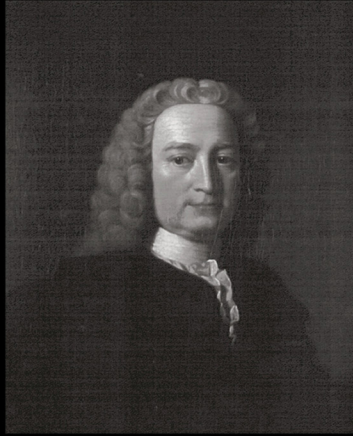


NATURAL LAW AND
ENLIGHTENMENT CLASSICS



*A System of Moral
Philosophy*

Francis Hutcheson

Edited and with an Introduction
by Knud Haakonssen
and Christian Maurer

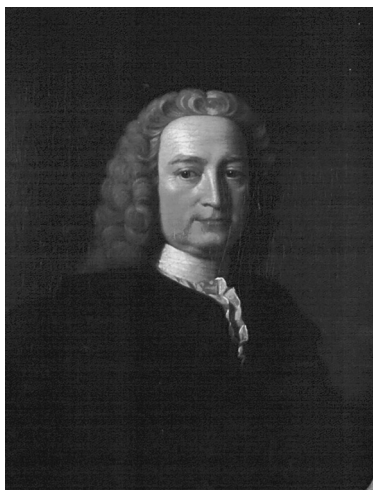
Knud Haakonssen, General Editor

A SYSTEM OF MORAL PHILOSOPHY

NATURAL LAW AND
ENLIGHTENMENT CLASSICS

Knud Haakonssen

General Editor



Francis Hutcheson

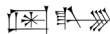
NATURAL LAW AND
ENLIGHTENMENT CLASSICS

*A System of Moral
Philosophy*

Francis Hutcheson

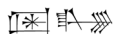
Edited and with an Introduction by
Knud Haakonssen and Christian Maurer

*The Collected Works and Correspondence
of Francis Hutcheson*



LIBERTY FUND

This book is published by Liberty Fund, Inc., a foundation established to encourage study of the ideal of a society of free and responsible individuals.



The cuneiform inscription that serves as our logo and as a design element in Liberty Fund books is the earliest-known written appearance of the word “freedom” (*amagi*), or “liberty.” It is taken from a clay document written about 2300 B.C. in the Sumerian city-state of Lagash.

Introduction, editorial additions, and index © 2025 by Liberty Fund, Inc.

Frontispiece: Detail of a portrait of Francis Hutcheson by Allan Ramsay (ca. 1740–45), oil on canvas, reproduced courtesy of the Hunterian Art Gallery, University of Glasgow.

All rights reserved

Printed in the United States of America

25 26 27 28 29 C 5 4 3 2 1
25 26 27 28 29 P 5 4 3 2 1

Library of Congress Cataloging-in-Publication Data

Names: Hutcheson, Francis, 1694–1746 author | Haakonssen, Knud, 1947– editor | Maurer, Christian, Professor editor

Title: A system of moral philosophy / Francis Hutcheson ; edited and with an Introduction by Knud Haakonssen and Christian Maurer.

Description: Carmel, Indiana : Liberty Fund, [2025] | Series: Natural law and enlightenment classics | Includes bibliographical references and index. |

Summary: “A System of Moral Philosophy is the major synthesis of Francis Hutcheson’s moral, social, and political thought. It is a concerted effort to make his theory of humanity’s innate moral sense compatible with and the foundation of a natural jurisprudence that encompassed a system of natural rights and duties”—Provided by publisher.

Identifiers: LCCN 2025019553 (print) | LCCN 2025019554 (ebook) | ISBN 9780865974609 hardcover | ISBN 9780865974616 paperback | ISBN 9781614872979 epub | ISBN 9781614876748 kindle edition | ISBN 9781614879442 pdf

Subjects: LCSH: Ethics, Modern—18th century

Classification: LCC B1501 .S97 2025 (print) | LCC B1501 (ebook) |

DDC 170.09/033—dc23/eng/20250501

LC record available at <https://lcn.loc.gov/2025019553>

LC ebook record available at <https://lcn.loc.gov/2025019554>

LIBERTY FUND, INC.
11301 North Meridian Street
Carmel, Indiana 46032
libertyfund.org

CONTENTS

Foreword	xi
Introduction	xiii
Note on the Text	xxv

A SYSTEM OF MORAL PHILOSOPHY

Dedication	I
The Preface by William Leechman	3
The Subscribers	3I

BOOK I. PART I

Concerning the Constitution of Human Nature, and the Supreme Good.

CHAP. I. Of the Constitution of Human Nature and its Powers; and first, the Understanding, Will, and Passions.	4I
CHAP. 2. Concerning the finer Powers of Perception.	52
CHAP. 3. Concerning the ultimate Determinations of the Will, and benevolent Affections.	69
CHAP. 4. Concerning the Moral Sense, or Faculty of perceiving Moral Excellence, and its Supreme Objects.	8I
CHAP. 5. The sense of Honour and Shame explain'd. The universal Influence of the Moral Sense, and that of Honour; and their Uniformity.	102

BOOK I. PART II

An Enquiry into the Supreme Happiness of Mankind.

CHAP. 6. How far the several Sensations, Appetites, Passions and Affections, are in our Power.	121
CHAP. 7. A Comparison of the several sorts of Enjoyment, and the opposite sorts of Uneasiness, to find their Importance to Happiness.	134
CHAP. 8. A Comparison of the several Tempers and Characters in point of Happiness or Misery.	157
CHAP. 9. The Duties toward God; and first, of just Sentiments concerning his Nature.	172
CHAP. 10. The Affections, Duty, and Worship, to be exercised toward the Deity.	201
CHAP. 11. The Conclusion of this Book, shewing the way to the Supreme Happiness of our Nature.	210

BOOK II

Containing a Deduction of the more special Laws
of Nature, and Duties of Life, previous to
Civil Government, and other adventitious States.

CHAP. 1. The Circumstances which encrease or diminish the Moral Good, or Evil of Actions.	217
CHAP. 2. General Rules of Judging about the Morality of Actions, from the Affections exciting to them, or opposing them.	226
CHAP. 3. The general Notions of Rights and Laws explained; with their Divisions.	237
CHAP. 4. The different States of Men. The State of Liberty not a State of War. The way that private Rights are known. The Necessity of a Social Life.	261

CHAP. 5. The private Rights of Men; first, such as are called Natural; and the natural Equality of Men.	271
CHAP. 6. The adventitious Rights, real, and personal. Property or Dominion.	284
CHAP. 7. The Means of acquiring Property. How far it extends. In what Subjects it resides.	296
CHAP. 8. Concerning derived Property, and the Ways of alienating or transferring it.	309
CHAP. 9. Concerning Contracts or Covenants. ¹	324
CHAP. 10. The Obligations in the Use of Speech.	345
CHAP. 11. Concerning Oaths and Vows.	358
CHAP. 12. The Values of Goods in Commerce, and the Nature of Coin.	365
CHAP. 13. The Principal Contracts in a Social Life.	373
CHAP. 14. Personal rights arising from some lawful action of the person obliged, or of him who has the right.	384
CHAP. 15. The rights arising from Injuries and damages, done by others: and the Abolition of Rights	392
CHAP. 16. Concerning the general Rights of Human Society, or Mankind as a System.	406
CHAP. 17. The extraordinary Rights arising from some singular Necessity.	416
CHAP. 18. How Controversies should be decided in Natural Liberty.	434

1. In the 1755 edition, volume II began with this chapter and the table of contents for Book II, chapters 9–18, and Book III was printed at the beginning of that volume.

BOOK III
Of Civil Polity.

CHAP. 1. Concerning the adventitious States or permanent Relations: and first, Marriage.	441
CHAP. 2. The Rights and Duties of Parents and Children.	470
CHAP. 3. The Duties and Rights of Masters and Servants.	480
CHAP. 4. The Motives to constitute Civil Government.	491
CHAP. 5. The natural Method of constituting Civil Government, and the essential parts of it.	503
CHAP. 6. The several Forms of Polity, with their principal Advantages or Disadvantages.	515
CHAP. 7. The Rights of Governours, how far they extend.	535
CHAP. 8. The Ways in which Supreme Power is acquired: how far just.	547
CHAP. 9. Of the Nature of Civil Laws and their Execution.	567
CHAP. 10. The Laws of Peace and War.	595
CHAP. 11. The Duration of the Politick Union; and the Conclusion.	615
Appendix: Documenting the <i>System</i>	623
Bibliography	633
Index	647

FOREWORD

The making of this work has taken its time, twice. About two decades passed from the time Francis Hutcheson commenced his magnum opus until his associates posthumously published it. About the same length of time has elapsed since one of us began the re-edition. But the only other comparison of their efforts with ours that we dare make is the mixed quality of excuses for the delay.

We are most grateful to the editors at the Liberty Fund for their extraordinary patience in waiting for this edition.

In our work on the edition we have had support and advice from many colleagues, but special mention must be made of two, Professor James Moore and Professor M. A. (Sandy) Stewart, whose unparalleled scholarship on Hutcheson and on his every context was made available to us not only in its published form but in a host of private communications over many years. Several of the documents that we produce in support of this edition were put at our disposal by Sandy Stewart, and for that and for his unfailing support and encouragement we dedicate the edition to him.

Particular inquiries were readily answered by the following colleagues: Doohwan Ahn, Alexander Broadie, John Cairns, Giovanni Gellera, James Harris, Tom Jones, Michael Lobban, Ian McBride, Karen Skovgaard Petersen, Michael Silverthorne, Richard Whatmore, and Paul Wood. We thank them all.

We are grateful to the staff in Special Collections at Glasgow University Library for their assistance. And we gladly acknowledge the Library's permission to make extensive use of the manuscript of Hutcheson's *System*, GB 247 MS Gen. 110. We thank also the Deputy Keeper, of Records, Public Record Office of Northern Ireland and the National

Library of Ireland for permission to publish transcripts of two letters (T3041/1/D4 and D2673/1/11).

Last, but not least, we thank the institutions that have supported our work. Knud Haakonssen thanks the British Academy, the Leverhulme Trust, the Swedish Collegium for Advanced Study, and the Max Weber Centre for Advanced Study, Erfurt. Christian Maurer has been generously supported by the Swiss National Science Foundation, grant number PP00P1_163751.

Knud Haakonssen
Christian Maurer

INTRODUCTION

In *A System of Moral Philosophy* Francis Hutcheson combines two different modes of moral philosophy. One is centered on moral virtue, more particularly on the ideas that morality is perceived by a moral sense, and that it consists fundamentally in the cultivation of virtues that have their roots in disinterested benevolent affections and passions. The second mode is focused on the idea that morality is a matter of natural law, natural rights, and duties. Elaborate explanations of the former mode had made Hutcheson well known as a moral thinker in his early works, *An Inquiry into the Original of Our Ideas of Beauty and Virtue* (1725) and *An Essay on the Nature and Conduct of the Passions and Affections, with Illustrations on the Moral Sense* (1728). The juridical mode was a prominent feature of his main course of lectures when he became professor of moral philosophy in the University of Glasgow in 1730, but it is likely to have been part of his teaching already at the Dissenting academy that he ran in Dublin from early in the 1720s (the exact date is not known), as was common in Dissenting teaching elsewhere in the Anglican world.¹ However, to the world at large Hutcheson presented his natural jurisprudence in full only when he published the Latin textbook *Philosophiae moralis institutio compendiaria, libris tres. Ethices et jurisprudentiae naturalis elementa continens* (1742, 2nd ed. 1745). The version of natural jurisprudence contained in the present work he himself never presented at all; the book was published posthumously in 1755, a circumstance that has left scholars guessing about its

1. For an example of a Dissenting curriculum in moral philosophy, see Grove, *A System of Moral Philosophy*. For an overview of Hutcheson's biography, see *ODNB*, s.v. (by James Moore). For Hutcheson's circle in Dublin, see Brown, *Francis Hutcheson in Dublin*. All references are to titles in the bibliography.

provenance in Hutcheson's intellectual career and about his intentions with it. We will offer our own suggestions below.

Hutcheson's early moral philosophy was highly critical of specific tenets in the leading natural law theories, especially that of Samuel Pufendorf, but also of Richard Cumberland. Hutcheson saw it as a particularly obnoxious form of self-interest to base moral obligation upon the possible sanctions of a law that was commanded by an authority, and he insisted that we are naturally sociable without consideration of the advantages of society.² In response to various attempts to ground morality on self-interest, he defended the naturalness of disinterested benevolence, which was approved as virtuous by the moral sense, in others and ourselves, and which could be cultivated and strengthened.³ Moral philosophy, if based on the right principles, was itself part of the cultivation of virtue; it was Hutcheson's aim to persuade his readers (and, undoubtedly, his listeners, the students at his Dublin academy) of the effectiveness of the moral sense by empirical evidence of the good life that it tended to create and the misery that ensued upon its neglect. A central point for Hutcheson was that the individual's pursuit of virtue was fundamentally connected to his or her intention to promote the happiness of others and of the whole system of moral beings. This connection between the individual and the system provided him with an argumentative opening for natural law in his moral thought. The basic law of nature was the duty to free our natural moral sense from distorting influences and to cultivate our affections and passions to promote the moral perfection of humanity. The resulting happiness could then be appreciated as evidence of this perfection. Ultimately, this was set in the religious framework of a divine providence; humanity was providentially enabled to realize its own moral goal by being endowed with the ability to understand that this was the case through adherence to the laws of nature. To convey such understanding was at once Hutcheson's philosophical task and his moral mission.

2. See, e.g., *Inquiry*, II.7.1, and *Natural Sociability*, pp. 205–10.

3. See Maurer, *Self-love, Egoism and the Selfish Hypothesis*, ch. 4.

This is clearly a far cry from Pufendorf, especially as Hutcheson presented him, namely, as a thinker close to Hobbes. On this view Pufendorf was a proponent of a divine command theory according to which natural law was an edict understood by rational means to impose such duties as made human life possible for individuals and groups. In this conception, moral obligation was grounded in fear of punishment and hope of its avoidance, both in the conduct of individual life and in the maintenance of societies. Instead of the regulated, natural love of virtue in oneself and in others, the moral life was one of prudent obedience to law.

This was, of course, a distortion of Pufendorf, but that makes it only so much more remarkable that Hutcheson from his first book to his last strove for a version of natural law that could be merged with his ideas regarding moral virtue, in particular his thoughts about the moral sense and disinterested benevolence. In the *Inquiry* the subject is confined to the last section, “A deduction of some complex moral ideas, viz. of obligation, and right, . . . from this moral sense.” In the *Compendiaria* and the *System* the link from the moral sense to natural law is not proclaimed as a “deduction,” but otherwise the transition is very similar to the “first notions” or “general notions” of natural jurisprudence.⁴ Vice versa, just as natural law is present in the *Inquiry*, so the discussion of moral virtue in terms of the moral sense, of disinterested benevolence and of the pleasures they afford, takes up approximately one-third of the text in both of the later works. There is obviously a lifelong record of efforts to accommodate moral sense and natural law theory to each other, despite the polemical use of the former to reject the obnoxious dominant forms of the latter. This is not to suggest that the accommodation is the same in the three works, but it indicates that Hutcheson did not see them as inherently different systems. Rather, he tried to formulate a moral theory in which natural law would emerge as founded on the moral sense, and he thereby excluded notions of natural law as extraneous to human nature.

4. See *Compendiaria*, II.1.1, and *System*, II.3.1.

It is hardly surprising that Hutcheson made the juridical mode relatively dominant in his teaching of moral philosophy in the University. This approach had become settled by his predecessor in the chair, Gershom Carmichael, on whose textbook edition of Pufendorf's shorter work Hutcheson drew quite heavily, as he himself indicated.⁵ What is more, natural jurisprudence was very much the modern subject in moral theory across much of Europe, with many contemporary teachers working out versions that they found philosophically and morally agreeable.⁶ One of the reasons for this popularity was that natural law theory offered a very wide curriculum in social and political theory that was considered appropriate in an education aimed not only at laying the foundations for the professional disciplines of theology, law, and medicine but at equipping students for a wide range of occupations and civic offices.⁷ However, in considering the relationship between the two mentioned modes of moral philosophy, namely the one focused on moral virtue, the moral sense, and disinterested benevolence and the one focused on natural law, it is crucial to appreciate that the latter was as much a language of moral inculcation as the former. This normative intention of Hutcheson's lectures and textbook, which is strongly emphasized in his preface to the *Short Introduction*, is also reflected in Hutcheson's striking combination of these two practical languages with a third, namely neoclassical republicanism, just as it informed his sociopolitical engagement, especially concerning toleration, political institutions, racism, and slavery. These aspects of his work had long-term influence in Ireland, Great Britain, and America.⁸

5. Hutcheson, *Short Introduction*, p. 3.

6. Cf. Haakonssen, "Early-modern natural law theories."

7. This is brought out with particular clarity in the teaching of one of Hutcheson's successors in Glasgow, Thomas Reid; see Reid, *Thomas Reid on Practical Ethics*. Cf. Carey, *Locke, Shaftesbury, and Hutcheson*, ch. 5; and Heydt, *Moral Philosophy in Eighteenth-Century Britain*. In the only surviving formal testimonial from Hutcheson for a former student, the later republican activist Richard Baron, Hutcheson stresses that in addition to being virtuous, Baron had been "particularly applying himself studiously to the law of nature"; see letter 35 in *Correspondence and Occasional Writings*.

8. See Haakonssen, "Natural Rights or Political Prudence?"; Maurer, "The Grievances from Toleration," 256–58; McBride, "The School of Virtue"; Robbins, "When It Is That Colonies May Turn Independent."

This leads us to the question of the place of the *System of Moral Philosophy* in the Hutchesonian landscape of moral philosophy. The *System* does cover much the same ground as Hutcheson's Latin textbook, especially the jurisprudence in Books II and III, yet in the *System* the material is expanded in elaborate literary form. The use of the "technical" language of jurisprudence is limited, and one finds frequent explanations of such usage intended for a "lay" readership. In fact, looking back at the abandoned work in 1741, Hutcheson clearly indicated the broad ambitions he had entertained before he put it aside. What he regretted not being able to finish does not sound much like a textbook, let alone like edited lectures. Instead, he used the manuscript of what was posthumously published as *A System of Moral Philosophy* as a useful stock of materials for his lectures.⁹

While it obviously draws upon material from his teaching, the *System* has to be seen as an attempt at a general synthesis of Hutcheson's moral, juridical, and political thought conceived for a broad audience. Whereas the famous early works had been, respectively, an *Inquiry* and an *Essay*, the new and much larger work was, as he stressed, a "system."¹⁰ His followers and literary executors showed a clear idea of its intended audience by offering it for public subscription, a common procedure at the time.¹¹ The 402 subscribers to the book represented an astonishingly wide segment of society from all conceivably relevant walks of life in England, Ireland, and Scotland—people able and ready to pay the special subscriber's price of one guinea. Some of them are still famous today, not least Hutcheson's greatest student, Adam Smith.¹² While people would have subscribed for a variety of reasons, purely academic interest cannot have played a central role.

Hutcheson's *System* is best seen as one among a group of works published in this period about whose audience and role in general we have only limited knowledge. In the first three-quarters of the eighteenth

9. See item 6 in the appendix.

10. See item 1 in the appendix.

11. The work was put up for subscription and was eventually advertised heavily in the London press as well as in Scotland. See the appendix, items 11 and 12.

12. For a survey, see Hogan, *A Posthumous Publication*, pp. 50–69.

century, a series of works on natural law were published in English; several of the most important ones were translations. These were large, some very large, works, clearly academic in the sense of being written by academic teachers who drew upon their teaching, but also in the sense of being part of the extremely dense intellectual culture prominent in most European universities. This culture was predominantly Latinate and was by no means unknown in Britain but was adopted especially in Scotland. Against this background, the publication in English (and in England) of several major works in this genre clearly shows that these were aimed at a much wider reading public than that found in academe. We see similar developments of natural law literature in many other European vernacular languages, especially French, but it is striking that England, with its distinctive common law, should domesticate natural law literature on the scale that it did. Seen from this perspective, Hutcheson's *System* was meant to contribute to a broader English-language literature by presenting his natural law in a literary form acceptable to a general audience while also taking up issues of special relevance to Scotland and Ireland, such as the relations between the church and civil authority. This aim was strengthened by the fact that this was a natural law founded in Hutcheson's theory of moral virtue, which was already an acknowledged contribution to a pan-British debate. In foreshadowing this move, he stressed that it was "in English, larger than both my former books" and was, if possible, to be published in London.¹³

Within this cosmopolitan framework Hutcheson dealt with a range of particular, parochial, and often pressing issues, including some changes to his earlier thought. Concerning Hutcheson's mode of moral philosophy, which focuses on defending the reality of a moral sense and of disinterested benevolence, one notices, for example, a modified list of internal senses (*System*, I.2), a fine-grained discussion of a new "desire

13. See item 1 in the appendix. In interesting contrast, he explicitly did not want the English translation of the Latin textbook to be published in London. But by the time of its publication he had his very own university press, the publishing house of his former students Andrew and Robert Foulis, who eventually issued the *System* as well.

of moral excellence" (*System*, I.3.6 and I.5.9), and an extensive discussion and rejection of a "higher scheme" of self-love that admits the reality of a moral sense and of disinterested benevolence yet claims that we cultivate these only in order to experience some supreme pleasures. As far as natural law is concerned, the central change from the *Inquiry* is the one mentioned already, namely that the subject becomes the major one and is presented in a systematic way. It is striking how up-to-date and deeply informed by the European natural law debate Hutcheson was. We flag several particular changes and additions in our annotation to the text of the *System*, hoping that these may be taken as invitations to further research.

As mentioned, Hutcheson despaired of finishing the *System* to the standard that he wanted for publication. He evidently worked on the book for some years after coming to Glasgow as professor,¹⁴ and surviving correspondence indicates that during the winter of 1737–38 he circulated the manuscript to his friends and associates in Ireland to obtain their comments. These letters provide a roster of Hutcheson's most important close allies, some of whom would play a role in the posthumous preparation and publication of the *System*.¹⁵

After the flurry of activity in the winter of 1737–38, we hear nothing more of the *System* until Hutcheson's despairing letter of June 1741, which clearly indicates that he had dropped the publication project. What had happened? We know for certain only what Hutcheson himself says in this letter about his mood and condition, yet there are clues that support some speculation.

The earliest records we have of Hutcheson tell us that he was involved in intellectual controversy, but he preferred to conduct his intellectual battles anonymously or pseudonymously when possible, and he was happy to operate also by proxy when helping supporters with pamphlets or sermons.¹⁶ The *System* has to be considered also in this light.

14. See item 1 in the appendix.

15. See items 2 and 3 in the appendix.

16. See the exchanges in the *London Journal* and the *Dublin Weekly Journal*, in *Correspondence and Occasional Writings*. For some striking cases of indirect operations, see Moore, "Evangelical Calvinists versus the Hutcheson Circle."

As we have indicated, despite the work's universalist claims, it carried a range of highly topical polemical edges. And in fact, Hutcheson initially wanted to publish even this major work anonymously.¹⁷ However, for a man as prominent as he had become, this was hardly possible, and rumors of a significant work were already abroad.¹⁸

Given Hutcheson's aversion to open controversy and the impossibility of anonymity, it seems plausible that a polemical battle that surrounded him during 1738 added considerably to his doubts about the publication of the *System*.¹⁹ Whatever he did, the work was bound to be seen in light of the fierce attack upon him for unorthodoxy and unsound ethics in his teaching by a former student, Hugh Heugh, and the angry and dismissive response of Hutcheson's allies—in which he might plausibly have been suspected of having had some hand—and further polemics. Although at first he dismissed Heugh's attack as "some whimsical Buffoonry about my Heresy,"²⁰ he likely came to see it in the same light as did his close friend and relative Will Bruce, who considered the accusations seriously damaging for Hutcheson's role as a public moralist.²¹ These considerations must have weighed heavily with Hutcheson, and we hypothesize that the situation played a significant role in Hutcheson's laying aside of the *System*.

Hot on the heels of this controversy there followed another disagreement of potentially much greater significance. Early in 1739, Henry Home (later Lord Kames) sent Hutcheson Books I and II of David Hume's recently published *A Treatise of Human Nature*. Hutcheson's comments, although cautious, led Hume to send him the draft of Book III.²² Read-

17. See item 1 in the appendix.

18. See item 7 in the appendix.

19. See the two pamphlets: Heugh's *Shaftsbury's Ghost conjur'd: or, a letter to Mr. Francis Hutcheson*, and *A Vindication of Mr. Hutcheson from the Calumnious Aspersions of a Late Pamphlet*, by a group of Hutcheson's "scholars," in *Correspondence and Occasional Writings*.

20. See item 5 in the appendix. Hutcheson to Thomas Drennan, 5 March 1738/39, in *Correspondence and Occasional Writings*, letter 27.

21. See item 4 in the appendix.

22. Hutcheson to Henry Home [April 1739], in *Correspondence and Occasional Writings*, letter 26.

ing Hume's theory of morals convinced Hutcheson that he faced a formidable philosophical opponent, as we learn from Hume's piqued response (Hutcheson's side of the correspondence has not been found).²³ Hume's moral theory, which could be read as Epicurean or skeptic, and his disengagement from every kind of moral edification were diametrically opposed to everything Hutcheson stood for. It is inconceivable that Hutcheson did not realize that the appearance of Hume's work significantly changed the intellectual situation in which his own major work would appear, and that some significant revisions to that work were thus necessary.

We get a few of Hutcheson's reactions to Hume in the Latin *Compend*,²⁴ but nothing that clearly can be identified as such appears in the *System*, certainly nothing that could be considered adequate from the senior Scottish philosopher's late magnum opus. We suggest that the magnitude of the revisions Hutcheson perceived to be necessary was the final straw that made him lay aside the *System*. Instead, he fought what he would have seen as a major public threat by means that were common, but which he commanded with particular skill: institutional politicking. He was instrumental in preventing Hume from becoming professor of moral philosophy in Edinburgh in 1744–45.²⁵

To all of these circumstantial troubles add Hutcheson's perception of his work as "confused" and in need of significant revision in both style and method. Although he was not a great stylist, he revised his writings repeatedly and often extensively, as we see especially in the case of the virtual rewriting of the *Inquiry*. The manuscript of the *System* shows a great deal of revision in Hutcheson's hand—some stylistic, some more substantial—but he was not wrong in wanting to do more. The organization of the material was indeed somewhat confused, with

23. Hume to Hutcheson, 17 September 1739; 4 March 1740; and 16 March 1740, in *Correspondence and Occasional Writings*, letters 30, 33, and 34. See Moore, "Hume and Hutcheson."

24. See, e.g., *Short Introduction*, I.1.10 and 11 (editorial notes 22 and 28); I.7.1; and III.1.6, p. 223. Cf. Luigi Turco, "Introduction," in Hutcheson, *Short Introduction*, pp. xix–xxi.

25. See Stewart, *The Kirk and the Infidel*.

substantial repetitions, sometimes verbatim.²⁶ Nevertheless, it was clearly a work nearing its final form when he despaired, first of the situation in which he unexpectedly found himself, and then eventually of his own powers, time, and, perhaps, ambitions to carry it through.

After Hutcheson's death, his close allies, especially the group of friends in Ireland to whom he had circulated the manuscript of the *System*, rallied to the cause of a final literary monument to their intellectual and moral leader. It seems that Hutcheson's protégé, William Leechman,²⁷ whom he had helped to get the professorship of divinity at Glasgow, was the organizer of the group's efforts to put the manuscript together for publication, though the formal editor was Hutcheson's son, also named Francis.²⁸ Apparently, the work literally had to be put together, as we explain in the Note on the Text below, but in addition to the physical stitching together, some of those involved also had a hand in some aspects of the presentation and the content. We see evidence of this in the different handwritings in the manuscript,²⁹ but we have in addition a remarkable letter in the hand of Leechman to one of the Irish associates, who can be identified with great likelihood to be William Bruce. The letter (from the summer of 1749) is significant for our understanding of the preparation of the *System*.³⁰ It shows the seriousness with which those involved with the publication of Hutcheson's work took the task, including their concerns about the delay and the expectations of the intended audience. It also indicates their willingness to interfere extensively in Hutcheson's text, although close examination of the manuscript that has survived does not give evidence of

26. Compare, e.g., III.6.2, last paragraph, with the final paragraph of section 7 in the same chapter; Hutcheson's notes at II.17.5 and III.5.6; his notes III.6.2 and III.6.6.

27. Hutcheson referred to Leechman as "one of my Scotch Intimates who sees all I do," item 6 in the appendix.

28. Francis Hutcheson (1721–80) was a physician; under the pseudonym Francis Ireland he was a popular songwriter.

29. See the Note on the Text.

30. See item 9 in the appendix.

quite such extensive manipulation.³¹ Further manuscript discoveries may lead to other results, but for ours, see the Note on the Text.

