopher's Notions in my Preface to PuFENDORF, p. xcviii. § XXIV. Second Edition, Of the La-w of Nature atid Nations.

5 Plutarch, in his Life of Jgeflaus, blames the Lacedemonians for making Virtue conjift principally in the III- terefi of their Country, and being miacquamted ivith ati^ ether Jufiice, but luhat they thought inight contribute to thb aggrandizing ^Sparta. Thucydides gives us the Senti- ments of the Jthenidns concerning the Humour of that People. The Lacedemonians generally ohfer<ve the Rules ef Virtue among themfehes, and in vjhat relates to the Laivs ef their oton Country ; but fenjeral Examples might be gi<veh of their different Conduit in regard to others ; in Jhort, they ejieem only that 'virtuous, 'which is agreeable to thtni, and only that jufi, ivhich promotes their Interef. Book V. Chap. CV. p. 344. Edit. Oxon. Grotius.

XXV. (i) I know not whence this is taken. Plu- tarch fays nothing like it, either in his Life of Pompey, or in his Apophthegms ; and it is not probable he would have omitted fo remarkable an Expreffion. Nor do I iind the Saying of the Spartan King, as it lliands here, in the Apphthegms of the Lacedemonians, or elfewhere. So that I much fufpeft our Author has depended too much on his Memory j and imagine the Miftake may be thus accounted for. Phraates, King of the Parthians, ha'vingfent an E.inbajjy to Pompey, dejlring him to be con- tent 'with bounding Ins Empire ^^y/;^" Euphrates ; that great General replied, that the Romans chofe rather to make Juf- tice the Boundaty of their Empire. Plutarch, Apoph- thegm, p. 204. Tom. IL Edit. Wech. See alfo the Life of Pompey, Tom. I. p. 637. where the Story is told with fome Difference. The fame Philofopher afcribes the following Reply in one Place to Agefilaus, and in ano- ther to his Son Archidamui: One of thefe Kings being ajked ho'w far the Lacedemonian Dominions extended, brandijhed his Spear, and anf'wered, as far as this can be carried. P. 210. See likewife p. 2)8, both of the fe- cond Volume. Out of thefe two Stories confufedly re- membred, our Author has formed what he here relates, and which, as far as I know> isto be found no where as he gives it.

2 It was Agefilaus; and Plutarch' hais' preferved this Saying : as an Anfwer to a Quelirion prbpofed concerning the comparative Excellency otf tlie- twtt ViKues. Apop}}thegm. LacoH'^^. ziOj. Toni. 11.-

3 Agefilaus having obferved ffiat iW Ihh'ahitaiits of Afia had a Cuftom of difiinguijhing the King of Perfia by the Appellation c/" Great, ajked: H/nv is that Prince greater than 1, iinlefs he is more jufi and more 'wife? Plutarch, Apopht, Lacon. p. 213. Grotius.

4 This Definition is produced and coftimended by Cicero, De Gfiic. Lib. I. Cap. XIX.

The Ernjeror Marcus Antoninus declares, that, its An- toninus, he cojifidercd Rome 'was his City and natinJe Coiin- try ; but as a Man, the 'whbte World. (Boo'l VI. § 44.) Porphyry fays, the Man, 'who is condiiSled by Reaj'on, foi-bears injuring his Fello'w-Citixens, and objer'ues the fame Rule fiill more rigor Oufiy In reiard i'o Sfratigers and all Man- kind ; and thus keeping the irrational fdrt in due Suijeilioni becomes more rationed, and confeqiiciitly more like iJi'vinhy than thofe 'with ivho!n he deals in this manner. Of Ab'fti- nence, BookW. (p. 333.) GRpntys.

6 We have a Verfe of an old Poe£ to this Purpofe.

K«i ^iiirui iitfuin ^xfiit ^uyot s/Ai'Sxht j)li>»{. KingMmoS has laid a heahyToM on the Mcks of the tftanisi

See St. Cyril's Vlth Book againil thfe Emperor ju-^ lian. Grotius.

The Father from VvhbiTi oui* Author ^ii taken this Verfe, qiiotes it as belonging to Cdltimachus ; and gives it with fome fmall Difference in the Words, though to the fame Sehfe.

K«> Kirftif sTtsTiiYl B'Xf)jii ^oyoK iu^ivl MiVa;,

XXVI. (i) ThePaflagb; WKich our Author had in View, occurs m the Oration on Cherfonefus, where Demofthenes, undertaking to diffiiade the fending of a new' General into x\-\tHellefpont, in the Room oi Diopithes, who lay under an Accufation of E.xtortion and Pyracy, Ihews that i t would he an extra'vagar.t Piece of Aladnefs to pro- ceed to that Extremity againft a Subjefl; of the State,, whom they might eafily punilh without fo much Noife. /; is pi-oper, fays the Orator, and even neceffary to pay Iroops, employ Veffcls, and ereSl publick Funds againfi an Enemy, 'who cannot be reduced by the Laws ; a Decree, an Impeachment, and a fingle Galley are fufiicient againfi our o'vjn Citizens, in the Opinion of all cbnfiderate Men. P. 38. Edit. Bafil. 1572.

XXVil. (i) See the Commentators on thefe Words of CicEro, in his Oration fo* Mila ; filent Aim Leges inter Jmia. Cap. IV.

thofe that are of perpetual Obligation, and are equally fuited to all Times. For it -was very' -well faid of Dion Prufeenfis % That between Enemies, Written, that is. Civil Laws, are of no Force, hut Unwritten ' are, that is, thofe which Nature dilates, or the Confent of Nations has inflituted. ' This we are taught by that ancient Form of the Romans, + Thefe Things I think muft be recovered by a pure and juft War. The fame ancient Romans, as Varro obferved «, were very flow and far from all Licentioufnefs in entring upon War,

becaufe they thought that no War hut fucb as is lawful and accompanied with Moderation, ought to be carried on. It was the Saying of Camillus *, That Wars ought to he managed with as much Juflice as Valour : And o/Scipio Africanus % That the Romans both begin and finifh their Wars with Juflice. An Author ' maintains. There are Laws of "War, as there are of Peace. Another » admires Fa- bricius for a ver\ great Man, and rctnarkable for a Virtue which is extremely difficult, Inno- tence in War, and who believed that there are fome Things, which it would be unlawful to frac^ tife even againft an Enemy.

XXVIII. Of how great Force in Wars is the Confcioufnefs of the Juflice of ' the Caufe, Hiflorians every where Jhew, who often afcrihe the ViElory chief y to this Reafon. Hence the

2 No njjritten Laiv is of Force in Regard to Enemies ; but there are certain Rules and Cuftoms, ivhich are ob- fer'vedh all, enjen luhen the Enmity is carried to the great eft Length'. Orat. =rift e«s;. This Paflage is quoted by Peter, du Faur, Semeftr. Lib. II. Cap. I. p. 8. Edit. Gejie-v. The Orator inftances in the Permiffion of bury- ing the Dead, the Security of Embaffadors, isfc.

3 Upon this Principle it was, that King Alfhonfiis, being a£ked which of the two he had been moft obliged to, Books or Arms ; anfwered, that he had learned by Books, both the Art of War, and the Rights of War. Plutarch fays, thzX amongft good Men there are Laivs of War ; and that v^e ought not to fujh the Dejire of conquer- ing fo far, as to make an Ad'Vantage of ivicked and impious Anions. Grotius.

Plutarch has put thefe Words into the Mouth of Camillus, when he generoufly declined making an Ad- vantage of the Schoolmafter's Treacher)', who betrayed the Children of the Falifci into his Hands. Life of Camillus, Tom. I. p. 134.

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

5 This occurs in a Fragment of that learned Author, preferved by Nonius, and was taken from his fecond Book De Vita Pofuli Romani. See what is faid on this Paflage, Book III. Chap. III. § 11. Note 2.

6 Thefe are the Words of that great General, as re- lated by Livy, on the Occalion of the perfidious School- Mafter ; whence Plutarch has taken Occafion to af- cribe to him a Speech very like this, which we have re- lated above. Note 3 . There are Laivs of War as luell as of Peace ; and ive have learnt honv to carry on a War •with as miuh J uftice as Bravery. Book V. Chap. XXVII.

7 Livy makes him fpeak thus, in his Anfwer to the Embaffadors from Carthage, who cam.e to fue for a Peace, that, though he ivas almoft fecure ofViBory, he does not refufe to make a Peace, that the ivhole JVorld may know the Roman People have a ftriB Regard to Jujiice both in engaging in and fnijhiiig their Wars. Book XXX. Chap. XVI. The thing itfelf, however, is far from being in- difputable. On the contrar)', if we look into the Con- du£l of the Romans, we fhall find Injuftice praftifed in feveral of their Wars, either in regard to the Subjeft, the Manner, or Conclufxon of them ; though Alberic Gentilis has taken upon him to juftify that People in his Treatife De Armis Romanis. See Mr. Buddeus's Differtation, intitled, Juris prudentia Hiftoricte Specimen, § 82, &c. among his Seleda Juris Naturae iif Gentium; and what Grotius himfelf fays in his Book Dc Verit. Rel. Chrifl. Lib. II. § 12. I remember a Paffage in Cicero, where that celebrated Orator and Philofopher fays, that Equity and Fidelity are moft commonly obferved in entering

on, purfuing, and ending a War. De Legib. Lib. li. Cap. XIV.

8 Livy, whofe Words have been quoted Note 6.

9 Seneca, Ep. CXX. We admired that great Man, per fevering in his Refolution of giving a good Example, and unmoved by all the Kin£s Offers, or the Promifes made him on the other Side ; preferving his Innocence in tVar, nxihich is extremely difficult, being perfuaded that fome Things vuere not allocable even in an Enemy, P. 595. Edit. Gronov. 1672.

XXVHI. (i) Appian makes Piwj/iev fpeak thus to his Army : " We ought to rely upon the Gods and the

" Goodnefs of our Caufe, fince we are engaged in thij " War out of an honell and juft Defire of maintaining " the Government and Liberty of our Country'." Dc Bell. Civil. Lib. II. p. 460. Edit. H.Steph. p. 755. Edit. Amftel.) The fame Hiftorian introduces Caffius faying, that in War nothing gives fo great Hopes as the Juflice of the Caufe (De Bell Civil. Lib. IV. p. 645. H. Steph. 1034. Edit. Amft.) Josephus fays that King Herod made ufe of this Confideration to animate his Soldiers, that God is with thofe, who have Juflice on their Side. Antiq. Jud. Lib. XV. We find in Procopius many Thoughts to the fame Purpofe ; as for Inftance, what Belifarius fays in the Speech he made, when he went into Africa. " Valour will not render us viftorious, " unlefs it be regulated and conduced by Juflice." [Van- dalic. Lib. I. Cap. XII.) See alfo another Speech of the fame General's before an Engagement, near Car- thage [Ibid. Cap. XIX.) In the Difcourie of the Lombards to the Herculi, we have the following Paffage, which I have a little corredled. " We call God to witnefs, " whofe Power is fo great, that the leaft Particle of it " infinitely furpaffes all human Force. There is Rea- " fon to believe, that having a Regard to the Caufes of " the War, he will- give to it an End anfwerable to the " Deferts of both." [Gothic. Lib. II. Cap. XIV.) And it is remarkable, that this Prediftion was foon accom- pliflied by a wonderful Event, which the Hiftorian after- wards recites. Totilas, in the fame Author, fays to the Goths : " It is not poffible, no, it is net poffible, that " thofe who commit Afts of Injuftice and Violence, " fhould acquire Glory by Arms ; but every one is for- " tunate or unfortunate, as he behaves himfelf well or " ill." [Ibid. Lib. III. Cap. VIII.) After the taking of Rome, Totilas makes another Speech, tending to the fame Purpofe. [Ibid. Cap. XXI.) Aoathias, another Hiftorian of thofe Times, tells us. Book II. Chap. I. that Injuftice and Irreligion ought always to be guarded a- gainft, and are very prejudicial, but efpecially when we are obliged to make War, and to come to an Engage- ment with the Enemy. He proves it elfewhere [Cap. V.) by the Examples of Darius, Xerxes, and the Athenians in their Expedition againft Sicily. See alfo what Crif- pinus {dcys to the Inhabitants of .^yw/f/'a in Herodian, Lib.\'lll. [Cap.Yl. Edit.Oxon. 1678.) Thucydides obferves, that the Lacedemonians believed they had brought upon themfelves, by their own Fault, the Dif- afters they met with at Pylos and other Places, becaufe they had refufed to fubmit to the Decifion of Arbitra- tors, though fummoned thereto by the Athenians, accord- ing to their Treaty. But the Athenians having after- wards refufed in their turn to give the fame Satisfaftion, after feveral Infringements and unjuft Enterprizes, the Lacedemonians from thence conceived good Hopes of £uc- cefs in their Affairs for the future. Lib. VII. Gro- tius.

The Paffage of Thucydides, which our Author means, is in § 18./. 421. of the Qr/or^ Edition. Seve- ral States of Peloponnefus making Preparations for War againft the Athenians, the Lacedemonians joined them with fo much the more Refclution and Confidence, as they believed the Event would not be the fame

as in the preceding War j which, they themfelves acknow- ledged, had been ogcafioned rather through their own 4 Fault,

Proverbial Sayings, ' A Soldier's Courage rifes or falls according to the Merit of his Caufe ; ^ fel- dom does he return fafely, who took up Arms unjuftly ■■, Hope is the "^ Co??ipamo!! of a good, Caufe ; and others to She fame Purpofe. Nor ought any one to be moved at the profpercus Succejfes of unjufi Attempts ; for it is fufficient that the Equity of the Caufe has of itfelf a cer- tain, and that very great Force towards A£lion, though that Force^ as it happens in all hutnun. Affairs, is often hindered of its EffeSi, by the Oppofition of other ' Caufes. The Opinion that a War is not rafhly and unjuftly begun, nor difhonourably carried on, is likewife very prevalent to- wards procuring Friend/hips ; which Nations, as well as private Perjons, ftand in need of upon many Occaftons. For no Man readily affociates with tbofe, who, he thinks, have Juftice_, Equity and Fidelity in Contempt.

XXIX. Now for my Part, being fully affured, by the Reafons 1 have already given, thai HI. The Au- there is fame Right common to all Nations, which takes Place both in the Preparations and in the Aor's Reafpns Courfe of War, I had many and weighty Reafons inducing me to write a Treatife upon it. I t^L^Bo^k ^ ohferved throughout the Chriftian World a Licentioufnefs in regard to War, which even barba- rous Nations ought to be afhamed of : a Running to Arms upon very frivolous or rather no Oc- fr 5^'"™S cafions ; which being once taken up, there remained no longer any Reverence for Right, either oufnefs in ma- Divine or Human, juft as if from that Time Men were authorized and firmly refolved to com- king War, mit all inanner of Crimes without Reftraint.

XXX. The Speulacle of which inonftrous Barbarity worked many, and thofe in no wife bad Men, up into an Opinion^ that a Chriftian, whofe Duty conftfts principally in lofving all Men without Exception, ought not at all ' to hear Arms •, with whom feem to agree fometimes Johan- nes Ferus * and our Country?nan ' Erafmus, Men that were great Lovers of Peace both Ecclefi- aftical and Civil ; but, 1 fuppofe, they had the fame View, as thofe have who in. order to make Things that are crooked ftraight, ufually ■*■ bend them as much the other Way. But this very En- deavour of inclining too much to the oppofite Extreme, is fo far from doi7ig Good, that it often does Hurt, becaufe Men readily difcovering Things that are urged too far by them, are apt to flight their Authority in other Matters, which perhaps are more reafonaUe. A Cure therefore was to be applied to both thefe, as well to prevent believing that Nothings as that all Things are lawful.

XXXI. At the fame Time I was likewife willing to promote, by my private Studies, the Pro- An Endeavour fejfon of Law, which I formerly praclifed in publick ' Employments with all pojfible Integrity ; *? promote the this being the only Thing that was left for me to do, being unworthily * banifhed my Native j^^ bv°eiv- Country, which I have honoured .with fo many of my Labours. Many have before this deftgned ing m Exam-

Fault, than that of the Athenians. For, having fided ^vith the Thebc.jts, when the latter came to attack Fla- ttete, during a Truce {Lib. II. § i. i^ feq.) ; and having moreover refufed, contrary to an exprefs Claufe of their Treaty, [LiB. V. § i8. p. 302.) to terminate fome Dif- ference in a judicial Way, though they had been fum- moned to it by the Athenians ; they were fully perfuaded they had been unfuccefcful on that Account,

and inge- huoufly afcribed to their Breach of Faith the Calami- ties that befel them at Fylos, and upon other Occafions. But after the Athenians, having equipped a Fleet, were gone to ravage the Lands of EpiiLmrus, Frafia, and other Places, and from Pylos made Incrufions into their Coun- try ; after they refufed, in their turn, to fubmit to a Decifion in an amicable Manner, when any Difpute arofe in relation to their Treaties : I fay, after that time, the Lacedemonians believing they had made the Injuftice to pafs over to the other Side, eagerly fought an Oppor- tunity of declaring War againft them.

2 The Author here makes ufe of the very Terms of Propertius, and not of Ovid, as Gronovius pretends. His Memorj' failed him on this Occafion, which was alfo the Cafe of the learned Mr. Menace. This Miftake has been correfted by the laft Commenta- tor on the Poet lafl: mentioned.

Frangit is' adtollit 'vires in ?nilite caufa : ^u^ nifi jiifia fuhefi, exciitit arma pudor.

Lib'.IV. Eleg.VI. Ver. 51, 52. Edit . Broekhuis.

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

fe for the Fa'vour of the Gods. Lib. VII. Ver. 349.

4 LuCAN introduces Pompey employing this Reafon for encouraging his Soldiers before the Battle of Phar- falia.

Caufajubet mslior fuperos fferare fecmdos.-

But long before that Poet's Time, Msnander had faid ia general :

When you engage in an') good Ail ion, entertain Hopes of Suc- cefs ; being affured that God favours a jufi Enteiprize.

Fragm. e Vulcanalib. p. 190. Edit. Cleric,

See alfo fome Paffages cited by our Author, Book II. Chap.l. § I.

5 Tacitus makes Otho fay that good and hivfulUn- dertakings are frequently attended nvith very bad Succefs, for 'want of a judicious Manner of proccediug, Hift. Book I. Chap. LXXXIII.

XXX. (i) Gladius bene de Bella cruentus, {ff melior ho- micida. Tertul. Dc Refurr. Carnis. Cap. XVI. Gro-

See below, Book I. Chap. II. § 8. and my Preface to PuFENDORP, §9; where I have inferted other Paflages from the Fathers of the Church, who have condemried War as abfolutely unlawful.

2 He w.as a Francifcan Preacher at Mentz, who lived in the Reign of Charles V. Ziegler on this Place quotes Sixtus of Sienna, Biblioth. Lib. VI. Annot. 1 1 ;, I ;6 ; where the Author produces and criticizes the Paifages of thofe two Writers on this Subjeft.

3 This great Author has a long Digreffion on the Proverb, Dulce Belkim inexpertis.

4 This has very often been the Praftice of fei'eral Moralifts, in all Ages. See a beautiful Paffage of Se- neca on this Subjeft, which I have given at Length, with a Tranflation in my Treatife On Ga?ning, Book I. Chap. III. § 1 2.

XXXI. (i) The Author had been Advocate-Generalj and Penfionary of Rotterdam.

IV. The Con- tents and Or der of the Work. Book I.

Nothing of the ancient Authors ex- tant on this Subjea.

to reduce it into a Syjiem •, but none has accompUJhed it ; nor indeed can it he done, ttnlefs thofe things (which has not been yet fufficienlly taken Care of,) that are ejtabli/hed ' by the Will of Men, he duly dipnguifhed from thofe which are founded on Nature. For the Laws of Nature being al- ways the fatne, may be eafily colleSled into an Art ; but thofe which proceed from Human In- Jiitution being often changed, and different in different Places, are no more fujceptible of a 7ne- thodical Syjiem, than other Ideas of particular Things are.

XXXII. But if the Profeffors oj true Jufiice would undertake to treat of the feveral Parts of that Law which is perpetual and natural, fetting afide every Thing which ozves its Rife to Volun- tary Injlitution, fo that one for Injlance zvould treat of Laws, another of Tributes, another of the Office of Judges, another of the Conjeifure of Wills, another of the Evidence in Matters of Fa£ly

■ there might at laft from all the Parts colle£led together be a Body of Law compofed.

XXXI II. What Method we thought fit to ufe, we have fhewn in Deed rather than in Words in this Treatife, which contains that Part of Law, which is by far the nobleft.

XXXI V. For in the firjl Book, after pretnifmg fome Things concerning the Origin of Right, we have examined the general ^leftion, whether any War isjuft ; afterwards to difcover the Dif- ference between a publick and private War, our Buftnefs was to explain the Extent of the Su- pre}?ie Power, what People, what Kings have it in full, who in part, who with a Power ofalie- mting it, and who have it without that Power. And then we were to fpeak of the Duty of Subjects to their Sovereigns.

XXXV. Thefecond Book, undertaken to explain all the Caufes from whence a War may arife, fhews at large, what Things are common, what proper, what Right one Perfon may have over another, what Obligation arifes from the Property of Goods, what is the Rule of Regal Succeffton, what Right arifes from Covenant or Contrail, what the Force and Interpretation of Treaties and Alliances, what of an Oath both publick and private, what may be due for a Da- mage done, what the Privileges of Embaffadors, what the Right of burying the Dead, what the Nature of Punijhinents.

XXXVI. The third Book treats firft of what is lawful in War \ and then, having diftinguifJed that which is done with hare Impunity, or which is even defended as lawful among foreign Na- tions, from that which is really blamelefs, defcends to the feveral Kinds of Peace, and all Agree- ments made in war.

XXXVII. But I thought this Undertaking ftill the more worth my Pains, becaufe, as I faid before, this Subje5l has not been fully handled by any Body ; and thofe who have treated of the Parts of it, have done it fo, that they have left a great deal for the Labour of others. There is nothing of this Kind extant of the ancient Philofophers, whether thofe of the Pagan Greeks, (amongff whom Ariftotle had compofed a Book inlitled, AtuMuficiloi noAE/xaii' ', The Rights of War,) or thofe of the Primitive Chrijlians, which was very much to be wifJjed for. Nay, of thofe Books of the ancient Romans concerning the ^ Fecial Law, we have nothing tranfmitted to us but the bare Name : 'Thofe who have made Sums of Cafes ofConfcience, as they call them, have made only Chapters, as of other T'hings, fo of War, of Promifes, of an Oath, of Reprizals.

XXXVIII. I have likewfe feenfome particular Treatifes concerning the Rights of War, fome of which were written by Divines, as ' Francifcus Victoria, Henricus^ Gorichemus, ' Wilhe!-- mus Matthaei, Johannes * de Carthagena -, fotne by Profeffors of Law, as ^ Johannes Lupus, * Francifcus Arius, ^ Johannes de Lignano, * Martinus Laudenfis. But upon fo copious a Subje£l, they have all of them faid but very little, and mofi of them in fuch a Manner, that they have, without any Order, mixed and confounded together thofe Things that belong fever ally to the Law Natural, Divine, of Nations, Civil and Canon.

XXXIX. What was mofi wanting in all thofe, viz. Illujirations from Hifiory, the mofi Learned ' Faber has undertaken tofupply in fome Chapters of his Semeftria, hut no farther than

XXXVir. (i) The Author is mifled here by a cor- rupted Paflage of Ammonius the Grammarian, in his Treatife Of like and different Words, upon the Word N«f, where we read, AiKnia^oali* 'aofiif/jav. The Laivs of IVar, inftead of 'aa'hiut, States ; as it is quoted by EusTATHius on the feventh Book of the Iliad. See Menace on Diogenes Laertius, BookW. \ 26. and Selden, Of the Laiv of Nature and Nations, Juxta Dif- cipl. Hebr. Lib. I. Cap. I. p. 4.

2 7he Juftice of War is taught moft firialy by fecial Lanju of the Romans. Cicero, De Offc. Lib. I. Cap. XI. See Book II. Chap. XXIII. § 4 and 8 of this Treatife.

XXXVIII. (i) He was a Spanijh Dominican, who lived in the XVIth Century ; and the Treatife liere mention- ed is intitled, De Indis ^ Jure Belli, and appears a- mong his twelve Theological Leflures.

2 A Dutchman, fo named from the Place of his Birth, and Chancellor of Cohgn. He lived about the Middle of the XVth Century, and wrote a Treatife De Bello Jujto.

3 I know not who, or what Countryman he was. Mr. De Courtin has tranflated his Name Matthifon ; and thus he appears to be an Englifhman ; but perhaps this is only done by guefs.

4 His Book was printed at Rome, in 1609. Gro-

5 A Native of Segovia. His Treatife De Bello £3" Bellatoribus, may be found in the large Colleftion, called Traaatus TraBatuum, Tom. XVI.

6 A Spaniard, his Name is Arias, and his Book is in the fame Volume of the fame CoUeftion, under the Title of De Bello ^ ejus Jujiitia.

7 A Native of Bologna in Italy. His Treatife De Bello, is inferted in the fame Volume of the Colledlion already fpecified.

8 His Name was Garat. His Treatife Df 5<//ff ap- pears in the fame Volume of that Colleftion. It was re-printed atLouvain in 1647, with the Treatife of Ayala, which our Author fpeaks of a little lower.

XXXIX. (i) Peter du Faur of ^/. JoW, Counfellor in the Grarul Council, afterwaids Mailer of Requefts, and

ferved his Purpofe, and only by alledging fame Authorities. The fame has been done more largely^ and that by applying a Multitude of Examples to fame general Maxims laid dczvn, by Bal- thazar ^ Ayaia, and fill more largely by Albericus ' Gentilis, ivbcfe Labour, as I know it may he ferviceable to others, and confefs it has been to me, fo what may be faidty in his Stile, in Me- thod, in difingui/hing of ^efions, and the feveral Kinds of Right, I leave to the Reader's Judgment. I fhall only fay this, that in the Decifwn of Controverfies^ he is often wont to fol- low either a few Examples that are not always to be approved of, or even the Authority of modern Lawyers in their Anfwers, not a few of which are "^ accommodated to the hiterefi of thofe that confult them, and not formed by the itivariable Rules of Equity and Jujlice. The Caufes, from whence a War is denominated juji or unjujl, Ayala has not fo much as touched upon: Gentilis has indeed defer ibed after his Manner fame of the general Heads ; but neither has he touched upon many fajnous ^teftions, which turn upon Cafes that are very common.

XL. We have been careful that nothing of this Kind be pajfed over in Silence, having like- '■ The Au- wifef}jewn the very Foundations upon which we build our Decifons, Jo that it might be eafy to de- ^^ ^^^^? termine any ^eftion that may happen to be omitted by us. It remains now, that I briefly declare the Law°of"^ with what Affiflance, and with what Care I undertook this Work. My firft Care was, to refer Nature. the Proofs of thofe Things that belong to the Lazu of Nature tofomefuch certain Notions, as none can deny, without doing Violence to his Judgment. For the Principles of that Law., if you rightly confider, are manifefi and f elf -evident, almoft after the fame Manner as thofe Things are that we perceive with our outward Senfes, which do not deceive us, if the Organs are rightly difpofed, and if other Things neceffary are not wanting. Therefore Euripides in his Phcenilfe makes Po- Jynices, whofe Caufe he would have to be reprefented manifejlly juft, deliver himfelf thus :

' I fpeak not Things hard to be underftood. But fuch as, founded on the Rules of Good And Juft "■, are known alike to Learn'd and Rude.

And he immediately adds the Judgment of the Chorus, (which confifled of Women and thofe too Barbarians) approving what hefaid.

XLI. I have likewife, towards the Proof of this Law, made Ufe of the Tejlimonies o/' Pbi- lofophers, Hijlorians, Poets, and in the laft Place, Orators ; not as if they were to be implicitly believed ; for it is ufual with them to accommodate themfelves to the ^ Prejudices of their Setf, the Nature of their » Subject, and * the Interejt of their Caufe : But that when jnany Men of different Times and Places unanimoufy affirm the fame Thing for Truth, this ought to be afcribed to a general Caufe ; which in the ^ejiions treated of by us, can be ?;o other than either a juft

at lall Firft Prefident of the Parliament of Touloufe. He was Scholar to Cujas. His "Work \nt\t\edi Semeftrium Libri tres, is full of Erudition. It has born feveral Im- preffions at Paris, Lyons, and Geneva.