Despite Leechman's worries already in 1749 about the delay with the publication, it was not until February 1753 that the plan was advertised through the call for subscriptions.³² The friends set about collecting subscriptions, and sufficiently many people must have signed up so that the printing could begin a year later.³³ Yet another year after that the book was finally advertised, first in April and May 1755, then in November of that year.³⁴

We know of two contemporary reviews, both anonymous. The first was most likely by Hugh Blair, a prominent member of the Moderate party in the Church of Scotland and later professor of rhetoric at Edinburgh, and is a substantial engagement with Hutcheson's philosophy.³⁵ The review was highly positive about Hutcheson's reform of Presbyterian morals and philosophy ("we may venture to ascribe to our author the praise of having removed a great deal of rubbish from the science of morals").³⁶ Like Leechman in his preface to the *System*, the author of the review also delineated a difference between Hutcheson and Shaftesbury, pointing out that the former insisted that we cultivate virtue not only out of a desire for our own happiness but also because there is an original "calm desire of the happiness of all rational beings."³⁷ Such ideas were basic to the clerical intellectuals known as the Moderates, who dominated the high Enlightenment in Scotland. The second review was by the Dissenting schoolmaster William Rose. Written in the style of

31. Nevertheless, we draw attention to one quite remarkable revision in III.9.2. See note 5 to that passage.

32. See item 11 in the appendix.

33. See item 8 in the appendix; and Alexander Haliday to William Bruce, 27 March 1754, Bruce papers, T.304/1/D4, PRONI.

34. See item 12 in the appendix.

35. [Blair], "Review of *A System*." The review appeared in the January–June 1755 issue of the short-lived first *Edinburgh Review*, pp. 9–23. See Grote, *The Emergence of Modern Aesthetic Theory*, pp. 162–64, 189–90.

36. [Blair], "Review of *A System*," pp. 8–9.

37. [Blair], "Review of *A System*," p. 14; cf. Leechman's preface, pp. xliv–vii; and *System*, I.4.12.

the time, it consists mainly of lengthy extracts and summaries of Leechman's preface and Hutcheson's text.³⁸ The author of the review begins his text by stating, "Few, if any, of our modern writers have cultivated the science of morals with so much success, as the very ingenious author of the work now before us."³⁹

38. Rose, "Review of *A System*." The review appeared in the *Monthly Review, or Literary Journal* 13 (1755): pp. 61–77, 100–112, 161–79. William Rose was an Aberdonian educated at Marischal College and was for a time an assistant at Doddridge's Academy in Northampton.

39. Rose, "Review of *A System*," p. 61.

NOTE ON THE TEXT

Printed text

The present edition is based on the printed text that was published in two volumes quarto by Robert and Andrew Foulis in Glasgow in 1755.¹ We used two copies. The first text can be found at Glasgow University Library, Special Collections Q81–82; and the second text is at Niedersächsische Staats- und Universitätsbibliothek Göttingen, 4° Philos. VI, 3000, as reprographically reproduced in Hutcheson, *Collected Works*, vols. 5–6. In addition, we consulted the copies located in the New York Public Library and the University of California Library, available from the Hathi Trust Digital Library; the Bayerischer Staatsbibliothek Digital; the library of Columbia University New York, available from Googlebooks; and the British Library available in Eighteenth Century Collections Online.

As we explain in the next section, the division of the work into two volumes did not reflect any intellectual arrangement of the text. Accordingly, the present edition does not reproduce this division.

Manuscript

A System of Moral Philosophy is the only one of Hutcheson's works for which a manuscript is extant, namely Glasgow University Library, GB 247 MS Gen. 110. For reasons we will explain, the manuscript cannot be considered of greater authorial authority than the published text, but we have made extensive use of it by including in our notes those

1. For a complete bibliographical description, see Gaskell, *Foulis Press*, p. 199.

variants from the printed text that could conceivably be relevant to the meaning of the latter. We have italicized the note reference numbers for notes that concern only manuscript variants.

The manuscript is important for understanding the generation of the published work, yet it also raises questions that cannot be answered completely with the evidence available. The handwritten document has been restored and is preserved as one volume that binds together several folders of leaves. It has three main components in distinct handwritings. The first and longest part contains Books I and II and is clearly in Hutcheson's own hand. It is paginated consecutively 1–311, but the text ends on page 308. A second part contains Book III, chapters 1–3, and is written in an unidentified hand. It is paginated consecutively 341–76. The rest of the work, Book III, chapters 4–11, is written in yet a different hand and is paginated 1–172. Despite the lack of consecutive pagination, the text of the manuscript corresponds to the continuous text that was published.

In the first part there are a great number of corrections and revisions of style, grammar, and meaning. A few *may* be in Leechman's hand, but generally they seem to be Hutcheson's own. In the two other parts the changes are minimal; several of them deal with what we take to be mistaken copying. These changes seem to be in Leechman's hand. The final part of the manuscript was issued with running heads in a uniform hand that we believe is also Leechman's. The corrections as well as the running heads are reproduced in the printed text.

Our interpretation of these complexities concerning the manuscript is as follows. Leechman as the *de facto* editor, acting for Hutcheson's son, had available only Books I and II of Hutcheson's own manuscript. Book III can most obviously be understood as missing either because it had not been returned from the friends in Ireland to whom he had sent it in sections or because it had been lost on its travels.² As a consequence, Leechman had to use other copies of Book III, possibly ones made when one reader sent on a section to the next reader. The differ-

2. For expressions about the uncertainties involved in the circulation, see items 3 and 4 in the appendix.

ent paginations are readily understood as the result of different copying exercises.

This composite manuscript does not appear to be the one from which the book was set and printed. In a note dated 3 July 1753 and preserved with the manuscript, Leechman gives the printer, Robert Foulis, instructions that clearly imply that Foulis was using a separate copy.³ Leechman was having a fair copy made and sent to Foulis, who was printing the work in stages (as was not uncommon). Given the very close correspondence between the extant manuscript, including the corrections, and the printed work, it seems safe to assume that the fair copy was made from the manuscript that we have.

The occasion for Leechman's note was that Foulis needed to know where the middle of the work was, so that he could plan where to divide the printed text into two volumes. Leechman could tell him because he had "the Original" and could see that the middle is at p. 236, and he noted that these page numbers had been transferred to the fair copy in the margin (there are none such in the margin of "the Original"). The section of the fair copy that Leechman was sending was now up to page 252 of the original and therefore past the middle.

Page 236 in the preserved original manuscript is in II.9.11 (vol. II, pp. 20–21 in the printed text), so Leechman advises Foulis that he may make the volume division either at II.9 or II.10. As we know, the printer chose the former. He had to make allowance for Leechman's preface and other front matter still to come.⁴ Leechman dated his preface 24 December 1754.

One thing might seem to cast doubt over our suggestion that the extant manuscript was not the one from which the book was printed.

3. See item 10 in the appendix.

4. The list of subscribers must of necessity have been a last-minute addition. In some copies it was printed separately on much smaller pages (small octavo) than the main text. But in later copies it was printed in the same format as the main text. Underneath Leechman's instructions to Foulis about the middle of the text there are some faint pencil calculations that state the lengths of the three segments of text in the three hands. But in addition, the lengths of Leechman's preface and the front matter seem to be indicated, which means that these calculations were made at a late state in the production. However, the writing is faint, and there may have been more.

In a number of places in the manuscript the signatures and the matching page numbers in the printed text have been added in the margin.⁵ In view of the evidence that the printer was using a fair copy, we must assume a different function for the signatures in our manuscript. One possibility is that they were added by Leechman for his own orientation when he checked the printed text against the manuscript, as he indicated that he did.⁶

In sum, on our interpretation of the scattered evidence, Leechman assembled a complete manuscript consisting of the three parts written in different hands. He got a fair copy made from this, which he checked and sent to the printer in segments as it became available. Foulis sent him the text as it was being printed, and Leechman proofread or “compared” it against his original composite manuscript “for the Press,” as he said. He would have gotten the printed text in sheets, so he kept order by noting the signatures from the sheets onto the manuscript.

One minor mystery remains about the manuscript. It has no title, and there is no definitive evidence that the title under which the work appeared was Hutcheson’s choice. In his first recorded reference to the work in 1737, Hutcheson uses the phrase descriptively: “tis a System of Morality.”⁷ Presumably such descriptions led to the adoption of the title, but we do not know exactly when and by whom. Similarly, there is no table of contents in the manuscript. This must have been assembled by Leechman (or Foulis) from the headings in the text.

Editorial material and interventions in the text

With a text as rich and many-sided as Hutcheson’s *System* it would be both futile and undesirable to attempt an exhaustive commentary. Our guiding ideal has been to provide the reader with enough textual and contextual leads to make the reading immediately profitable but also to

5. We identify fifteen signatures in the manuscript. All are in Books I and II, i.e., in the text preserved in Hutcheson’s handwriting, in which the most extensive revisions had been made. There may be more signatures that are hidden in the binding.

6. See item 10 and note 22 in the appendix.

7. See item 1 in the appendix.

facilitate, indeed to encourage, further work. We have therefore striven to abstain from direct interpretation of Hutcheson's text. The leads we provide are, of course, offered from our point of view, but we have tried to be as broadly inclusive as possible within the accepted limitations of the series in which the work appears.

There are only a few typographical errors in the text Robert Foulis printed, and we have corrected these silently. We have collated the printed text with the manuscript and, as mentioned, noted those variants that might be seen as important for the meaning of the text or informative of the way in which Hutcheson composed.

All the editorial notes are numbered consecutively in each of the three books. As mentioned, for notes that deal exclusively with variant readings, we have italicized the note reference numbers. The original text includes notes by Hutcheson and Leechman that are indicated consecutively for each page by the symbols common in older texts: *, †, ‡, and §. We have retained this system. Whenever mandated by the content, we have added our references and explanations within the original notes in [square brackets].

Cross-references take the form *System* I.8.9 and I.5.7(2), for example, where the initial roman numeral is the book number, the second number is the chapter number (chapter numbers are given in arabic numerals in Hutcheson's contents lists but in roman numerals at his chapter openings), and the third number refers to Hutcheson's section within the chapter (usually a roman numeral in the original text); where relevant, a subsection is noted in parentheses.

The page numbers of the 1755 edition are inserted in the present edition in <angle brackets>. For example, page 112 begins after <112>.

We have reproduced all spelling, capitalization, italics, and punctuation as they were in the original printed work and in the variants quoted from the manuscript. Full bibliographical details are given only in the bibliography.

Because the work was sold in sheets, and buyers had it bound as they saw fit, the sequence of the texts at the front (dedication, preface, list of subscribers, table of contents) vary in the extant copies.

A
S Y S T E M
O F
M O R A L
P H I L O S O P H Y.
IN THREE BOOKS;

WRITTEN BY THE LATE
FRANCIS HUTCHESON, L. L. D.
PROFESSOR OF PHILOSOPHY
IN THE UNIVERSITY OF GLASGOW.

PUBLISHED FROM THE ORIGINAL MANUSCRIPT,
BY HIS SON FRANCIS HUTCHESON, M. D.

To which is prefixed
SOME ACCOUNT OF THE LIFE, WRITINGS, AND CHARACTER OF THE AUTHOR,
BY THE REVEREND WILLIAM LEECHMAN, D. D.
PROFESSOR OF DIVINITY IN THE SAME UNIVERSITY.

V O L U M E I.

GLASGOW: PRINTED AND SOLD BY R. AND A. FOULIS PRINTERS TO THE UNIVERSITY.

L O N D O N,

SOLD BY A. MILLAR OVER-AGAINST KATHARINE-STREET IN THE STRAND,
AND BY T. LONGMAN IN PATER-NOSTER ROW.

M.DCC.LV.¹

1. The Liberty Fund edition is based on the printed text that was published in two volumes by Robert and Andrew Foulis in Glasgow in 1755. We present here the two title pages as they originally appeared.

A
S Y S T E M
O F
M O R A L
P H I L O S O P H Y.
IN THREE BOOKS;

WRITTEN BY THE LATE
FRANCIS HUTCHESON, L.L.D.
PROFESSOR OF PHILOSOPHY
IN THE UNIVERSITY OF GLASGOW.

PUBLISHED FROM THE ORIGINAL MANUSCRIPT,
BY HIS SON FRANCIS HUTCHESON, M.D.

To which is prefixed
SOME ACCOUNT OF THE LIFE, WRITINGS, AND CHARACTER OF THE AUTHOR,
BY THE REVEREND WILLIAM LEECHMAN, D.D.
PROFESSOR OF DIVINITY IN THE SAME UNIVERSITY.

V O L U M E II.

GLASGOW, PRINTED AND SOLD BY R. AND A. FOULIS PRINTERS TO THE UNIVERSITY.

L O N D O N,
SOLD BY A. MILLAR OVER-AGAINST KATHARINE-STREET IN THE STRAND,
AND BY T. LONGMAN IN PATER-NOSTER ROW.
M.DCC.LV.

TO THE RIGHT REVEREND
FATHER IN GOD,
EDWARD,
LORD BISHOP OF ELPHIN.¹

MY LORD,

Your Lordship's known regard for the sacred interests of Virtue and true Religion, is sufficient to ensure your favourable reception of any work which tends to promote those great and important ends. The following has yet a farther claim to your Lordship's favour. The Author, my excellent Father, (your Lordship knows I exceed not the truth in calling him so) was formerly honoured with a place in your friendship. As this was a source of the highest pleasure to him while he lived, so it must reflect particular honour upon his memory. It is with pleasure I embrace this public opportunity of declaring myself, with the highest respect and gratitude,

MY LORD,

*Your LORDSHIP's most obedient,
and most humble Servant,*

DUBLIN, }
Jan. 25, 1755. }

FRANCIS HUTCHESON.²

1. Edward Synge (1691–1762), Church of Ireland Bishop of Elphin; see note 7 to the preface, below.

2. Francis Hutcheson (1721–1780), the son of the philosopher.

THE PREFACE

Giving some Account of the Life, Writings, and Character of the Author.

Dr. Francis Hutcheson was born on the 8th of August, A. D. 1694. His father, Mr. John Hutcheson, was minister of a dissenting congregation in the North of Ireland; a person of good understanding, considerable learning, and reputation for piety, probity, and all virtue. His son Francis, when about eight years of age, was sent to be educated along with his elder brother, under the eye and direction of their grandfather Mr. Alexander Hutcheson, who was also a worthy dissenting clergyman in the same part of the country, but had come from Scotland. He was second son of an ancient and reputable family in the shire of Ayr in that kingdom.

A superior capacity, an ardent thirst for knowledge, and the seeds of the finest dispositions soon began to <ii> shew themselves in Francis: particularly a singular warmth of affection and disinterestedness of temper, for which he was distinguished thro' his whole life, appeared in many instances in this early period of it. The innocence and sweetness of his temper, his great capacity and application to his learning soon procured him a distinguishing place in his grandfather's affections. But such was his love for his brother, that his grandfather's fondness gave him no joy while his brother did not equally share it: nay the preference that was shewn him gave him real concern, and put him upon employing all means and innocent artifices in his power to make his brother appear equally deserving of his grandfather's regard. And when his grandfather in his last will had made an alteration of a prior settlement of his family-affairs in his favour, tho' many arguments were used by

his relations to prevail with him to accept of it, he peremptorily refused, and insisted to the last that the first settlement should take place. These, and many other instances of the like kind which might be related, were promising presages of remarkable disinterestedness in more advanced years. <iii>

When he had gone thro' the common course of school education he was sent to an Academy at some distance from his parents to begin his course of Philosophy: he was taught there the ordinary Scholastic Philosophy which was in vogue in those days, and to which he applied himself with uncommon assiduity and diligence.

In the year 1710 he removed from the Academy, and entered a student in the Natural Philosophy class in the University of Glasgow, and at the same time renewed his study of the Latin and Greek languages: and in all parts of literature, to which he applied himself, he made such proficiency as might be expected from a genius like his cultivated with great care and diligence.

After he had finished the usual course of philosophical studies, his thoughts were turned toward Divinity, which he proposed to make the peculiar study and profession of his life. For prosecution of which design he continued several years more at the University of Glasgow studying Theology under the direction of the reverend and learned Professor John Simson.¹ <iv>

Among the manifold theological enquiries which occurred to him as deserving his most serious examination; he chused to begin with the grand fundamental one concerning the being, perfections, and providence of God. The reverend Dr. Clark's² learned and ingenious book on this subject, published a short time before, fell into his hands. Tho' he most heartily approved of all the Doctor's conclusions, and had the

1. John Simson (1667–1740), Church of Scotland minister and Professor of Divinity at the University of Glasgow. In 1717 and 1727, Simson underwent two processes for heresy and was finally suspended from teaching in 1729.

2. Samuel Clarke (1675–1729), Anglican theologian and philosopher, author of *A Demonstration of the Being and Attributes of God* (1705) and of *A Discourse concerning the Unchangeable Obligations of Natural Religion, and the Truth and Certainty of the Christian Revelation* (1706), both of which were based on Boyle lectures delivered by Clarke in 1704 and 1705.

highest sense of his singular abilities and virtues, yet after the most serious and attentive consideration of his arguments, he did not find that conviction from them which he wished and expected. In order to procure more satisfaction on this subject, and particularly with regard to the force and solidity of the arguments *a priori* (as they are commonly called) he wrote a letter to him, about the year 1717, urging his objections, and desiring a further explication. Whether the Doctor returned any answer to this letter does not appear from Dr. Hutcheson's papers.³ After all the enquiry he could make, he still continued extremely doubtful of the justness and force of all the metaphysical arguments, by which many have endeavoured to demonstrate the existence, unity, and perfections of <v> the Deity. He not only thought that these kind of arguments were not adapted to the capacity of the bulk of mankind,⁴ but even that they could afford no solid and permanent conviction to the learned themselves. It was his opinion in this early part of his life, and he never saw cause to alter it, that as some subjects from their nature are capable of a demonstrative evidence, so others admit only of a probable one; and that to seek demonstration where probability can only be obtained is almost as unreasonable as to demand to see sounds or hear colours. Besides he was persuaded that attempts to demonstration on such subjects as are incapable of it were of very dangerous consequence to the interests of truth and religion: because such attempts instead of conducting us to the absolute certainty proposed, leave the mind in such a state of doubt and uncertainty as leads to absolute scepticism: for if once we refuse to rest in that kind of evidence, which the nature of the subject only admits of, and go on in pursuit of the highest kind, strict demonstration, we immediately conclude there is no evidence; because we do not meet with that kind of it which we expected: and thus the mind remains in a state of <vi> absolute uncertainty, imagining there is no evidence, when all that the nature of the case admits of is laid before it, and enough to satisfy every one whose

3. On the absence of a reply by Clarke, cf. Scott, *Francis Hutcheson*, pp. 16–17, who quotes Stuart, *Historical Memoirs of the City of Armagh*, p. 492.

4. For critical remarks regarding the capacity of the “bulk of mankind” by Hutcheson himself, see *System* III.9.1.

understanding is not disordered with an unnatural thirst for scientific knowledge on all subjects alike. This opinion of the various degrees of evidence adapted to various subjects first led Dr. Hutcheson to treat morals as a matter of fact, and not as founded on the abstract relations of things. But of this more particularly hereafter.

After he had spent six years at the University of Glasgow, he returned to Ireland, and submitted to trials, in order to enter into the ministry, and was licensed to preach among the Dissenters. He was just about to be settled a minister in a small dissenting congregation in the North of Ireland, when some gentlemen about Dublin, who knew that his abilities and virtues qualified him to be more extensively useful than he could possibly be in that remote congregation, invited him to take up a private academy there. He complied with the invitation, and acquitted himself in that station with such dignity and success as gave entire satisfaction to all those who committed their <vii> children to his care; and soon drew the attention of the public upon him. He had been fixed but a short time in Dublin when his singular merit and accomplishments made him generally known: men of all ranks, who had any taste for literature, or esteem for learned men, sought his acquaintance and friendship. Among others he was honoured with a place in the esteem and friendship of the late Lord Viscount Molesworth,⁵ who took pleasure in his conversation, and assisted him with his criticisms and observations to improve and polish the *Inquiry into the Ideas of Beauty and Virtue*, before it came abroad.⁶ The reverend Dr. Synge, now Lord Bishop of Elphin,⁷ whose friendship Dr. Hutcheson always

5. Robert Molesworth, first Viscount Molesworth (1656–1725), Whig politician and political writer. In the early 1720s, Molesworth famously had a literary circle in Dublin where the writings of Anthony Ashley Cooper, the third Earl of Shaftesbury, were discussed.

6. A reference to Hutcheson's *An Inquiry into the Original of Our Ideas of Beauty and Virtue in Two Treatises*, which saw four editions during Hutcheson's lifetime: 1725, 1726, 1729, and 1738.

7. Edward Synge (1691–1762), Church of Ireland Bishop of Elphin, was a friend of Hutcheson's since the 1720s, when both were members of Lord Molesworth's circle. In the preface to his *Inquiry* (11), Hutcheson acknowledges the support of Synge. See note 1 in the dedication.

regarded as one of the greatest pleasures and advantages of his life, likewise revised his papers, and assisted him in the general scheme of the work.

The first edition came abroad without the author's name, but the merit of the performance would not suffer him to be long conceal'd: such was the reputation of the work, and the ideas it had raised of the author, that Lord Granville,⁸ who was then Lord Lieutenant of Ireland, whose discernment and taste as to <viii> works of genius and literature is universally acknowledged, sent his private secretary to enquire at the booksellers for the author, and when he could not learn his name, he left a letter to be conveyed to him, in consequence of which he soon became acquainted with his Excellency, and was treated by him all the time he continued in his government with the most distinguishing marks of familiarity and esteem.

From this time his acquaintance began to be still more courted by most men of distinction either for station or literature in Ireland. Archbishop King,⁹ the author of the book *De Origine Mali*, held Dr. Hutcheson in great esteem, and his friendship was of great use to him in an affair which might otherwise have been very troublesome to him, and perhaps ended in putting an entire stop to his usefulness in that place. There were two several attempts made to prosecute Mr. Hutcheson, in the Archbishop's court, for daring to take upon him the education of youth, without having qualified himself by subscribing the ecclesiastical canons, and obtaining a licence from the Bishop.¹⁰ Both these attempts were effectually discouraged by his Grace, with expressions of hearty displeasure against <ix> the persons who were so forward as to commence them. And at the same time he assured him that he needed be under no apprehension of disturbance from that quarter, as long as it continued in his power to prevent it.

8. John Carteret, second Earl Granville (1690–1763).

9. William King (1650–1729), Church of Ireland Archbishop of Dublin, and author of *De origine mali* (1702).

10. Hutcheson's good relations with King are reflected in his gift of a copy of the *Inquiry* to King when it first appeared. See Letter No. 3, *Correspondence and Occasional Writings*, p. 6.

He had also a large share in the esteem of the late Primate Bolter,¹¹ who, thro' his influence, made a donation to the University of Glasgow, of an yearly fund for an exhibitor, to be bred to any of the learned professions. This is only one instance among many of that prelate's munificent temper. Mr. West,¹² a gentleman of great abilities, and of known zeal for the interests of civil and religious liberty, was particularly fond of Dr. Hutcheson, and lived in great intimacy with him, while he continued in Ireland.

A few years after the Enquiry the Treatise on the Passions was published:¹³ as both these books have been long abroad in the world and undergone several impressions, a sufficient proof of the reception they have met with from the public, it would be needless to say any thing concerning them. About this time he wrote some philosophical papers accounting for Laughter, in a different way from Mr. Hobbs, and more honourable to human nature: these papers were published in the collection called *Hibernicus Letters*.¹⁴ Some letters in the *London Journal* 1728 subscribed Philaretus,¹⁵ containing objections to some parts of the doctrine in *the Enquiry*, occasioned Mr. Hutcheson's giving answers to them in those public papers: both the letters and answers were afterwards published in a separate pamphlet. The debate was left unfinished, Philaretus's death having put an end to the correspondence, which was proposed to have been afterward carried on in a more private manner.

11. Hugh Boulter (1672–1742), Church of Ireland Archbishop of Armagh. See also *Correspondence and Occasional Writings*, p. 216.

12. Richard West (c. 1691–1726), Lord Chancellor of Ireland.

13. A reference to Hutcheson's *An Essay on the Nature and Conduct of the Passions and Affections, with Illustrations on the Moral Sense*, which saw three editions during Hutcheson's lifetime: 1728, 1730, and 1742.

14. The letters, originally published in the *Dublin Journal*, were later published in several self-standing collections, edited by the poet and essayist James Arbuckle (d. 1742). The first was a two-volume collection entitled *A Collection of Letters and Essays on Several Subjects, Lately Publish'd in the Dublin Journal* (1729); later came another two-volume collection entitled *Hibernicus's Letters: or, A Philosophical Miscellany* (1734). For a modern edition, see *Correspondence and Occasional Writings*, pp. 195–243.

15. "Philaretus" was the pseudonym of Gilbert Burnet (1690–1726). In their controversy, Hutcheson adopted the pseudonym "Philanthropus."

After he had taught the private Academy in Dublin for seven or eight years with great reputation and success; in the year 1729 he was called to Scotland to be a Professor of Philosophy in the University of Glasgow. His established reputation for literature and worth was the only consideration that induced the University to elect him into the place vacant by the death of the learned and worthy Mr. Gershom Carmichael.¹⁶ The public approved of their choice, and the event abundantly justified the wisdom of it. The Professors were soon sensible, that his admission into their body had good effects both upon the reputation and interests of the society. Several young gentlemen came along with him from the Academy, and his just fame drew many more both from England and Ireland. But it will probably be rather matter of surprize to the reader, that he accepted of the place, than that the University unsolicited made him the offer of it.¹⁷ If any one should ask, as it is natural to do, how it came to pass that a man of Dr. Hutcheson's accomplishments and virtues, and who could count such lists of honourable persons, and many of them of great authority and influence, in the number of his friends, should continue to teach a private Academy for seven or eight years in the heart of a country where there were so many beneficial places proper to be bestowed on men of genius and merit. Or if any one should ask, how it came to pass that he was permitted, to leave his country, break off all connections with his relations and friends, and in the midst of life remove to another kingdom to accept a place in an University far from being lucrative and very laborious? It is sufficient to answer to these questions: that it was not the want either of inclination or power in his friends to serve him that was the stop to

16. Gershom Carmichael (1672–1729), first professor of moral philosophy at the University of Glasgow, introduced the teaching of Pufendorbian natural law in the University of Glasgow. He published an edition of Pufendorf's *On the Duty of Man and Citizen* that included numerous supplements and notes (Glasgow, 1718 and 1724).

17. The faculty of the University was in fact split, with Hutcheson being elected with a majority of two. But the election was secured by the dominant political faction allied with Archibald Campbell, first Earl of Ilay (later third Duke of Argyll), and the faculty dispensed with the trial comparing contenders for the post. See Emerson, *Academic Patronage in the Scottish Enlightenment*, pp. 96–97.

his preferment. He <xii> had private reasons which determined him neither to seek promotion, nor to encourage the most probable schemes proposed to him for obtaining it. It is but justice to his character to say, that he was useful and contented in that station in which it had pleased Divine Providence to fix him, and that neither the love of riches, nor of the elegance or grandeur of human life prevailed so far in his breast as to make him offer the least violence to his inward sentiments. To which it may be added, that the silent and unseen hand of an all-wise Providence which over-rules all the events of human life, and all the resolutions of the human will, conducted him to that station in life, which tho' far from being the highest in external distinction, yet was perhaps of all others the most suited to the singular talents with which he was endowed, and gave him the opportunity of being more eminently and extensively useful than he could have been in any other.

After his settlement in the College he was not obliged (as when he kept the Academy) to teach the languages and all the different parts of Philosophy, but had leisure to turn his chief attention to his favourite study Human Nature: he had high thoughts of its <xiii> original dignity, and was persuaded, that even in this corrupt state, it was capable of great improvements by proper instruction and assiduous culture. The profession of Moral Philosophy was the province assigned him in the College. In cultivating this science he pursued the same method in which he began, setting aside all researches into the abstract relations and eternal fitness and unfitness of things, and directing his enquiries into what is more obvious and immediately known from observation and experience, viz. What is in fact the present constitution of human nature; what is that state of heart, and course of life which is most correspondent to the whole frame.

He had observed, that it was the happiness and glory of the present age, that they had thrown off the method of forming hypotheses and suppositions in natural philosophy, and had set themselves to make observations and experiments on the constitution of the material world itself, and to mark the powers and principles which are discerned operating in it: he saw plainly that it was by adhering strictly to this method that natural philosophy had been carried to a greater degree of perfec-

tion than ever it was before, and that <xiv> it is only by pursuing the same method that we can hope to reach higher improvements in that science. He was convinced that in like manner a true scheme of morals could not be the product of genius and invention, or of the greatest precision of thought in metaphysical reasonings, but must be drawn from proper observations upon the several powers and principles which we are conscious of in our own bosoms, and which must be acknowledged to operate in some degree in the whole human species. And that therefore, one proper method at least to be followed in the moral science, is to inquire into our internal structure as a constitution or system composed of various parts, to observe the office and end of each part, with the natural subordination of those parts to one another, and from thence to conclude what is the design of the whole, and what is the course of action for which it appears to be intended by its great Author.¹⁸ He thought there was ground to hope, that from a more strict philosophical enquiry into the various natural principles or natural dispositions of mankind, in the same way that we enquire into the structure of an animal body, of a plant, or of the solar system, a more <xv> exact theory of morals may be formed, than has yet appeared: and a theory too built upon such an obvious and firm foundation as would be satisfactory to every candid enquirer. For we can be as certain of the several parts of our internal frame from inward perception and feeling, as we are of the several parts of an animal structure from ocular inspection: and we can as little doubt of the ends for which the principal parts at least of our internal constitution are intended, as we can doubt of the ends for which the members of our body, or our external senses were framed: and whatever evidence we have for the existence and perfections of the Supreme Being, we have the same evidence that the moral constitution of our nature is his work, and thence we conclude, that it is most certainly his will, that we should cultivate that temper of mind, and pursue that course of life, which is most correspondent to the evident ends and purposes of his divine workmanship; and that

18. Leechman's language is here strongly reminiscent of Butler's in the preface to his *Sermons*, as often is Hutcheson's own.

such a state of heart and plan of life, as answers most effectually the end and design of all the parts of it, must be its most perfect manner of operation, and must constitute the duty, the happiness, and perfection of the order of beings to whom it belongs. <xvi>

Our author has attempted in the following work, first to unfold the several principles of the human mind as united in a moral constitution, and from thence to point out the origin of our ideas of moral good and evil, and of our sense of duty, or moral obligation; and then to enquire what must be the supreme happiness to a species constituted as mankind are; and then he proceeds to deduce the particular laws of nature, or rules necessary to be observed for promoting the general good in our common intercourses with one another as members of society. How far he has succeeded, must be left to the judgment of the attentive and candid reader.