2 He was a Native of Antijuerp, oi Spanijh Extradlion. His Treatife, De "Jure (3' Officiis Bellicis, was printed in that City in 1597, in Znjo. The Edition I make ufe of is thzt of Lowvain, 1648.

3 This Author has written De Jure Belli : My Edi- tion is printed at Hanau, i6i2.

4 This Reproach does not fall on the modern Law-)'ers alone j Mr. Noodt has plainly proved that the an- tient ProfeiTors of that Science have fometimes been guilty of the fame Fault. See his Probabilia Juris, Lib. 11. Cap. II.

XL. (l) TauT duUKcisa, itiZrif, bjji wipia'^oxaj; Aoytyif ctSfo'ivxi uTrey, aAAce jcj (yo<poT^

See my Preface to Pufendorf, § I, fefc. Cajjiodorus obferves, that to teach Men the Duties of Jufiice is indeed a tVork of feme Difficulty, hut not imfoffible ; becaufe the Di- 'uinity has been fo indulgent to all, that even they, nxiho are un- acquainted nvith the Principles of Latu, are yet fertjihle of the confequential Truths derived from them. Var. VII. 26. 2 The fame Poet introduces Hermione fpeaking thus to Andromache.

Ou fiaf^a^at teftieirit OHcSfiiU WXir,

" We do not govern our State by the Laws of Barba- " rians." To which Andromache replies :

Ktixu Tit 7' uKrjcf* xfiSsii' diTf^uiwi ^i(tt.

" What is diflionourable or dilhoneft among them, bears " the fame Charadler alfo among us."

XLI. (i) Why (hould they not be thus employed > The Emperor Alexander Severus read every Day Cicero's Books De Republicd, and his Treatife Of Offices. Gro- tius.

This Account is taken from the Life of that Prince, written by jElius Lampridius, who fays, ivhen he read \M.\n Books, he preferred none to Cicero's Pieces Of Offices, and On the Commonwealth, Cap. XXX.

2 The Philofophers, in Confequence of certain falfe Principles, with which they were infatuated, frequently advanced very falfe Maxims, and fometimes contradift- ed themfelves. The Academifts were particularly re- markable on this Account, valuing themfelves on the Art of maintaining both Sides of all manner of Sub- jefts. See Buddeus's Y)\S^xK.z\\or& Of Moral Sccptifm, and the Errors of the Stoicks, among his AnakHa Hiftarice Philofophica, and the Morality of the antient Philofo- phers, abridged in my Preface to Pufendorf's great Work.

3 The Hiitorians, as well as the Poets, with a View of lieeping up the Charafter of the Perfons introduced, often put Maxims into their Mouths, which are falfe and contrary to Natural Law. The Writers of both Clafles entertained likewife fome Ideas which were far from being jult, and fometimes very grofs, on feveral Subjedls ; but the Poets exceeded the Hiftorians in this Particular. In regard to the former, fee my Preface to Pufendorf, § 16 ; and as to what concerns the latter, Mr. Le Clerc's Parrhafmna, Tom. I. p. zoo,

^c. Our Author, in the Courfe of this Work, produces a great Number of Paflages, which may ferve to prove beyond Difpute what he here advances. We have al- ready feen fome of them, at the Entrance of this Pre- liminary Difcourfe, § III. Notes i, 2. which are taken from Thucydides and Tacitus, two of the greateft and moft judicious Hiftorians of Antiquity, the one Greek, and the other Latin.

2. In diftin- guifliing both of them, and

n. Affiftance in the Work. 1. Philofo-- phers. Ari- Jlotle, his Praife.

Inference drawn from the Principles of Nature, or an univerfal Confent. The former JJoews the Law of Nature, the other the ' Law of Nations. The Difference between which is not to he un- derftood from the Tefiimonies themfelves (for the Law of Nature and of Nations are Words ufed every where * -promifcuoufy by Writers) but from the ^lality of the Subjetf. For that which can- not be deduced fro7n certain Principles by jufi Confequences, and yet: appears to be every where ob- ferved, tfiuft owe its rife to a free and arbitrary Will.

XLII. Therefore thefe two I have very carefully endeavoured always to^ difiin^uifh no lefs from one another, than from the Civil Law : And even in the Law oj Nations, I have made a T>if- tinElion between that which « tridy and in every RefpeEl lawful, and that which onfy produces a certain external Effecf after the Manner of that primitive Law ; fo that, for Inftance, it may be lazvful to reftft it, or 'that it even ought to be every where defended with the publick Force, for the Sake of fame Advantage that attends it, or that feme great Inconveniencies may be a- voided. Which Obfervation, how nece_^/fary it is in many Refpeols, will appear in the follow- ing '■ Treatife. We have been no lefs careful in dijiinguijhing Things belonging to Right properly and ftriifly fo called, whence arifes the Obligation of makifig Reftitution, from thofe which are only faid to belong to it, becaufe that the affing other-wife is repugnant to fame other Dilate of right Reafon i* Which Biftintiiotn we have already touched upon.

XLIII. Amongl'hilofophers Ariftotle deferve'dly holds the chief Place, whether you confider his Method of treating Suhje^s, or the Acutenefs of his Dijiinffions, or the Weight of his Rectfons. r could only wiflj that the Authority of this great Man had not for fome Ages pafi degenerated into Tyranny, fo 'that Truth, for the Difcovety of which Ariftotle tookfo great Pains, is now oppreffed by nothing more than the very Name 0/ Ariftotle. /, for my Part, both in this and in all my. other Writings, take to myfelf the Liberty of the ancient Chriflians, who efpoufed no Sefl of Phi- lofophers ; not that they held with thofe who- ajferted that nothing can he kmwn, than which there is nothing more foolifh ; hut were of Opinion; that there was no one Se£f that had difcovered all Truth, nor any but what held fomething that was true. Therefore to colleSl- into a Body the Truths that were difperfed in the Writings of each Philofopher and each Seft, they conceived to be nothing elfe, but ' to deliver the true Chriftian Doolrine.

XLIV. Among other Things, {that I may mention this by the by, as not being foreign to our Purpofe,) it is not without Reafon, that fome of the Pliuonifts and ancient ' Chrif- ti'ans feem to diffent from Ariftotle in this, that he placed the very Nature of Virtue "• in a Me- diocrity of Paffions and Anions ; which being once laid down, drove him to this, that of Vir- tues of a different Kind, as for Injlance, ^ Liberality and Frugality ^ he made but one ; and

4 Tlvis relates to the Orators. See Pufendorf's Larjiu of tiature and 'Nations, Book IV. Chap. I. § 21. Note , I ."' •

XLIII. (i) This is what Lactantius fays, Would any one but colleSl ivhat Truths are fcattered through the V/ritings of each of them, and diffufed through the fenjeral Sr<Ss, and reduce them into one Body, he ivould not differ from us. Inftit. Divin. Lib. Mil. Cap. VII. (Num. 4. Edit. Cellar.) Justin Martyr fpeaks to the fame Purpofe in his firit Apology : Not, fays he, becauje the DoSrines o/"Plato are entirely different from thofe of Christ ; btU becaufe they are not conformable to them in e^ery Particular. Which is alfo the Cafe in regard to the Tenets of the other Philofophers, as of the Stoicks, and of the Poets and Hifo- rians ; for each of them, being direded by a Ray of the Light of innate Divine Reafon, difco^'ered fomething conformable to it, and fpoke nxell fo far (p. 34. Edit. Oxon.) Tertul- LiAN frequently calls Seneca, our Seneca ; but then he obferves that, none but Christ could give us a complete Body of Spiritual Virtues, (Adv. Jud. Cap. IX.) St. Au- gustine lays it down as a Faft that thofe Rules of Mo- rality, ivhich are fo highly commended by ClCERO, are taught and learnt in the Chrijiian Churches, diffufed through the ivhole World, Ep. CCII. See what the fame Father fays in regard to the Platonijis, whom he maintains to be almofc Chriflians, Ep. LVI, in his Treatife De Vera Religione, Cap. III. and Co?ifeff. Book VII. Chap. IX. and Book VIII. Chap. II. Grotius.

To thefe Autjiorities we may add that of Clement of Alexandria, who talks in the fame manner, Strom. Lib. I. p. 338, 349. Edit. Oxon. See the Life of that Father, written by Mr. Le. Clerc, in his Bibliotheque Univerfelle, Tom. X. p. 187, £3'f. and the Differtation of the late Mr. Olearius, De Philofophid EcleSlica, p. 1216, in the Latin Verfion of Mr. Stanley's Phih- Jpfhkal Hijlary, printed at Lcipftck in 1712. 3

XLIV. (i) Lactantius treats on this Point at large in his Divine hfitutes. Book VI. Chap. y^M , XVI, XVH. Let us add this Paffage of Cassiodore : Non adfellibus moveri, fed fecundum eos moveri, utile vel noxium. Gro- tius.

3 Whatever the learned Gronovius may fay on the Subjeft, thefe are really two different Virtues. Ari- stotle might give the Greek Word 'EAsuflspioVij? a com- pound Idea, including both that Difpolition, by which a Man is inclined to give freely, and that which diredla him to a prudent Regulation of his Expences j but they are in Reality two different Difpoiitions, and two dif- tinft Ideas. It, is true, the more faving we are, the more we have to give away ; but it does not therefore follow that Frugality, or a commendable S.avingnefs, is only Part of Liberality. It is a very different Modifica- tion of the Soul, which indeed puts us in a Condition of performing more numerous and more confiderable Afts of Liberality, on certain Occaiions ; but which is not therefore more a Part of Liberality itfelf, than Sobriety and a Love of Work are Parts of Chaftity, becaufe they are good Prefervatives againft Temptations to Impurity, and becaufe thofe three Virtues, like moiV others, mu^ t-ually affilt one the other. Whoever takes a Delight in, relieving the Indigent with his Subftance, and adually does it on proper Occafions in a judicious manner, and as far as his prefent Circumftances permit, is fo far tru- ly liberal, even though, for want of that CEconomy, and Care of his Affairs, which compofe the Charadler of a good Manager, he ftiould be reduced to a Station, in which he is no longer able to give as much as would otherwife have been in his Power. We fhall fome- times fee Perfons, who, in fpite of all their Negli- gence, and after their fuperfluous

Expences, have ftill fomething to give, and beftow it freely on all, whom they have an Opportunity of affifting ; will any one de- ny fuch Men the Charafter of Liberality ? In a Word, Liberality, and Frugality, are two different Virtues ; but they are both to be equally acquired and cultivated, but the Want of the latter Ihould hinder the Practice of the

affigned + to Veracity two Oppofiks hetween which there is not an equal Contrariety, viz. Soajiing and falfe Modefiy ; and impofed the Name of Vice upon fame 'Things, which either ars not in Nature, or in them/elves are not Vices, as, the ^^ Contempt of Pleafiire and -^ flonours,

former, or at leaft confine the Exercife of it to too nar- row a Compafs. The Philofopher himfelf owns that Li- berality, according to his Definition, confifts more in giving and fpending judiciouily than in getting Debts in, and keeping one's Money. The Ufe of ^bney fem^ to confifi in Expeiices and Gifts ; for recei'ving and keeping it are rather to be called Poffejfon ; fi that it is the Bujtnefs of a liberal Man rather to give to 'whom he ought to gi've, than t-o recei've from tl'of 'who are indebted to hint, and not receive 'where it is not due. Ethic. Nicomach. Lib. IV. Ma^.l. Thus our Author rightly obferves that Ari- s?'6Ti,E was obliged to reduce the two Virtues under Confideration to one, in order to find two oppofite Vices, one by DefeiSl, the other by Excefs ; for Avarice is in- deed oppofite to Liberality, according to the common ideas ; but Prodigality is fo far from being in itfelf con- trary to Liberality, that it bears fome Refemblance to that Virtue, and piay have fome l^endency toward pro- pioting the Praftice of it, which at leaft is not incompa- tible with it. If fome prodigal Perfons become nig- gardly, when the Neccffitous are to be relieved, there are others, who give freely, and take a Pleafure in do- ing good, though they often do it without much Judg- ment, or a fufRcient Regard to all Circumftances.

4 There are fev^ral Faults in this Diftinftion. i . The Philofopher does not diftinguifli the Virtue in queftion by any particular Name, but only calls the Perfon en- dowed with it «^l^fleu1lx©• and PiA«Piii% ; and underftands by it that Difpofition which direfts a Man to love Truth, and commit no violence on it by his Aftions, in Things indifferent, i. e. in regard to which we were otherwife under no Obligation to fpeak and aft fin- cerely from the Laws of Fidelity and Juftice ; for, fays he. Sincerity in Dealings, and every thing that regards Juf- tice and Lnnijiice, relates to another Virtue. Ethic. Niconj. Lib. IV. Cap. XIII. Thus he makes a fault)' Diftinai- on of two Sorts oi Sincerity, and Veracity, one relating to Things indifferent, the other to thofe, which are obli- gatory ; as if the Diverfity of the ObjetSs on ^hich ops and the fame Virtue is employed, would privilege the Multiplication of that Virtue into as many different Spe- cies. 2. He no where treats of that other Sort of Ve- racity and Sincerity, which is only occaiionally inention- f:A Vet this Place ; and that wiich he here treats of i^ en- tirely reduc-ed to indifferent Things ; which relate only to the Perfon of him, who fpeaks or afts. But is it not jsoffible for a Man to lie, feign, or diffemble in a thou- fand other indifferent things, on a Point of Hiftory, fbr Example, a Phenomenon of Nature, an Event, on fom? Aftion or Quality of another Man, which does neither good nor harm to any one ? 3 . Striftly fpeaking, Boatt- ihg and Dilfiraulat-ion, which Aristotle gives us for the two of^fite Extremities, are both of them contrary to Truth and Sincerity by Defeft, and not by Excefs. Both he who^ attributes to himfelf Qualitie,';, with which Jie either is net- endowed at all, or not in fo high a De- gree, and he who refufes to acknowledge or extenuates thofe of which he ie really ppffeffed, are faulty in devi- ating from the Truth. If one fays n)ore than' true and the other lefs, they only take two different V/ays of fay- Jpg things otherwife

than they ar-e. The oppofite Ex- tremity 'in the Excefs would be to fpeak and aft top finc-er^ly, and with an e.xceffive Sirppljcity, which dif- covers either by Words or Conduft what was not pro- per to be known. Befides, the End of Diffimulation, 6f which the Philofopher difcourfes, i? copimonly to agquire more Efteem than we defgrve, while we either feem unwilling to acknowlege our Merit, or undervalue Jt ; and he himfelf obferves that it fometimes feems to be, a fort ofBoafling in Difgulfe ; and concludes the Chapter, which treats of thefe two Vices, with faying thq.t Boaji- in<r is diametrically oppofite, .to Veracity, and even woorfe, that's Diffimulation. The fame Inequality of Oppofi- tion is- found between- feveral other Vices ; from which it appears how Joofe and ufelefs his principle of Medio- crity proves.

5 Our Philofopher owns himfelf that no Man is ivithr out a Relijh for Pleafure ; and that human Nature is a

Stranger to fuch an Infenfibility ; that e-ven Brutes ^ake &. DiftinSiion in their Food, and are pleafed I'.jth one Kind pre- ferably to another : If any one, fays he, finds nothbig delight- ful, or snakes no Dijiinilion betiveen one thing ajid another, he is far from being a Man. As there is no fuch Perfon in the World, there is no Name ajfigned him. Ethic, Nicom. Lib. III. Cap. XIV. It appears from this Paffage that Aristotle had an Idea of a thing that has no Ex- iftence ; for where is the Man, to whom every thing is indifferent, and who takes g. Pleafure in nothing .? If any one .be found infenfible to the natural Pleafures pf the Taftezwi. Toicch,- to which the Philofopher confines Tcmperayice, and makes this Infenfibility the Extremity by Defeft, it muft be the Refult of a very fingular Con- ftitution, a deep Melancholy, or fome other Indifpo^- tion of Body ; • and in this Cafe the Defeft will not be moral, but purely phyfical. In regard to other Plea- fures, as that of Mufick, or what anfes from ji Contem_- plation of the Beauties of Painting, or JrchiteSiire, Sec. an Infenfibility to them is not a thing evil in itfelf The Inftance here alledg^d by Gronovius, of Timofi the Man-hater, and the Conduft of Mark Anthony, who cOt- pied his Example for a llioj-t Time, are nothing to the Purpofe. That famous Hijmaurift, notwithftanding his Enmity to Manki^d, ?ind his Averfion to Society, toofe a Pleafure in cultivating his Garden. Mr. Hemster- nuis has given us his Charafter, ajid all the Particulars to be found in Hiftory conceruing him, in his beautiful Remarks on Lucia>i's Timon, publifhe^ in 1708, in 3. new Edition of the SeM Dialogues, and fonje other Pieces of Grecian Antiquity. One might \yith more Propriety here alledge the Example of Mifei-s, who de- prive themfelves of the Comforts and Conve^iencje3> and fometimes even of the Neceffaries of Life. ?#? befides that it is no common thiflg to fee the M^ttef carried to that Excefs, if tiiey deny themfelves the IJ^ of feveral Things, this does not commonly proceed from a ft-upid Infenfibility to the maft natural Pleafures, but from the Preference tjiey give their Money ; for when it is in their Po\ver to tafte thofe Pleafiu-es, without Jds- ing at any Expence, they indulge themfelves without Rcferve, and are niore apt to exceed the Boun4s of M9.- deration, than tfiofe yvho pay for the Ufe of what Na.- ture offers tliem.

6 Gronovius is of Opinipn that the jPhilqfop.her would not be underftood to fpeak of the Contempt o^ Honours, which is not Evil, bijt only of the Contempt: of Reputation, by which a Man is induc;4 to aft ill, 't;o get above the Confideration ofiAihat vjill Pecfle pQi^. apd fmk into a tfafe and fordid way of Hving. He lnfbnc,es in the famous DionfHis, Tyrant of Syracufe, who having left his Kingdom," retired to Corinth, where he wQrd dirty and ragged Cloaths, drank freely with all he met, fi-equented 'taverns and Brothels, and am.ufed himfelf with chattering abqut Trifles wifh the Refufe of Man- kind, as Justin tells us. Book XXI. Chap. V. But we peed only obferve Aristotle's Defcription of the Coa- tempt of Honoup, in

which be makes tjve Extremity oppofite to Magnanimity in the Defeft confi|t, tP be con.- yinccd that the learne4 Gentleman, whofe Explication r have given, difguifes the Philofopher's Thought o^ of a too warm Concern for the Credit of th.e Antjentg. Aristotle fays : Thofe >vhq afc fubj.eft to tjie Fau}?: in Queftion do not ffem to be bad Men, becavf they arf guilty of 710 Crime :' TY^t the puftllanimms are fafil(yojii/ in depriving themfetves of thofe Honoifi-s, luhk-h the Pmlofot pher confiders as real Goods, (hough they deferve them, an,4 forego the Poffejpon of fom,e valuable thing, fir want ofe^

dutSenfe of their own Merit. Th&t fetch Perfo3»^

feem rather chargeabk with La%inefs than Folly. The Opir nion, they entertaiv of themfelves, makes thim fill ivurf^-.

. , they forbear engaging in good ASions and glorip,p,

Enterpfizes, as unwortly of appearing in thcTn,, and dcelinf the Enjoyment if exterior Goods. Ethic. Nicom- Ljl. IVr Cap. \%. ' Sucii a Difpofition has tiothi^g in it that is of itfelf vitious, and even comes nesr to Humility, ^ which the Pagans had foipe ^dea, as I have Ihewn m my Treatife On Play, Book I. Chap. Hi. § 6. As long h ^

and an Infenfibility to Injuries, which ^ hinders us from being angry againfi Men. All Virtue XLV. But that this Principle of Mediocrity, taken nniverfally, is not rightly laid, appears

tas not Vice j^otn the Injiance of Jufiice ilfelf, whofe Oppofites, too much arid too little, when he could not ,_ T7„„„r, ^^^ ^^ ^^^ AffeSiions and their fuhfequent A^lions, \ he fought for Both in the "Things themjelves

as a Man is ignorant of his own Merit, he is fo far from being culpable for not afpiring at Honours, that require Qualifications, of which he believes himfelf not pof- fefled, that he is to be commended for not aiming at them ; and Ignorance in this Cafe is the more excufable, as we are much more inclined to the oppofite Extreme, and to flatter ourfelves with the PoiTeffion of good Qua- lities, of which we are entirely unprovided. It is gcod always to entertain a Diffidence of ourfelves in that Point, in order to avoid the Illufion of Self-Love ; and there is commonly great Reafon for prefuming, that the Man who declines Honours, does it rather on a Principle of Modelly, than out of Indolence, or Mean- nefs of Soul. Aristotle, however, maintains that Pufilla7iimity (by which Term he means an Indiiference to Honours) appears more frequently in Oppojition to Magna- Timlty, than Jmbitlon, and that it is the more culpable of the tiijo. Ibid. Experience fliews the Falfity of the for- mer of thefe Affertions ; in regard to the latter, it muft be allowed that the Philofopher fpeaks conformably e- nough to the Notions of the Vulgar, and the ambitious Part of Mankind. Hence it was that among the Ro- mans, for Example, thcfe who had a Right to afpire at the Confulfliip, and declined the Charge, were particu- larly careful to offer the P^eafons for their Conduft in the flrongeft Terms, to avoid the Reproach of PufiUanimity. See Cicero's Epiftles to Jtticus, Bookl. Ep. I. p. 8. Edit. Gne-v. But, confulting the Ideas of found and right Reafon, it will appear that there is more Great- nefs of Soul in refufing Honours than in purfuing and embracing them.

7 According to our Philofopher, it is no lefs a Folly not to be angry on juft Occafions, as to give a loofe to PafTion without Reafon. ^hey, <who are tiot angry, as Perfons, Times, and Things require, are chargeable ivith Folly. They feem miferahle, incapable of being affeiied, or revenging an Injury. To which he adds that to fuffer patiently in fuch Cafes, nndnegleli the Defence of our Friends, is a Mark of a mean and fer'vile Mind. Ethic. Nicom. Lib. IV. Cap. XI. Hence it appears that Aristotle confiders the Difpofition of all thofe in general, who command their PafTion, when they have jufl Reafon to be angry, as a Vice oppofite to Lenity by Defeft ; and ihat he does not, as Gronovius pretends, confine that Cenfure to the ilupid and mean Patience of Buffoons and Parafites, who tamely fubmit to the greatefl Affronts and Indignities, in Confideration of fome paultry Ad- vantage. But if we confider the Matter in itfelf, the Tranquillity cf a Mind, free from Anger, is not a mo- ral Defeft. For fuppofmg, what is very feldom to be found, a Man either naturally or by the Force of long Cuftom fo hard to be moved, that he is feldom or never angry, he is thus very happy, as being fecured from the ExcefTes of a blind PafTion ; nor will fuch a Man be lefs difpofed, or lefs able to maintain his juft Rights, and that of his Friends. On the contrary, by being Matter of his PafTions, and of a peaceable Difpofition, he will be able to take more juft Meafures, and manage his In- tereft better than thofe, who are aftuated by a PafTion fo hard to govern as Anger. Though Anger is not evil in its own Nature, and may be allowed to a certain Point, it is never abfolutely necefTary. We always may, and that with more Security, fupport our Dignity and maintain our Right, without being in a PafTion. But it is evident that our Philofopher makes a Virtue of a moderate Degree of Anger, and a Defire of Revenge, the natural Effeft of that PafTion ; which being in itfelf vitious, never allows Anger to be kept within due Bounds.

XLV. (i) He fpeaks in the following Manner of Jvflice, properly fo called, which he terms particular or fri'vate, to diftinguifh it from iini'verfal ox general fuflics, including the Praftice of all the Virtues which relate to our Neighbour. This Dijlin&ion being made, it is enjident that a juft ASlion confifts in obfernjing a Medium bet--ween doing an Injury and receiving one. He that does an Injury, has morf, and he ivho is injured, lefs than his due. Jujlice

is a Mediocrity ; not in the fame manner as the Virtues al- ready fpoken of; but as the Medium is its OhjeB, and h- juftice includes the tivo Extremes. Jujlice therefore is a Difpofition to a£l ivhat is right ivith Choice and Delihera.- tion, and to render every one his Due, both in our Dealings vuith others, and thofe ivhich others have vjith one another ; fo that ive do not take to ourfelves more ofvjhat is agreeable and advantageous, or lefs of what is difagreeable and pre- judicial than 13 our Due, leavivg others too fmall a Share of the former, and too much of the latter, but obferve a jujl Proportion here, as nvell as in the Difiribution to be made a- jnong others. Injuftice, on the contrary, is a Difpofition of doifig Wrong defignedly, that is of giving each Perfon too much or too little of vuhat is advantageous or prejudicial, vuithout any regard to exaSl Proportion. Thus there is both Excefs and Defell in Injuftice, becaufe it conffts in giving too much and too little, that is, in appropriatiiig to ones fe If too large a Share ofvuhat is fimply advantageous, and taking too little of vjhat is prejudicial ; and obferving the fame wi- equal Difiribution in regard to other Men, deviating from the Rule of Proportion jometimes on one Side, and fometimes on the other. The Extreme in unjuft AStions, by v-ay of Defell, is to receive an hjmy ; that by v.ay of Excefs, to do one. Ethic. Nicom. Book V. Chap. IX. Gronovius thinks Aristotle fufficiently

defended againft our Au- thor's Criticifm, by faying, that whereas m other Vir- tues there is but one Medium, fixed by Geometrical Pro- portion, Jufiice obferves fometimes the Medium of this Geometrical Proportion, and fometimes that of Arithmeti- cal Proportion ; fo that here is only an Explication and Diftinftion of Terms, not a Tranfition from one kind of Thing to another. But the prefent Queftion does not turn on the Nature of the Medium, or the Proportion to be obferved for determining it. The Subjeft, in which this Medium is placed, muft be fpecified, fo as to be found between two oppofite Extremes of the fame 1 hing, whatever Proportion is obferved for determining it. According to Aristotle, the Medium, in which the EfTence of Moral Virtue confifts, is planted, as one may fay, in certain Sorts of PaJJions and Anions, not vicious in themfelves, but which become fuch, by deviating from that Medium, and thus form two oppofite Vices, one by Excefs, the other by Defeft. Fear, for Example, is a PafTion not evil in its own Nature ; too much Fear is Timidity, or Covjardice ; too little is Audacity, or a rafh Boldnefs : The juft Medium is Fortitude, or rational Courage. Speaking, laughing, a regular Compofure of the Face and exterior walking, itanding flill, in fhort all we fay or do in Converfation are in themfelves indifferent. Behaving ourfelves in thefe Particulars fo as to endeavour at pleafing every one, or certain Per- fons on all Occafions, is Flattery : on the contrary, to aft as if we had no Concern for pleafmg any one, is Clominfhnefs or Incivility ; the juft Medium is Civility, or a reafonable Complaifance. See Ethic. Nicom. Book II. Chap. VI, VII. To return to Jufiice, the Virtue under Confideration, according to our Philofopher, its Medium confifts in a certain Equality, an equal Diftribution of Advantages and Difadvantages j for this is what he means by that Equality to which the Aftions, whereby we praftife Juftice, relate. An exaft Obfervation of this Equality, is the proper Employment of Juftice, and what conftitutes its Nature. A Difregard of this Equa- lity, whether we take or give more or lefs than it re- quires, is a Vice oppofite by Defeft j the more or the lefs is not then in Matter of Juftice, but in the Things about which it is employed : We do not obferve this E- quity too much or too little, we do not exceed the juft Equality, but always fall fhort of it, even when we take or give too much, this is no more than a different man- ner of Inequality. Where then is the other oppofite Extreme, which ought to confift in an excefTive Concern for maintaining the Equality in queftion '>. It will not be the Jus fummum, that rigorous Jufiice, which is cal- led the Height of Injuftice. [Summum Jus, fumma Inju- ria, Cicero De Ojffic. Lib. I. Cap. X. Terence Heautont. Aft. IV. Scene V. Ver. 48.) For when a

about which Juftice is converfant. Which very thing is in the firft _ Place to leap from one kind of Thing to another, which he defervedly blames in others ; and in the next Place, to receive lefs ' than on^s Due may indeed happen to be a Vice, when the Circumftances of himfelf or his Fa- mily cannot allow of any Abatement ; but certainly it cannot he repugnant to Jujiice, ftnce it con- fijls wholly in ahftaining from that which is another Man's. Like to which Miflake is that of bis not allowing ' Adultery proceeding from Luft, and Murder from Anger, to belong properly to Injuftice : Whereas the very Nature of Injujlice confifts in nothing elfe, but in the Violation of another's Rights ; nor does it fignify, whether it proceeds fro7n Avarice, or Luft, or Anger, or imprudent Pity, or Ambition, which are ufually the Sources of the greateft Injuries. For to re- ftft all Temptations of what Kind foever, and that for this only Reafon, viz. the preferving of Human Society inviolable, is indeed the proper Bufinefs of Juftice.