Whatever corrections or improvements his scheme may be supposed to admit of, after longer observation and further examination into the frame and operations of our minds, one thing is certain that the result of his observations and reasonings must meet with entire approbation, as it places the highest virtue and excellence of a human character, where all sound Philosophy and Divine Revelation has placed it, viz. *In such habitual and prevailing exercise of all these good affections to God and man, as will restrain all other appetites, passions, and affections within just bounds, and <xvii> carry us out uniformly to pursue that course of action, which will promote the happiness of mankind in the most extensive manner to which our power can reach.** And it must also be acknowledged, that our Author's doctrine, which asserts that we are laid under a real

* Some seem to have mistaken our Author's doctrine so widely, as to imagine that he placed virtue in the mere sentiment or perception of moral beauty and deformity in affections and actions, which it is owned the worst of mankind may retain in a very considerable degree. Whereas he always places it in the exercise of these affections and actions flowing from them which the moral faculty recommends and enjoins. Or in other words, virtue does not lye in the mere sentiment of approbation of certain affections and actions, but in acting agreeably to it. [Leechman may be thinking, for example, of Gilbert Burnet's objections to Hutcheson. See the exchange between Burnet and Hutcheson in the *London Journal* as reprinted in Hutcheson, *Correspondence and Occasional Writings*, pp. 152–93.]

internal obligation, of a most sacred kind, from the very constitution of our nature,* to promote the good of mankind, tho' at the expence of sacrificing life itself and all its enjoyments, coincides, or at least is no way inconsistent with these precepts of Christianity, by which we are enjoined to lay down our lives for the <xviii> bretheren; while at the same time it gives us more just, more amiable and worthy ideas of human nature, as originally intended to be actuated by more disinterested principles, than these philosophers are willing to allow, who labour to reduce all the motions of the human mind to self-love at bottom, however much they may seem to be different from it at first appearance.¹⁹ According to our Author's views of human nature, tho' these generous principles may be born down and over-powered in this corrupt state, by sensual and selfish passions, so as not to exert themselves with sufficient vigour, even when there is proper occasion for them; yet the intention of the Author of Nature is abundantly manifest from this important circumstance, that the moral sense is always so far true to its office, that it never fails to give the highest and warmest approbation to every instance of truly disinterested virtue. The less suspicion there is

* Some seem to have mistaken Dr. Hutcheson so far on this subject, as to imagine, that when he says we are laid under a most real and intimate obligation by the moral sense to act virtuously, he meant to assert that all other obligations from the consideration of the will of God, and the effects of his favour or displeasure in this and in another world were superseded. Nothing could be farther from his thoughts; nor is it a consequence of his scheme. He was fully sensible of the importance and necessity of enforcing the practice of virtue upon mankind from all possible considerations, and especially from these awful ones of future rewards and punishments. If any one should say, that there is a natural sense of equity implanted in the human mind, which will operate in some degree even on those who know not that there is a God or a future state: it could not justly be concluded from thence, that such a person also maintained, that this natural sense of equity alone, was sufficient to ensure the uniform practice of justice, in all mankind, even when meeting with numberless strong temptations to depart from it. The application is so obvious, that it is needless to insist upon it. [The objection against Hutcheson discussed by Leechman, which concerns the source of our obligation to virtue, may have been triggered by Hutcheson's own remarks on moral obligation, for example in *Inquiry* II.7.1, pp. 176–78. See also Hutcheson's discussion in *System* I.4.12.]

19. The falsity and dangerous consequences of the selfish hypothesis are often discussed in Hutcheson's writings. See, e.g., the preface to the *Essay* (3–11) and, with a slightly different interest, *System* I.3.1–6.

of any view even to future fame in the behaviour of the martyr, the patriot, or hero, when he yields up his life in a worthy cause, so much louder and stronger is the applause of all spectators, and so far as any interested considerations are supposed to influence him, the approbation <xix> given to him is proportionably diminished: according to this representation of things, the soul of man, not only bears a resemblance of the Divine Intelligence in its rational faculties, but also of the Divine disinterested benignity in its social and public affections: and thus too our internal constitution, formed for pursuing the general good, beautifully tallies with the constitution of the universe: we see thro' the whole of Nature what admirable provision is made for carrying on the general interests of all the species of living beings. So that it is quite agreeable to the analogy of Nature, that mankind, the highest order of creatures in this lower world, should be formed with dispositions to promote the general good of their species, and with a discernment that it is their duty to part with life itself, when a public interest requires it.

But Dr. Hutcheson's character, as a man of parts and learning, does not depend merely on the peculiarities of a scheme of morals. His knowledge was by no means confined to his own system: that he was well acquainted with the writings both of the ancients and moderns relative to morality, religion, and government will appear evident to every one who per<xx>uses the following work. Nor did the study of morals, even in this extensive view, engross his whole time and attention. An ardent love of knowledge was natural to him. He loved truth, and sought after it with impartiality and constancy. His apprehension was quick and his memory strong: he was not only patient of thought and enquiry, but delighted in it. His mind was never subject to that languor which frequently interrupts the studies of worthy men: his faculties were always at his command and ready for exercise. A mind endowed and disposed in such a manner, and employed in study for a long course of years, must have been furnished with a large compass of knowledge.

In the earlier part of his life he entered deeply into the spirit of the ancients, and was soon sensible of and admired that justness and sim-

plicity both of thought and expression which has preserved and distinguished their writings to this day. He read the historians, poets, and orators of antiquity with a kind of enthusiasm, and at the same time with a critical exactness. He had read the poets especially so often, that he retained large passages of them in his memory, which he frequently and elegantly applied to the subjects he <xxi> had occasion to treat in the course of his prelections. His knowledge and taste in Latin appears from what he has wrote in it. His Synopsis of Metaphysics, Pneumatics, Natural Theology, and his Compend of Ethics are written with a spirit and purity of style seldom to be met with in modern Latin compositions.²⁰

He had studied all the parts of Philosophy with such care as to have attained clear and comprehensive views of them. He composed a small treatise of Logic, which tho' not designed for the public eye, yet gives sufficient proof how much he was master of that science.²¹ It appears from his treatise of Metaphysics, that he was well acquainted with the logomachies, meaningless questions, and trivial debates of the old Scholastics, which had thrown a thick darkness on that part of Philosophy: he has set that branch of knowledge in a clear light, and rendered it instructive and entertaining. He understood Natural Philosophy as it is now improved by the assistance of Mathematics and experiments, and applied his knowledge of it to the noble purposes of establishing the grand truths of the existence, the perfections, and government of God.²² He was well acquainted with the history of the arts <xxii> and sciences: he had carefully traced them from their origin, thro' all their various improvements, progresses, interruptions, and revolutions, and marked the characters of the most remarkable Philosophers, and the distinguishing doctrines and peculiar genius of their Philosophy. Besides

20. For modern editions of these texts, see Hutcheson, *Logic, Metaphysics, and the Natural Sociability of Mankind* (ed. James Moore and Michael Silverthorne) and *Philosophiae Moralis Institutio Compendiaria, with A Short Introduction to Moral Philosophy* (ed. Luigi Turco).

21. Cf. *Logic, Metaphysics, and the Natural Sociability of Mankind*.

22. Hutcheson's interest in mathematics is particularly evident in his "Attempt to Introduce a Mathematical Calculation in Subjects of Morality," as the first edition of the *Inquiry* put it in the subtitle. See *Inquiry*, p. 199.

he knew the civil and ecclesiastical history both of ancient and modern times with an exactness that was surprizing in one so much conversant in deeper and severer studies. He had studied too the original language of the Old Testament, and tho' his other necessary studies had not permitted him to become a critic in it himself, yet he knew the most important criticisms of the learned in that way.

His great capacity appeared in the strongest light, in his conversation with his friends; there he discovered such a readiness of thought, clearness of expression, and extent of knowledge, on almost every subject that could be started, as gave delight to all who heard him. There are some men who have amassed great stores of learning, but it is reposed as it were in some corner of the mind, and requires time to recollect it and bring it forth. In others you see their great erudition seems to darken their conceptions and <xxiii> disturb their views of things, by the different ideas which crowd into their minds at once. But the whole compass of his knowledge lay as it were always before him, and was at his command at all times; and he saw at once whatever was connected with his present subject, and rejected what did not belong to it. He spoke on the most difficult and abstruse subjects without any labour and with a degree of perspicuity which would have cost other men of no mean parts repeated efforts, without equal success: he exposed and took to pieces deceitful reasonings with the greatest facility; and distinguished at once, betwixt true learning and false, betwixt subjects which admit of demonstration, and such as do not, and betwixt questions which are useful and important, and such as are only curious and amusing. He gave an habitual attention to the real uses to which knowledge could be applied in life. He did not chuse to amuse with insignificant speculations, but in all his enquiries having the real good and utility of mankind in view, he took occasion even from metaphysical disputes, (of which no other use could be made) to repress that pride and vanity that is apt to puff up young minds from a notion of their <xxiv> superior knowledge, by shewing how incapable the acutest of mankind are of penetrating into the intimate nature and essences of things.

These singular abilities and talents were united in Dr. Hutcheson with the most amiable dispositions and most useful virtues: the purity of his manners was unspotted from his youth: as he always exprest the highest indignation against vice, he kept at the greatest distance from it, avoiding even the smallest indecencies of conduct: but this severity of virtue was without any thing of that sourness, stiffness, or unsociality which sometimes accompanies it, and renders characters, otherwise valuable, in some respects disagreeable, and prevents the good effects that the example of their virtues might produce upon others. His integrity was strict and inviolable: he abhorred the least appearance of deceit either in word or action: he contemned those little artifices which too frequently pass in the world for laudable arts of address, and proofs of superior prudence: his nature was frank, and open, and warmly disposed, to speak what he took to be true: you saw at first sight his sincere and upright soul, and in all further intercourse with him you found <xxv> him always the same. He was all benevolence and affection; none who saw him could doubt of it; his air and countenance bespoke it. It was to such a degree his prevailing temper, that it gave a tincture to his writings, which were perhaps as much dictated by his heart as his head: and if there was any need of an apology for the stress that in his scheme seems to be laid upon the friendly and public affections, the prevalence of them in his own temper would at least form an amiable one.

His heart was finely turned for friendship; he was sparing indeed of the external professions of it, but liberal of its most important offices: he was the refuge of his friends for advice and assistance in all cases of perplexity and distress. The ardor of his affection for his friends got the better of a natural reluctance he had to ask favours, which no regard for his own interests could have overcome: his kind offices were far from being confined to the circle of his particular friends and relations; his heart overflowed with goodwill to all around him, and prompted him to embrace every opportunity of doing kind and obliging things. Tho there are but few to be found who had such a <xxvi> keen thirst for knowledge, or who pursued it with such unremitting attention and

vigour; yet even this taste yielded on all occasions to the more important one of doing good. Among many other acts of beneficence, he took a peculiar delight in assisting worthy young men, in straitened circumstances, to prosecute their studies with his money, and admitting them to attend his colleges without paying the customary fees.

A remarkable degree of a rational enthusiasm for the interests of learning, liberty, religion, virtue, and human happiness, which animated him at all times, was a distinguishing part of his character: he was visibly moved by some of these noble principles in whatever he said or did. They had such an ascendancy over him as gave a peculiar cast to his whole conversation and behaviour, and formed in him a public spirit of a very extensive kind. Public spirit in him was not a vague and undetermined kind of ardor, for something unknown or not distinctly understood; but it was an enlightened and universal zeal for every branch of human happiness, and the means of promoting it. His love of valuable knowledge, his unabating activity in pursuing it and spreading a taste for it, fitted him, in a <xxvii> very singular manner, for that station which Providence had assigned him. And perhaps very few men, even in similar stations, have discovered equal zeal, or had equal success, in promoting a taste for true literature: but his zeal was not confined to what peculiarly belonged to his own profession, but extended to every thing that could contribute to the improvement of human life. When he spoke, you would have imagined that he had been employed in almost all the different stations in society, so clearly did he appear to understand the interests of each, and such an earnest desire did he express for promoting them. His benevolent heart took great delight in planning schemes for rectifying something amiss, or improving something already right, in the different orders and ranks of mankind. These schemes were not airy and romantic, but such as were practicable, and might have deserved the attention of those whose power and influence in society could have enabled them to carry them into execution. This warm zeal for public good appeared uppermost in his thoughts not only in his more serious, but also in his gayer hours. But while he abounded in projects for the interests of others, none <xxviii> ever heard of one which centered in himself. It has already been observed, that in the

earlier part of life, when the taste for external enjoyments is commonly strongest, he did not listen to proposals which offered prospects of rising to wealth and preferment: in a more advanced age, but when he was still in such a vigorous state of health, as he might have hoped for many years longer of life, he had offers made of removing him to the University of Edinburgh, to be Professor of Moral Philosophy there, which might have been a more lucrative place to him, and given him better opportunities of forming connections with people of the first rank and distinction in this country, but he was contented with his present situation, and discouraged all attempts to change it.²³

These singular accomplishments and moral endowments rendered his conversation, especially among his friends, so entertaining and instructive, that it was a school of wisdom to those who had the happiness to enjoy it. It must have been an undiscerning company which did not receive both pleasure and improvement from him. A remarkable vivacity of thought and expression, a perpetual flow of cheerfulness and good-will, and a visible air of inward happiness, made him the life and genius of society, and spread an enlivening influence every where around him. He was gay and pleasant, full of mirth and raillery, familiar and communicative to the last degree, and utterly free from all stateliness or affectation. No symptoms of vanity or self-conceit appeared in him. He sought not after fame, nor had he any vain complacency in the unsought possession of it. While he was visibly superior to others about him, he was the only one that was quite insensible of it. His own talents and endowments were not the objects on which his thoughts were employed: he was always carried away from attending to himself, by the exercise of kind affections, zeal for some public generous designs, or keen enquiries after truth. This was such an acknowledged part of his

23. In the politicking of finding a successor to John Pringle as professor of moral philosophy in Edinburgh, Sir Gilbert Elliot, Bt., Lord Minto (1693–1766), sounded out Hutcheson about his interest in July 1744. Hutcheson firmly declined, but the City Council—which determined appointments—nevertheless appointed him to the chair in April 1745 in an effort to keep out David Hume. Hutcheson declined again, and a person to his liking, William Cleghorn (1719–54), was appointed. See *Correspondence and Occasional Writings*, letters 52 and 55; and Stewart, *The Kirk and the Infidel*.

character, that even those who were least disposed to think well of him, never insinuated that he was proud or vain: the natural modesty of his temper was heightened and refined by his religious sentiments.

He had a full persuasion and warm sense of the great truths of natural and revealed religion, and of the importance of just and rational devotion to the happiness of human life, and to the stability and purity of a virtuous character. The power of devout sentiments over his mind appeared in his conversation: in his public prelections he frequently took occasion from any hints which his subject afforded him, as well as when it was the direct subject itself, to run out at great length, and with great ardor, on the reasonableness and advantages of habitual regards to God, and of referring all our talents, virtues, and enjoyments to his bounty. Such habitual references appeared to him the surest means of checking those emotions of pride, vain complacency, and self-applause, which are apt to spring up in the minds of those, who do not seriously and frequently reflect, that they did not make themselves *to differ from others, and that they have nothing but what they received*.²⁴ Such sentiments deeply rooted in the mind, he looked upon as the proper foundation of that simplicity of heart and life, which is the highest perfection of a virtuous character.

Such abilities, such dispositions, and such stores of knowledge, as have been mentioned, accompanied with a happy talent of speaking with ease, with propriety and spirit, rendered him one of the most masterly and <xxxi> engaging teachers that has appeared in our age. He had a great fund of natural eloquence and a persuasive manner: he attended indeed much more to sense than expression, and yet his expression was good: he was master of that precision and accuracy of language which is necessary in philosophical enquiries. But he did not look upon it as his duty, either in his prelections, or in his writings upon moral and religious subjects, to keep up strictly at all times to the character of the didactic teacher, by confining himself to all the precision requisite in

24. A reference to 1 Corinthians 4:7: "For who maketh thee differ *from another*? and what hast thou that thou didst not receive? now if thou didst receive *it*, why dost thou glory, as if thou hadst not received *it*?"

accurate explication and strict argument. He apprehended that he was answering the design of his office as effectually, when he dwelt in a more diffusive manner upon such moral considerations as are suited to touch the heart, and excite a relish for virtue, as when explaining or establishing any doctrine, even of real importance, with the most philosophical exactness: he regarded the culture of the heart as a main end of all moral instruction:²⁵ he kept it habitually in view, and he was extremely well qualified for succeeding in it, so far as human means can go: he had an uncommon vivacity of thought and sensibility of temper, which rendered him quickly susceptible of the warmest emotions upon the great subjects of morals and religion: this gave a pleasant unction to his discourses, which commanded the attention of the students, and at the same time left strong impressions upon their minds: he filled their hearts with a new and higher kind of pleasure than they had any experience of before, when he opened to their view, in his animated manner, large fields of science of which hitherto they had no conception: when, for instance, he pointed out to his pupils, in his lectures on Natural Theology, the numberless evidences of wonderful art and kind design in the structure of particular things, and the still more astonishing evidences of the wisest contrivance, and of the most benign intention, in the whole material system considered as one thing, it is easy to conceive that their tender minds, warm with the love of knowledge, would be greatly struck. Such views of nature were new discoveries to them, which filled them with delight and astonishment, and gave them at the same time the most joyful and satisfying conviction of the being and perfections of the great Author of all. In like manner, when he led them from the view of the external world to the contemplation of the internal one, the soul of man, and shewed them like instances of Divine wisdom and benignity in the contrivance of its moral constitution, they were filled with fresh delight and wonder, and discerned new and encreasing proofs of the glorious perfections of the Father of our

25. For Hutcheson, moral philosophy had an ultimately practical dimension, as is made clear in the very first sentence of the *System* I.1.1, and in many other passages in Hutcheson's works, for example in the preface to the *Essay*, pp. 3–4.

spirits. And when he described the several virtues exercised in real life, as beautiful in themselves, as the noblest employment of our rational and moral powers, as the only sources of true dignity and happiness to individuals and to communities, they were charmed with the lovely forms, and panted *to be* what they beheld. The pleasure springing from the light of truth and beauty of virtue breaking in upon ingenious and well-disposed minds, excited such a keen desire of knowledge, and such an ardor of pursuing it, as suspended for a time those impulses of youthful passions which are apt to hurry young men away, in that period of life. But that it may not be imagined these strong effects are entirely to be ascribed to the charms of novelty, it deserves to be taken notice of, that students advanced in years and knowledge chused to attend his lectures on Moral Philosophy, for four, five, or six years together, still finding <xxxiv> fresh entertainment, tho' the subject in the main was the same every season.

It was a great addition to the usefulness of his lessons, that they were not confined to high speculations, and the peculiarities of a scheme, but frequently descended to common life, sometimes pointing out and exposing fashionable vices and follies in the upper part of the world, departures from real justice and equity in the busy and commercial part of it, and the dangerous rocks on which youth is apt to split and make shipwreck both of virtue and happiness; and at other times insisting upon matters acknowledged by all, to be of the highest importance. The grand maxims he dwelt upon, and laboured to instil into the minds of his pupils, were to rejoice above all things in the firm persuasion of the universal Providence of a Being infinitely wise and good, who loves all his works, and cannot be conceived as hating any thing he hath made.²⁶ This he constantly inculcated in the warmest manner,

as a steady foundation of entire trust and confidence in him, and chearful submission to his will in all events. That sufferings may be considered as our greatest blessings, by giving us an opportu<xxxv>nity

26. This may be an implicit criticism of the *Westminster Confession of Faith*, the central pillar of Scottish Presbyterian orthodoxy, where the theme of a “wrath of God” was very prominent (see, e.g., *Confession* III.7; VI.6; XX.1).

of practising the most sublime virtues, such as resignation to the will of God, forgiving of injuries, returning good for evil, and by leading us to form just notions of the vanity of all things, except the love of God, and the love and practice of universal goodness: that all our advantages, of all kinds, are things which ought never to be ascribed to ourselves, but to God the giver of all. That love and gratitude ascribing to him the glory of all that is excellent, joined to a vigorous zeal of doing good, seems to be the height of human perfection.²⁷

He delivered himself on these grand topics in that simple but striking manner which immediately touches the heart, and presents the imagination with the most beautiful and engaging forms.

As he had occasion every year in the course of his lectures to explain the origin of government, and compare the different forms of it, he took peculiar care, while on that subject, to inculcate the importance of civil and religious liberty to the happiness of mankind: as a warm love of liberty, and manly zeal for promoting it, were ruling principles in his own breast, he always insisted upon it at great length, and with the greatest <xxxvi> strength of argument and earnestness of persuasion: and he had such success on this important point, that few, if any, of his pupils, whatever contrary prejudices they might bring along with them, ever left him without favourable notions of that side of the question which he espoused and defended.

Besides his constant lectures five days of the week, on Natural Religion, Morals, Jurisprudence, and Government, he had another lecture three days of the week, in which some of the finest writers of antiquity, both Greek and Latin, on the subject of Morals, were interpreted, and the language as well as the sentiment explained in a very masterly manner.

Besides these sets of lectures he gave a weekly one on the Sunday-evening, on the truth and excellency of Christianity, in which he produced and illustrated, with clearness and strength, all the evidences of its truth and importance, taking his views of its doctrines and divine scheme from the original records of the New Testament, and not from the

27. Not an actual quotation but Leechman's summary of Hutcheson's theistic ideas, later to be criticised in Hume's *Dialogues concerning Natural Religion* (1779).

party-tenets or scholastic systems of modern ages:²⁸ this was the most crowded of all his lectures, as all the different sorts and ranks of students, being at liberty from their peculiar pursuits on this day, chused to attend it, being always sure of finding both pleasure and instruction.

A Master, of such talents, such assiduity in the duties of his office, with the accomplishments of the gentleman, and fond of well-disposed youth, entering into their concerns, encouraging and befriending them on all occasions, could not fail to gain their esteem and affections in a very high degree. This gave him a great influence over them, which he employed to the excellent purposes of stamping virtuous impressions upon their hearts, and awakening in them a taste for literature, fine arts, and every thing that is ornamental or useful to human life. And he had remarkable success in reviving the study of ancient literature, particularly the Greek, which had been much neglected in the University before his time: he spread such an ardor for knowledge, and such a spirit of enquiry every where around him, that the conversation of the students at their social walks and visits turned with great keenness upon subjects of learning and taste, and contributed greatly to animate and carry them forward in the most valuable pursuits. He did not confine his attention to the pupils immediately under his care, but laid <xxxviii> himself out to be useful to the students in all the different faculties, whenever any opportunity offered: and he was especially solicitous to be serviceable to the students of divinity, endeavouring, among other important instructions, to give them just notions of the main design of preaching. High speculations on disputable points, either of Theology or Philosophy, he looked upon as altogether improper for the pulpit, at least on all ordinary occasions. He particularly insisted upon the uselessness and impropriety of handling in the pulpit such speculative questions, as, whether human nature is capable of disinterested affections, whether the original of duty or moral obligation is from natural conscience, or moral sense, from law, or from rational views of interest, and such like enquiries. Tho' such disquisitions might be proper and

28. For a discussion in Hutcheson of the dangerous consequences of such "party-tenets," see, e.g., *System* I.8.9 and I.5.7(2).

even necessary in a school of philosophy,* yet in his view of things <xxxix> they did not fall within the province of the preacher, whose office is not to explain the principles of the human mind, but to address himself to them, and set them in motion: besides, as to the philosophical question concerning moral obligation, all the different ways of explaining it conspire to press the same virtuous course of action, which is the main thing the sacred orator should be concerned about. The general plan of preaching which he recommended was to this purpose: As mankind are weak, ignorant, guilty creatures, altogether insufficient for their own happiness, and every moment exposed to many unavoidable calamities, let them be called upon to reflect upon themselves as such, and let these doctrines of natural and revealed religion, which will impart consolation to them under these humbling views of themselves, be set before them in the strongest light: As they are apt to <xl> be seduced both from their duty and happiness by selfish and sensual passions, let both the awful doctrines of religion, which may strike a dread and check the impulses of bad passions, and the joyful ones, which

* According to our Author's scheme it is only vindicating the Divine Wisdom and Goodness, manifested in the constitution of our nature, to assert the existence and binding authority of the moral sense; because whatever other obligations we may be under, this internal one will co-operate with them, when the mind perceives them, and will exercise its authority without them, when thro' a variety of causes we may be hindered from attending to them. Is the law of God duely promulgated the supreme obligation on all intelligent beings? in this view of obligation, the internal law will co-operate with the external one, when we are attentive to its authority; and when we are not, it will be a rule of action, in some degree at least, without it. Besides it may be observed, that if the obligation of the moral sense be admitted to be a real one, men of the most sceptical turn of mind must be considered <xxxix> as remaining under its authority when they have set themselves at liberty from all other ties. Let us suppose a person so unhappy as not to believe that there is a God, or a future state of rewards and punishments, or that it is his interest upon the whole in this life to act the virtuous part; even such a person is still under the power of the internal sentiment, that one thing is right and another wrong. If he acts contrary to it he violates a known obligation, and must be conscious that he deserves punishment, and that it awaits him, if there is a judge and punisher. If we suppose that the sense of right and wrong is entirely erased, then on our Author's scheme, as well as that of others, he is still accountable at least for the previous steps he had taken to bring himself into this state of total insensibility as to all moral perceptions and views.

may excite and encourage to the practice of purity, sincerity, and all goodness, be displayed before them in all their force. And as they are prone to rest in the general knowledge of their duty, without seriously applying it to the government of their hearts and lives, let the religious instructor take care not to dwell too much upon such general topics as the beauty, excellency, and reasonableness of the Divine Laws, but commonly descend, in a minute and particular manner, to direct their conduct in all the relations and stations of life, even the lowest, and in the ordinary business and intercourses of it. And let all these things be done without laboured elevation of language, in that plain and simple manner which touches the heart, and brings things home to the conscience and immediate feeling of every one.

To all which it is but just to add, that he was a most valuable member of the University in all other respects as well as that of an instructor of youth, his <xli> great talents qualifying him, and his unwearied zeal prompting him on all occasions to promote all its civil as well as literary interests.

Such was the life of this worthy person, spent in a course of assiduous but not painful study, in continually doing good to the utmost of his power, and propagating truth, virtue, and religion among mankind. To conclude, he had uncommon abilities, uncommon virtues, and small failings, and these arising from good qualities; if he was at any time too much or too soon heated, it was owing to the quickness of his parts and sensibility of his temper; if his indignation was strong, it was only provoked by such baseness or malignity as his heart abhorred; if at any time he was open, when reserve might have been more proper, it proceeded from an honesty and sincerity of heart unaccustomed to dissemble. Some were displeased with his honest freedom, some might emulate his reputation, some traduce him thro' prejudice, some thro' bigotry; but his parts, his spirit, and his worth, will be remembered, when any prejudices that were raised against him will be entirely forgotten.

A firm constitution and a pretty uniform state of <xlii> good health, except some few slight attacks of the gout, till some months before his death, seemed to promise the world much longer enjoyment of so

valuable a life; but it pleased all-wise Providence to cut him off, after a few months of an uncertain state of health, and a few days of a fever, in the fifty-third year of his age, and about sixteen years after his coming to Glasgow, to the great regret of the lovers of learning and virtue, and the irreparable loss of the society of which he had been a most excellent member, and of all who were connected with him, either by blood, friendship, or acquaintance.

He was married, soon after his settlement in Dublin, to Mrs. Mary Wilson, a daughter of Francis Wilson, Esq; a gentleman of estate in the county of Langford, who distinguished himself at the Revolution as a Captain in the service of the late King William of glorious and immortal memory. He showed the same liberal and generous principles in this transaction, which appeared in all the other steps of his life. He had an abhorrence of that spirit of traffick which often mingles so deeply in forming this alliance: he was determined solely by the good sense, lovely dispositions, <xliii> and virtuous accomplishments of the lady: and the uniform happiness of their whole conjugal state justified the wisdom and virtue of his choice: he has left behind him one son, Francis Hutcheson,²⁹ Doctor of Medicine, who gave early marks of genius, and is the publisher of this Work. If any one should wish to know any thing about Dr. Hutcheson's external form; it may be said it was an image of his mind. A stature above middle size, a gesture and manner negligent and easy, but decent and manly, gave a dignity to his appearance. His complexion was fair and sanguine, and his features regular. His countenance and look bespoke sense, spirit, kindness and joy of heart. His whole person and manner raised a strong prejudice in his favour at first sight.

It only remains to be added, that it has been intended, in any thing that is said of the Author's Philosophy, to deliver his sentiments without any regard to what may be the writer's own views of these subjects. The Author was a lover of truth and freedom of thought, and did not wish that any one should espouse his opinions, farther than the evidence

29. See note 2 to the dedication. The son was a physician and, under the pseudonym Francis Ireland, a composer.

with which they were supported, determined him. There <xliv> appears thro' the work such a manifest aim of promoting piety and virtue, and the good of mankind, that it is hoped the main of it must be approved of by all unprejudiced and well-disposed persons, however the writer of these memoirs or others may differ from the Author, as to particular sentiments, or the decision of particular questions.