XLVI. To return from this Digreffion, true indeed it is, that to fome Virtues it happens, that they moderate the Affections, yet not for the Reafon, that it is the proper and perpetual Office of all Virtue todofo; but becaufe right Reafon, which Virtue always follows, ' prefcribes a Mea- Jure to hefollotved in fome Things ; in others it excites us to the utmofi we are capable of. We ^^ ^^^ ^^^^^ cannot, for Inftance, ^ ferve God with too much Ardour ; for the Crime of Superftition confifts ble of.

Man puflies his Demands as far as he may according to the Rigor of the Law, or preiTes the Terms of the Law too feverely in pronouncing Sentence, it is a De- feft of Equity : He offends againft the Spirit of the Law, againft that very Equality which the Law defigns to eftablifli, and introduces a real Inequality contrary to Equity, as Aristotle himfelf makes appear, Book V. Chap. XIV. In a Word, our Philofopher was very fen- fible of the Lamenefsof his Principle oi Mediocrity, when applied to this Virtue, and Ihews it plainly enough in the Words already quoted. He owns that Juftice is a Mediocrity, not in the fame manner as other Virtues are, but as a Medium is its Objedl, and Injuftice only is Its oppofite Vice, which alone includes the two Ex- tremes. This abundantly fliews the Ufeleffiiefs and InfufBciency of Aristotle's Principle. Befides, it will appear, on a careful Examination of the Matter, that the Nature of all the Virtues may be accurately explain- ed without having recourfe to that Principle. See a Paflage from Mr. Grew, an ingenious Englijhman, quoted in my Prf/arf to Pufendorf, ■^. xciv, xcv. of the fecond Edition.

2 The learned Gronovius calls this Chicanry ; be- caufe, fays he, this lefs, according to Aristotle, re- lates to Hardfhips and Difadvantages, and not Profits and Advantages. But he is himfelf guilty of the Fault with which he charges our Author. Groti us has his Eye on the Definition of an Unjuft Aftion, which oc- curs in the Clofe of the Paflage quoted in the foregoing Note ; according to which recei'ving an Injury, or ha<ving lefs than onis due is comprehended in the Idea of Injuftice, as well doing an Injury, or taking more than one's Due. The Philofopher explains himfelf clearly in another Place, where he fays, // is evident that both recei'ving and doing an Injury are evil; for by the former a Man has lefs, and

hy the latter more than the Medium requires ^ But

doing an Injury is the mare culpable of the two, becaufe done malicioufy ; nvhereas a Man receives an Injury nvithout

Malice, or an Inclination to Injuftice. So that recei'ving

an Injttry is in itfelf the lefs e'vil, though it may hy Accident become a greater. Ethic. Nicom. Lib. V. Cap. XV. ;S. 73. On reading this laft Sentence, we immediately perceive the tacit Allufion which Grotius makes to it, while he explains it, and refutes the Philofopher's Opinion.

3 Sufpoftng one Man commits Adultery for Lucre's Sake, and recei'ves his Reivard ; another is guilty of the fame Crime out of a Moti've of Luft, and pays for it. The latter feems rather fenjual than co'vetous ; luhereas the former is unjuft, but not fenfual, becaufe he aBed 'with a Vienxj of Gain. Befides, every other unjuft Aiiion has altvays a Re- lation to fome Vieixi. Thus Adultery relates to Intemperance ; abandoning one's Comrade in an Engagement, to Coijjardice : ftriking, to Anger. But 'when a Man gains by his Crime, it relates only to Injuftice. Ethic. Nicom. Lib. V. Cap. 4, We fee here that the Philofopher does not fufficiently diftinguilh between the Principle or Motive, which in- duces a Man to commit an Injuftice, and

the unjuft Aftion itfelf ; for he pretends that one and the fame Aftion, by which we invade another's Property, relates either to unlverfal Juftice, or to particular Juftice, which is Juftice properly fo called, as the Agent is influenced by a Motion of Senfuality, Cowardice, Anger, or by a

formal Defign of feizing on what belongs to another, and taking more than one's Due. Now befides that this formal 6efign is feldom found in Injuftice, few Men doing an Injury merely for the Sake of doing it, and without being aftuated by fome Paflion, without which they would rather choofe to leave their Neighbour's Right untouched ; befides this Confideration, I fay, the Diverfity of Principle may indeed make us of- fend at the fame Time both againft Juftice, properly fo called, and againft fome other Virtue, relating either to ourfelves or others ; but, this notwithftanding, every Adlion tending to the Prejudice of another's Right, fuch as Adultery and Murder,, will always be a real Injuftice in itfelf; and all that Gronovius has advanced in Defence of Aristotle, is nothing to the Purpofe. He may, if he pleafes, alledge the E.xample of Miiefter the Comedian, who was proof againft all the Solicitations of Meffalina, till the Emperor Claudius, her Hulband, commanded him to do whatever ftie ftiould require of him. This Comedian, according to our Commenta^ tor, did indeed commit an unjuft Aftion, and an Adl of Intemperance ; but if we judge of his Condudl in a moral Manner, he was neither chargeable with Injuftice nor Intemperance. I own he was not fo culpable, as if he had folicited Meffalina ; but even granting that a Huftiand can yield to another Man his Right to his Wife's Body, this was by no means the Emperor's In- tention, whofe general Order to obey the Emprefs did not extend to this Aftion. So that the Comedian ought ftill to have perfifted in his Refufal, and by his Com- pliance he certainly became even more guilty of In- juftice than Intemperance ; though this Tingle Aftion did not denominate him habitually unjuft or intempe- rate, which is not the prefent Queftion. As to Murder committed by a Motion of Anger, it is fufficiently fpe- cified in the Paflage here quoted, ftriking, relates to Anger. So that Gronovius had no Reafon to fay he knew not whence this was taken, and that it could on- ly be from Eth. Nicom. Lib. V. Cap. X. p. 68, in which he pretends our Author contradifts himfelf ; for he himfelf quotes and commends this very Paflage, Book III. Chap. XI. § 4. But the Queftion there turns on a different Thing, 'viz- the Diftinftion between un- juft Adlions committed malicioufly, and fuch as are done without any premeditated Defign.

XLVI. (i) Agathias makes a famous General fpeak thus : Thofe Motions of the Soul, 'which by Nature prompt us to 'what is pure, good, eligible and our Duty, are to be indulged 'without Reftraint. Thofe, 'which have a con- trary Tendency, are not to be followed on all Occafio>!s, but only fo far as is confiftent. Thus Prudence is in the Opinion of all Mankind a pure Good, 'without the Jeaft Mixture of E'vil; and Anger, fo far as animates us to ASlion, is com- mendable ; hut an Excefs of that Paffion is to be a'voided as prejudicial. In Belifarius^s Speech, BookV. [Chap. yil.) Grotius.

2 Here Gronovius makes two Replies in Favour qf Aristotle. Firft, that the Philofopher is to be ex- cufed for not ranking Piety, Faith, Hope and Charity among the Moral Virtues, as they are known only by Revelation delivered to Chriftians ; for Aristotle, fays he, as all {he ancient Pagan Philofophers did, included.

not hiferving God with too tnuch Ardour, but in ferving him femerfely. Neither can we too much deftre eternal Happinejs, nor tm much dread eternal Mifery, nor loo much hate Sin. It is. therefore truly faid of

Gellius \ there are fime things whofe Extent has 710 Bounds, and which arefo much more commendable as they are carried to a higher Pitch. La6tantius '^, after having difcourfed largely on the Paffions, fays, Wifdom does not confift in moderating them, but in regulating the Impreflions of the Gaufes that produce them, for they are excited by external ObjecEls. ^ Neither ought a Reftraint to be put principally upon them, becaufe it is poffible for them to be very weak in thofe who commit the greateft Crime, and to be very violent without leading to any Crinae at all. Our Purpofe is tofet always a high Value upon Ariftotle, but fo as to referve to ourfelves the fame Liberty which he himfelf took with his Maflers, for the Sake of finding Truth.

XLVII. Hiftories have a double Ufe with refpe£i to the Subje£i we are upon, for they fiipply us both with Examples ' and Judgments. Examples, the better * the Times and the wifer the People were, are of fo much the greater Authority ; for which Reafon we have fref erred thofe of the ancient Grecians and Romans before others. Nor are the Judgments we meet with iti Hiftories to be defpifed, efpecially when they agree : For the Law of Nature, as we. have .already faid,Ms in fime Meafure proved from hence, but of the Law of Nations there is no other Proof

XLVIII. The Opinions of Poets and Orators are not of fo great Weight : And we often make ufe of them, not fo much for the Sake of building any Thing upon them, as that their Ex:- preffions may add an Ornament to what we have a mind tofa-j.

XLIX. The Autho^ry of thofe ^ooks wl^ich Men infpired by God, either writ or. approved of, I often ufe, but with a Difference of the Old and New Law. Some there are who ' urge the Old: Law for the very Law of Nature, but they are undoubtedly in the wron^g : For many Things ^ in it proceed from the FreS Will of God, which yet is never repugnant to tt? Law of Nature it- felf \ and fo jar an Argument may be rightly drawn frojni it, 'provided w$ carefully diftinguifh the ' Rights of God, which Godfonetimes es^ercifes by the Miniftry of Men, frofn the Rights of

eluded the Worfhip of the Deity under Magnificence. Ethic. Nice;}!. Lib. IV. Cap. V. This Idea is followed by Sallust, Be/t. Catiliti. Cap. IX. In fijppliciis Deo- rummagnifici, &c. and by Justin, 5ooi XXIV. Ghap.'VX. fpeaking of the Prefents offered in the Temple of Vel- phos. Now Excefs in this Cafe is poiTible, as appears from that ancient Law: Pietate?n adhihento : opes amo- ■vento. Cicero de Legib. l,ib. II. Cap. VIII. and from the Reafon affighed by Lycurgus for a Law he had made for regulating the Expence of the Sacrifices. Plut. Apophthegm. Lac on. p. Z2(). Tom. II. Edit. IVech. The other Anfwer is,' that folid Piety indeed cannot be carried too far , and the fame is to be faid of all other Virtues, which, as fuch, are always found in the juft Medium, to what Length foever they are carried ; but that there may be Excefs in exterior Aftions, by which alone one Man can form a Judgment of another's Sen- timents. For how do we make it appear that we ferve God ? Is it not by frequenting Places of Worihip } by praying on our Knees, bear-headed, and with our Hands joined and raifed up to Heaven : By giving Alms, by contributing to the neceffary Expences of the publick Worfhip ; by obferving Feftivals ; by reading and me- ditating on the Holy Scriptures ; by abftaining from every thing, which we think contains any Impieiy, an4 hindering the CommiiSon of it, as much as in us lies, i^c ? Now who does not know that in each of thefe Particulars we may do more thap God requires, and found Reafon allows ? Thus, conformably to Ari- stotle's Principle,

P.iety will certainly hold the middle Way between Superfiition, which makes its Excefs, and Impiety or Atheifm, which' is its Defeft^ This is our learned Commentator's Reafoning ; on which I have two obfervations to make. Firft, it is no very eafy Matter entirely to juflify Aristotle's Omiffion of fo confiderable a Virtue as Piety ; and feveral judicious Au- thors have with good Reafon blamed him for allowing Religion no Place in his Syftem of Morality, as I have ihewn in my Preface to Pufendorf, § 24. In Reality, as foon as we acknowledge a Deity, as he did, if we rea- fon with ever fo little Exaftnefs, we muft necelTarily difcover certain Duties in which we ftand engaged to that Being. Thus we fee feveral of the Pagan Philofo- phers have fpoken veiy finely on that Subjeft. In vain does Gronovius pretend that according to the Ideas of all the ancient Heathen Writers, the Worfhip of the Divinity is included in that Virtue, which Aristotle calls Magnificence. He ha4 forgot that beautiful Paffage

of Cicero. The heji, the pureji, moji holy and mofi. piqui Worfhip of the Gods is alvjays to l^onqur them ^with Purity, Siticerity, and Integrity both of Mind and Words. Fov the Philofophers are not the onh/ Perfons, nuho haiuf dijlinguijhed Piety from Superjiition ; our Ancejiors ha$j(done the faTfie,. De Nat. Deor. Lib. II. Cap. XXVIJL See alfb;' his' Oration Pro domg fud, ad Pontifices, Cap. XLI. y/ith; Grjevius's Notes, and the Paffages quoted from Se- neca and Epictetus in my firft. Note 6n PuFEijiDaRFs Book II. Chap. IV. § 3. It is evident from thofe and feveral other Authorities, which might eafily be produ- ced, that many of the vvife Pagans made Piety, and the Worihip of the Divinity confift principally iri the in- terior Sentiments, and not in the exterior i^fts of De- votion. Secondly, we muft then find out t\yo vicious Extremes in the' interior Sentiments : It muft be poflible for a Man to entertain too exalted an Idea of God, re- fpeft and love him too much, be too fubmifllve to his Will, i^c. in all which there never can be any Excels. So that whatever they may fay \yho a're refolved to re- concile Aristotle vvith Reafon and good Senfe at <iny Rate, it will ftill be certain that hijre, as, ip feveril' other Virtues, there is no Mediuin, eqt^lly oj- aliijqft' equally removed from t\yo oppofite' E.Mtremes, in thi? fame Kind of Things, which ^q" tlie proper Objeft 0? Virtue.

3 'No£i. Attic. Lib. I-V. Cap. IX. at the End.

XLVII. (i) Which are to be ufgd \vith ijiuph Cau- tion. See the Author's Refl^ftion on that Subjeft.

z Of this Sort, according to GaoNoyius, ^|-e thefg

found in the Roman Hijhry, dowi^ to the ilx hui^dreotji

■Vear from the jpoundatiph of Rame, or the thifd Punick

War ; and thofe in the G^ician M^ory ts ih^ P.eloign-

XLIX. (i) The fame Gronovids, fays our AuiJjqr,

had BoDiN and other Judaizing Chriftiians in Yi.^vv:, in

2 The Ceremonial, and feveral Political L^t^f?.

3 From vvhat God is pleafed to do or cp^^jmand by Virtue of his fupreme Authority over- the Life and Gqads of his Creatures', no Confequpnce can be dravi;n that ti^p fame Thing is ordered in Regard to Men, or allpwpft! by the Law of Nature. On this Oecalion are allpdgei the Example of Abraham, whom God corjij^cin^ed'tp facrifice his Son : And that of tKe Ifraelitei wno received

Min mnongthentfelvis, -We have- ihirefm Molded^ as much as we could, hoth this Error, and dfo another contrar^.to ih viz, *-that fines the Promulgation of the Neii^'Teftament the Old one isofnoUfe. We are of a contrar^j Opinion, both upon Account of what we have faid already, and alfo becaufe the Nature of the New Teftament is fuch, that whatever are the moral Pre- cepts in the Old Teftament, the fame, or more ferfeS ', are enjoined by the New alfo : And in this Manner we fee the teftimonies of the Old Teftament made Ufe of by the Writers among the. Primitive Chrijlians. , ,, ,

L. But to underftand fhe Senfe of the Books of the Old Teftament, the Hehrew Writers may afford us no little Afftftance, thofe ' efpecidlly who were thoroughly acquainted with the Language and Manners of their Country.

LI. The New Teftament / ufe for this Purpofe, that I may fhew, what cannot be elfewhere learned, what is lawful for Chrijlians to do ; which Thing itfelf, 1 have notwithflanding, con- trary to what moft do, dtftinguified from the Law of Nature ; as being fully affured, that in that moft holy Law a greater Sanaily is enjoined us, than the meer Law of Nature in itfelf requires. Nor have I for all that omitted obferving, what Things in it are rather "■ recom- mended to us than commanded, to the Intent we may know, that as to tranfgrefs the Commands is a Crime that renders us liable to be punijhed ; fo to aim at the higheft Perfection, in what is hut barely recommended, is the Part of a generous Mind, and that will not fail of a proprtion- aUe Reward.

LII. The Canons of Councils ', when they are juft and reafonable, are Confequences drawn from the general Maxims of the Divine Law, fitted to particular Cafes that happen : Thefe like- wife either fhew what the Divine Law commands, or exhorts us to what God recommends. And this is the Office of the true Chrifiian Church, to deliver to us thofe Things that are delivered to her of God, and in the fame Manner as they are delivered. But even the Cufloms [likewife that

4. The Man- ners and Cuf- toms of the firft Chrifti-

an exprefs Order from him to carry off the Egyptians Gold and Silver Veffels, and utterly exterminate the feven Nations of Canaanites, after having feized on their Country, and all their Pofleffions. See what our Author fays on this Subjeft, Book I. Chaf. I. § lo. Num. 6. Book II. Chap. XXI. § 14. and Book III. {Ihap. I. § 4. Nmn. 6.

4 This fome Anabaptifts maintain. Zeigler refers us to Sixties Senonenfu\ BMotheca Sanfi. Book VIII. ILeref. I.

5 This is to be underftood of the Letter, not of the Spirit of the Law, or the Intention of the Legiflator. See what I have faid in my Treatife Of Play, Book L Chap. III. § I, and my firft Note on Book I. Chap. I. § 17. of this Work.

L. (i) This isanObfervationof Cassian in his. Di- nAne Infiiiutions. Grotius. But the moft judicious Part of the learned World have at prefent but little Value for the Rabbies, and are of Opinion that thofe Doftors are of very little Ufe for underftanding the Old Teftament. The moft antient Rabbies, whofe Writings are extant, are the Authors of the Talmud, who lived fome Centuries after Jesus Christ. The Hebrew had then long been a dead Language ; they had no Book in that Tongue but the Old Teftament ; they were very fcad Criticks, and Men of little Judgment. They had no other antient Monuments of the Hiftory of their own Nation, than the Books of the Old Teftament, and were unacquainted with Heathen Authors : Their Traditions «iuft have undergone much Alteration and Corruption by Length of Time. To fupply their Defeft of Know- ledge, and indulge their Inclination to Fables and Al- legories, they have invented the moft extravagant and chimerical Fafts and Cuftoms. So that they are on no Account comparable to Chriftian Interpreters, who, like Grotius, have ftudied the Languages methodi- cally, and had recourfe to all the Monuments of Anti- quity. See CuN^us, De Repub. Hebr. Lib. II. Cap. XXIV. Mr. Le Clerc's Thoughts on Father Simon's Critical Hi/iory, p. 1 98, 199, and the Defence of that Book, Letter VI ; the Bibliotheque Uninierfelle, Vol. IV. p. 315, &c. Vol. VII. p. 247, &c. Vol. X. p. 117, 118. Vol. XXIV. p. 115, &C. Bibliotheque Choifie, Vol. VII. p. 83, 84. David le Clerc's ^afiiones Sacra, p. 139, 285, &c. and John le Clerc's ^<i'- fiimesHieronymiaTia, Quaeft. VI. Ziegler here quotes aPaflage of Isaac Casaubon's Exercit. in Baron, XVI. Uum. 15 ; and another from Joseph Scaliger, De Emendat. Jtmparum, Lib. VII. But the Rabbies areleaft to be depended on in Matters of Morality and Law.

Selden's Treatife De Jure Nat. ac Gent . fecundum Dif- ciplinam Hebraorum, is a good Proof of what I advance,; how advantageous an Opinion foever that learned Gen- tleman may have entertained of the Jewifh Doftors. See my Preface to Pufendorf, § 7. Boecler accufes Grotius of not reading the Books of the Rabbies with fufficient Care and Attention, and confining him- felf almoft wholly to Mafes the Son of Maimon. But others, perhaps, will think he allows them too much Weight, and loft too much of his Time in perufing them, though the Strength of his Judgment preferved him from the Contagion.

LI. (1) See my nineteenth Note on Bookl. Chap. 11. §9.

LII. (i) Thefe Canons can be of no great Ufe to our Author's Defign. Firft, becaufe we have very little remaining of the Councils of the two or three firft Cen- turies, when, according to him, the Doftrine of the Church muft have been in its greateft Purity ; and feve- ral of thofe that have come to our Hands, are either fuppofititious, falfified, or corrupted in feveral Places. Secondly, becaufe, generally fpeaking, the Decifions of Councils commonly run either on fpeculative Points, or on Ecclefiaftical Difcipline. Thirdly, becaufe the Coun- cils not only were fubjeft to Error, but have very often aftually erred, even in fuch Things as were very eaf/: Our Author gives us to underftand as much, when he fays, Synodici Canones, qui reBi^funt ; i.e. Thofe Synodi- tal Canons 'which are juft and reafovable. So that, after all, Recourfe muft be had to the Scripture, which, when well interpreted, is the Touchftone for examining the Decifions of the Councils, in order to fee whether they are juft and reafonable. Laftly, it is well known that the Proceedings of moft of the Councils were very irregular, and they were generally only fo many Ca- bals of Men devoted to the Emperors, or fome other prevailing Party ; fo that the leaft Concern on thofe Occalions was to furnifti the Mind with neceffary Knowledge, or bring an upright and Chriftian Heart to fuch Affemblies.

2 It is a great Miflake to imagine the Generality of the primitive Chriftians Men of a Piety and Probity exaftly conformable to the Rules of the Gofpel, See Mr. Le Clerc's Ecclefiaftical Hiftory, Ssc. I. Anno LVII. § 6, &c. But how good foever they might have been, their Judgment and Conduft cannot be here admitted as a Rule, in Matters not otherwife clearly and exprefly decided in Scripture. The Extent of their Knowledge, and the Juftnefs of their Judgment were not always equal to the Warmth of their Zeal, and the Integrity of their i Heart.

■were received or commended amongfl thofe antient Chriftians, who maintained the Dignity of fo 5. Both the ^k^^ ^ ^«'^^^' ^^'^'^ defervedly the Force 0} Canons. The next in Authority to thefe, are the De- Writings and cifions of thofe who ' were famous in their Times for their Chriftian " Piety and Learning, and the Confent lygre not charged ivith any grofs Error : For even what thefe afjert with great Pofitivenefs, as if they were certain of it, ought to have no little Weight in interpreting the Places thatfeem ob- fcure in Holy Scripture, and that the more, by how much the more there are that confent in the fame Thing, and the nearer they are to the Times in which the Church was mofi pure, when as yet neither Dominion, nor FaElion, was able to corrupt the primitive Truth.

LIII. The Schoolmen that fucceeded thefe, give us many Proofs of their great Capacities \ hut their Misfortune was to live in unhappy Times, when good Learning was entirely negleEled : The lefs Wonder then, thai among many Things, in their Writings commendable, there are fome that need Indulgence. And yet when they agree in Matters of Morality, they feldom err, as be- ing quick in difcerning thofe Things that are blameable in the Sayings of others ; and even in this their prevailing Uumoiir of contradi5iing, they fet us a laudable Pattern of Modefty, as difputing againjl one another with Arguments, and not, as the Cuftom of late hath been, to the Dijhonour of Learning , with Reproaches, the hafe Offspring of an impotent Mind.

LIV. Of thofe that profefs the Knowledge of the Roman Laws, there are three SortSi-^ The frji is oftho/e whofe Works a-ppear in the Digeft, the Codes o/Theodofius and Juftinian, and the Novels. The fecond is, of thofe who fucceeded ' Irnerius, as ^ AccUrfius, Bartolus ', and many others, that for a long time reigned at the Bar. The third comprehends ■"■ thofe who pined

Heart. Every one knows that feveral of them enter- tained too high a Notion of the Neceflity of Martyr- dom, and thus prepoffeiTed run to it with fome Rafh- nefs. The Generality of them feemed to think it un- lawful to engage in a War, to go to Law, to bear publick Offices, to take an Oath, to carry on Trade, to marry a fecond Time, or receive Interefb for Money ; all which it is impoflible to prove evil in themfelves, either from Reafon or Scripture. Thus too great a Ve- neration for the . uninlightened Simplicity of thofe firft Ages feems to have induced our Author to give into the DiiliniTtion of E-vangelical Councili, and Precepts ; as ap- pears from Book I. Chap. II. § 9. where my Remarks on that Subjeft may be feen at Length.

3 I have been pretty large in fhewing, in my Preface on PuFENDORF, § 9, and lo, that the Fathers of the Church, of whom our Author fpeaks in this Place, are but indifferent Matters, and even bad Guides in Law and Morality. I have not changed my Opinion fince Father Cellier., a Betieflzffin Monk oppofed me on that Head in a Book in 4/0, entitled, .An Apology for the Morality of the Fathers of the Church, publiflied

at Paris in 1718. I could eafily make it appear that I have been fo far from dealing in falfe Accufations, that I have advanced nothing on the Subjeft in Queftion, but what may be demonftrated either by the Confeffion of my Antagonift himfelf, or the Weaknefs of the Rea- fons he offers in Favour of thefe antient Doftors of the Church, whom he undertakes to juftify at any Rate. Their Caufe is not in very good Hands, fince their Apologift, on one Side, does not underftand the State of the Queftion ; and on the other, diftrufting the Force of his Proofs, calls in Inveftives and abufive Language to his Affiftance ; not to mention an Infinity of trifling Things, nothing to the Purpofe.

LEV. (i) This Irnerius, or, as fome call him, Wernerius, lived at the Beginning of the Xlth Cen- tury ; fome make him a Milanefe, others a German. The Roman Law had been for fome Ages, if not abfo- lutely unknown and out of Ufe in the Weft, at leaft but little knov/n or followed. The Digeft in particular feemed then quite buried in Oblivion. But the famous PandeSls of Florence being found at Amalphi, in the King- dom of Naples, when the Town was taken by the Em- peror Lotharius II, in the War which he made, in C'onjunftion with .Pope Innocent II, on Roger King of Sicily, the Inhabitants of Pifa, who had furniihed the Emperor with fome Ships, defired that Copy, as a Re- compence of their Services, and obtained it. The Tafte of Learning was then beginning to revive, and Profeffors in all Sciences had been lately fettled at Bo- logna. Pepo, one of that Number, undertook to ex- plain the Poman Law. But he did not fucceed in that Poft, Irnerius, who had been Profeffor of the Liberal Arts at Ravenna, took his Place. He was called Ui-

cerna Juris, i. e. 7he Light of the Laiv, and introduced the Roman Law into the Schools, either of his own Head, or as the .<^^&' D'Ursperg fays, at the Solicita- tion of Matilda, Countefs of Tufcany. Soon after the Roman Law made its Way to the Bar, and Lotharius and ■his Succeffors gave it the Force of Law. Irnerius, ■ who underftood Greek, had ftudied the Bajilics, and other Greek Books of the Roman Law, preferved in the Eaft. He made Ihort Scholia on the Body of the Civil Law, and thus gave Birth to the Gloffes, which increafed very much under his Succeffors. See Delineatio Hiftoriis Juris Romani y Germanici, written by Mr. Tho.ma- sius, § \7.\,lSc. publiihed at Leipfic, in 1704, at the Head of Francis Hotman's Anti-trihonianus : and Origines Juris Cinjilis, by the late Mr. Gravina, PrO" feffor at P^ome, Book I. § 143. p- loi. {3°f. the laft Edi- tion, printed in 171 7.

2 Francis Accursius, a Native of Florence, lived in the Clofe of the Xllth and the Beginning of the Xlllth Century. He made a Collection of all the Explications of -the Lawyers before his Time, with confiderable Addi- tions of his own ; fo that though he was almoft forty Years old, when he entered upon that Study, he has left us Gloffes on the whole Civil Law, fomewhat larger than the former, but ftill pretty fhort. The great Cu J A s places him above all the Expofitors both Greek and Latin, with whom he was acquainted. See Gravina's Book quoted in the preceding Note, § 153. p. 108. •

3 He was born at SeJitinum, a Town in TJmbria, cal- led at prefent Saffoferrato, and lived in the middle oi the XrVth Century. He brought the Subtilties of Lo- gick, and the barbarous Language of the Schools into the Law, fo that he did not fo much apply himfelf to the Explanation of the Roman Law, as to the Decifion of an Infinity of Cafes and Queftions, of which the Laws take no Notice, but which he undertook to de- duce from them, either by Confequences, and thofe of- ten very remote, or without any Grounds. See MrL Gravina's 0>-igines Juris Civilis, § 164. p. 112, i^c. where a Diftinftion is alfo made between the Difciples

of Bartoli, as making a Clafs of Lawyers different from that of AccuRSius's Scholars.