Some very good judges may think, and perhaps not without reason, that by any thing yet said, justice has not been done to Dr. Hutcheson's character as an author:³⁰

That he has been represented only as enquiring into the mind of man as a moral constitution, and asserting a distinct order of affections in it terminating ultimately on the good of others, and a Moral Sense, by which we instantaneously perceive a certain set of affections, characters, and actions as good, and a contrary one as bad; all which is commonly done by that whole order of Philosophers who agree with him in admitting generous principles in human nature: whereas he justly deserves to be exhibited to the public in the light of an original, original in the most capital of all articles relative to the science of human nature and morality: <xlvi> for tho' all the disciples of the generous philosophy assert, in the strongest manner, a distinct order of affections in our nature, having the happiness of others for their ultimate object, yet when the agent is put upon determining the most important measure of human conduct, Why am I to gratify this present desire? or why should I rather chuse to controul it in favour of another? the answer which this order of philosophers has given, is very different from that which is and must be given by Dr. Hutcheson: according to the former the agent is referred to the consideration of his personal happiness* (arising indeed from the prevalence of virtuous affections) as the

30. The following is Leechman's imagined discussion with likely critics of Hutcheson.

* Shaft. Inq. from p. 77 to 174, and p. 69 middle sect. Lond. Ed. [The text referred to as "p. 69 middle sect." in several editions of Shaftesbury's *Inquiry* concerns our reasons to be virtuous. Section I.3.3 of Shaftesbury's *Inquiry* is entitled "*Now as to the last case, the opposition made by other affections to the natural sense of right and wrong.*" The text of the mentioned section reads as follows: "Now as to ATHEISM: tho it be plainly deficient and without Remedy, in the case of *ill Judgment on the Happiness of Virtue*; yet it is not, indeed, of necessity the Cause of any such *ill Judgment*. It may be alledg'd perhaps, that without an absolute Assent to any Hypothesis of *Theism*, the Advantages of Virtue may

determiner of his choice; taking it for granted, that there can be but one ultimate end of the agent's cool and deliberate pursuit, viz. his own highest interest or personal happiness: but Dr. Hutcheson's doctrine is far otherways; according to him, there are three calm determinations in our nature, namely, the calm desire of our own happiness, the calm desire of the happiness of other beings, and the calm desire of moral perfection, <xlvi> each of them alike ultimate; that betwixt the second and third determination there can scarce happen any opposition, but that it is quite otherwise betwixt the first and the other two, where an apparent opposition at least may often fall out, and in all such cases it is so far from being intended by the constitution of our nature, that the desire of private happiness should controul the other desires, that the Moral Sense never fails to dictate to the agent the voluntary sacrifice of the first, to either of the other two*: the whole is a question of fact, and every one must judge of it for himself: but the difference is the greatest imaginable, whether the desire of moral excellence, or the desire of private happiness is destined to be the supreme controuling principle according to the actual constitution of our nature: and none of the Philosophers before our Author has ever hinted at such a representation of our nature as pleads for the former as the just account of the matter: nature has formed the union between the latter two of the three great ultimate determinations of the human mind; but it is religion <xlvi> alone, according to him, that can render all the three invariably harmonious, and incapable of acting in different and opposite directions.

It may be acknowledged that Dr. Hutcheson has taught this doctrine more fully and explicitly than any of the Philosophers either antient or modern†; but that none of them have *ever hinted at it*, tho' it should be so, cannot well be positively asserted without a very extensive, and at the same time a very particular survey of their works. Our Author has indeed made no pretensions to new discoveries, but rather expressly

be seen and own'd, and a high Opinion of it establish'd in the Mind. However, it must be confess'd, that the natural Tendency of Atheism is very different.”]

* Book I. chap. iv. § 12. of this work. [The first marginal title of this section is “*The moral sense reduces all our powers into order.*”]

† Book I. chap. iv. § 12. of this work. [See Leechman's previous note.]

disclaimed them*: but this may be owing to the particular modesty of his genius and disposition: it was probably owing, in some degree, to this amiable turn of mind, that he chused to consider morals rather in the humbler way of a matter of fact, than in the more pompous one of scientific knowledge: and this too made him always more solicitous that his doctrine should in the main coincide with that of other good Moralists, than that it should be different or opposite: thus he endeavoured to shew, <xlviiii> that once admitting the generous affections into human nature and the Moral Sense, the doctrine of the eternal fitness and unfitness of things, and of immutable moral truths was very just and solid. But it is time to leave the candid reader to the perusal of the Work itself, and to form such judgments of the Author's doctrine in all respects, as upon serious examination shall appear to him to be well founded.

W. LEECHMAN.

GLASGOW-COLLEGE, }
Dec. 24. 1754.

* Pref. to *Essay on the Pass.* p. 18 and 19. [There, Hutcheson refers in very general terms to Joseph Butler's *Sermons*. Cf. Hutcheson, *Essay*, preface, 9.]

THE SUBSCRIBERS

A.

HIS Grace the Lord Archbishop of
Armagh, Primate of all Ireland.
The Rt. Hon. Richard Earl of
Anglesea.
The Hon. Baron Areskine.
Mr. John Abernethy.
Mr. Patrick Adair, Merchant in
London.
William Adair, Esq;
James Adair, Esq;
Mr. John Adams.
Thomas Adderley, Esq;
William Agnew, Esq;
John Alcock, D. D. Dean of Ferns.
The Rev. Andrew Alexander, A. M.
Mr. William Alexander.
Mr. John Anderson, Professor
of Oriental Languages in the
University of Glasgow.
John Armour, A. M.
The Rev. John Averell, A. M.

B.

The Rt. Hon. Henry Boyle, Esq;
Speaker of the House of Commons
of Ireland.
The Hon. Patrick Boyle.
Nathaniel Barry, M. D. King's
Professor of Surgery, Dublin.
Constantine Barber, M. D. King's
Professor of Materia Medica,
Dublin.

John Bagwell, Esq;
James Balfour of Pilrig, Esq;
The Rev. Mr. Balguy of St. John's
College, Cambridge.
Richard Brown-Bamber, Esq;
Mr.—Banantyne, Merchant in Air.
Thomas Bateson, Esq;
Richard Barry, Esq;
The Rev. Benjamin Barrington,
D. D.
Mr. George Bell.
Henry Bellingham, Esq;
William Henry Bernard, Esq;
Mr. Matthew Biggar, Minister at
Kirkoswall.
The Rev. Alexander Bisset, D. D.
John Blackwood, Esq;
The Rev. Adam Blair, A. M.
George Bogle of Dildowie, Esq;
Cornelius Bolton, Esq;
The Rev. Mr. Boulton.
Mr. John Bowden, A. B. F. T. C. D.
Mr. John Bowman, Merchant in
Glasgow.
John Bond of Granjo, Esq;
Charles Boyd, Esq;
Mr. Joseph Boyd.
John Boyd, Esq;
The Rev. Mr. John Bradfute.
Edward Brice, Esq;
The Rev. Clotworthy Brown, A. M.
Mr. Francis Browne.

The Rev. Mr. Bruce.
 Mr. William Bruce.
 Mr. James Bruce.
 Mr. Michael Bruce.
 Archibald Buchanan of Silverbanks,
 Esq;
 Andrew Buchanan of Drumpeller,
 Esq;
 The Rev. Mr. Bulkly.
 The Rev. John Bumford, A. M.
 Benjamin Burton, Esq;

C.

The Rt. Hon. Lord Cathcart.
 The Rt. Hon. Thomas Carter, Esq;
 The Hon. Francis Caulfield, Esq;
 Sir James Colquhoun of Lusse, Bart.
 Andrew Caldwell of Dublin, Esq;
 William Campbell, Esq;
 Samuel Campbell, Esq;
 Capt. Duncan Campbell.
 Mr. Charles Campbell.
 Mr. George Chalmers, Merchant in
 Edinburgh.
 The Rev. Mr. Samuel Chandler.
 Mr. Robert Christie, Merchant in
 Glasgow.
 George Clavell of Smedmore, Esq;
 William Clements, M. D. sen.
 F. T. C. D.
 The Rev. James Clewlow, A. M.
 Mr. James Clow, Professor of
 Philosophy in the University of
 Glasgow.
 The Rev. Robert Clive, Rector of
 Atherly.
 Mr. James Clugston.
 Mr. William Coats, Minister at
 Kilmaurs.
 John Cooper, Esq;
 The Rev. Mr. John Colquhoun,
 Minister of Badernock.

The Rev. Mr. James Connel, Minister
 at Sorn.
 The Rev. Walter Cope, A. M.
 Maurice Copinger, Esq;
 Gabriel Cornwall, A. M.
 Richard Cox, Esq;
 John Craig, Esq; Advocate.
 The Rev. Mr. William Craig, one of
 the Ministers of Glasgow.
 The Rev. George Crump, D. D.
 Dr. William Cullen, Professor of
 Physic in the University of
 Glasgow.
 Charles Cunningham, Esq;
 George Cunningham, Esq;
 Mr. John Cunningham, Preacher, at
 Kilmarnock.
 John Curtis, Esq;
 The Rev. Ephraim Cuthbert, A. M.

D.

His Grace the Lord Archbishop of
 Dublin.
 The Rt. Hon. Lord Dalmeny.
 Sir David Dalrymple of Newhales,
 Bart.
 David Dalrymple, Esq; Advocate.
 Mr. William Dalrymple, Minister at
 Air.
 John Dalrymple, Esq;
 John Damer of Came, Esq;
 John Damer, Esq;
 Joseph Damer, Esq; of Molton Abbey.
 Mr. John Davidson, junior, Writer to
 the Signet.
 William Henry Dawson, Esq;
 Jonathan Darby, Esq;
 Joshua Davis, Esq;
 William Dean, Esq;
 Mr. Robert Deans, Preacher, at
 Irvine.
 Theophilus Debrisay, Esq;

Mr. Robert Dick, Advocate, and
 Professor of Civil Law in the
 University of Edinburgh.
 Dr. Robert Dick, Professor of
 Philosophy in the University of
 Glasgow.
 The Rev. Brabaron Disney, senior,
 D. D. F. T. C. D.
 Conway Richard Dobbs, Esq;
 Hugh Donaldson, Esq;
 William Doudeswell, Esq;
 George Doudeswell, Esq;
 The Rev. Charles Doyne, A. M.
 Allan Dreghorn, of Roughhill, Esq;
 The Rev. Thomas Drenan, A. M.
 The Rev. James Duchal, D. D.
 Capt. Patrick Dunbar.
 Mr. James Dunbar, Student of
 Philosophy.
 The Rev. William Dunn, A. M.
 Mr. Samuel Dyer.
 Jeremiah Dyson, Esq;

E.

The Right Rev. Lord Bishop of
 Elphin, ten Sets.
 Archibald Edmonstone, Esq;
 Campbell Edmonstone, Esq;
 Gilbert Elliot, Esq; Member of
 Parliament.
 Patrick Ewing, Esq;

F.

The Hon. Henry Fagel, Principal
 Secretary to their High Mighti-
 nesses the States General of the
 United Provinces.
 Mr. Adam Fairholm, Merchant in
 Edinburgh.
 John Farrel, M. D.
 Robert Ferguson of Reath, Esq;
 The Rev. Adam Ferguson, A. M.

The Rev. Andrew Ferguson, A. M.
 The Rev. Victor Ferguson, A. M.
 Mr. Robert Finlay, one of the
 Ministers of Paisley.
 Samuel Fleming, M. D.
 The Rev. John Foster, D. D.
 Mr. Joseph Fowke.
 Mr. David Fullerton, Student of
 Philosophy.

G.

The Rt. Hon. the Earl of Glasgow.
 The Rt. Hon. Lord Garlies.
 The Hon. Lockhart Gordon, Esq;
 The Rev. Hugh Gaston, A. M.
 Mr. Robert Getty.
 Bartholomew William Gilbert, Esq;
 James Gladstones of Dublin, Esq;
 Counsellor at Law.
 Thomas Gladsterns, Esq;
 John Gordon, Esq;
 Mr. George Gordon.
 John Graham of Dougalston, Esq;
 John Graham, Esq;
 Richard Graham, Esq;
 John Grant, Esq; Advocate.
 Joseph Green, Esq;
 John Green, Esq;

H.

The Rt. Hon. the Earl of
 Hillsborough.
 The Hon. Frederick Hamilton.
 Alexander Haliday, M. D.
 William Hall of Whitehall, Esq;
 Mr. Hall.
 Mr. Thomas Hall.
 The Rev. Mr. Robert Hall, one of the
 Ministers of Kilmarnock.
 Roger Hall, Esq;
 John Haly Hutchinson, Esq;
 Alexander Hamilton, Esq;

Mr. Francis Hamilton.
 William Hamilton, Esq; of
 Dunnemanagh.
 William Hamilton, Esq; of
 Londonderry.
 The Rev. John Hamilton, A. M.
 Henry Hamilton, Esq;
 The Rev. Mr. James Hamilton, one of
 the Ministers of Paisley.
 Dr. Robert Hamilton of Ardrrie, Esq;
 Professor of Anatomy in the
 University of Glasgow.
 Gabriel Hamilton of Westburn, Esq;
 William Hamilton, M. D.
 The Rev. Hugh Hamilton,
 A. M. F. T. C. D.
 Ambrose Harding, Esq;
 John Hardman, Esq; Member of
 Parliament for Liverpool.
 The Rev. John Harlet, A. M.
 Thomas Harris, Esq;
 Myles Harrison, Esq;
 Mr. Travers Hartley.
 Cheney Hart of Salop, M. D.
 The Rev. John Hastings,
 A. M. F. T. C. D.
 The Rev. David Harvey, A. M.
 The Rev. Adam Harvey.
 John Hatch, Esq;
 Mr. John Hawkins.
 Mrs. Hays.
 Mr. Arthur Hemphill.
 The Rev. John Henderson of
 Liverpool, A. M.
 The Rev. Michael Henry, A. M.
 Peter Heron, Esq;
 Mr. Arthur Heywood, Merchant in
 Liverpool.
 Mr. William Holmes.
 The Rev. John Hood, A. M.
 Mr. Thomas Hopekirk, Merchant in
 Glasgow.

Mr. John Hornby.
 Vansittart Hudson, Esq;
 The Rev. Mr. Hurd, Fellow of
 Emanuel College, Cambridge.
 Hans Hutcheson, Esq;
 Mr. Alexander Hutcheson.
 Francis Hutchinson, Esq;
 Mr. Robert Hyde, Merchant in
 Manchester.

I.

The Rt. Hon. the Lord High
 Chancellor of Ireland.
 Simon Isaac, Esq; two Sets.
 Matthew Jacob, Esq;
 Mr. David Johnston.
 Arthur Johnston, Esq;
 Joseph Johnston, Esq;
 The Rev. James Johnston, A. M.
 James Johnston, Esq;
 Joseph Johnston, M. D.
 John Jones, Esq;

K.

The Rt. Rev. Lord Bishop of Killaloe
 and Kilfenora.
 The Rt. Rev. Lord Bishop of Killalla
 and Achonry.
 The Rt. Hon. the Lord Kaims.
 The Rev. Ebenezer Kellburn, A. M.
 George Kelley, M. D.
 The Rev. Gilbert Kennedy, A. M.
 Hugh Kennedy, Esq;
 Hugh Ker, Esq;
 Andrew Knox, Esq;
 Mr. George Knox, Bookseller in Air.

L.

The Rt. Rev. the Lord Bishop of
 Leighlin and Ferns.
 The Hon. Sir George Littleton,
 Baronet.

Hercules Langford-Rowley, Esq;
 Mr. James Lang.
 Samuel Lard, Esq;
 The Rev. Joseph Lard, A. M.
 The Rev. John Lawson, senior, D. D.
 The Rev. William Leechman, D. D.
 Professor of Divinity in the
 University of Glasgow.
 The Rev. Thomas Leland,
 B. D. F. T. C. D.
 William Lenox, Esq;
 The Rev. Mr. James Lesly, one of the
 Ministers of Kilmarnock.
 The Rev. Henry Leslie, A. M.
 Dr. Hercules Lindsay, Professor of
 Law in the University of Glasgow,
 three Sets.
 Theophilus Lindsay, A. M.
 William Littleton, Esq;
 The Rev. Dr. Littleton, Dean of Exeter.
 William Lloyd, Esq;
 John Lodge, Esq;
 The Rev. Mr. Smyth Loftus.
 The Rev. Mr. Lord.
 The Library of the University of
 Glasgow.
 The Library of the Greek Class in
 that University.
 M.
 The Rt. Hon. Lord Viscount
 Molesworth.
 The Rt. Hon. the Lord Milton.
 Sir John Maxwell of Pollok.
 Alexander McAulay, L.L.D.
 Oliver MacCasland of Strabane, Esq;
 The Rev. James Mackay, A. M.
 The Rev. Arthur Mahon, A. M.
 George Maconchy, M. D.
 Mr. George Macquay.
 Dr. Munkley, Physician in London.
 The Rev. Isaac Mann, D. D.

The Rev. William Martin,
 B.D.F.T.C.D.
 Mr. Samuel Mattcare.
 John Mattcare, M. D.
 The Rev. Henry Matthew, A. M.
 George Maxwell, Esq; Advocate.
 The Rev. John Maxwell, D. D.
 The Rev. John Maxwell, A. M.
 Dalton McCarthy, Esq;
 Mr. Robert McClintock.
 Mr. Henry McCulloch.
 Mr. John McDormit, Minister at
 Stratton.
 John McGill, Esq;
 The Rev. Archibald McLean, Minister
 of the English Church at the Hague.
 The Rev. William McNeely, A. M.
 Daniel McNeil of Liverpool, Esq;
 Donald McNeil, Esq;
 The Rev. Mr. James McNight,
 Minister at Maybole.
 Robert McQueen, Esq; Advocate.
 The Rev. Mr. Andrew McVey,
 Minister of Dreghorn.
 The Rev. John Mears, A. M.
 The Rev. John Menagh, A. M.
 Mr. Thomas Millar, Advocate.
 The Rev. Mr. James Millar, one of the
 Ministers of Hamilton.
 The Rev. Andrew Millar, A. M.
 Mr. Andrew Mitchell, Minister at
 Muirkirk.
 The Rev. James Moody, A. M.
 Mr. Richard Moore.
 Mr. Robert Montgomery.
 Mr. John Morris.
 William Muir of Caldwell, Esq;
 Member of Parliament.
 Major James Muir-Campbell,
 Member of Parliament.
 Mr. James Moor, Professor of Greek in
 the University of Glasgow, two Sets.

Mr. George Muirhead, Professor of
Humanity in the University of
Glasgow.
William Mussenden, Esq;

N.

The Rt. Hon. the Earl of
Northumberland.
The Rt. Hon. the Countess of
Northumberland.
Alexander Nesbit, Esq;
Ezekiel Nesbit, M. D.
The Rev. Mr. Nevil, Fellow of
Emanuel College, Cambridge.
Thomas Neville, A. M. Fellow
of Jesus College,
Cambridge.
The Rev. William Nevin, A. M.
Mr. John Nicholson, Merchant in
Liverpool.

O.

John Olpherts, Esq;
The Rev. John Orr, A. M. Rector of
Maryborough.
Dr. Ould.
The Rev. John Owen, D. D. Dean of
Clonmacnoise.

P.

Robert Parkinson, Esq;
Mr. James Park.
John Parnell, Esq;
The Rev. Mr. Walter Paterson,
Chaplain to the North British
Dragoons.
William Paul, Esq;
Mr. John Payne.
The Rev. James Pitcairn, D. D.
Mr. Robert Pettigrew.
Mr. John Potts.
Andrew Pringle, Esq; Advocate.

Q.

Henry Quin, M. D. King's Professor
of Medicine in Dublin.

R.

The Rt. Hon. Lord Rawdon.
The Rt. Hon. Lord Ross.
The Hon. William Ross.
The Rev. Mr. John Rae, one of the
Ministers of Paisley.
Arthur Rainey-Maxwell, Esq;
Francis Rainey, M. D.
Thomas Reid, Esq;
William Richards, Esq;
Mrs. Richardson.
Archibald Robertson, Esq; of
Bedlay,
Lewis Roberts, Esq;
Christopher Robinson, Esq;
Mr. David Ross.
David Ross, Esq; Advocate,
Mr. George Ross, late Professor of
Humanity in the University of
Glasgow.
The Rev. Mr. Andrew Ross, Minister
at Newmills.
Mr. William Ruat, Professor of
Church History in the University
of Glasgow.
Mr. James Ruddock.

S.

The Rt. Hon. the Earl of Selkirk,
twelve Sets.
Matthew Sankey, Esq;
John Sargent, Esq;
William Scott, M. D.
Walter Scott of Harding, Esq;
Member of Parliament.
William Scott, Esq;
William Scot, Esq; Recorder of
Londonderry.

Mr. Abraham Scawright of Drumore,
in the County of Down.

The Rev. Mr. John Seddon of
Warrington.

The Rev. Patrick Simpson, A. M.

Mr. Adam Smith, Professor of Moral
Philosophy in the University of
Glasgow, two Sets.

The Rev. Robert Smyth, A. M.
George Smyth, Esq;

The Rev. Benjamin Span, A. M.

Mr. Stephens of Exeter.

Dr. Stevenson, two Sets.

James Stevenson, Esq;

The Rev. Guy Stone, A. M.

Peter Storer, Esq;

The Rev. John Strong, A. M.

The Rev. James Strong, A. M.

Andrew Thomas Stuart, Esq;

James Stuart, Esq;

Alexander Stuart, Esq;

William Stuart, Esq;

William Stuart, Esq; of Londonderry.

Walter Stewart, Esq; Advocate.

George Swinton, Esq; Advocate.

T.

The Rev. Mr. William Thom,
Minister of Govan.

Mr. Edwin Thomas.

Mr. William Thurlburn, Bookseller
in Cambridge.

John Tickell, Esq;

The Rev. John Torrence, A. M.

Mr. Peter Touchett, Merchant in
Manchester.

Mr. James Trail.

Mrs. Mary Trevor.

The Rev. Mr. Turner.

U.

Clotworthy Upton, Esq;

V.

James Veitch, Esq; Advocate.

W.

The Hon. Mr. Justice Ward.

James Waddel, Esq;

Capt. James Wallace of Liverpool.

James Wallace, Esq;

Mrs. Sarah Wallace.

Mr. Robert Wallace.

James Wallace, Esq;

The Rev. Bernard Ward, A. M.

Bernard Ward, Esq;

Alexander Wedderburn, Esq; Advocate.

The Rev. Peter Westeura, A. M.

Richard Weld, M. D.

The Rev. Isaac Weld.

Mark White, Esq;

Mr. Abraham Wilkinson.

Godfrey Wills, Esq;

Mr. Thomas Williams.

Joseph Williamson, Esq; Advocate.

The Rev. John Williamson, A. M.

William Wilson, Esq;

Mr. Robert Wilson.

Mr. William Wilson.

Robert Wood, Esq;

Hans Wood, Esq;

The Rev. Mr. Patrick Woodrow,
Minister of Tarbolton.

William Wray, Esq;

Y.

Benjamin Yates, Esq;

Mr. John Young, Professor of
Philosophy in the University of
St. Andrews.

OMITTED;

The Rev. Ebenezer Keay, A. M.

❧ BOOK I¹ ❧

*Concerning the Constitution
of Human Nature, and
the Supreme Good.*

1. In the printed version from 1755, p. 100, and in the table of contents, as well as on p. 67 in the Ms. [GUL], there is an indication “Book I. Part II” that has no corresponding “Part I” here. See I.6, n. 1 below, and the Note on the text, p. xxix above.

Of the Constitution of Human Nature and its Powers, and first the Understanding, Will, and Passions.

I. The intention of moral philosophy is to direct men to that course of action which tends most effectually to promote their greatest happiness and perfection; as far as it can be done by observations and conclusions discoverable from the constitution of nature, without any aids of supernatural revelation: these maxims, or rules of conduct are therefore reputed as laws of nature, and the system or collection of them is called the LAW of NATURE.²

Moral Philosophy, what.

As human happiness, which is the end of this art, cannot be distinctly known without the previous knowledge of the constitution of this species, and of all its perceptive and active powers, and their natural objects; (since happiness denotes the state of the soul arising from its several grateful perceptions or modifications the most natural method in this science must be first to inquire into the several powers and dispositions of the species, whether perceptive or active, into its several natural determinations, and the objects from whence its happiness can arise; and then

Knowledge of the human powers necessary to it.³

2. The idea of moral philosophy as a guide to the happiness that is found in the virtuous life is consonant with the opening paragraph of Hutcheson, *Short Introduction* I.1.1, p. 23, but the *System* is quicker to add the language of natural law and to dismiss revelation. On the practical relevance of moral philosophy, cf. the prefaces to Hutcheson's *Inquiry*, pp. 7–13, and *Essay*, pp. 3–11.

3. Similar methodological reflections are found, e.g., in the preface of Joseph Butler's *Fifteen Sermons*, pp. 5–6.

to compare together the several enjoyments this species is capable of receiving, that we may discover what is its supreme happiness and perfection, and what tenor of action is subservient to it.

In this inquiry we shall but briefly mention such parts of our constitution, whether in body or mind, as are not of great consequence in morals; avoiding unnecessary controversies, and often referring to other authors for those points which have been tolerably well explained by them. Thus we pass over many ingenious anatomical observations upon the advantages and dignity of the human body above that of other animals. The reader may find them in the anatomical authors, and Dr. Cumberland.⁴

Early infirmities of men.

II. Consider mankind from their birth, you see a species at first weaker and less capable of subsisting, without the aid of the adult, than any other; and continuing longer in this infirm state. Animals of several other kinds attain to their full vigour and the perfect use of all their powers in a few months; and few require more than four or five years to their maturity. Ten or twelve years are necessary to mankind before they can obtain subsistence by their own art or labour, even in civilised societies, and in the finest climates after they have been cleared of all beasts of prey. Many other animals are both cloathed and armed by nature, and have all that is necessary for their defence or convenient subsistence without any care or contrivance of their own: the earth uncultivated offers them their food, and the woods or rocks their shelter. Mankind are naked and unarmed; their more salutary and agreeable food is more rare, requiring much art and labour: their bodies are less fit to resist the injuries of weather, without more operose contrivances for cloathing and shelter. Their preservation therefore, in their tender years, must depend on the care of the adult; and their lives must always continue miserable if they are in solitude, without the aids of their fellows.⁵

4. Cf. chapter 2 of Richard Cumberland's *Treatise of the Laws of Nature*, pp. 363–461. In Hutcheson's *Short Introduction* I.I.3, p. 25, the anonymous translator added a reference to Cumberland in a similar context. It is noteworthy that in *On the Natural Sociability of Mankind*, p. 204, Hutcheson presents Cumberland as an ally in his defense of natural sociability, together with the “ancients” and Shaftesbury.

5. For another discussion of mankind's state of imbecillity, and the connection with Pufendorf, see Hutcheson's *On the Natural Sociability of Mankind*, pp. 202–3.

This is no unreasonable severity in the Author of Nature to our species. We shall soon discover the natural remedy provided for this lasting imbecillity of our younger years, in the tender parental affection of a rational species; and the final causes of it, in the several improvements we are capable of receiving. The means of subsistence to our species require much contrivance and ingenuity: we are capable of many noble enjoyments unknown to other animals, and depending on useful and delightful arts, which we cannot attain to without a long education, much instruction and imitation of others. How much time is requisite for learning our mother-tongues? how much for dexterity even in the commonest arts of agriculture, or in domestic service? full strength of body, without a mind equally advanced in knowledge and arts and social habits, would make us ungovernable and untractable to our parents or instructors. Since we need to be so long in subjection, we should not soon be able to shake off the necessary and friendly yoke.

their final
causes.

III. The natural principles which first discover themselves are our external senses, with some small powers of spontaneous motion, an appetite for food, and an instinct to receive and swallow it. All these powers exert themselves in a way too dark for any of us ever to apprehend completely: much less have the brutes any knowledge to direct them to the teats of their dams, or notion of the pressure of the air upon which sucking depends. At first indeed we all alike act by instincts wisely implanted by a superior hand.

Powers which
appear first.

Our external senses soon introduce to the mind some perceptions⁶ of pleasure and pain:⁷ and along with these perceptions there immediately appears a natural constant determination to desire the one and repel the other; to pursue whatever appears to be the cause or occasion of pleasure, and to shun the causes of pain. These are probably our first notions of natural good or evil, of happiness or misery.⁸

6. GUL Ms., p. 3: "perceptions" replaces "notions."

7. On the claim that pleasure and pain are posterior to instincts, see the famous "cradle argument" by the Stoics against the Epicureans, for example, in Cicero, *De finibus*, III.5, pp. 233–37.

8. See also Hutcheson, *Essay* I.I, pp. 17–18, and the introduction to *Inquiry* II, pp. 85–88.

Proper ideas of
sensation.⁹

The external senses are those “determinations of nature by which certain perceptions constantly arise in the mind, when certain impressions are made upon the organs of the body, or motions raised in them.” Some of these perceptions are received solely by one sense, others may be received by two or more. Of the former class, are these five sorts, viz. colours, sounds, <5> tastes, smells, cold or heat; some ingenious authors reckon more: these we may call the proper ideas of sensation.

These sensations, as the learned agree, are not pictures or representations of like external qualities in objects, nor of the impression or change made in the bodily organs. They are either *signals*, as it were, of new events happening to the body, of which experience and observation will shew us the cause; or *marks*, settled by the Author of Nature, to shew us what things are salutary, innocent, or hurtful; or intimations of things not otherways discernable which may affect our state; tho’ these marks or signals bear no more resemblance to the external reality, than the report of a gun, or the flash of the powder, bears to the distress of a ship. The pleasant sensations of taste, smell, and touch, generally arise from objects innocent or salutary, when used in a moderate degree; the disagreeable or painful sensations, from such as are pernicious or unfit for common use. But sight and hearing seem not to be immediate avenues of pain; scarcely is any visible form or any sound the immediate occasion of it; tho’ the violent motion of light or air may cause painful feelings; and yet by sight and hearing the exquisite pleasures of beauty and harmony have access to the soul, as well as the ideas of magnitudes, figures, situation, and motion. It is by the former senses, and not by those, that we receive the pleasures commonly called *sensual*.

Concomitant
ideas of
sensation.

The ideas of two or more senses are Duration, num<6>ber, extension, figure, motion, rest. Duration and number are applicable to every perception or action of the mind, whether dependent upon bodily organs or not. The simpler ideas of this class, which some call the Concomi-

9. There are various connections with Locke, *Essay* II. Concerning perception and understanding, see also Hutcheson, *Synopsis* II.1, pp. 111–25, and *Short Introduction* I.1.3–4, pp. 25–28.

tant ideas of sensation, are not generally either pleasant or painful.¹⁰ It is from some complex modes of figure and motion that pleasure is perceived: beauty, from some proportions of figure with colour: harmony, from some proportions of time as well as of tones or notes. The proportions of numbers and figures are the field in which our reasoning powers have the most free and vigorous exercise. Of these hereafter.

IV. There is another natural power of perception, always exercised but not enough reflected upon, an inward sensation, perception, or consciousness, of all the actions, passions, and modifications, of the mind; by which its own perceptions, judgments, reasonings, affections, feelings, may become its object:¹¹ it knows them and fixes their names; and thus knows itself in the same manner that it does bodies, by qualities immediately perceived, tho' the substance of both be unknown.

Ideas of consciousness or reflection.

These two powers of perception, *sensation* and *consciousness*, introduce into the mind all its materials of knowledge. All our primary and direct ideas or notions are derived from one or other of these sources. But the mind never rests in bare perception; it compares the ideas received, discerns their relations, marks the changes made in objects by our own action or that of <7> others; it inquires into the natures, proportions, causes, effects, antecedents, consequents, of every thing, when it is not diverted by some importunate appetite. These powers of judging and reasoning are more known and better examined by all philosophers than any other, and therefore we pass them over. All these several powers, of external sensation, consciousness, judging, and reasoning, are commonly called the acts of the *understanding*.

judging and reasoning.

V. Tho' there are many other sorts of finer perceptions to be considered as natural to men, yet as some of them have the acts of the *will*, the

The acts of the will.¹²

10. For Hutcheson's adoption of the notion of concomitant ideas, cf. *Essay*, p. 16fn.†, and *Synopsis* II.1.3, p. 115, with the editors' introduction, pp. xii, xiv. Hutcheson does not use this language in the *Short Introduction*.

11. Here, Hutcheson's language is reminiscent of Shaftesbury, *An Inquiry* I.1.3, p. 16; and Butler, *Sermons* I.8, p. 19.

12. For Hutcheson's ideas of the will, see also *Synopsis* II.2, pp. 126–37, *Short Introduction* I.1.5–7, pp. 28–32, and *Essay* II, pp. 30–48, especially the “definitions” and “axioms.”

affections, and passions, for their objects, it is necessary to take a short view of the will and its natural determinations, before we proceed to these finer perceptions.

Here it is plain, as soon as any sense, opinion, or reasoning, represents an object or event as immediately good or pleasant, or as the means of future pleasure, or of security from evil, either for ourselves or any person about whom we are solicitous, there arises immediately a new motion of the soul, distinct from all sensation, perception, or judgment, a *desire* of that object or event. And upon perception or opinion of an object or event as the occasion of pain or misery, or of the loss of good, arises a contrary motion called *aversion*; on all occasions of this sort, these primary motions of the will naturally arise without any previous choice or command, and are the general springs of action in every rational agent.

Four general
classes of the
acts of the
will.¹³

To the *will* are commonly referred also two other <8> modifications, or new states, arising from our apprehensions of objects or events, as obtained or not obtained, according to our previous desire; or repelled and prevented, or not, according to our previous aversions; which are called *joy* and *sorrow*. But as they do not immediately move the soul to action, they seem rather new *feelings* or *states* of the soul, than acts of the will, more resembling sensations than volitions. These words however are often used promiscuously, as are many other names of the actions and passions of the soul. Thus *delight* or *joy*, is often used for the desire of any event which when it befalls will give delight; so is *sorrow*, for fear and aversion. Thus we have the *old division of the motions of

13. On the subdivision of the emotions or passions, cf. *Short Introduction* I.1.5–6, pp. 28–30, *Essay* II.1, pp. 30–31, with an additional reference to Malebranche, and *Essay* III.1, p. 49. Cf. also Cicero, *Tusculan Disputations* IV.6–14, pp. 339–63.

* See Cicero's *Tuscul. lib. iii. & iv.* [*Tusculan Disputations*, esp. III.7–8, pp. 240–47 and IV.11–14, pp. 352–63.] *Hinc metuunt, cupiuntque, dolent, gaudentque.* Virg. [Virgil, *Aeneid*, VI.733, p. 557: "Hence their fears and desires, their griefs and joys."] The Stoics, the avowed enemies of the passions, allowed the βούλησις and εὐλάβεια, and χαρὰ, in the perfectest character, even the Deity; but all these of an higher sort than the turbulent passions; of which distinction hereafter. [The Stoics, as presented in Cicero's *Tusculan Disputations*, distinguished four violent emotions or *perturbationes* (i.e., "violent passions" in Hutcheson's terminology) regarding present or future good or evil, but they listed only the three mentioned calm emotions or *constantiae* (i.e., "calm affections" in Hutcheson's terminology). According to the Stoics, the Sage

the will into four general species, Desire, Aversion, Joy, and Sorrow. Nor can we easily imagine any spirit without these modifications and motions of Will of one sort or other. The Deity indeed, as he is possessed of all power and all perfection,¹⁴ must be incapable of every modification implying pain.

The acts of the will may be again divided into two classes, according as one is pursuing good for himself, and repelling the contrary, or pursuing good for others and repelling evils which threaten them. The former we may call *selfish*, the later *benevolent*. Whatever subtle debates have been to prove that all motions of the *will* spring from one fountain, no man can deny that we often have a real internal undissembled desire of the welfare of others, and this in very different degrees.

These
selfish or
benevolent.¹⁵

VI. There are two calm natural determinations of the will to be particularly considered on this occasion. First, an invariable constant impulse toward one's own perfection and happiness of the highest kind. This* instinct operates in the bulk of mankind very confusedly; as they do not reflect upon, or attend to, their own constitution and powers of action and enjoyment; few have considered and compared the several enjoyments they are capable of, or the several powers of action. But whosoever does so will find a calm settled desire of the perfection of all our active powers, and of the highest enjoyments, such as appear to us, upon comparison, of the greatest importance to our happiness. Those

The two calm
determinations
of will.
Self-love.

never experiences any emotion regarding a real present evil (i.e., vice, and vice only), since as a Sage, he manages to avoid such real evil, and since he does not give assent to erroneous representations of external, indifferent things—such as illness, poverty, death, or torture—as evils. Hutcheson does not discuss this point, probably since for him, our aversion against the misery befalling others (which may take, for example, the form of compassion) is a form of disinterested benevolence.]

14. GUL Ms., p. 6: the sentence “as he is possessed of all power and all perfection” replaces “must be incapable of sorrow as he is omnipotent.”

15. On the distinction between selfish or self-interested, and benevolent or disinterested emotions, see, e.g., *Short Introduction* I.1.7, pp. 30–32, and *Essay* III.2, pp. 53–55, and furthermore *Inquiry* II.2.2–5, pp. 102–7.

* We need no apology, for using the word instinct for our highest powers, to those who know the Latin language. Appetite is in our language much confined to lower powers; but in Latin the word is applied to the highest. [This point may be connected to *Essay* II.2., p. 32fn.]

who have not made such reflections and comparisons, naturally desire all sorts of enjoyments they have any notion of by their senses or any higher powers they have exercised, as far as they are consistent with each other, or appear to be so; and desire the perfection of such powers as they attend to. Where several enjoyments appear inconsistent, the mind, while it is calm, naturally pursues, or desires in preference to others, those which seem of the greatest importance to its happiness.¹⁶ So far all agree.

Benevolence.

The other determination alleged is toward the <10> universal happiness of others. When the soul is calm and attentive to the constitution and powers of other beings, their natural actions and capacities of happiness and misery, and when the selfish appetites and passions and desires are asleep, 'tis alleged that there is a calm impulse of the soul to desire the greatest happiness and perfection of the largest system within the compass of its knowledge. Our inward consciousness abundantly testifies that there is such an impulse or determination of the soul, and that it is truly ultimate, without reference to any sort of happiness of our own. But here again, as few have considered the whole system of beings knowable by men, we do not find this determination exerted generally in all its extent; but we find natural desires of the happiness of such individuals, or societies, or systems, as we have calmly considered, where there has intervened no prejudice against them, or notion that their happiness is any way opposite to our own.

Affections
extensive or
limited.¹⁷

As the notion of one's own highest happiness, or the greatest aggregate or sum of valuable enjoyments, is not generally formed by men, it is not expressly desired or intended. And therefore we cannot say that every particular calm desire of private good is aiming directly at that sum, and pursuing its object under the notion of a necessary part of that sum. Men naturally desire, even by calm motions of the soul, such objects as they conceive useful or subservient to any valuable enjoyment, such as wealth,

16. On the idea of comparing and ranking different enjoyments, or of comparing the values of different kinds of pleasures, cf. *Essay* V, pp. 87–110, and *System* I.7.1–16.

17. On the different scopes of benevolence, cf. *Short Introduction* I.1.7, pp. 31–32, *Essay* II.2, pp. 31–33, and *Inquiry* II.3, pp. 236–37.

power, honour, without this conception of their making a part <II> of this greatest sum. In like manner we have calm benevolent affections toward individuals, or smaller societies of our fellows, where there has not preceded any consideration of the most extensive system, and where they are not considered formally as parts of this largest system, nor their happiness pursued as conducing to the greatest sum of universal happiness. Such are our calm benevolent affections to friends, countries, men of eminent worth, without any reference in our thoughts to the most extensive system. We can make these references of all selfish enjoyments pursued by us to the greatest sum of private happiness, whenever we please; and we can in like manner refer all our calm particular kind affections to the general extensive benevolence; and 'tis of great consequence to have these large conceptions, and to make these references. But 'tis plain the several particular affections, whether selfish or benevolent, operate, and that too without turbulent or passionate commotions, where no such references have preceded.

VII. But beside all these calm motions of the will more or less extensive, there are many particular passions and appetites which naturally arise on their proper occasions, each terminating ultimately on its own gratification, without further reference; and attended with violent, confused, and uneasy sensations, which are apt to continue till the object or gratification is obtained. Of these turbulent passions and appetites some are selfish, some benevolent, and some may partake of both characters. Of the selfish are hunger, thirst, lust, <12> passions for sensual pleasure, wealth, power, or fame. Of the benevolent kind are pity, condolence, congratulation, gratitude, conjugal and parental affections, as often as they become violent and turbulent commotions of the soul. Anger, envy, indignation, and some others, may be of either kind, according as they arise either on account of some opposition to our own interests, or to those of our friends or persons loved and esteemed. These all arise on

Turbulent passions selfish or benevolent.¹⁸

18. On the distinction between calm emotions or affections, on the one hand, and violent emotions or passions, on the other hand, cf. *Short Introduction* I.1.6, p. 29, *Essay* II.1–2, pp. 30–44, and *Inquiry* II.3, pp. 236–37. For Hume's reluctant use of the distinction between "calm" and "violent," see *Treatise* II.1.1.3, pp. 181–82.

their natural occasions, where no reference is made by the mind to its own greatest happiness, or to that of others.

The difference between the calm motions of the will and the passionate, whether of the selfish or benevolent kinds, must be obvious to any who consider how often we find them acting in direct opposition.* Thus anger or lust will draw us one way; and a calm regard, either to our highest interest the greatest sum of private good, or to some particular interest, will draw the opposite way: sometimes the passion conquering the calm principle, and sometimes being conquered by it. The calm desire of wealth will force one, tho' with reluctance, into splendid expences, when necessary to gain a good bargain or a gainful employment; while the passion of avarice is repining at these expences. The sedate desire of a child's or a friend's virtue and honour and improvement, will make us send them abroad amidst dangers; while the parental and friendly passions are opposing this purpose. Gratitude, pity, and friendly passions, sollicit to one side; <13> and love of a country, or a yet more extensive benevolence, may be soliciting on the other side. We correct and restrain our children, we engage them in uneasy studies and labours, out of calm good-will, while this tender passion is opposing every thing that is uneasy to them. Desire of life persuades to abstinence, to painful cures and nauseous potions, in opposition to the appetites destined to preserve life in the order of nature.

As there belong to the understanding not only the lower powers of sensation, common to us with the brutes, but also those of reasoning, consciousness, and *pure intellect*, as 'tis called; so to the will belong not only the bodily appetites and turbulent passions, but the several calm and extensive affections of a nobler order.

Powers of
motion.

VIII. To the Will we also ascribe the power of Spontaneous Motion; since, in consequence of our willing it, we find many parts of the body move as we incline. All its parts are not thus subjected to be moved as we please; but only such as 'tis necessary or useful in life for us to have thus subjected. The inward parts go on, in those motions upon which

* See this well described in *Plato. Rep. l. 9.* and *Aristot. Eth. Nicom.* [*Plato, Republic IX*, esp. 571b–572b; Aristotle, *Nicomachean Ethics* I.13–20, 1102b–1103a.]

the continuance of life immediately depends, without any acts of our will; nor can we directly, by any volition, accelerate or retard them. To superintend motions continually necessary would engross the mind perpetually, and make it incapable of any other business. Nor does every motion or impression on the parts of the body excite sensations in the soul. There is no sensation of the internal motions on which life immediately depends, while the body is in good order. Such sensation would be an uneasy useless distraction of the mind from all valuable purposes; as we experience, when a disease makes the contraction of the heart, or beatings of the pulse, become sensible. Sensations indicate only such changes, and new events, or objects, as 'tis convenient we should be apprized of. Thus volitions move the head, the eyes, the mouth, the tongue, the limbs, and, that exquisite instrument of a rational inventive and artful species, the hand. All these are plain indications of the wise and benign counsel of our Creator. Nay our limbs are moved immediately in consequence of the contraction of muscles, and of some power sent down by nerves from the head. But in our spontaneous motions we neither know nor will these intermediate steps: we intend the last motion; and those other motions are performed without any knowledge or will of ours. Sensation in like manner immediately ensues upon some motion in a nerve continued to the brain: we perceive no motion in the brain; but have a sensation immediately referred to the extremity of the body where the impression was made, and seeming to occupy that place; in a manner quite inexplicable. These considerations have led some ingenious and pious men to conclude that a superior Being, or the Deity himself, is the sole physical cause of all our motions; according to certain general laws; and the sole efficient cause of all our sensations too, in the like manner.¹⁹ <15>

19. Cf. Nicholas Malebranche, *The Search after Truth*, I.9, esp. pp. 46–47, and I.12, pp. 59–60; Andrew Baxter, *An Enquiry into the Nature of the Human Soul*, vol. I, pp. 395–407. Cf. Hutcheson, *Synopsis*, IV.1, pp. 145.

Concerning the finer Powers of Perception.

I. After the general account of the perceptive powers, and of the will, we proceed to consider some finer powers of perception, and some other natural determinations of will, and general laws of the human constitution.

Pleasures of
imagination.¹

To the senses of seeing and hearing, are superadded in most men, tho' in very different degrees, certain powers of perception of a finer kind than what we have reason to imagine are in most of the lower animals, who yet perceive the several colours and figures, and hear the several sounds. These we may call the senses of beauty and harmony, or, with Mr. Addison, the *imagination*.² Whatever name we give them, 'tis manifest that, the several following qualities in objects, are sources of pleasure constituted by nature; or, men have natural powers or determinations to perceive pleasure from them.

Beauty.

1. Certain forms are more grateful to the eye than others, even abstracting from all pleasure of any lively colours; such complex ones, especially, where, uniformity, or equality of proportion among the parts, is observable; nor can we, by command of our will, cause all forms indifferently to appear pleasant, more than we can make all objects grateful to the taste.

1. Cf. *Essay* I.1, pp. 17–18, *Inquiry* I.1, pp. 19–27, and *Short Introduction* I.1.8, pp. 32–33.

2. Cf. Joseph Addison, “Essay on the Pleasures of the Imagination,” in *Spectator* nos. 411–21 (21 June–3 July 1712). In *Short Introduction* I.1.8, pp. 32–33, the Addisonian nomenclature is absent.

2. As a disposition to imitate is natural to man<16>kind from their infancy, so they universally receive pleasure from imitation.* Where the original is beautiful, we may have a double pleasure; but an exact imitation, whether of beauty or deformity, whether by colours, figures, speech, voice, motion or action, gives of itself a natural pleasure. Imitation.

3. Certain compositions of notes are immediatly pleasant to the generality of men, which the artists can easily inform us of. The simpler pleasures arise from the concords; but an higher pleasure arises from such compositions as, in sound and time, imitate those modulations of the human voice, which indicate the several affections of the soul in important affairs. Hence PLATO[†] and LYCURGUS[‡] observed a moral character in musick, and looked upon it as of some consequence in influencing the manners of a people. Harmony.

4. As we are endued with reason to discern the fitness of means for an end, and the several relations and connexions of things; so, there is an immediate pleasure in knowledge,[§] distinct from the Judgment itself, tho' naturally joined with it. We have a pleasure also in beholding the effects of art and design, in any ingenious machinery adapted to valuable purposes, in any utensil well fitted for its end; whether we hope to have the use of it or not. We have delight in exercising our own rational, inventive, and active powers; we are pleased to behold the like exercises of others, and the artful effects of them. In such works of art <17> we are pleased to see intermixed the beauty of form, and imitation, as far as it consists with the design; but the superior pleasure from the execution of the design makes us omit the inferior when it is inconsistent. Design.

* *Aristot.* Poet. c. 4. calls man ζῷον μιμητικώτατον. ["the most imitative animal," Aristotle, *Poetics* III.4, 1448b 6, p. 13.]

† De Repub. I. 3. [Plato, *Republic* III.10, 398c–403c.]

‡ Plut. in Lycurgo. [Plutarch's life of the legendary Spartan legislator Lycurgus is in his *Lives*. The role of music in education to Spartan virtue is outlined in *Lives, Lycurgus* XXI, 53B.]

§ *Inquiry* b. i. c. 3. and *Aristot. Ethic.* there cited. [Hutcheson, *Inquiry* I.3.6., p. 40; for the note, see pp. 208–9. There, Hutcheson quotes Aristotle's *Nicomachean Ethics* X.2, 1174a 4–8, pp. 588–91, in support of the more general claim that "we have certain natural Propensities to certain Actions, or to the Exercise of certain natural Powers, without a View to, or Intention of, obtaining those Pleasures which naturally accompany them."]

Cause of variety of tastes.

II. Granting all these dispositions to be natural, we may account for all that diversity of fancies and tastes which we observe; since so many qualities are naturally pleasing, some of which may be chiefly regarded by one, and others by others. The necessitous, the busy, or the sloathful, may neglect that beauty in dress, architecture, and furniture, which they might obtain, and yet not be insensible to it. One may pursue only the simpler kind in the uniformity of parts; others may also intersperse imitation of the beautiful works of nature; and, of these, some may chuse one set of natural objects, and others may chuse other objects of greater beauty or dignity: the manner too of imitation may be more or less perfect. Again, some in their works may chiefly regard the pleasure from appearance of design, and usefulness, admitting only the pleasures of beauty and imitation as far as they consist with it. In the most fantastick dresses there is uniformity of parts, and some aptitude to the human shape, and frequently imitation. But our modern dresses are less fitted for easy motion, and the displaying of the human shape, than the antient. Spectators who regard these ends may prefer the ancient dresses; those who do not think of them, or regard them, may prefer the modern.

In like manner as to architecture; they who discern the imitation of the proportions of the human body in certain parts, may relish one manner on that account. Others, who know the uses of which certain parts present the appearance, may relish this design; others, without these views, may be pleased with the uniformity of the parts: others may like or dislike through some *associations of ideas; of which hereafter.

not reducible to usefulness.³

One who would reduce all sense of beauty in forms to some real or apparent usefulness discerned, will never be able to explain how the spectator relishes those useful forms from which he gets no benefit, nor expects any beyond the pleasure of beholding them; nor how we are

* See the *Inquiry* into Beauty. b. i. c. 7. §. 4. [Hutcheson there discusses "Associations of Ideas without any natural Connection," and connects them with prejudices; see Hutcheson, *Inquiry* I.7.4, pp. 73–74. The theme of associations of ideas is also discussed in moral contexts, and mostly critically so. See, e.g., *Inquiry* II.5.7, p. 158, on the theme of false honor.]

3. See the footnote to *Inquiry* I.5.2, pp. 210–11, 4th edition, which makes a connection with Berkeley's *Alciphron* and includes a discussion of Aristotle and Plato.

pleased with the forms of flowers, of birds, and wild beasts, when we know not any real or apparent uses indicated by them; nor how any spectator, quite a stranger to the views of the architect, shall be pleased with the first appearance of the work; nor whence it is that we are all pleased with imitations of objects, which, were they really placed where their images are, would be of no advantage; one may as well assert that, before we can be pleased with a savour, we must know the figures of the minute particles, and see their inoffensive nature to our nerves.

The pleasures of these *finer senses are of no small importance in life. How much soever they seem neglected by the votaries of wealth and power, they are generally much in their view for themselves, in some future period of life, or for their posterity: as for others who have a more elegant taste, they are the end of a great part of their labours: and the greatest part of men, when they are tolerably provided against the uneasy cravings of appetite, shew a relish for these pleasures: no sooner are nations settled in peace than they begin to cultivate the arts subservient to them, as all histories will inform us.

of great consequence in life.

To these pleasures of the imagination may be added two other grateful perceptions arising from novelty and grandeur. The former ever causes a grateful commotion when we are at leisure; which perhaps arises from that curiosity or desire of knowledge which is deeply rooted in the soul; of which hereafter. Grandeur also is generally a very grateful circumstance in any object of contemplation distinct from its beauty or proportion. Nay, where none of these are observed, the mind is agreeably moved with what is large, spacious, high, or deep, even when no advantage arising from these circumstances is regarded. The final causes of these natural determinations or senses of pleasure may be seen in some †late authors.

Relish for grandeur and novelty.

* One who would make all these to be perceptions of the external senses, and deny that we have any distinct powers of perception, may as well assert that the pleasures of geometry, or perspective, are sensual, because 'tis by the senses we receive the ideas of figure. [This may be a general swipe at ancient and modern versions of Epicureanism.]

† See *Spectator* N. 412. and the *Inquiry into Beauty*, last section. [The references are to Addison (see I.2, n. 2, above) and *Inquiry* I.8., pp. 76–82.]

The sym-
 thetick sense.
 Compassion.⁴

III. Another important determination or sense of the soul we may call the *sympathetick*, different from all the external senses; by which, when we apprehend the state of others, our hearts naturally have a fellow-feeling with them. When we see or know the pain, distress, or misery of any kind which another suffers, and turn our thoughts to it, we feel a strong sense of pity, and a great proneness to relieve, where no contrary passion with-holds us. And this* without any artful views of advantage to accrue to us from giving relief, or of loss we shall sustain by these sufferings. We see this principle strongly working in children, where there are the fewest distant views of interest; so strongly sometimes, even in some not of the softest mould, at cruel executions, as to occasion fainting and sickness. This principle continues generally during all our lives.

Congratula-
 tion.⁵

We have a like natural disposition to Congratulation with others in their joys; where no prior emulation, imagined opposition of interest, or prejudice, prevents it. We have this sympathy even with the brute animals; and hence poets so successfully please us with descriptions of their joys. But as our own selfish passions which repel evil, such as fear, anger, resentment, are generally stronger commotions of soul than the passions pursuing private good; so pity is a stronger benevolent passion than congratulation. And all this is wisely contrived, since immunity from pain seems previously necessary to the enjoyment of good. Thus the stronger motions of the mind are directed toward that which is most necessary. This sympathy seems to extend to all our affections and passions. They all seem naturally contagious. We not only sorrow with the distressed, and rejoice with the prosperous; but admiration, or surprise, discovered in one, raises⁶ a correspondent commotion of mind in all who

4. Cf. *Short Introduction* I.1.9, p. 33. In the *Essay*, Hutcheson refers to this sense as the “publick sense” and connects it to the *sensus communis* of the Ancients, and to sympathy; cf. *Essay* I.1, pp. 17–18, I.3, p. 23, and *Essay* III.4, p. 56. Furthermore, cf. *Inquiry* II.5.8, pp. 160–62, and II.2.8, pp. 110–12.

* See *Inquiry into Virtue* sect. 2. [Cf. *Inquiry* II.2. Pity and compassion are discussed in great detail in important passages added to the 3rd and 4th editions of the *Inquiry*—see especially *Inquiry* II.2., pp. 227–31.]

5. Cf. *Essay* III.4, pp. 56–57.

6. GUL Ms., p. 15: “the like in all around him” is crossed out and replaced by “a correspondent commotion of mind in all who behold him.”

behold him. Fear observed raises fear in the *observer* before he knows the cause, laughter moves to laugh, love begets love, and the devout affections displayed dispose others to devotion. One easily sees how directly subservient this sympathy is to that grand determination of the soul toward universal happiness.

IV. Before we mention some other finer senses, which have actions of men for their objects, we must observe one general determination of the soul to exercise all its active powers. We may see in our species, from the very cradle, a constant propensity to action and motion; children grasping, handling, viewing, tasting every thing. As they advance they exert other powers, making all trials possible; observing all changes, and inquiring into their causes; and this from an impulse to action and an implanted instinct toward knowledge, even where they are not allured by any prospects of advantage. Nay we see almost all other animals, as soon as they come to light, exercising their several powers by like instincts, in the way that the Author of Nature intended; and by this exercise, tho' often laborious and fatiguing, made happier than any state of slothful sensuality could make them. Serpents try their reptile motions; beasts raise themselves and walk or run; birds attempt to raise themselves with their wings and soar on high; water-fowl take to the water as soon as they see it. The colt is practising for the race,* the bull is butting with his <22> horns, and the hound exercising himself for the chace.

A natural propensity to action in most animals,⁷

Children are ever in motion while they are awake, nor do they decline weariness and toil: they shew an aversion to sleep till it over-powers them against their wills: they observe whatever occurs, they remember and inquire about it; they learn the names of things, inquire into their natures, structures, uses, and causes; nor will their curiosity yield to rebukes and affronts. Kind affections soon break out toward those who are kind to them; strong gratitude, and an ardor to excel in any thing that is praised; in vying with their fellows they are transported with success and victory, and exceedingly dejected when they are out-done by others. They

chiefly in men.

7. Cf. *Short Introduction* I.I.10, p. 34. The general theme of a not further specified "natural propensity to action" seems not present in *Inquiry* and *Essay*.

* *Dente lupus*, &c. Hor. lib. i. sat. I. l. 52. ["the wolf [attacks] with his fang, [the bull with his horn],” Horace, *Satires* II.I, 52, pp. 130–31.]

are soon provoked to anger upon any imagined injury or hurt; are afraid of experienced pain, and provoked at the cause of it; but soon appeased by finding it undesigned, or by professions of repentance. Nothing do they more resent than false accusation or reproach. They are prone to sincerity, and truth, and openness of mind, until they have experienced some evils following upon it. They are impatient to relate to others any thing new or strange, or apt to move admiration or laughter; ready to gratify any one with what they have no use for themselves; fond of pleasing, and void of suspicion, till they have had experience of injuries.

High pleasures
in action.

This impulse to action continues during life, while we retain the use of our powers. The men who are most worthless and slothful yet are not wholly idle; they have their games, their cabals and conversation <23> to employ them, or some mean ingenuity about sensual pleasures. We see in general that mankind can be happy only by action of one kind or other; and the exercise of the intellectual powers is one source of natural delight from the cradle to the grave. Children are transported with discoveries of any thing new or artificial, and impatient to shew them to others. Publick shows, rarities, magnificence, give them high entertainment: but above all, the important actions of great characters; the fortunes of such men, and of the states where they lived, whether related, read, or represented by action, are the delight of all ages. Here the pleasure is heightened by our social feelings of joy, and the keenness of inquiry increased by our impulse to compassion, and our concern about the persons we admire.

When men have the proper genius, and access to more laborious knowledge, what ardour of mind do some shew for geometry, numbers, astronomy, and natural history? All toils and watchings are born with joy. Need we mention even fabulous history, mythology, philology? 'Tis manifest there is an high natural pleasure in knowledge without any allurements of other advantage. There is a like pleasure in practical knowledge about the business of life, and the effects of actions upon the happiness of individuals, or that of societies. How contrary are all these appearances of Nature to that Philosophy which makes the sole impulse or determination of the soul to be a desire of <24> such pleasures as arise from the body and are referred to it, or of immunity from bodily pain!

V. Action is constituted to mankind the grand source of their happiness by an higher power of perception than any yet mentioned; namely, that by which they receive the moral notions of actions and characters. Never was there any of the human species, except ideots, to whom all actions appeared indifferent. Moral⁹ differences of action are discerned by all, even when they consider no advantage or disadvantage to redound to themselves from them. As this moral sense is of high importance, it shall be more fully considered in a subsequent chapter. It may suffice at present to observe what we all feel, that a certain temper, a set of affections, and actions consequent on them, when we are conscious of them in ourselves, raise the most joyful sensations of approbation and inward satisfaction;¹⁰ and when the like are observed in others, we have a warm feeling of approbation, a sense of their excellence, and, in consequence of it, great good will and zeal for their happiness. If we are conscious of contrary affections and actions, we feel an inward remorse, and dislike to ourselves; when we observe the like in others, we dislike and condemn their dispositions, reputed them base and odious.