4 Andrew Alciati, a Lawyer of M^«, was the firft who united thefe two Studies, which ought to be infeparable. He was Profeffor, firft at Bourges, and afterwards at Awignon. Returning into his own Country he taught publickly at Bologna and Ferrara ; he then retired to P/?i;/a, where he died in 1550, aged about 59. Francis Cujas went fo far beyond him in this Point, that he is defervedly efteemed the chief Reftorer of the Roman Law. That great Man was a Native of Ihobufe. He taught in the Univerfities of Cahors and Bourges, at Valence in Dauphiny, and Turin. Having appeared to great Advantage in all thofe Places, he re- turned

the Knowledge of the Belles Lettres with the Study of Laws, For the firjl I have a great De- i . Ancient. fereftce ; for they both fupply us with Reafons, and thofe often the very beft, to demonftrate what belongs to the Law of Nature ; and alfo often give Tefiimony to it, as well as to the Law of Nations ; yet fo as that they, as well as others, often ' confound thefe Words, nay and often call that the Law of Nations, which prevails among fome Nations only, and that not by a fort of tacit Agreement, but by Imitation of one another, or even by a cafual Confent. But again, _ thofe Things which really belong to the Law of Nations, they often handle promifcuoiifly and in- . difcriminately with thofe that belong to the Roman Law, as appears from the * Title concerning Captives and Poftliminy. Therefore we took Pains to have thefe difiinguifijed.

LV. The-fecond Clafs, being regardlefs of the Divine Law and ancient Hiflories, fiudied to 2. Thofe of deter?nine all Controverfies between Kings and Nations from the Roman Laws, to which they ^|'^ "^'ddle fometijjtes joined the Canon Law. But thefe were likewife hindered, by the Infelicity of their Times, '^ ' from difcovering the true Senfe of thofe Laws, though otherwife fagacious enough in fearching into the Nature of Equity : From whence it comes, that they often make very good Overtures for new Laws, at the fame Time that they are but bad Interpreters of Laws already made. But they are then chiefly to be attended to, when they give Tefiimony to fuch a Cufiom, as now in our Time pajjes for a Law of Nations.

LVI. The Profeffors of the third Clafs, confining themfelves within the Limits of the Roman. 3. Modem. Law, and either never, or but lightly, meddling with this Law common to Princes and Nations, are fcarce of any Ufe to us in our Subject. AmongH thefe, Covarruvias ' and Vafquez ^, two Spaniards. Spaniards, have pined Scholafiick Subtilty with the Knowledge of Laws and Canons 5 fo that they could not forbear treating of the Controverfies between Nations and Kings ; the one with a great deal of Freedom, the other more modejlly, and not without fome Exacfnefs of Judgment. The French have with ?nofi Care attetnpted to introduce Hiftory into the Study of Law, amongSf whom Frenchmen. Bodin ', and Hottoman * are in great Efieem, the one for a continued Treatife, the other for fome fc altered ^eflions. Their Decifions and Reafons will often furnifh us with Matter for the Search of Truth.

LVIl. In this whole Work there were three Things that I chiefly propofed to myfelf ; to render vil. The Dc- the Reafons of my Decifions as evident as pojfible, to difpofe the Matters to be treated of into a iign and Or- regular Method, q,nd to difiinguifh clearly thofe Things which might appear to be the fame, but ^^ obferved

LVIII. / have forborn meddling with thofe Things that are of a quite different Subject, as explained. the giving Rules about what it may be profitable or advantageous for us to do : For they properly belong to the Art of Politicks % which Ariftotle rightly fo handled by itfelf, that he mixed no- thing foreign with it : Bodin on the contrary has confounded it with that which is the Subje^ of this Treatife. Tet in fome Places I have made mention of the ufeful, but by the by, and to dif- iinguifh it 7nore clearly from a ^eftion ofthejufl.

L,IX. He will do me wrong whoever fhall think that I had Regard to any Controverfies of the prefent Age, either already rifen, or that can be forefeen to arife. For I profefs truly, that as Mathematicians confider Figures abfira3ed from Bodies, fo I, in treating of Right, have with- drawn jny Mind from all particular Fa5ls.

LX. As to the Style, I was not willing, by joining a Multitude of Words with a Multitude Aconcifeway of Things to be treated of, to create a Diflafie in the Reader, whofe Advantage I confulted. I of fpeaking. have therefore followed, as much as 1 could, a concife way of fpeaking, as convenient for fuch as undertake to inflruSi ; that fo, they who are employed in publick Affairs, may, as at one View, fee, both what Kinds of Controverfies ufually arife, and alfo the Principles by which they may be

turned to Bourges, where he died in 1590, about 70 and more compleat. That which I make ufe of is

Years of Age. We meet with the moll confiderable printed at Francfort in 1622.

Particulars relating to the Life, Charafter, and Wri- 4 Francis Hotman, a Native of Paris, and de- tings of thofe two celebrated Lawyers, and the chief of fcended from a Sikjlan Family, died 2lX. Bafil in 1590, their Succeflbrs in Mr. Gravina's Origines Juris Ciiii- after having written a great Number of Books. His Jis, Lib. I. ^ 170. p. 121, fcrV. to the End of the Book, ^reftiones Illujires, the Treatife here meant, appeared in

5 See Note the third on Pufendorf, Lanjj of Na- 1573-

ture and Nations, Book. II. Chap. III. § 23. LVIII. (i) Good Policy ought to authorize nothing

6 See Book III. Chap. IX. againft the invariable Rules of Juftice ; and that of LVI. (i) Diego Covarruvias was born at Tole.h, the Machiawellians, which makes the Advantage of the

and was the firft Profeffor of Canon Law at Salamanca. State, or of thofe who rule it, the only Principle, is - -

He enjoyed feveral publick Employments, and died falfe and abominable. However, the ^a/? and the t^-

Bifhop of Segovia in 1577. His Works have been print- fu/ are really two different Things, even in Politicks j

ed feveral Times, in two Volumes in Folio. as will be eafily comprehended by one iingle Ex-

z Fernando Vasquez, was Scholar to Covarru- ample taken from the Matter of the Work before us.

vias. His Controvcrjle Illu/ires is the chief Piece ufed Before engaging in a War, it is above all Things ne-

in this Work. It is divided into fix Books, and has ceflary, that ajuft Caufe fliould appear for fo doing,

born more than one Impreffion. Our Author has fome But how good foever the Reafons for fuch a Step may

Quotations from his Book De Succejp.onibiis iS ultiniis 'vo- be, if Circumftances do not allow of taking Arms,

luntatibus, which makes three Volumes in Folio. without afting to the Prejudice of the Publick Good,

3 John Bodin, a Lawyer of Anjou, died in 1585. if there is Danger of lofmg as much as, or even more

The Work here meant by our Author, is his famous than will be gained, it would then be contrary to good

Treatife Of the Commowvjealth, which is extant both in Policy. Latin and French ; but the Latin Edition is the better

decided ; which being known, it will be eafy to fail the Bifcourfe to the SubjeSi Matter, and en- large upm it as much as they pleafe. The very LXI. Thavefpmetimes quoted the very PFords of the ancient PFriters, when they were fuch

Words of Au- as feemed to be exprejfed, cither with afmgular Force or Elegancy ; which I have done fometimei thors (quoted. ^ f^ggard to Greek Authors., efpecially when either the Sentence was Jhort, or the Beauty of it fuch as I could not hope to equal in. a 'Tranflation ; which notwithftanding I have always fuhjoined, for the life of thofe who have not learned the Greek Language. TlieLibert>' LXII, And now, whatever Liberty I have taken in judging of the Opinions and Writings of ^^'^^^^}^^ others, I defire and befeech all thofe, into whofe Hands this 'Treatife fhall come, to take the fame to e. e^ei. _^^.^^ ^^^^^ 'They fhall no fooner admonifh me of my Miftakes, than I fhall follow their Admonitions. And moreover, if I have faid any thing contrary either to Piety, or to good Manners, or to Holy Scripture, or to the Confent of the Chriflian Church, or to any Kind of Truth, let it be unfaid again^

L L ' the DifFereiices of thofe who do not acknowledge one common Civil Right, whereby they may and ought to be decided; fuch as are a mul- titude of People ^ that form no Community, or thofe that are Members of different Nations, whether ^ private Perfons, or Kings, or other Powers inverted with an Authority equal to that of Kings, as the Nobles of a State, or the Body of the People, in Republican Governments : All fuch Differences, I fay, relate either to the Affairs of War, or Peace. But becaufe War is untertaken for the Sake of Peace, and there is no Controverfy from whence War may not arife, all fuch Quarrels, as commonly happen, will properly be treated under the Head of the Right of War; and then War itfelf will lead us to Peace, as to its End and Purpofe.

II. I. Being then to treat of the Right of War, we mufl confider what that War is which we are to treat of, and what the Right is which we fearch for. Ci^ r^ro* defines War a Dijpute by force. ButCuflom has fo prevailed, that ' not the

J See PuFENDORF, Law of Nature and Nations. B.I. Chap. I. §8. Note i.

2 Such were the antient Patriarchs, who lived in Tents, and travelled from Place to Place, with- out forming a Community or depending on any Government; though there were civil Societies al- ready eftabliihed in the World at that Time. The learned Gronovius on this Place, alledges the Example of the Aborigines, the firft Inhabitants of Italy, and of feveral People in Africa; "The Abo- rigines, a favage People, free and independent, ivith- cut Laws or Government. Salust. Bell. Catil. Cap. VI. The Getulians ayid Libyans, a rough and un- civilized Set of Men, were the firji Inhabitants of

Africa they lived without any Government or

Laws, or the leajl Meafures of Difcipline among them. Idem Bell. Jugurth. Cap. XXI. Edit. Waff. They (the remote Inhabitants of Cyrenaica) being fcattered about the Country in Families, and living under the DireSlion of no Law, had no common Regidations. PoMPONius Mela, Lib.I. Cap. VIII. Num.IL

Edit. Voir. We find even at this Day amongftthe Arabians, and Africans, feveral Nations of Savages., and Vagrants, without Laws, Magiftrates or any Form of Government.

4 For fine e there are two Ways of difputlng Things., one by Debate, the other by Force, &c. JDe Offic. Lib.I. Cap. XL See Pufendorf. B.V. Chap. XIII. where he treats of other Ways of deciding Differences in the independent State of Nature.

5 Philo the Jew confiders as Enemies not only fuch as aifually attack us by Sea or by Land, but

alfo thofe who make Preparations for either, thofe who ereSi Batteries againft our Ports, or JValts^ though no Battle is given. De Specialib. Lib. II. pi 790. Edit. Paris. Servius, onVerfe545. of the firft Book of the Eneid.

Definition oflVar,and the Origi- nal of the Word (hel- ium.)

Nee pieiate fuit, nee BELLO major ist armis, A Makes

A<fl: of Hoftllity, but the State and Situation of the contending Parties, now goes by that Name; fo that War is the State or Situation of thofe (confidered ^ in that Refpeft) who difpute by Force of Arms, Which general Acceptation of the Word comprehends all the kinds of War of which we fhall hereafter treat, not even excludino- fingle Combats, which being really ancienter than Publick Wars, and undoubtedly of the fame Nature, may therefore well have one and the fame Name, This agrees very well with the Etymology of the Word; for the Latin Word BeJliim {Wa?-) comes from the old Word Duelhim [a Duet) as BoJius from Diionus, and Bis from Dtiis. Now Duellum was derived from Duo, and thereby implied a Difference between two Perfons, in the fame Senfe as we term Peace Utiity (^vom Ufiitds) for a contrary Reafon. So the ' Gr^-f/^ Word noAs/^o?, commonly ufed to fignify /F^r, expreifes in its Original an Idea of Multitude. The ancient Greeks likewife called it av)j, which imports a DiJiinio7i of Minds ; juft as by the Term Avny they meant the Dijjolution of the Parts of the Body.

2. Neither ^ does the Ufe of the Word {War) contradidl this larger Acceptation, For tho' fometimes we only apply it to lignify a Publick Quarrel, this is no Ob~ iedion at all, fince 'tis certain, that the more eminent ^ Species does often peculiar- ly aifume the Name of its Genus. We do not include Jujiice in the Definition of War, becaufe it is the Defign of this Treatife to examine, whether any War bejufl, and what War may be fo called. But we muft diftinguifh that which is in Queflion, from that concerning which the Queflion is propofed. IWiRighi, III. I. Since we intitle this Treatife Of the Rights of War, we defign firfl to en- "l-'lJlJ"' ^^^""^ (^^ ^ ^^^'^ before) whether any War be jufl; and then what is juft in that War? Jaion, de- For Right in this Place fignifies meerly that which is juft, and that too rather in a ne- pibed,^ gative than a pofitive Senfe. So that the Right of War is properly that which may TntoTattf be done without Injujtice with Regard to an Enemy. Now that is unjufl which is Go-vernon repugnaut to the Nature of a Society of reafonable Creatures. So Cicero fays, it is Vfi-Jd'and unnatural to take from another to enrich one's felf; which he proves thus, becaufe, that of E- '° if every one were to do Jo, all Human Society and Intercourfe 77iujl necefarily be dif-

Makes this Remark. This is not an idle Repetition; for the Word Belliim, (War) includes Counfels, and Meafures, taken ogainji the Enemy ; that is a Skill in Military Affairs. Whereas the Word Arma, (Arms) is ufed only to exprefs the very ASt of em- ploying Forces: thus the former relates to the Mind, the latter to the Body. The fame Commentator, on Verfe 547. of B.VIII. fays: Bellum is the whole Time employ d in making the neceffary Preparations for fighting or in ASts of Hoflility: and Prselium denotes an actual Engagetnent. Grotius.