A moral sense.⁸

The affections which excite this moral approbation are all either directly benevolent, or naturally connected with such dispositions; those which are disapproved and condemned, are either ill-natured, by which one is inclined to occasion misery to others; or <25> such selfish dispositions as argue some unkind affection, or the want of that degree of the benevolent affections which is requisite for the publick good, and commonly expected in our species.

This moral discernment is not peculiar to persons of a fine education and much reflection. The rudest of mankind shew such notions; and young minds, who think least of the distant influences of actions upon themselves or others, and have small precaution about their own future interests, are rather more moved with *moral forms* than others. Hence that strong inclination in children, as soon as they understand the names of the several affections and tempers, to hear such stories as present the

universal in
mankind.

8. Cf. *Short Introduction* I.1.10, pp. 35–37, *Inquiry* II.1, pp. 89–100, and *Essay* I.1, p. 17.

9. GUL Ms., p. 17: “Some” is crossed out and replaced by “Moral.”

10. GUL Ms., p. 17: “with ourselves” is crossed out.

moral characters of agents and their fortunes. Hence that joy in the prosperity of the kind, the faithful, and the just; and that indignation and sorrow upon the successes of the cruel and treacherous. Of this power we shall treat more fully hereafter.

A sense of
honour;¹¹

VI. As by the former determination we are led to approve or condemn ourselves or others according to the temper displayed, so by another natural determination, which we may call a sense of honour and shame, an high pleasure is felt upon our gaining the approbation and esteem of others for our good actions, and upon their expressing their sentiments of gratitude; and on the other hand, we are cut to the heart by censure, condemnation, and reproach. All this appears in the countenance. The fear of infamy, or censure, or contempt, displays itself by blushing. <26>

an immediate
principle.

'Tis true, we may observe from our infancy, that men are prone to do good offices to those they approve and honour. But we appeal to the hearts of men, whether they have not an immediate pleasure in being honoured and esteemed, without thinking of any future advantages, and even when they previously know that they can receive none. Are not we generally solicitous about our characters after our death? And whence is it that blushing accompanies this sort of fear, and not the fears of other disadvantages, if this is not an immediate principle?

*ARISTOTLE'S account of this pleasure, tho' more elegant, is not just: "that we relish honour as it is a testimony to our virtue, which we are previously conscious is the greatest good." This consideration may sometimes make honour very grateful to men who are doubtful and diffident of their own conduct. But have not also the men of greatest abilities, who are perfectly assured of the goodness of their conduct, a like natural joy in being praised, distinct from their inward self-approbation?¹²

11. Cf. *Short Introduction* I.1.13, pp. 41–43, *Essay* I.1, p. 18, and, in connection, the comparative discussion in *Essay* V, pp. 87–110.

* *Ethic. ad Nicom.* I. i. c. 5. [Aristotle, *Nicomachean Ethics* I.5, 1095b 25–30, pp. 14–15. The translator of *Short Introduction* added the same point and reference, cf. *Short Introduction* I.1.13, p. 42fn].

12. Cf. Smith's discussion of love of true glory and love of virtue in *The Theory of Moral Sentiments* VII.2.4.10.

The kind intention of God in implanting this principle is obvious. 'Tis a strong incitement to every thing excellent and amiable: it gives a grateful reward to virtue: it often surmounts the obstacles to it from low worldly interests: and even men of little virtue are excited by it to such useful services as they would have other ways declined. The selfish are thus, beyond their inclination, made subservient to a publick interest; and such are punished who counteract it.¹³ < 27>

What may further prove that this sense of honour is an original principle, is this; we value the praise of others, not in proportion to their abilities to serve us, but in proportion to their capacity of judging in such matters. We feel the difference, between the interested desire of pleasing the man in power who can promote us; and the inward joy from the approbation of the judicious or ingenious, who cannot do us any other good offices. The desire of praise is acknowledged to be one of the most universal passions of the soul.

VII. Tho' it is by the moral sense that actions become of the greatest consequence to our happiness or misery; yet 'tis plain the mind naturally perceives some other sorts of excellence in many powers of body and mind; must admire them, whether in ourselves or others; and must be pleased with certain exercises of them, without conceiving them as moral virtues. We often use words too promiscuously, and do not express distinctly the different feelings or sensations of the soul. Let us keep *moral approbation* for our sentiments of such dispositions, affections, and consequent actions, as we repute virtuous. We find this warm approbation a very different perception from the admiration or liking which we have for several other powers and dispositions; which are also relished by a sense of *decency* or *dignity*. This sense also is natural to us, but the perceptions very different from moral approbation. We not only know the use of such valuable powers, and of their exercise, to the person possessed of them; but <28> have agreeable commotions of admiration

A sense of decency and dignity.¹⁴

13. Cf. Hutcheson on the sense of honour in *Essay*, VI.5, pp. 125–26.

14. Cf. *Short Introduction* I.1.10, pp. 34–35, and I.3.1, p. 69, as well as the editor's introduction to *Short Introduction*, p. xix. The *Essay* does not present the sense of dignity as a separate sense in its list of senses in I.1, pp. 17–18.

and liking, and these in several degrees. Thus beauty, strength, swiftness, agility of body, are more decent and esteemable than a strong voracious stomach, or a delicate palate. The manly diversions of riding, or hunting, are beheld with more pleasure and admiration than eating and drinking even in a moderate degree. A taste for these manly exercises is often valued; whereas pursuits of mere sensuality appear despicable even when they do not run into excess, and at best are only innocent. Nay there is something graceful, in the very shape gesture and motion, and something indecent and uncomely; abstracting from any indications of advantage discerned by the spectators.

in different
degrees.

But this is still more obvious about the powers of the mind and their exercise. A penetrating genius, capacity for business, patience of application and labour, a tenacious memory, a quick wit, are naturally admirable, and relished by all observers; but with a quite different feeling from moral approbation. To every natural power there seems to be a corresponding sense or taste, recommending one sort of exercise, and disliking the contrary. Thus we relish the exercise of all the ingenious arts, machinery of every kind, imitation in painting, sculpture, statuary, poetry; gardening, architecture, musick. We not only behold the works with pleasure, but have a natural admiration of the persons in whom we discern a taste and genius for these arts. Whereas the exercise of our lower powers, merely subservient to sensual gratification, are at best beheld with indifference, are often matter of shame, and the cause of contempt.

Happiness of
active beings is
in action.

Thus according to the just observation of ARISTOTLE, "The chief happiness of active beings must arise from action; and that not from action of every sort, but from that sort to which their nature is adapted, and which is recommended by nature."¹⁵ When we gratify the bodily appetites, there is an immediate sense of pleasure, such as the brutes enjoy, but no further satisfaction; no sense of dignity upon reflection, no good-liking of others for their being thus employed. There is an exercise of some other bodily powers which seems more manly and graceful. There is a manifest gradation; some fine tastes in the ingenious arts

15. A reference to Aristotle's definition of happiness in *Nicomachean Ethics* I.7, 1098a 15–20, pp. 32–34.

are still more agreeable; the exercise is delightful; the works are pleasant to the spectator, and reputable to the artist. The exercise of the higher powers of the understanding, in discovery of truth, and just reasoning, is more esteemable, when the subjects are important. But the noblest of all are the virtuous affections and actions, the objects of the moral sense.

Some other abilities and dispositions of soul, which are naturally connected with benevolent dispositions, and inconsistent with the highest selfishness and sensuality, seem to be immediatly approved by the moral sense itself. These we refer to another place. We shall only take notice here, that by certain associations of ideas, and by frequent comparisons made in similies and metaphors, and by other causes, some inanimate objects have obtained additional ideas of dignity, decency, sanctity; some appear as mean and despicable; and others are in a middle state of indifference. Our relish for imitation and observing resemblances has made all languages full of metaphors: and similitudes and allegories give no small pleasure in many compositions: hence we cloath many objects with additional ideas of qualities they are not naturally capable of; some of these ideas are great and venerable, others low and contemptible. Some attempt to explain the natural cause or occasion of laughter, a commotion of mind generally agreeable, of which all are susceptible, from a natural sense of the *ridiculous* in objects or events.¹⁶

Additional
ideas.

VIII. Before we pass to the dispositions of the will, we may observe a natural involuntary determination to associate or bind together all such perceptions as have often occurred together, or have made at once a strong impression on the mind, so that they shall still attend each other, when any object afterwards excites any one or more of them. As this is experienced in smaller matters, so it affects our apprehensions of good and evil natural and moral. When the strain of conversation and popular maxims have long represented certain actions or events as good, and others as evil; we find it difficult to break the association, even after our reason is convinced of the contrary. Thus certain actions

Association of
ideas very
necessary.¹⁷

16. For Hutcheson on laughter, see also *Correspondence and Occasional Writings*, pp. 195–216.

17. Cf. *Short Introduction* I.I.17, pp. 46–47. In the *Essay* and the *Inquiry*, Hutcheson treats associations of ideas more critically, see, e.g., *Essay* VI, pp. 110–11.

are confusedly imagined honourable, others dishonourable; certain stations miserable, and others happy; as spectres are imagined in churchyards. Tho' <31> many miseries and vices spring from this fountain, we may see the absolute necessity of this determination. Without it we could have little use of memory, or recollection, or even of speech. How tedious would it be to need a particular recollection, upon each word we hear or desire to speak, to find what words and ideas are joined by the custom of the language? it must be as tedious a work as decyphering after we had found an alphabet. Whereas, now, the sound and idea are so associated, that the one ever is attended with the other. Nay, how is it we remember? when we are examined about a past event, the time, or place, some circumstance, or person then present, is suggested in the question, and these bring along with them the whole train of the associated ideas. The subject of a debate is suggested; a man conversant in it finds, previous almost to volition, the principal reasonings on both sides arising in his mind. To this disposition in a great measure is owing the power of education, which forms many associations in our early years; and few have the patience or courage to examine, whether they are founded in nature, or in the weakness of our instructors.

The will and
habits.

IX. Many of the natural determinations of the will are abundantly explained by such as treat designedly upon that subject, and point out the natural occasions of the several passions and affections. To these authors we may refer much of this subject. We considered, above, the strong natural propensity to action. We may also observe another determination, or law <32> of our nature, by which the frequent repetition of actions gives not only a facility in performing them, by encreasing our active powers, but makes the mind more prone to them for the future, or more uneasy when it is by violence restrained from them. And this is called an Habit. In our passive sensations the pleasures and pains are rather abated by frequent feelings: and yet the uneasiness under the want of pleasures is increased by our being long enured to them. If we find much detriment from habits of vice, equally great is the advantage of the habits of virtue. It is of general advantage to a rational species, that it thus can increase any of its powers as it chuses, and make them more stable and vigorous. It is still in our power, too, to wear out any habits, by

abstaining from their acts, or resolutely acting in opposition to them. Could we acquire no habits, our powers must remain miserably weak, and all artificial action continue as uneasy as we found our first essays.

But all these associations, habits, customs, or prejudices, recommend objects to our liking, or raise aversions to them, under the notion of some quality or species perceivable by the senses we are naturally endued with, nor can they raise any new ideas. No sentiments therefore of approbation or condemnation, no liking or disliking, are sufficiently explained by attributing them to prejudice, custom, or education, or association of ideas; unless we can fully shew what these ideas or notions are, and to what sense they be³³long, under which these objects are approved or condemned, liked or disliked.

No habit or custom gives new ideas.

X. At a certain age arises a new desire between the sexes, plainly destined for the continuance of our race; which, as it would be pernicious or useless in our first years, before we had acquired knowledge and experience sufficient for the preservation of offspring, is wisely postponed in the order of nature. This desire in mankind does not terminate merely on sensual pleasure, as in the brutes; nor is it in mankind only¹⁸ a blind impulse, such as excites the brutes, previously to experience of pleasure. There is a natural liking of beauty as an indication of a temper and manners. A character is apprehended, and thence good-will and esteem arises, and a desire of society for life, with friendship and mutual love, and united interests. Thus these sentiments and desires, in mankind, always accompany the natural impulse. They have also universally a desire of offspring, where no stronger inconsistent views restrain them.

Conjugal and parental affections.

Toward offspring there is in man, as in other animals, a peculiar strong affection, and a tender solicitude for their preservation and happiness. In mankind this affection continues during life, as parents may always do some good to their posterity. It descends to grandchildren, and their children, almost undiminished. In the brutes it is found where the young need assistance; where they don't, it is not found. It lasts till the young can support themselves, and then generally ceases. All this carries with

¹⁸ GUL Ms., p. 23: "the sole Effect" is erased and replaced by "is it in Mankind only."

it manifest evidences of design in the Author of Nature. Like affections, but weaker, are found generally to attend the ties of blood among collaterals. These tender affections are the springs of more than one half of the labours and cares of mankind: and, where there is any ability, they rouse the mind to diligence and industry, and to things great and honourable. By means of them the heart is made more susceptible of every tender kind and social affection.

Men social,
and fit for civil
society.¹⁹

XI. One can scarce deny to mankind a natural impulse to society with their fellows, as an immediate principle, when we see the like in many species of animals; nor should we ascribe all associating to their indigence. Their other principles, their curiosity, communicativeness, desire of action; their sense of honour, their compassion, benevolence, gaiety, and the moral faculty, could have little or no exercise in solitude, and therefore might lead them to haunt together, even without an immediate or ultimate impulse, or a sense of their indigence. The ties of blood would have the same effect, and have probably first united large numbers for mutual assistance and defence, upon a common apprehension of their indigence in solitude. When many were thus associated, the superior goodness, prudence, or courage of some, would naturally procure them a superior esteem and confidence from all around them. Controversies would arise; the mischief of deciding them by violence would soon appear. They would soon see the danger of divided counsels, either about improving their condition, or common defence; tho' all agreed in the general end. The most esteemed would soon be chosen *arbitrators* of their controversies, and *directors* of the whole body in matters concerning their common interest; and, as their prudence suggested, laws and political institutions would be established. The rest, finding the sweets of good order, safety, and laws, would have a veneration for the society, and its governors, and constitution. The finer spirits would feel patriotism and the love of a country in their breasts: and all, in some measure, by bonds of acquaintance, and intercourse of business,

19. Cf. Hutcheson's arguments for this point in his inaugural oration, *On the Natural Sociability of Mankind*, esp. pp. 201–16.

and the enjoyments of protection for themselves and their fortunes, would acquire a love to the community and zeal for its interests.

XII. As the order, grandeur, regular dispositions and motions, of the visible world, must soon affect the mind with admiration; as the several classes of animals and vegetables display in their whole frame exquisite mechanism, and regular structure, evidencing counsel, art, and contrivance for certain ends; men of genius and attention must soon discover some intelligent beings, one or more, presiding in all this comely order and magnificence. The great and the beautiful strikes the mind with veneration, and leads us to infer intelligence as residing in it, or directing it: a careful attention to the structure of our own nature and its powers leads to the same conclusion. Our feeling moral sentiments, our sense of goodness and virtue, as well as of art and design; our experience of <36> some moral distribution within, by immediate happiness or misery constantly attending virtue and vice, and of a like distribution generally obtaining even in external things by a natural tendency, must suggest that there is a moral government in the world: and as men are prone to communicate their knowledge, inventions, conjectures, the notions of a Deity and providence must soon be diffused; and an easy exercise of reason would confirm the persuasion. Thus some devotion and piety would generally obtain, and therefore may justly be called natural to a rational system. An early revelation and tradition generally anticipated human invention in this matter: but these alone could scarce have diffused the belief so universally, without the aids of obvious reasons from strong appearances in Nature. Notions of Deity and some sort of worship have in fact as universally obtained among men, as living in society, the use of speech, or even propagating their kind; and thus may be counted as natural.²⁰

Religion
natural.

The several powers dispositions or determinations above-mentioned are universally found in mankind, where some accident hath not rendered

20. At the beginning of his *Natural History of Religion* (1757), David Hume famously rejects the claim that religious beliefs are universal, whilst admitting that they are in some sense natural.

some individual monstrous, or plainly maimed and deficient in a natural faculty. But, in the different individuals, these dispositions are not in the same proportion as to strength; one being prevalent in one, and another in another: and hence the great diversity of characters. Yet, upon a proper occasion, when there is no opposi<37>tion from some stronger principle, each of these powers will exert itself, and have its effect.

The causes of
vice.²¹

XIII. Notwithstanding that all these nobler powers we mentioned are natural to us, the causes of that vice and depravity of manners we observe, are pretty obvious. Not to say any thing of causes not discoverable by the light of nature, mankind spend several of their first years, where there is not a careful education, in the gratification of their sensual appetites, and in the exercise of some lower powers, which, by long indulgence, grow stronger: reflecting on moral notions, and the finer enjoyments, and comparing them with the lower, is a laborious exercise. The appetites and passions arise of themselves, when their objects occur, as they do frequently: the checking, examining, and ballancing them, is a work of difficulty. Prejudices and groundless associations of ideas are very incident to men of little attention. Our selfish passions early gain strength by indulgence. Hence the general tenor of human life is an incoherent mixture of many social, kind, innocent actions, and of many selfish, angry, sensual ones; as one or other of our natural dispositions happens to be raised, and to be prevalent over others. <38>

21. On vices and their causes according to Hutcheson, see also *Short Introduction* I.6.3, pp. 90–94, and *Inquiry* II.3.4, pp. 120–22.

Concerning the ultimate Determinations of the Will, and benevolent Affections.

I. After this long enumeration of the several senses or powers of perception, by which a great multitude of objects may be the occasion of pleasure or pain, or of some sorts of happiness or misery; and a like enumeration of many dispositions of will, or determinations of desire; human nature must appear a very complex and confused fabrick, unless we can discover some order and subordination among these powers, and thus discern which of them is naturally fit to govern. Of this we shall treat in some following chapters. In the first place the *Understanding*, or the power of reflecting, comparing, judging, makes us capable of discerning the tendencies of the several senses, appetites, actions, gratifications, either to our own happiness, or to that of others, and the comparative values of every object, every gratification. This power judges about the means or the subordinate ends: but about the ultimate ends there is no reasoning. We prosecute them by some immediate disposition or determination of soul, which in the order of action is always prior to all reasoning; as no opinion or judgment can move to action, where there is no prior desire of some end.¹

The ultimate determinations of the soul.

Were there no other ultimate determination or desire in the human soul than that of each one toward <39> his own happiness; then calm **self-love* would be the sole leading principle, plainly destined by Nature

The selfish general determination alleged the only one.

1. See a similar point in Hutcheson's distinction between exciting and justifying reasons in *Illustrations upon the Moral Sense*, I, pp. 139–40.

* By *self-love* we mean, one's *desire of his own happiness*, and this only. By a frequent use of the word *love*, for *esteem*, some have imagined an universal *self-esteem*,

to govern and restrain all other affections, and keep them subservient to its end; having reason for its minister or counsellor, to suggest the means.² But the *end* would be constituted by that ultimate determination, without any reasoning.

Various accounts of it.

This is a favourite tenet of a great many authors, and pleases by its simplicity.³ But very different and contrary accounts are given, by these authors, of the private enjoyments or happiness pursued in the offices we commonly repute virtuous. Some make the sole motive to all offices or actions even the most honourable, the sole end ultimately intended by them, to be some worldly advantage, some bodily pleasures or the means of them. This was the tenet of the *Cyrenaicks*, and probably of the *Epicureans* too, and of some moderns. Others say, that we desire the good of others, or of societies, merely as the means of our own safety and prosperity; others, as the means of some subtler pleasures of our own by sympathy with others in their happiness: others make our end to be the pleasures we enjoy in being honoured, or some rewards we expect for our services, and these either from GOD, or men.⁴

or preference of our moral character and accomplishments to those of others, which is contrary to what the modest and self-diffident continually experience. [During Hutcheson's period, the English term "self-love" was used to designate a variety of concepts, for example, self-interested desires, self-esteem, pride, and *amour-propre*. Hutcheson's note shows awareness of this ambiguity and clarifies his own use of the term. He may have had Mandeville in mind, who in his *Enquiry into the Origin of Honour*, p. 3, mentioned "that great Value, which all Individuals set upon their own Persons; that high Esteem, which I take all Men to be born with themselves."]

2. The claim discussed here is more specific than the general claim that self-love (be it calm *or* passionate) is the sole principle of action. The general claim is usually the target of Hutcheson's arguments in the *Inquiry* and the *Essay*. Hutcheson may here show awareness of the discussions of self-love in Butler's *Sermons*, where self-love is presented as a general reflective principle. See esp. Butler, sermon 11, in *Fifteen Sermons*, pp. 93–102.

3. See Hume's critical remarks on this point in *Enquiry concerning the Principles of Morals*, appendix II, esp. pp. 92–94.

4. As "modern" representatives of the four groups mentioned here, Hutcheson may have thought of, first, Hobbes, Pufendorf, and Mandeville; second, Hobbes and Pufendorf; third, John Clarke of Hull, Archibald Campbell, and John Gay; fourth, Campbell, Clarke, and Mandeville. Numerous arguments in the *Inquiry* and the *Essay* attack more or less specifically one or several of these arguments. See

But there is still an higher scheme; allowing indeed no other calm settled determination of soul but <40> that in each one toward his own happiness; but granting that we have a *moral faculty*, and many particular kind affections truly disinterested, terminating upon the happiness of others, and often operating when we have no reference of it in our minds to any enjoyment of our own. But, say they, “the sole original spring of all calm deliberate purposes of cultivating these generous affections, and of gratifying them in opposition to any selfish affections, is this; we experience the sublimest joys of self-approbation in gratifying these generous motions;⁵ these joys are a nobler happiness than any other; and the desire of them, flowing from the *calm selfish determination*, is the view of all deliberate purposes of virtue; tho’ the kind passions themselves often hurry us into friendly and generous actions without this thought.”⁶

This last account gives a lovely representation of human nature and its affections, and leaves a great deal of room for most of the generous virtues of life; but it does not please us with such simplicity as the other schemes, which directly deduce every motion of the heart from *self-love*. This is not to be reckoned among the selfish schemes, since it makes all the eminent virtues flow from disinterested affections, natural to the heart, however in our calmer hours they may be corroborated by the calm views and desires of our own happiness. But our business is to

This consistent with many disinterested affections.

also Hutcheson’s brief overview of the philosophical schools, or “sects,” at the beginning of his *Compend of Logic*, pp. 3–8; for the ancient Cyrenaics, for whose leader Aristippus “the highest good lies in the pleasure of the body,” and Cynics, see p. 5. On Epicurus, Hutcheson writes that “in ethics he agreed with Aristippus, though he coined new terms to avoid jealousy,” see p. 6.

5. GUL Ms., p. 28: The sense requires “motives,” but the Ms. seems to have “motions.”

6. The target here is most likely Shaftesbury, whom Hutcheson knows defended the reality of disinterested benevolence, and thus rejected the normal “selfish schemes.” However, Hutcheson may have seen Shaftesbury as supporting the present, more specific claim that we cultivate first-order benevolence out of self-interested second-order considerations. Leechman’s preface to the *System* (pp. 28–29) and Blair’s review of the *System* suggest similar interpretations, explicitly juxtaposing Hutcheson and Shaftesbury. In the background, there may be the conception of self-love as a general affection developed in Butler’s *Sermons*.

find the truth, let the schemes, or their authors, be classed as they will: and, for this purpose, 'tis necessary to consider well, both these affections alledged to be disintegrated, and the *moral faculty* by which we judge of all the motions of the *will*; that we may see, whether there be in the soul, as we alledged above, another *calm determination*, beside that one toward our own happiness; as well as many particular affections, terminating upon the good of others, as their immediate and ultimate object, without reference to private interest of any kind.

In desires, the
uneasiness differs
from the
motives.⁷

II. The *calm self-love*, or the determination of each individual toward his own happiness, is a motion of the *will* without any uneasy sensation attending it. But the several selfish desires, terminating on particular objects, are generally attended with some uneasy turbulent sensations in very different degrees: yet these sensations are different from the act of the will to which they are conjoined; and different too from the motives of desire. The motive is some good apprehended in an object or event, toward which good the desire tends; and, in consequence of desire, some uneasiness arises, till the good is obtained. To aversion, the *motive* is some evil apprehended or feared, and perhaps not yet felt. Uneasiness too attends the aversion, untill the evil is repelled. Prospects of the pleasures or powers attending opulence are the⁸ motives to the desire of wealth, and never the uneasy feelings attending the desire itself. These feelings are, in nature, subsequent to the desire.

Again, when we obtain the thing desired; beside the pleasures to be obtained from this object, which were the motives of the desire, and often before we <42> enjoy them, there is one pleasure immediately arising from the success, at least in those cases where there was any difficulty in the pursuit, or fear of disappointment. It would be absurd to say that this joy in the success was the motive to the desire. We should have no joy in the success, nor could we have had any desire, unless the prospect of some other good had been the motive. This holds in all our desires, benevolent or selfish, that there is some motive, some end in-

7. On Hutcheson's rejection of the argument that all desires are selfish because attended with uneasiness, cf. also *Essay* I.3, p. 24, I.4, pp. 28–29.

8. GUL Ms., p. 29: "may be" is crossed out and replaced by "are the."

tended, distinct from the joy of success, or the removal of the pain of desire; otherways all desires would be the most fantastick things imaginable, equally ardent toward any trifle, as toward the greatest good; since the joy of success, and the removal of the uneasiness of desire, would be alike in both sorts of desires. 'Tis trifling therefore to say that all desires are selfish, because by gratifying them we obtain the joy of success, and free ourselves from the uneasy feelings of desire.

III. 'Tis owned by all, that many actions, beneficial to others, may directly spring from selfish desires of rewards, of returns of good offices, of honour.⁹ One may serve others from fear of unjust violence, or of just punishment. Nay, from the desire of our own happiness we may have an inward undissembled desire of another's happiness, which we conceive to be the means of our own.¹⁰ Thus, one desires the success of a partner in managing the common stock; the prosperity of any country or society upon which his fortunes depend; the advancement of a friend from <43> whom we expect promotion; the success and good conduct of a pupil, which may redound to the honour of the master or tutor.¹¹ These real¹² desires of the welfare of others may all be subordinate to one's own selfish desires.

Subordinate
good-will is
not virtue.

Here 'tis agreed by all, that desires of the welfare of others, subordinated to one's desires of his own worldly advantages, without any other affection, have nothing virtuous in them. A change of outward circumstances, without any change of temper, would raise desires of the adversity of others, in the same manner. The main question is, whether the affections reputed benevolent are subordinated to some finer interests

Whether kind
affections are
ultimate;¹³

9. Hutcheson distinguishes conceptually and, somewhat less often, terminologically between *benevolence*, which is ultimately disinterested, and *beneficence*, which is not.

10. GUL Ms., p. 29: This sentence is corrected from an impersonal voice ("ones"; "he") toward a personal voice ("our"; "we").

11. GUL Ms., p. 30: In the Ms. "tutor" is followed by semicolon and, apparently, one more example, but the two lines have been crossed out in a crude, broad pen so that they are unreadable.

12. GUL Ms., p. 30: "real" is inserted.

13. The arguments in this and the following paragraphs may again be directed against authors such as Clarke, Campbell, and Gay. Among other places, see the arguments in Hutcheson, *Inquiry* II.2, pp. 225–26, added in the 3rd and 4th editions.

than worldly advantages, and ultimately terminate upon them: or, if there are not kind affections ultimately terminating on the good of others; and these constituted by nature, (either alone, or perhaps sometimes corroborated by some views of interest,) the immediate cause of moral approbation. Now 'tis plain,

they do not
terminate
upon rewards
from men;

IV. 1. That all hopes or fears from men, whether about wealth or poverty, honour or infamy, bodily pleasure or pain, can only be motives to external actions or services, and not to any inward good-will or desire of their happiness; since we all know that our internal affections are hid from others. External deportment alone can be the means of obtaining what we hope from them, or of avoiding what we fear.

nor on those
from God, or
from self-
approbation.

2. As self-love can make us desire only what appears the means of our own happiness, one can scarce <44> alledge that even the subtlest interests are the springs of real good-will to others. If one is aware of the high pleasures of self-approbation, arising upon consciousness of inward good-will and kind affections, or is convinced that the Deity will confer rewards upon men of such tempers; these two motives may make one desire to have that useful set of affections, in order to obtain happiness. Now, could we by command of the will directly raise what affections we desire, from these motives we would raise kind affections. But a temper or set of affections cannot thus be raised. As esteem cannot be raised, by any act of the will, toward an object in which no excellence appears, nor fear where there is nothing formidable, nor anger where there is nothing hurtful, nor pity where there is no suffering, nor gratitude where there has been no evidence of prior benevolence;¹⁴ so neither can a mind wholly determined toward selfish good raise in itself kind affections, by a command of its will. The natural cause must be presented before any affection can be raised.

How divine
laws operate to
make men
virtuous.

If indeed our hearts are so constituted, as the assertors of disinterested affections alledge, that upon presenting the state of any sensitive beings to our calm thoughts, when no opposition of interests or evil dispositions apprehended in them obstruct the natural motion of our souls, a

14. GUL Ms., p. 31: "beneficence" is crossed out and replaced by "evidence of prior benevolence."

kind good-will naturally arises; then the motives of gaining the nobler pleasures of self-approbation, or rewards from God, will incline us to turn our calm attention to the state of others; will <45> surmount little interfering interests, and remove even the obstacles of anger.* The same motives will make us inquire also into all such qualities excellencies or good offices of others as are the natural occasions of the warmer and more endearing affections. And thus it is that the sanctions of the divine laws can influence our affections. But,

3. From self-love we desire only the means of our own happiness. Now the *actual happiness of others* is neither the cause nor means of obtaining self-approbation, nor rewards from God. Our hearts approve us, and God promises rewards to us, not because others are in fact happy, but because we have such kind dispositions, and act our parts well in their behalf, whether in the event they are happy or not. Our desire therefore of the pleasure of self-approbation, or of divine rewards, can only make us desire to have these affections, and to act a suitable part. But these affections cannot be directly raised by the will: and wherever they are, they plainly terminate upon the good of others, as the ultimate end intended by them; tho' in our previous consultations with ourselves, or deliberations about the inward culture of the mind, we may have resolved, with a view to our own perfection <46> and sublimest happiness, to encourage all such affections in ourselves, and to turn our attention to all such considerations as are naturally apt to raise them; and to despise all the mean interfering interests of this present world. These generous affections often operate where there have been no such previous

* This is the reference to our own highest and most noble enjoyments and interests, which we see made in some of the best writings of the antients, and in Lord *Shaftesbury*; "That, conscious of the inward delights and dignity of *virtue* surpassing all other enjoyments, we resolve to follow all the noble and generous motions of our hearts in opposition to the lower interests of this life." Not that they imagined we can raise any new affection, by command of the *will*, which nature had not planted and connected with its proper causes: nor that all generous affections have private good in view. This notion they opposed with the greatest zeal and strength of reason. [Hutcheson seems to be paraphrasing a basic thought in Shaftesbury; cf., e.g., Shaftesbury's *Inquiry* II.2.2, in *Characteristicks*, vol. 2, pp. 57–58, and *Miscellaneous Reflections* IV.2, in *Characteristicks*, vol. 3, pp. 135–37. In the GUL Ms., p. 31, the word "best" is added before "writings," and the phrase "of the best sort" is deleted after "antients."]

deliberations and purposes of cultivating them; and where there have been such purposes, still the generous affection terminates and rests upon its natural object, the good of others; and must have had its existence in the soul previous to all desires and intentions of cultivating it.¹⁵

The affections
do not arise
immediatly
upon our
wishing to
have them.

There is nothing strange or unusual in this that one should want certain tender generous affections, of love, esteem, gratitude, pity, repentance for offences; while yet he earnestly wishes to have them. An inward temper and a set of affections do not start up at once upon a wish or command. Men who have been careless about virtue and piety are often observed, upon approach of danger, and on other occasions, heartily wishing, from self-love or fear of punishment, that they had love and gratitude to God, warm charity and good-will to their neighbours, meekness and a forgiving temper, and sorrow for their sins; and yet they have a distressing consciousness¹⁶ that these dispositions do not arise in them. In good men these affections operate without any intentions of interests, without views of self-approbation, or future rewards.

Nay, are not some of these kind affections strongest where we least expect honour from men, rewards from <47> God, or even any considerable self-approbation; as the conjugal and parental affections, friendship, and gratitude? However the want of them is much condemned, these affections are reputed but a lower kind of virtue, some of them scarce any virtue at all.

All kind affec-
tions are not
from sympathy.

V. Some plead that our most generous affections are subordinate to private interest by means of *sympathy*, which makes the pleasures and pains, the happiness or misery of others, the constant causes of pleasure or pain to ourselves.¹⁷ We rejoice in seeing others happy, nay in knowing that they are happy tho' at a distance. And in like manner we have pain or sorrow from their misery. To obtain this pleasure therefore and

15. GUL Ms., p. 32: The final passage, "and must . . . cultivating it," is inserted on an added paper slip.

16. GUL Ms., p. 32: "have a distressing consciousness" replaces "regret."

17. Hutcheson may here have thought especially of authors such as John Clarke of Hull, John Gay, and Archibald Campbell. See *Essay* I.3, 23, where Hutcheson refers to Clarke's comments on Hutcheson's *Inquiry* in a footnote.

to avoid this pain, we have from self-love, say they, an inward desire of their happiness, undissembled, tho' subordinate to our desire of our own. But this sympathy can never account for all kind affections, tho' it is no doubt a natural principle and a beautiful part of our constitution. Where it operates alone, it is uniformly proportioned to the distress or suffering beheld or imagined without regard to other circumstances, whereas our generous affections are in very different degrees and proportions; we may have a weaker good-will to any person unknown; but how much stronger is the affection of gratitude, the love with esteem toward a worthy character or intimate friend, the parental affection? This sympathy, if it is the cause of all love, must be a very variable disposition, increasing upon benefits received, moral excellence observed, intimacies, and ties of blood: for the inward <48> good-will, the kind affection, is plainly increased by these causes.

Grant it naturally varied from these causes, yet this sympathy could never account for that immediate ardour of love and good-will which breaks forth toward any character represented to us as eminent in moral excellence, before we have had any thoughts, or made any inquiries into his state in point of happiness or misery. Suppose him in the remotest parts of the earth, or in some other planet. Sure we can know the intention of the soul in its pursuits or affections. Is our own future pleasure in some sympathetick joys the object upon which every kind affection and every friendly wish terminates? Does parental care, patriotism, even when it is deliberately sacrificing life for its country, terminate upon some private joy of its own? when and where is it to be obtained? only a moment or two, before death is to carry us off from all human affairs, and few of us think of knowing the state of our survivors. Should God intimate to a brave man that his death is approaching next moment, and that he should have no longer fellow-feeling with mortals or memory of them, but that he would grant his last wishes about his children, his friends, his country; would he not as ardently desire their prosperity as in any former period of life, tho' his joyful sympathetick imagination would cease next moment? how will one account upon this scheme for those anxieties, tender recommendations, advices, and ardent prayers of

men a-dying for those who were dear to them, tho' <49> they are persuaded that they shall presently be removed from this state and know no more of human affairs?

Compassion
not selfish.¹⁸

Our compassion too toward the distressed, 'tis plain, terminates upon their relief, even when we have no attention to our own pain. Nor is the termination of any desire merely upon the removal of the uneasiness which accompanies it. Thus tho' there may be in nature some connections of interest between us and the objects of our tender affections, yet the affection terminates on their good, is previous to this connexion, and is the cause of it. We therefore rejoice in the happiness of our child, our friend, our country, because we previously had an ultimate goodwill to them. Nor do we therefore love them or wish them well because we have observed that we would derive joy from their happiness, and sorrow from their misery. Hence it is that, the stronger our previous love and esteem was, the greater shall our joy be on account of their happiness, and our sorrow for their misery.

Some affec-
tions entirely
disinterested.

This may suffice to establish that important point, that our nature is susceptible of affections truly disinterested in the strictest sense, and not directly subordinated to self-love, or aiming at private interest of any kind. The ties of blood, benefits received, moral excellence displayed, tho' we apprehend no advantage redounding to ourselves from it, are the natural causes of these particular kind affections; many of them arise unmerited; all terminate on the good of others; and all of them often operate in the soul when it has no <50> views, or rational ground of hoping for any private advantage; nay when they are involving it in trouble and anxiety.

Calm affec-
tions and
passions.

VI. As we observed formerly that the particular motions of the will toward private good are,¹⁹ either the calm stable affections, or turbulent passions; so are²⁰ the particular motions²¹ of the generous kind: some of them are calm, sedate, and steady; aiming at the happiness of their object, whether an individual or a society, attended with no turbulent sen-

18. Cf. the arguments in *Inquiry* II.5.8, pp. 160–62.

19. GUL Ms., p. 34: "might" is crossed out and replaced by "are."

20. GUL Ms., p. 34: "may" is crossed out and replaced by "are."

21. GUL Ms., p. 34: "of the will" is crossed out.

sations, and only causing uneasiness when they are defeated in their intention; others are turbulent, and attended with uneasy sensations. We may proceed further in this comparison.

As there is found in the human mind, when it recollects itself, a calm general determination toward personal happiness of the highest kind it has any notion of; so we may find a like principle of a generous kind. When upon recollection we present to our minds the notion of the greatest possible system of sensitive beings, and the highest happiness it can enjoy, there is also a calm determination to desire it, abstracting from any connection with or subserviency to our private enjoyment. We shall find these two grand determinations, one toward our own greatest happiness, the other toward the greatest general good,²³ each independent on the other, each capable of such strength as to restrain all the particular affections of its kind, and keep them subordinate to itself.

Universal
benevolence.²²

But here arises a new perplexity in this complex <51> structure, where these two principles seem to draw different ways. Must the generous determination, and all its particular affections, yield to the selfish one, and be under its controul? must we indulge their kind motions so far as private interest admits and no further? or must the selfish yield to the generous? or can we suppose that in this complex system there are two ultimate principles which may often oppose each other, without any umpire to reconcile their differences? or shall we deny any original calm determination toward a publick interest; allowing only a variety of particular ultimate kind affections; not indeed arising from self-love, or directly aiming at private good as their natural termination, and yet in all our deliberate counsels about the general tenor of our conduct, subjected, in common with all the particular appetites and passions of the selfish kind,²⁴ to the original impulse in each one toward his own perfection

Whether
should the self-
ish yield to the
benevolent
principle or
not.

22. On calm universal benevolence, see also *Inquiry* II.3.10, pp. 126–28, and *Essay* II, pp. 32–33.

23. GUL Ms., p. 35: “most universal happiness” is crossed out and replaced by “greatest general good.”

24. GUL Ms., p. 35: the subclause “in common with all the particular appetites and passions of the selfish kind” is inserted.

and happiness? This last seems to be the scheme of some excellent authors both antient and modern.²⁵

This determined by the moral sense.

To alledge here that, by our reason and reflection, we may see what was the intention of God the Author of our Nature in this whole fabrick of our affections; that he plainly intended the universal happiness, and that of each individual, as far as it is consistent with it; and that this intention should be our rule: that we should therefore restrain and controul, not only all selfish affections, but even all generous particular affections, within such bounds as the universal interest requires: this is true in fact, but does not remove the <52> difficulty, unless we are first told from what determination of soul, from what motive, are we to comply with the divine intentions? if from a desire of reward, then the selfish calm determination is the sole ultimate principle of all deliberate counsels in life: if from a perception of his moral excellence, a desire of imitating him, and from love and gratitude,²⁶ then the desire of moral excellence must be the supreme original determination. But this desire of moral excellence, however an original principle, must presuppose some antecedent determinations of the will as its object. And among these there must be some one in which the supreme moral excellence consists, otherways our very sense and desire of moral excellence, since it may recommend many particular affections, which may interfere with each other, will again lead us into a new labyrinth of perplexity. The solution of these difficulties must be found by considering fully that *moral faculty* above-mentioned, to which, in the next place, we proceed; briefly touching at those reasons which shew this *moral faculty* to be *an original determination or sense* in our nature, not capable of being referred to other powers of perception. <53>

25. The modern author in question is most likely Shaftesbury; see I.3, n. 6. The present passage was used by both Leechman and an anonymous contemporary reviewer of the *System* to stress the difference between Hutcheson and Shaftesbury. See Leechman's preface to the *System*, pp. 28–29, and [Hugh Blair?], Review of *A System of Moral Philosophy*, pp. 15–16.

26. GUL Ms., p. 36: The beginning of this phrase reads, before corrections: "If from a perception of his moral excellence, and love and gratitude, and the desire of imitating it, then [. . .]."

Concerning the Moral Sense, or Faculty of perceiving Moral Excellence, and its Supreme Objects.

I. Altho' we have kind affections ultimately aiming at the good of others, the success of which is joyful to us, yet our approbation of moral conduct is very different from liking it merely as the occasion of pleasure to ourselves in gratifying these kind affections. As we do not approve all conduct which gives us this pleasure, so we approve sometimes such conduct as does not give it; and our approbation of the good conduct which gives this pleasure is not proportioned to the pleasure it gives us. Thus many inventions, and much art and industry which does good to the persons or country we love, is not approved as virtuous: we approve generous attempts tho' unsuccessful; we approve the virtues of enemies, which may hurt the chief objects of our love. We equally approve the virtues or generous designs of good men in former ages toward their contemporaries, or in the remotest nations, toward their countrymen, for whom our affections are very faint and weak, as if the like were done to our friends, or country, the objects of our strongest affections.

The notion of moral goodness is not giving us pleasure by sympathy;¹

1. In the opening sections of this chapter, Hutcheson polemicizes against theories that make self-interest the source of moral approbation—for example, Archibald Campbell's. In the previous chapter, by contrast, the target was theories that make self-interest the motive for self-cultivation; cf. especially I.3, n. 4 above. Cf. *Inquiry* II.1, pp. 89–100, where Hutcheson defends at length the claim that the moral sense is disinterested, as well as *Short Introduction* I.I.10, pp. 34–38.

nor pleasing
our moral
sense.

Again——Tho' the approbation of moral excellence is a grateful action or sensation of the mind, 'tis plain the good approved is not this tendency to give us a <54> grateful sensation. As, in approving a beautiful form, we refer the beauty to the object; we do not say that it is beautiful because we reap some little pleasure in viewing it, but we are pleased in viewing it because it is antecedently beautiful.² Thus, when we admire the virtue of another, the whole excellence,³ or that quality which by nature we are determined to approve, is conceived to be in that other; we are pleased in the contemplation because the object is excellent, and the object is not judged to be therefore excellent because it gives us pleasure.

nor that of
usefulness to
the agent;

II. Much less is it the approved species of virtue, that it is an affection or action which gives pleasure to the agent. It always may indeed give him pleasure upon reflection, by means of this moral faculty: but 'tis plainly *then* that we most admire the virtue of another when we attend to its labours, dangers, difficulties, pains; and have no thought of any present or future pleasures of the agent.⁴

or to the
approver;

'Tis strange that men should be at a loss to discern what form, or conception, or species it is, under which they approve esteem or admire their own affections and conduct, or that of others; and disapprove and condemn the contrary. One would think it manifest that the notion under which one approves virtue, is neither its tendency to obtain any benefit or reward to the agent or to the approver. The approver never expects a reward for the virtue of another; he approves where he sees no interest of his own promoted: and he would less approve such actions as are <55> beneficent, the more he considered them as advantageous to the agent, and imagined him influenced by the views of his own advantage. Actions are conceived rewardable because they are good, not good because they are to be rewarded. Both the spectator and the agent value good actions the more in point of virtue, the more expensive or disadvantageous they are to the agent; and both will disapprove as immoral some

2. Hutcheson's insistence on the connection between the domains of the aesthetic and the moral is already evident in the *Inquiry*.

3. GUL Ms., p. 37: "is conceived to be in the object" is crossed out at this point.

4. Cf. also Hutcheson's "moral mathematics" in *Inquiry* II.3.II, p. 129.

actions which the one will allure to by bribes, and the other undertake; both conceiving them in this manner advantageous.

Now, if direct explicate opinions of tendencies to the advantage of the approver or agent do not raise moral approbation, much less can we suppose that any confused imaginations, or vague associations of ideas, about such advantages to the approver or the agent, can be the form under which virtue is approved.⁵

nor imaginations of advantage.

'Tis also obvious that the notion under which we approve virtue is not its tendency to procure honour.⁶ A prospect of honour may be a motive to the agent, at least to external actions: but the tendency of an action to procure honour cannot make another approve it, who derives no honour from it. Our very desire of gaining honour, and the disposition in spectators to confer it, must presuppose a moral sense in both. And any views an agent may have to obtain self-approbation must also presuppose a moral sense. We cannot therefore say an action is judged good because it gains to the agent the pleasure of self-approbation; but it gains to him this pleasure because it was antecedently good, or had that quality which by the constitution of this sense we must approve. Our present question is, what is that quality, and how perceived?

III. The primary notion under which we approve is not merely a *conformity to the divine will or laws*. We seriously inquire about the moral goodness, justice, holiness, rectitude, of the Divine Nature itself, and likewise of his will or laws; these characters make up our common praises of them. They surely mean more than that *his will or laws are conformable to themselves*. This we might ascribe to an artful impure Demon. Conformity to his nature is not conformity to immensity, eternity, omnipotence. 'Tis conformity to his goodness, holiness, justice. These moral

Not conformity to laws;⁷

5. Such a point is made, for example, by Campbell in his *Enquiry*, p. 440.

6. For the background of Hutcheson's analysis of the relation between honour and virtue, cf. especially Mandeville's provocative discussion in *Fable of the Bees*, remark 'R,' pp. 198–223, and his *An Enquiry into the Origin of Honour and the Usefulness of Christianity in War* (1732). Hutcheson's most extensive analysis of honour is in *Inquiry* II.5.3–7, pp. 151–60.

7. Hutcheson is referring broadly to all forms of divine voluntarism, in his eyes exemplified in recent times by natural lawyers such as Pufendorf. Cf. *Inquiry* II, *Introduction*, pp. 86–87, and II.1.5, p. 96.

perfections then must be previously known, or else the definition by *conformity to them* is useless.

nor conformity
to truth.⁸

Neither is the notion of moral goodness under which we approve it well explained by conformity of affections and actions to *truth, reason, true propositions, reason of things*; as in the common acceptation these characters agree to every object of the mind, about which it judges truly, animate or inanimate, virtuous or vicious. *Conformity to moral truth*, or true propositions about morals, equally belongs to virtue and vice; as the mind discerns truth about both; and, as every true proposition is conformed to its object, so is the object to the proposition. If 'tis said that these moral truths intended are only such as shew what actions are *good*, what we are *obliged to do*, what *ought to be done*. These words mean no more than the <57> word moral goodness; and then the definition is no better than this, "the moral goodness of an action is its conformity to such true propositions as shew the action to be good;" or, "good actions are such about which 'tis true that *they are good*."

In general, all descriptions of moral goodness by conformity to reason if we examine them well, must lead us to some immediate original sense or determination of our nature. All reasons exciting to an action will lead us to some original affection or instinct of will; and all justifying reasons, or such as shew an action to be good, will at last lead us to some original sense or power of perception.

or fitness,
congruity, &c.

In like manner all descriptions of it by *fitness, congruity, agreement*, must lead us to these original determinations. The fitness of means or subordinate ends, does not prove them to be good, unless the ultimate end be good. Now fitness of an end truly ultimate must be an absurd expression; as it is referred to nothing, or is fit for nothing further. All ultimate ends are settled by some of the original determinations of our nature.*

8. See also *Illustrations upon the Moral Sense*, esp. I, pp. 137–55, and III, pp. 161–73, with an attack on William Wollaston's account of morality.

* A complete examination of these characters would call us off too much from the present design; we must therefore refer to *the illustrations on the moral sense*. [The GUL Ms., p. 39, has "and the Disputation Subjoined to this Book" crossed out. In *Illustrations* II and III, pp. 155–73, Hutcheson presents an elaborate criticism

'Tis in vain here to alledge instruction, education, custom, or association of ideas as the original of moral approbation.⁹ As these can give no new senses, let us examine what the opinion or what the notion is upon which we approve, and to what sense it belongs, whatever way the notion may have been conjoined, or whatever <58> have been the causes of our getting this opinion that such a quality is inherent in or connected with the action? and this will lead us to an original principle.

IV. There is therefore, as each one by close attention and reflection may convince himself, a natural and immediate determination to approve certain affections, and actions consequent upon them; or a natural sense of immediate excellence in them, not referred to any other quality perceivable by our other senses or by reasoning. When we call this determination a *sense* or *instinct*, we are not supposing it of that low kind dependent on bodily organs, such as even the brutes have. It may be a constant settled determination in the soul itself, as much as our powers of judging and reasoning. And 'tis pretty plain that *reason* is only a subservient power to our ultimate determinations either of perception or will. The ultimate end is settled by some sense, and some determination

There is a
moral sense.¹⁰

of the rationalist ethics in Samuel Clarke, *A Discourse concerning the Unchangeable Obligations of Natural Religion* (1706); and William Wollaston, *The Religion of Nature Delineated* (1722). The debate was pursued in an exchange with Gilbert Burnet in the *London Journal* in 1724–25, collected in *Letters between the Late Mr. Gilbert Burnet and Mr. Hutcheson [sic]* (1735); now in Hutcheson, *Correspondence and Occasional Writings*, pp. 135–93. The GUL Ms. does not indicate the passage to which the present note belongs. It would seem more appropriate at the first full stop in the paragraph beginning “Neither” (which is at the top of the Ms., p. 39). The disputation referred to in the deleted note may have been part of the illustrations that the editors of the *System* contemplated appending; see appendix, p. 629, n. 20.]

9. Cf. *Inquiry* II.1.7, p. 99. Hutcheson's primary targets are Bernard Mandeville's ideas of morals as a politically instilled means of social control and John Gay's reductive account of moral ideas as derived by association from self-interest. See, e.g., Mandeville's *Enquiry into the Origin of Moral Virtue*; and Gay's “Concerning the fundamental principle and immediate criterion of virtue or morality.” The topic was sensitive for Hutcheson insofar as he himself had in certain contexts made use of associationist explanations, albeit typically from a critical perspective. Cf. *Inquiry* I.6.11, pp. 67–68, *Essay* IV.3, pp. 69–72, and V, pp. 87–110, *Short Introduction* I.17, pp. 46–49, and *Synopsis* 2.6, pp. 136–37.

10. Cf. *Short Introduction* I.1.10, p. 34, *Inquiry* II, *Introduction*, p. 88, and II.1.1, pp. 90–92.

of will: by some sense we enjoy happiness, and self-love determines to it without reasoning. Reason can only direct to the means; or compare two ends previously constituted by some other immediate powers.

This plainly
analogous to
other parts of
nature.¹¹

In other animal-kinds each one has instincts toward its proper action, and has the highest enjoyment in following them, even with toil and some pain. Can we suppose mankind void of such principles? as brutes seem not to reflect on their own temper and actions, or that of others, they may feel no more than present delight in following their impulses. But in men, who can make their own tempers and conduct the objects of reflection, the analogy of nature would make one expect a sense, a relish about them, as well as about other objects. To each of our powers we seem to have a corresponding taste or sense, recommending the proper use of it to the agent, and making him relish or value the like exercise of it by another. This we see as to the powers of voice, of imitation, designing, or machinery, motion, reasoning; there is a sense discerning and recommending the proper exercise of them. It would be anomalous in our structure if we had no relish or taste for powers and actions of yet greater importance; if a species of which each one is naturally capable of very contrary affections toward its fellows, and of consequent actions, each one also requiring a constant intercourse of actions with them, and dependant on them for his subsistence, had not an immediate relish for such affections and actions as the interest of the system requires. Shall an immediate sense recommend the proper use of the inferior powers, and yet shall we allow no natural relish for that of the superior?

This sense
requires
culture and
improvement.

V. As some others of our immediate perceptive powers are capable of culture and improvement, so is this moral sense, without presupposing any reference to a superior power of reason to which their perceptions are to be referred. We once had pleasure in the simple artless tunes of the vulgar. We indulge ourselves in musick; we meet with finer and more complex compositions. In these we find a pleasure much higher, and begin to despise what formerly pleased us. A judge, from the motions of pity, gets many criminals acquitted: we approve this sweet ten-

derness of heart. But we find that violence and outrages abound; the sober, just, and industrious are plagued, and have no security. A more extensive view of a publick interest shews some sorts of pity to occasion more extensive misery, than arises from a strict execution of justice. Pity of itself never appears deformed; but a more extensive affection, a love to society, a zeal to promote general happiness, is a more lovely principle, and the want of this renders a character deformed.¹² This only shews, what we shall presently confirm, that among the several affections approved there are many degrees: some much more lovely than others. 'Tis thus alone we correct any apparent disorders in this *moral faculty*, even as we correct our reason itself.¹³ As we improve and correct a low taste for harmony by enuring the ear to finer compositions; a low taste for beauty, by presenting the finer works, which yield an higher pleasure; so we improve our *moral taste* by presenting larger systems to our mind, and more extensive affections toward them; and thus finer objects are exhibited to the moral faculty, which it will approve, even when these affections oppose the effect of some narrower affections, which considered by themselves would be truly lovely. No need here of reference to an higher power of perception, or to reason.

Is not our reason itself also often wrong, when we rashly conclude from imperfect or partial evidence? must there be an higher power too to correct our reason? no; presenting more fully all the evidence on both sides, by serious attention, or the best exercise of the reasoning power, corrects the hasty judgment. Just so in the moral perceptions.

VI. This moral sense from its very nature appears to be designed for regulating and controlling all our powers. This dignity and commanding nature we are immediately conscious of, as we are conscious of the power itself. Nor can such matters of immediate feeling be otherways

The moral sense destined to govern our other powers.¹⁴

12. Cf. a similar discussion in a passage added to the 4th ed. of *Inquiry* II.3., p. 237.

13. Cf. Hutcheson on the causes of apparent perversions of the moral sense in *Inquiry* II.4.3–7, pp. 138–47.

14. This is reminiscent of Butler's discussion of the supremacy of conscience, esp. in *Sermons*, 1–3. At the beginning of sermons 2 and 3, Butler refers to the topical Romans ii:14. Cf. also Hutcheson's inaugural oration, *On the Natural Sociability of Mankind*, p. 199, where Hutcheson uses the Stoic term *hegemonikon*.

proved but by appeals to our hearts.* It does not estimate the good it recommends as merely differing in degree, tho' of the same kind with other advantages recommended by other senses, so as to allow us to practise smaller moral evils acknowledged to remain such, in order to obtain some great advantages of other sorts; or to omit what we judge in the present case to be our duty or morally good, that we may decline great evils of another sort. But as we immediately perceive the difference in kind, and that the dignity of enjoyment from fine poetry, painting, or from knowledge is superior to the pleasures of the palate, were they never so delicate; so we immediately discern moral good to be superior in kind and dignity to all others which are perceived by the other perceptive powers.

In all other grateful perceptions, the less we shall relish our state, the greater sacrifice we have made of <62> inferior enjoyments to the superior; and our sense of the superior, after the first flutter of joy in our success is over, is not a whit increased by any sacrifice we have made to it: nay in the judgment of spectators, the superior enjoyment, or our state at least, is generally counted the worse on this account, and our conduct the less relished. Thus in ¹⁵ sacrificing ease, or health, or pleasure, to wealth, power, or even to ¹⁶ the ingenious arts; their pleasures gain no dignity by that means; and the conduct is not more alluring to others. But in moral good, the greater the necessary sacrifice was which was made to it, the moral excellence increases the more, and is the more approved by the agent, more admired by spectators, and the more they are roused to imitation. By this sense the heart can not only approve itself in sacrificing every other gratification to moral goodness, but have the highest

* Thus the Stoick in *Cicero de Fin.* l. iii. c. 10. *Bonum hoc, de quo agimus, est illud quidem plurimi aestimandum, sed ea aestimatio genere valet, non magnitudine.*—*Alia est aestimatio virtutis, quae genere, non crescendo valet.* [“. . . this Good which we are discussing is superlatively valuable, yet the value in its case depends on kind and not on quantity. . . . The value of Virtue is therefore peculiar and distinct; it depends on kind and not on degree.” *Cicero, De finibus*, III.10, pp. 252–55. The *System's* GUL Ms., p. 42, has “See Dr Butler's Sermons” crossed out at the end of the note.]

¹⁵. GUL Ms., p. 42: “moral good, the greater the necessary sacrifice” is crossed out.

¹⁶. GUL Ms., p. 42: “wealth, power, or even to” is inserted.

self-enjoyment, and approbation of its own disposition in doing so: which plainly shews this moral sense to be naturally destined to command all the other powers.

VII. Let us next consider the several powers or dispositions approved or disapproved by this faculty. And here 'tis plain that the primary objects of this faculty are the affections of the will, and that the several affections which are approved, tho' in very different degrees, yet all agree in one general character, of¹⁸ tendency to the happiness of others, and to the moral perfection of the mind possessing them. No actions, however in fact beneficial to society, are approved as virtuous if they are imagined to flow from no inward <63> good-will to any person, or from such dispositions as do not naturally suppose good-will in the agent, or at least exclude the highest selfishness. The desires of glory, or even of rewards in a future state, were they supposed the sole affections moving an agent in the most beneficial services, without any love to God, esteem of his moral excellencies, gratitude to him, or good-will to men, would not obtain our approbation as morally good dispositions: and yet a firm belief of future happiness to be obtained by Divine appointment, upon our doing beneficent actions, might be as steady and effectual a cause of or motive to such actions as any other. But mere desire of one's own happiness, without any love to God, or man, is never the object of approbation. This itself may shew us how distinct moral approbation is from a persuasion of the tendency of actions to the interest of the approver, since he might hope equally great advantages from such a steady interested disposition to actions in fact beneficent, as from any kind affection.

The chief objects of approbation are kind affections.¹⁷

That some sort of benevolent affections, or some dispositions imagined to be connected with them, are the natural objects of approbation; and the opposite affections, or the want of the kind ones, the objects of condemnation, will be plain from almost all our reasonings in praising or censuring, applauding or condemning the characters and actions of mankind. We point out some kind or beneficent intention, or some

This evident from experience.

17. Cf. *Inquiry* II.3.1, p. 116.

18. GUL Ms., p. 43: "of" should presumably be "or." In the Ms. the word is all but cut off in the margin, but the visible remnant indicates "or."

beneficent purposes proposed by the agent in what we praise, or would vindicate from censure. We shew <64> some detriment ensuing to others, either intended or known, or what easily might have been known by one who had any tender regard for the interests of others, as the evidence either of ill-nature in the agent, or such selfishness, or such selfish passions as over-power all kindness and humanity.