6 For not only thofe who are at War, ftand in feveral different Relations to other Perfons, who ob- ferve a Neutrality, by Vertue of which they do many Things thit by no Means relate to a State of Hoftility: but they alfo may and frequently do &&. towards each other, as if they were not Enemies ; fo that in iuch Cafes the Ufe of Force, and the Laws of War are fufpended. This takes Place when two Eriemies enter into an Agreement, or Treaty ; as the Author fhews at large in the proper Place. GkoN'Ovius, in a Note on this Place, and Huber De jure Civitatis, Lib. IIL Sed. IV. Cap. IV. §. z. allow of no Difference in the Main between C'lCERo's Definition, and that given by our Au- thor. It is fufficient however, if the latter is more clear and extenfive than the former. Obrecht, in his Differtation De ratione Billi (which is the eighth in the ColleSion published in 1704.) has de- fciided our Author's Definition againft the miftaken Criticifms of fome Commentators.

7 Our Author, givihg the Etymology of Tr;>.f,/.o-, derives it from ^oxi-c; while others fearch elfewhere for the Origin of that Word ; nor are wc to be fufprifed at this. The Country of Etymologies is of a very large Extent, and affords great Numbers of different Roads, where each Man may walk at his Eafc. However, in Complaifance to thofe who delight in fuch Enquiries, and for the Sake of clear-

ing up our Author's Meaning, we muft fay fome- thing on the laft Words of this Paragraph, which ftand thus in the Original: Veterihus etiam y^-Jn a diffohitione, quomodo & corporis diffolutio ^-Jn. Here the Commentators are filent, not excepting Gro- Novius, a Critic by Profeffion j who only explains ^u'ij by other Greek Words, fignifying any Sort of Unhappinefs. But this neither fhews the Reafon of our Author's Etymology, nor his Application of it. At firft fight it might be imagined that the Text is faulty; and I know

fome have been of Opinion, that ^1/'^ ought to be repeated in this Place; but we find <?;/« in all the Editions of this Work ; and I firmly believe I have found out what our Au- thor Means, and what induced him to propofe the Etymology of this Word, which he tacitly derives from ()\iu. He took ^u'u in the Senfe which fome Lexicographers give to AkV*-, dolor; and at the fame Time was thinking of Plato's Etymology of >iiT», Pain, which he derives from >W»', to dijjolve ; hecaufc, fays he, when we fiffer Pain, the Body fuffers a Diffohlion ; in Cratylo, p. 41 9. Vol. I. Edit. H. Steph. Our Author in Imitation of that an- cient Philofopher, derives S'v-/i from .JsV for the fame Reafon ; for on a Separation of the Parts of the Body, it follows that thofe which before appear'd only as one continued whole, by their Union, become ?nore than one. The Principles of the old Philofophy, in which our Author was educated, helped him more- over to form this Etymology; for we know that according to thofe Principles, Pain is caufed by a Diffolution of Continuity.

8 See, for Example, Horace 5. 1. Sat.Wl. v. 107. and Terence Eunuch. Aft. I. Seen. I. V. 16.

9 The Author gives Inftances of this B. II, Chop. XVI. §9.

fohed. Florentinus " declaresj that it is a mllalnous Abi for one Man to lay an Am- hufh for another, becaufe Nature has founded a kind of Relation between us. And Seneca '" obferves, As all the Members of the Hiif?ian Body agree amo?ig themfehes; hecauje on the Prefervation of each depends the Welfare of the Whole, fo flmdd Men fa- vour one another, fiiice they are born for Society, which '3 cannot Jiibftfi but by a mutual Love and Defence of the Parts,

2. But as in Societies J fome are equal, as thofe oi Brothers, Citizens, Friends and Allies. And others unequal^ x«d' vTnqoxyiV, "•■ by Preeminence, as Ariflotle terms it; as that oi Parents -Sind Children^ Majiers ^indi Servants, King znd SubjeSi, '^ God and Man: So that which is Juji takes Place either among Equals, or amongft People whereof fome are Governors and others governed, confidered '^ as filch. The ^jusRic- latter, in my Opinion, may be called the =" Right of Superiority, and the former the 1"-^^" ^ Right of Equality. ... quaZhm. '

IV. There is another Signification of the Word Right different from this, but yet JV. Right drifingfrom it, which relates diredly to the Perjon: In which Senfe Right k '7 a 'tZiu^dV. moral ^ality annexed to the Perfon, enabling hun to have, or do, jomething jujlly . I vidtd hut fay, annexed to the Perfon, tho' this Quality fometimes follows the things, as '^ Ser- ^'"f^^j vices of Lands, which are c^Wed. real Rights, in Oppoftion to Rights, '^ meerly perfonal, iimde or not becaufe the firft are not annexed to the Perfon, as well as the laft, but becaufe they ^itnefe. are annexed only to him ^° who poiTeffes fuch or fuch a Thing. This moral Qijali-

ty when ^' perfedt, is called by us a Faculty; when imperfeft^ an Aptitude: The former anfwers to the A5l, and the latter to the Power, when we fpeak of natural Things.

V. Civilians call 2l Faculty that Right which a Man has to his ^'^ own-, but we ^■'Pacui. fhall hereafter call it a Right properly, and jiriSlly taken. Under which are contain- '^takln^dt

III have quoted this Law in my firft Note on & 14. of the Preliminary Difcourfe.

13 InEp. XLVIIl. he fays thus: TVe ought to oh- ferve carefully and religioufly the Laws of this Society,

which unite us all together, and teach us that there is a Lazv common to all Mankind. The Reader may likewife fee what S. Chrysostom fays on this Subje£l on i Cor. Chap. XI. v. i. Grotius.

14 K««" v7n(t:'/.y- • l^ut the Philofopher makes this Diftin£tion with Regard to Friendfliip, which is the Bond of Societies. The Friendjhips already men-

tion'd therefore, are founded on Equality

But there is another Sort of Friendjhip, ejiablijhed on Pre-eminence, fuch as that between Father and Sony the Elder and the Younger, Husband and Wife, and between every Prince and his SubjeSfs. Ethic. Ni- com. B. VIIL Chap. VL VIL

ly Concerning this Society, fee Phi LO the Jew, on thefe Words ili'»-^i nJs. Noah awaked (from his Wine) p. 281, 282. Edit. Parif. Plutarch alfo has fomething on the fame Subjedl in his Life of Numa. p. 62. Edit. Wech. Vol. L Gro- tius.

I am furprifed that our Author has not quoted the following remarkable PalTage of Cicero, which is much more exprefs, and more to his Purpofe than thofe, to which he refers us. Since therefore nothing is 7nore excellent than Reafon,- which is comfnon to

God and Alan, the firfi rational Society is between God and Man. For tuhere there is a Participation of Reafon, there is alfo a mutual Participation of right Reafon. Now this being a Law, tve are to con- clude a Society between the Gods and Men founded on Law. Farther, where there is one common Law, there is likewife a common Right ; and thofe who hold thefe in common, are to be efeetnd, as it were, fellow-ci- tizens. De Legib. Z./i!'. L Cap.Vll. But, properly fpeaking, there is no Law, or Right common to God and Man. See Pufendorf B. II. § 3. and Chap. III. § 5, 6. As alfo Mr. Thomasius's Differtation call'd, Philofophia Juris, de Obligat. l^ ASlion. which is the third in the ColleiStion printed St Leipfjc. Cap. I. § 8, i^c.

16 This Reftriftion is to be carefully obferved. p^'f' For, as ZiEGLER very well remarks on this Place, g,J q/^, in all Dealings between a Superior and an Inferior, j^^^ independently of the Relation of Superiority, the Right of Equality takes Place, as amongft Equals; thus, for Example, Contrails between a Prince and one of his Subjects require no other Rules than thofe which ought to be obferved between two private Per- fons. Wheii a Merchant has fold his Goods to his King, the Kthg is as much obliged to pay for them, on the Terms, and at the Time agreed on, as the meaneft Purchafer. To which I add, that there are fome Cafes, wherein a Superior becomes in cer- tain Refpefts the Inferior ; and that then the Right of Superiority is changed in Regard to the fame Per- fons, according to the Nature of the Things. Thus a Magiftrate is bound to honour his Parents, and confequently to fubmit to their Will to a certain Degree, whenever the Adminiftration of publick Affairs is not concern'd ; but, in the Charafler of Magiftrate, he is to have no Regard for the Will of his Parents, but may even command them. Sed .e. II. Chap.W. §6. Notel.

18 See the fame Author, 5. IV. Chap.Wlll.

19 Such, for Example, is the Power of a Father over his Child, the Right of a Husband over his Wife, the UfufruSiuary Riglit and the Right of de- manding the Performance of a Promife, by which a Man has perfonally engaged himfelf, i^c.

20 Thus the Right of Poffage, belonging to the Proprietor of a Country Houfe in the Neighbourhood, is inherent only in the Pofleflbr of the faid Houfe, and is tranfmitted to all, who (hall poflefs the fame, till that Right is extinft.

21 Perfect Right, is that which we mayaffert by Force, and the Violation of which is a Wrong properly fo called. Whence it is eafy to judge what is ImperfeSl Right. See Pufendorf, B.i, Chap. I. §7. and our Author, 5. II. Cbap.XXU. § 16.

22 As when we fay, Suum cuiqus tribumdum eji, we muft give every Man his own.

ed, I, A Power eitlier over our felves, which is term'd ^3 Liberty ; or over others,

fuch as that of a Father over his Children, or a Lord over his Slave. 2. ^"i- Property,

which is either compkaf, "'> or imperfedi. The laft obtains in the Cafe ^^ of Farms ^

for Inftance, or Pledges. 3 . The Faculty of demanding what is due^ and to this ^^ an-

fwers the Obligation of rendering what is owing.

VI. ^10- Vi. Right ftriSlly taken is again of two Sorts, either private and inferior., -^ which

^Im ?fFa- tends to the particular Advantage of each Individual : Or eminent ?inA Juperior, fuch

■cuity into as a Community has over the Perfons and Eftates of all its Members for the com-

privaie ijxion Benefit, and therefore it ^' excells the former. Thus a regal Power is above

30 jj^^f q£ ^ Father and Majler; a King has a 3 ' greater Right in the Goods of his

Subjeds for the publick Advantage, than the Proprietors thertifelves. And when

23 Hence the Roman Lawyers very well called this Liberty Facultas. Grotius.

This Definition occurs twice in the Body of the Law : Libert a 5 eft natural! s Facultas ejus, quod cui- que facere libet, nifi quid Vi, aut yure, prohibetur. Digest. Lib. \. "/it.V. Dejlatu Hominum. Leg. V. andlNSTiT. Lib. I. Tit. III. De Jure Perjo- narum, § i . In order to underftand it thoroughly, it will be proper to read Mr. Noodt's excellent Commentary on the firft Part of the PandeSis, p. 2C). SeePuFENDORF's Remark on the Manner, how this natural Power of Man over himfelf is to be underftood. B. I. Chap. 1. § 19.

24. TheScholiaft on Horace fays the Word ^z/j is taken for Property or a Right to a Thing. Jus pro Dominio. Grotius.

Our Author probably had the following Paflage in View :

Permutet Dominos, iff cedat in altera Jura.

Lib. 11. Ep. n. V. 174. On which the Scholiaft fays : In altera Jura, id eft, in alterius Dominium.

16 Ut VfusfruSius, Jus Pignoris, fays our Author. As thefe Words ftand, they infinuate that the UfufruStuary, and the Creditor have a Sort of Right of Property, though imperfect, the former to the Goods in his Pofleffion by vertue of his Tenure, the latter to the Thing pledged in his Hands for Secu- rity of the Debt. But, if we reafon conformably to the Ideas of the Law of Nature, neither of them has any fuch Right, of Property, properly fo call'd. The whole Matter is, that the Enjoyment of the Goods by the Ufufru£iuary, till the Time of the Tenure is expired ; and the Detention of the Pledge by the Creditor till he is pay'd, renders the Property imperfeiS, of which the Mafter of the faid Things, who remains folely fuch, has not all the Profits, or full Exercife, during that Time. But our Author had the Niceties of the Roman Law in View, which allows an JJfufruSiuary Creditor, i^c. a real Action for recovering the Polfeffion of another Man's Goods, in the fame Manner as if they were the real Proprie- tors of them ; and thus they are often confidered as fuch, and the Right to them near to that of Property : Jus dominio proximum, fay the Interpre- ters.

27 Creditum: Debitum. Short, and very proper Expreffions, taken from the Roman Law. See what I have faid on Pufendorf B.l. Chap. I. § 20. Note ^. of the fecond Edition: and B.V. Chap. XI. §1. Note 5. The learned Gronovius, without Reafon, reftrains the Terms in Queftion to Contrafls of Loan, properly fo called. It is fur- prifmg, that he did not obfcrve, that our Author here imitates the Language of the Roman Lav/yers ; and the more fo, becaufe fome other Commentators, much lefs fkill'd in Criticifm, have perceived this Allufion. In my Opinion it may be affirm'd, without the leaft Hefitation, that by the Word Cre- ditum, we are here to underftand, not only the Right a Man hath to demand what is due to him by Vertue of fome Contract, Bargain, Promife, or Law; but alfo the Right we have to require Satis-

faction for any Damage or Injury received; all which is included in the Idea afnx'd to that Word by the Roman hawyers. CreditorUM Appellatione non hi tantum accipiuntur, qui pecuniam crediderunt, fed. omnes, quibus ex qualibet caujd debetur ; ut ft cui ex empto, vel ex locato, vel ex alio ullo debetur : Sed etfi ex deliSio debeatur, ?nihi videtur Creditoris loco acclpi. Digest. Lib. I. Tit. XVI. De verborumi, i^ rerun fignif. Leg. XI, XIL See B. II. Chap.l. § 2. and Chap. XVII. §1. I believe our Author goes ttill farther, and extends the Word Creditum to the Right of puni(hing, and that of Debitiim to the Obligation of fubmitting to condign Punifti- ment. I am induced to think fo, becaufe iirft the Perfect Right, to which the Debitum is" Credi- tum in Queftion relate, anfwers to the Law of Na- ture, or Natural Right, properly fo called, of which the Author has fpoken in his preliminary Difcourfe, § 8. Now one of the general Rules of that Law is, that thofe who violate its Maxitns, deferve to be punijhed. See what I have faid on § 10, Note 7. It is very probable therefore, that our Author, while he was enumerating the feveral Things which may be required in Rigour, would not forget the Punifliment of Criminals. Secondly, becaufe he elfe- where aftually ranks Debitum ex pcena, or pcenale among thofe things, which we may demand of another in Rigour. B. III. Chap. XIII. § i, 2. and makes a Right to punilh belong to Jujlitia ex- pletrix, which is the Matter oiPerfeil Right. B. II. Chap. XX. § 12.