A decency and
a dignity dis-
tinct from
virtue.¹⁹

VIII. There is a plain gradation in the objects of our approbation and condemnation, from the indifferent set of actions ascending to the highest virtue, or descending to the lowest vice. It is not easy to settle exactly the several intermediate steps in due order, but the highest and lowest are manifest. The indifferent affections and actions are such as pursue the innocent advantages of the agent without any detriment to society, and yet without any reference made by the agent to any good of others. Such are the necessary and moderate gratifications of appetite, and many trifling actions. To explain the different degrees, we must observe, what was hinted at formerly, that beside the moral approbation of virtue, there is also another relish or sense of a certain dignity or decency in many dispositions and actions not conceived as virtuous. Thus we value the pursuits of the ingenious arts, and of knowledge, nay even some bodily perfections, such as strength and agility, more than mere brutal sensuality. We in like manner value more in another activity, patience of labour, sagacity, and spirit in business, provided they are not injurious, tho' we conceive them solely exercised for his own promotion to wealth and honour, than a lazy inactive indolence. <65>

Qualities nei-
ther approved
as virtue, nor
condemned
as vice.

The calm desire of private good, tho' it is not approved as virtue, yet it is far from being condemned as vice.²⁰ And none of the truly natural and selfish appetites and passions are of themselves condemned as evil, when they are within certain bounds, even tho' they are not referred by

19. Cf. *Short Introduction* I.I.II, pp. 38–40. Again, this idea of dignity as “distinct from virtue” is absent in *Inquiry* and *Essay*; cf. I.2, n. 14 above. These reflections may be connected to discussions between Hume and Hutcheson on Cicero’s objections against the Stoics in Book IV of *De finibus*. Cf. the postscript of Hume’s letter to Hutcheson from 17 September 1739, *The Correspondence and Occasional Writings*, letter 30, pp. 73–74.

20. Cf. *Inquiry*, II.3.5, p. 122.

the agent to any publick interest. It was necessary for the general good that all such affections should be implanted in our species; and therefore it would have been utterly unnatural to have made them matter of disapprobation even while they were not hurtful. Nay, as these selfish affections are aiming at an end necessary to the general good, to wit the good of each individual, and as the abilities of gratifying them are powers which may be very usefully employed in subserviency to the most generous affections, it was highly proper and benign in the Author of Nature to invite us to the culture of these powers by an²¹ immediate relish for them wherever we observe them, in ourselves or in others; tho' this relish is plainly different from moral approbation.

We all have by consciousness and experience a notion of the human constitution, and of a certain proportion of affections requisite to an innocent character. The selfish affections are then only disapproved when we imagine them beyond that innocent proportion, so as to exclude or over-power the amiable affections, and engross the mind wholly to the purposes of selfishness, or even to obstruct the proper degree of the generous affections in the station and circumstances of the agent. <66>

IX. But there is another set of dispositions and abilities still of a finer nature, tho' distinct from both the calm universal benevolence and the particular kind affections; which however are naturally connected with such affections, natural evidences of them, and plainly inconsistent with the highest sorts of selfishness and sensuality; and these seem immediate

Degrees of virtue; first some abilities and dispositions different from kind affections.

21. GUL Ms., p. 45: At this point the Ms. has a note marker; the intended note was subsequently crossed out. It says:

If we say that our Relish of such abilities as have no natural connection with kind affections is a bare opinion of their Utility to any possessor; we shall not easily explain how several Qualities and actions known to be thus usefull are not relished, such as a selfish constant Painstaking for Wealth; mere bodily Strength, & Dispositions to bear illiberal gainfull Drudgery & the Arts of pleasing the Palate. If one says the reason is that there are much finer Pleasures obtained by the Qualities we have the higher Relish for, this at least leads us to a great Diversity of Senses for the Pleasures obtained by the several sorts of Abilities, some admitting much higher Pleasures than others, which is enough for our purpose.

objects of the *moral sense*, tho' perhaps not the highest. They seem to be approved immediately, even before we think of this connexion with disinterested affections, or imagine directly that the agent is referring them to beneficent purposes. Of these moral dispositions there are several sorts, all immediately approved, unless the mind directly discerns that they are employed in vicious purposes. Thus is fortitude approved, as it imports that something moral is more valued than life, and as plainly inconsistent with the highest selfishness: if indeed it be seen employed in rapine, and merely selfish purposes, such as those of lust or avarice, it becomes the object of horror. Candour, and openness of mind, and sincerity, can scarce ever be unattended with a kind honest heart; as 'tis virtue and innocence alone which need no disguise. And these dispositions too are immediately approved, perhaps before we think of this connexion; so is also a stedfast principle of veracity whenever we speak.

When veracity
is approved.

I know not if CICERO's account of this be exact; "that we naturally desire knowledge, and are averse to ignorance, and error, and being deceived; and thence relish these dispositions which are the natural means of knowledge, and the preservatives against deceptions."²² Veracity seems to be immediately and strongly approved, and that from our infancy; as we see the first natural impulse of the young mind is to speak truth, till by experiencing some inconveniencies it is taught to counteract the natural impulse.²³ One needs not mention here courtesy and good manners: they are the very dress of virtue, the direct profession of kind affections, and are thus approved. As all these abilities and dispositions are of great importance in life, highly beneficial to mankind when exerted in consequence of kind affections, and are naturally connected with them, or exclude the opposite extreme, 'tis with the highest goodness and wisdom that they are immediately recommended to our approbation by the constitution of our *moral faculty*.

22. This is not a quotation but a loose rendering of the thought in Cicero, *De finibus*, V.18.

23. GUL Ms., p. 46: This is a particularly striking example of the Ms. being changed in the printing, apparently for stylistic reasons. The Ms. has: "till experiencing some inconveniencies teaches it to counteract its natural impulse."

But of all such dispositions of our nature, different from all our kind affections, none is so nearly connected with them, none so natural an evidence of them, none so immediately and necessarily subservient to them, as an acute moral sense itself, a strong desire of moral excellence, with an high relish of it wherever it is observed. We do not call the power or sense itself virtuous; but the having this sense in an high degree naturally raises a strong desire of having all generous affections; it surmounts all the little obstacles to them, and determines the mind to use all the natural means of raising them. Now, as the mind can make any of its own powers the object of its reflex contemplation, this high sense of moral excellence is approved above <68> all other abilities. And the consequent desire of moral excellence, the consequent strong love, esteem, and good-will to the persons where it is found, are immediately approved, as most amiable affections, and the highest virtues.

The relish and desire of moral excellence.²⁴

X. Having premised these considerations, we may observe the following degrees of approbation, as they ²⁵ arise above what is merely indifferent.

The degrees recited.

1. One may rank in the first step, as the object of some sort of esteem or good liking, the exercise even of those more manly powers, which have no necessary or natural connexion with virtue, but shew a taste above sensuality and the lower selfishness: such as the pursuits of the ingenious arts, of the elegance of life, and speculative sciences. Every one sees a dignity in these pleasures, and must relish the desires of them; and indeed they are far less opposite to virtue, or the publick interest, than keen tastes or appetites of a lower kind.

Certain abilities of dignity.

2. 'Tis plain however, that our moral sense puts a much higher value upon abilities and dispositions immediately connected with virtuous affections, and which exclude the worst sorts of selfishness. Thus candour, veracity, fortitude, and a strong sense of honour, have a moral estimation above other abilities.

24. This "desire of moral excellence" is mentioned neither in the *Inquiry* nor in the *Essay*. The theme is, however, quite prominent in the *System* and the *Short Introduction*. It is noteworthy that the terminology of "relishing" virtue, which marks the discussion in the following pages, is strongly present in the English translation of Henry More's *An Account of Virtue*, e.g., I.2.5, pp. 6, II.9.14–15, pp. 155–56. Hutcheson wrote an (anonymous) introduction to the edition of Henry More's *Divine Dialogues*, published in Glasgow in 1743. See *Correspondence and Occasional Writings*, pp. 363–65.

25. GUL Ms., p. 46: "we" instead of "they."

Calm kind affections more approved than passions.

Extensive more approved than the narrow.²⁶

3. But to come to the more immediate objects of moral approbation, the kind affections themselves; 'tis certain that, among affections of equal extent, we more approve the calm stable resolute purposes of heart, than the turbulent and passionate. And that, <69> of affections in this respect alike, we more approve those which are more extensive, and less approve those which are more confined. Thus, the stable conjugal and parental love, or the resolute calm purpose of promoting the true happiness of persons thus related to us, is preferable to the turbulent passionate dispositions of tenderness. And the love of a society, a country, is more excellent than domestick affections. We see plainly the superior dignity in these cases from this, that, notwithstanding the struggle felt in our breasts, and the opposition made by the passionate or more limited affections, yet, when we resolutely follow the calm and extensive notwithstanding of this opposition, the soul in its calmest hours and most deliberate reflections approves of its own conduct; and scarce ever fails to approve the like conduct in others at once; as in the case of others its passions are not raised to give opposition. On the contrary, when we have yielded to the passion or the limited affection, in opposition to the calm or more extensive principle, the soul upon reflection is dissatisfied with itself, and at first view it condemns the like conduct in others.

The chief moral excellence, universal good-will,²⁷

and love of this affection.²⁸

That disposition therefore which is most excellent, and naturally gains the highest moral approbation, is the calm, stable, universal good-will to all, or the most extensive benevolence. And this seems the most distinct notion we can form of the moral excellency of the Deity.

Another disposition inseparable from this in men, and probably in all beings who are capable of such extensive affection, is the relish or approbation of this affection, and a naturally consequent desire of this moral excellence, and an esteem and good-will of an higher kind to all in whom it is found. This love of moral excellence is also

26. Cf. the connected discussion of our approval of different degrees of benevolence in the 4th ed. of *Inquiry* II.3.6, pp. 236–37, as well as in *Short Introduction* I.I.II, pp. 38–39.

27. Cf. the added paragraph to the 4th ed. of *Inquiry* II.3, p. 237.

28. See I.4, n. 24 above.

an high object of approbation, when we find it in ourselves by reflection, or observe it in another. It is a pretty different affection from benevolence or the desire of communicating happiness; and is as it were in another order of affections; so that one cannot well determine whether it can be compared with the other. It seems co-ordinate, and the highest possible of that kind; never in opposition to benevolence, nay always conspiring with and assisting it. This desire of moral excellence, and love to the mind where it resides, with the consequent acts of esteem, veneration, trust, and resignation, are the essence of true piety toward God.

We never speak of benevolence toward God; as that word carries with it some supposal of indigence, or want of some good, in the object. And yet, as we have benevolence toward a friend when he may need our assistance; so, the same emotion of soul, or the same disposition toward him, shall remain when he is raised to the best state we can wish; and it then exerts itself in congratulation, or rejoicing in his happiness. In this manner may our souls be affected toward the Deity, without any supposition of his indigence, by the highest joy and complacency in his absolute happiness.

XI. 'Tis easy to observe the like gradation from the <71> indifferent state of the soul through the several degrees of moral turpitude. The first may be the want of these more reputable abilities; which indeed implies no evil affection, and yet plainly makes a character despicable, tho' not immoral. Thus we dislike the imprudent conduct of any man with respect to his own interest, without thinking of any detriment to arise to society from it. Thus negligence, rashness, sloth, indolence, are naturally disliked, abstracting from their effects upon society. So is a mind insensible to the more manly pleasures of arts and genius. When indeed imprudent conduct, in point of private interest, is considered also as affecting a publick, or some other persons than the agent, whose interests he ought to have regarded, as it generally does; then it may be matter of

The degrees of vice.²⁹

29. On the degrees of vice, see also *Inquiry* II.7.9, pp. 189–92, and II.3.12, pp. 130–32.

high moral condemnation and remorse; so may the meanness of our talents or abilities, when occasioned by our immoderate sloth and sensuality, and a defect of generous affections.

Several degrees
recited.

1. The objects of the gentlest moral disapprobation or censure are those cases “where one in gratifying some lovely narrower affection has inadvertently omitted what would have most tended to the publick good.” Such is the promoting a good friend or benefactor in opposition to a competitor of superior merit and abilities. The preferring, in such cases, a less worthy friend to one’s self, may be censured indeed as a want of due proportion among these lovely affections, when a more extensive one yields to the more limited; but the moral beauty of some limited affecti<72>ons is so great that we readily overlook some defects in the more extensive. The same is the case if one has served a friend at a trouble or expence to himself much above the value of the good he has done his friend; perhaps too incapacitating himself for some wiser services hereafter. Where indeed one preferred to himself a friend of equal merit, the publick interest is as well promoted this way, and a beautiful affection of friendship is displayed. And yet the contrary conduct, when there are no special circumstances pleading for a friend, could not be censured as immoral.

2. Other objects of lighter censure are those actions detrimental to the publick which a person is forced to do to avoid death torture or slavery; when yet the publick detriment is still greater than those evils he avoids. Here the agent may have no ill-will; nay may have many generous affections, tho’ not of that heroick strength which the moral sense would recommend. The guilt is exceedingly extenuated by the greatness of the temptation, which few have sufficient strength of soul to resist. In order to retain the character of innocence, we expect, not only the absence of all malicious dispositions, but many good affections, and those too of an extensive nature; with much caution about the interests of others. The precise degrees cannot well be determined; nor is it necessary. But the stronger and the more extensive the generous affections are, so much the better is the temper; the lower they are, and the more that any opposite or narrower ones prevail against them, so much the

temper is the worse. <73> 'Tis our business to aim at the highest moral excellence, and not content ourselves with merely avoiding infamy or censure.

3. Another degree of vice are the sudden passionate motions of anger, resentment, and ill-will, upon provocation either falsely apprehended, or aggravated beyond any real ground. Such passions when they lead to injury are vicious, tho' not in the highest degree. When indeed by indulgence they turn into habitual rancour and settled malice or revenge, they form a most odious character.

4. A more deformed sort of vice is when the selfish passions and sensual appetites lead men into like injuries. These are worse excuses and weaker extenuations of guilt than the angry passions.

5. A degree more deformed is when calm selfishness raises deliberate purposes of injury known to be such. In these cases the moral faculty must be quite over-powered, and deprived of all its natural force in the soul, and so must all humanity. The like is the case when men from mere selfishness, without any grievous temptation, or without any motives of publick interest, counteract their moral sentiments by falsehood, treachery, ingratitude, a neglect of honour, or low cowardice dreading to lose some positive advantages, even while there is no such evil impending as could much affect a brave and good man.

6. In this class, or rather in a worse one, we must rank impiety, or the want of all due affections to the Deity, when he is known and conceived to be good. <74> Our moral faculty must be strangely asleep where the desire of knowing the Supreme Excellence is a-wanting, or love to it when it is known: or where there is no care to cultivate devout affections of gratitude where there have been the greatest benefits received, and where they are repeated every moment.

There is a disposition still worse, conceivable in the abstract, but scarce incident to mankind, or the creatures of a good Deity; a fixed unprovoked original malice, or a desire of the misery of others for itself, without any motives of interest.³⁰

30. Cf. the discussion in *Inquiry* II.2.4, p. 105.

The moral
sense reduces
all our powers
into order.³¹

XII. Without a distinct consideration of this moral faculty, a species endued with such a variety of senses, and of desires frequently interfering, must appear a³² complex confused fabrick, without any order or regular consistent design. By means of it, all is capable of harmony, and all its powers may conspire in one direction, and be consistent with each other. 'Tis already proved that we are capable of many generous affections ultimately terminating on the good of others, neither arising from any selfish view, nor terminating on private good. This moral faculty plainly shews that we are also capable of a calm settled universal benevolence, and that this is destined, as the supreme determination of the generous kind, to govern and controll our particular generous as well as selfish affections; as the heart must entirely approve its doing thus in its calmest reflections: even as in the order of selfish affections, our self-love, or our calm regard to the greatest private interest controlls our particular selfish passions; and the heart is satisfied in its doing so.

Calm self-love
not the
supreme
principle.

To acknowledge the several generous ultimate affections of a limited kind to be natural, and yet maintain that we have no general controlling principle but self-love, which indulges or checks the generous affections as they conduce to, or oppose, our own noblest interest; sometimes allowing these kind affections their full exercise, because of that high enjoyment we expect to ourselves in gratifying them; at other times checking them, when their gratification does not over-balance the loss we may sustain by it: is a scheme which brings indeed all the powers of the mind into one direction by means of the reference made of them all to the calm desire of our own happiness, in our previous deliberations about our conduct: and it may be justly alledged that the Author of Nature has made a connexion in the event at last between our gratifying our generous affections, and our own highest interest.³³ But the feelings of our heart, reason, and history, revolt against this account: which seems however to have been maintained by excellent authors and strenuous defenders of the cause of virtue.

31. This section is referred to in a footnote in Leechman's preface, p. 29.

32. GUL Ms., p. 51: "would be" is crossed out and replaced by "must appear a."

33. This seems to be a version of the "higher" selfish scheme discussed in *System* I.3.I.

This connexion of our own highest interests with the gratifying our generous affections, in many cases is imperceptible to the mind; and the kind heart acts from its generous impulse, not thinking of its own interest. Nay all its own interests have sometimes appeared to it as opposite to, and inconsistent with the generous part, in which it persisted. Now were there <76> no other calm original determination of soul but that toward one's own interest, that man must be approved intirely who steadily pursues his own happiness, in opposition to all kind affections and all publick interest. That which is the sole calm determination, must justify every action in consequence of it, however opposite to particular kind affections. If it be said "that 'tis a mistake to imagine our interest opposite to them while there is a good providence:" grant it to be a mistake; this is only a defect of reasoning; but that disposition of mind must upon this scheme be approved which coolly sacrifices the interest of the universe to its own interest. This is plainly contrary to the feelings of our hearts.

Can that be deemed the sole ultimate determination, the sole ultimate end, which the mind in the exercise of its noblest powers can calmly resolve, with inward approbation, deliberately to counteract? are there not instances of men who have voluntarily sacrificed their lives, without thinking of any other state of existence, for the sake of their friends or their country? does not every heart approve this temper and conduct, and admire it the more, the less presumption there is of the love of glory and postumous fame, or of any sublimer private interest mixing itself with the generous affection? does not the admiration rise higher, the more deliberately such resolutions are formed and executed? all this is unquestionably true, and yet would be absurd and impossible if self-interest of any kind is the sole ultimate termination of all <77> calm desire. There is therefore another ultimate determination which our souls are capable of, destined to be also an original spring of the calmest and most deliberate purposes of action; a desire of communicating happiness, an ultimate good-will, not referred to any private interest, and often operating without such reference.

In those cases where some inconsistency appears between these two determinations, the moral faculty at once points out and recommends the glorious the amiable part; not by suggesting prospects of future

Another ultimate determination of will toward publick good.

Which the moral faculty shews destined to controul all others.

interests of a sublime sort by pleasures of self-approbation, or of praise. It recommends the generous part by an immediate undefinable perception; it approves the kind ardour of the heart in the sacrificing even life itself, and that even in those who have no hopes of surviving, or no attention to a future life in another world. And thus, where the moral sense is in its full vigour, it makes the generous determination to publick happiness the supreme one in the soul, with that commanding power which it is naturally destined to exercise.³⁴

It must be obvious we are not speaking here of the ordinary condition of mankind, as if these calm determinations were generally exercised, and habitually controlled the particular passions; but of the condition our nature can be raised to by due culture; and of the principles which may and ought to³⁵ operate, when by attention we present to our minds the objects or representations fit to excite them. Doubtless <78> some good men have exercised in life only the particular kind affections, and found a constant approbation of them, without either the most extensive views of the whole system, or the most universal benevolence. Scarce any of the vicious have ever considered wherein it is that their highest private happiness consists, and in consequence of it exerted the calm rational self-love; but merely follow inconsiderately the selfish appetites and affections. Much less have all good men made actual references of all private or generous affections to the extensive³⁶ benevolence, tho' the mind can make them; or bad men made references of all their affections to calm self-love.³⁷

Comparing,
reasoning,
laws, religion,
still necessary.

XIII. But as the selfish principles are very strong, and by custom, by early and frequent indulgences, and other causes, are raised in the greatest part of men above their due proportion, while the generous principles are little cultivated, and the moral sense often asleep;³⁸ our powers

34. This is reminiscent of Butler's discussion of the superiority of conscience in the *Sermons*, esp. in sermons 1–3.

35. GUL Ms., p. 53: "and ought to" is inserted.

36. GUL Ms., p. 53: "the extensive" is inserted.

37. GUL Ms., p. 53: this entire paragraph is inserted from a note at the bottom of the page.

38. The tone of Hutcheson's description of human nature appears somewhat less optimistic here than in the *Inquiry* and the *Essay*. On the need to cultivate our moral judgments, cf. II.I.5 and III.9.1.

of reasoning and comparing the several enjoyments which our nature is capable of, that we may discover which of them are of greatest consequence to our happiness; our capacity, by reasoning, of arriving to the knowledge of a *Governing Mind* presiding in this world, and of a moral administration, are of the highest consequence and necessity to preserve our affections in a just order, and to corroborate our *moral faculty*: as by such reasoning and reflection we may discover a perfect consistency of all the generous motions of the soul with private interest, and find out a certain tenor of life and action the most effectually subservient to both these determinations. This shall be the subject of some following chapters, after we shall have subjoined some further confirmation of these moral principles, from the sense of honour; and observed the universality of both, and how far they seem uniform principles in our species.

The sense of Honour and Shame explain'd.
The universal Influence of the Moral Sense,
and that of Honour, and their Uniformity.¹

Sense of
honour an
immediate
principle.²

I. If we consult our own feelings we must acknowledge that as there are certain affections and actions which we naturally approve, and esteem, and praise, so there is an immediate grateful sensation felt when we are approved and praised by others, and generally a most uneasy one when we are censured; without the expectation of any other advantages or disadvantages which may thence accrue to us. A more distinct consideration of this sense of honour and shame will much confirm the preceding account of our *moral faculty*.

Abstracted
from private
interest.

They who refer all the motions of the heart to private interest, and would reduce all our perceptive powers to a very small number, by one artful reference or another, depart exceedingly from nature in their accounts of those determinations about honour and shame, which are acknowledged to appear universally among men. <80> They tell us “our honouring a man is merely reputing him useful to us either explicitly, and thus we honour the generous and beneficent, with whom we have intercourse, and by whose offices we are profited; or implicitly, and by some confused imaginations, and thus we honour *heroes* who lived in prior ages, or remote nations, imagining they are our contemporaries

1. Cf. *Short Introduction* I.1.13, pp. 41–43; *Inquiry* II.5.3–7, pp. 151–60, II.4, pp. 136–47; *Essay* V.8, pp. 100–102, VI.5, pp. 125–26.

2. Cf. *Essay* I.1, p. 18.

or countrymen; or thinking that they would be very useful to us if we had intercourse with them. And thus our esteem is only an opinion of a character or conduct as useful to us, and a liking it on this account." And, say they, "we desire to be honoured, or reputed useful to others, not from an immediate sensation, but because we know that men are studious of serving such as they honour and repute useful to them; not indeed from ultimate love to them, but as a further allurements to continue thus useful; and we, in hopes of such services from those to whom we are reputed useful, desire to obtain this reputation of being useful to others." 'Tis a pain to dwell upon such schemes as contradict the immediate feelings of the heart so manifestly.³

Upon this scheme, the man who honours an agent, and the agent himself who approves his own conduct, must have notions of the same honoured action the most different imaginable. The honourer must only value it as tending to his ease, wealth, pleasure, safety; and the agent values it as the artful, and necessary, but disagreeable means of obtaining some remote advantages from others, who will probably invite him to continue such conduct by making him some returns of useful services. But 'tis plain there are many tempers and actions useful to us, nay to a whole community, which we don't honour; such as useful treachery, a selfish inventive industry in improving manufactures; a promiscuous profuseness. Nay we honour sometimes what we conceive directly to be detrimental; as patriotism or courage, in a foreigner, or an enemy. Shall confused imaginations of usefulness be regarded here, against the most direct opinions of detriment to ourselves? Who finds these imaginations respecting his own interests, in reading antient histories, or dramatick writers, when the soul is so strongly moved with the several *moral forms*?

And then, surely, this notion of my own temper and conduct as beneficial to others can upon their scheme have nothing immediately grateful to me. These cool uncertain prospects of returns of advantage from

This proved by several reasons.

3. This may be directed against Archibald Campbell, *Enquiry*, profusely in Treatise II, which contains Campbell's criticisms of Hutcheson, sections 7–9; for a pithy statement, see pp. 440–41. It may also be broadly directed against Bernard Mandeville's *Enquiry into the Origin of Moral Virtue*. Cf. also what may be Hutcheson's response to Campbell in the 4th ed. of the *Inquiry* II.1.3, pp. 219–20.

the selfish arts of others can have nothing alluring amidst certain expences, labours, wounds, and death? whence the ardour for a surviving fame? this is all monstrous and unnatural. Is all our admiration, our high zeal for the brave, and merciful, and generous, and magnanimous, all our ambition and ardour for glory, this cool traffick, this artful barter of advantageous services without an express bargain? We appeal to every human heart in this matter; to the hearts of the young, who are most ardent in praising, and most delighted with praise; and have little felt those artful <82> mean designs of interest. Is all esteem and honour a mere cool opinion that from some actions and affections we shall reap some advantage? Is all the confounding sense of shame, and blushing, only a fear of some future uncertain losses, which we know not well what they shall be, or how they will befall us? Are not men conscious of their own designs in the pursuits of honour; of their own apprehensions in their avoiding of what is shameful; and of the occasion of their sorrow when they are ashamed? surely these artful views of our own interest could not be unknown to us.

This sense
appears very
early.

II. There is therefore an immediate sense of honour and shame, often operating where there are no such views of interest, and plainly presupposing a *moral sense*.⁴ It generally appears very early in life, before any considerable reasoning or reflection can settle well the notions of morality; and thus before we can judge for ourselves we are wisely and benignly subjected to the direction of others, are rewarded for our compliance by a most grateful sensation, and by a most uneasy one deterred from forwardness and obstinacy. The selfish accounts of this principle make all the ardour for glory the same base temper with that of a traitor or informer, who desires to appear useful to others in hopes of a reward. No better notion can they give of modesty, the sense of shame, the abhorrence of any imputation of moral turpitude, that *pudor*⁵ of the ROMANS, the finest stroke in a character. <83>

There are several degrees of the honourable and shameful.

We see this sense of *honour* admits several degrees in conformity to the *moral sense* on which it is founded. But first, in consequence of that natural desire or impulse toward the perfection of all our powers, and a

4. Cf. *Inquiry* II.5.5, pp. 153–55.

5. Modesty, propriety.

sense of dignity and decency in some of them above others, we find a natural pleasure in discovering to others the perfection of any manly powers, and in being valued in that respect. Hence a taste for the ingenious arts of musick, sculpture, painting, and even for the manly diversions, is reputable. The grandeur and elegance of living, in dress, architecture, furniture, gardens, are in certain circumstances matter of glorying and of praise: much more so are the abilities yet higher, a strong genius in acquiring knowledge, the high lively imagination of the poet or orator. This last indeed plainly includes an high moral sense.

But to come directly to our sense of pleasure in obtaining moral⁶ approbation. All actions which proceed from any friendly or kind affection, and are not opposite to some more extensive one,⁷ are attended with assurance, and openness of behaviour, and we glory in them. The sensual passions, and ill-natured affections of anger, malice, envy, and even cool selfishness, we naturally conceal; and are ashamed of them.

III. One cannot well pass by that peculiar branch of modesty so conspicuous in all ages and nations, about venereal enjoyments. As there is a very violent appetite implanted for the most necessary purposes of the system, requiring however, in order to answer these <84> ends more effectually, a great deal of nice regulation, by our reason and consideration of the common interest of society. 'Tis with great wisdom and goodness that such an early check is provided for this appetite by a natural principle of modesty. Children uninstructed would not soon discover to us this modesty, nor have they for some years a notion of the object or design of it, as the appetite does not arise in our first years. Should we whimsically suppose savages come to maturity in solitude, without these objects occurring to them which could excite social affections or moral notions; in this unnatural state some natural principles might not appear. But were they brought into society, and had the actions and sentiments of others presented to them, their moral faculty,

The modesty
of the sexes
natural.

6. GUL Ms., p. 56: "pleasure in obtaining moral" is inserted.

7. GUL Ms., p. 56: "finer affection" is crossed out and replaced by "more extensive one."

and their sense of honour and shame, would soon discover themselves; and particularly their natural modesty of this peculiar kind would quickly appear. As they would approve all humanity and kindness, even when practised toward others, and abhor the contrary dispositions, they would soon despise sensuality and selfishness. As soon as they knew how the race of mankind is preserved, they would desire marriage and offspring; and when the occasion of this natural modesty was felt, and the intention of the appetite known, this natural check of shame would discover itself.⁸

When the necessity of strict marriage-laws for the ascertaining to the fathers their own offspring was once observed, new reasons would appear for modest behaviour, and for creating an early habit of it in the education of both sexes. But, besides, there seem to be several natural dispositions and senses peculiarly relative to this affair, distinct from the general shame of all immoderate selfishness, particularly that of modesty, which begins at that period when the appetite which needs its controll arises, and seems to abate in old age along with the appetite.

This sense
how affected
by education.

IV. Having a natural capacity for moral notions, we may be ashamed of actions without knowing the true reasons why they are immoral. By education we may contract groundless prejudices, or opinions about the qualities perceivable by any of our senses, as if they were inherent in objects where they are not. Thus we are prejudiced against meats we never tasted: but we could not be prejudiced on account of favour, or under that notion, if we had not the natural sense. Thus it is always under some species recommended by the *moral faculty* that we praise or desire to be praised, tho' we frequently have very imperfect views of the tendencies of actions, and of the affections from which they proceeded.

What we observed about the *moral faculty*, holds also in our sense of honour, that we are highly delighted with the approbation of others, not only for the good affections themselves, but for all those abilities and dispositions which are their natural concomitants, or which exclude the

8. Contrast this with Bernard Mandeville's account of the genealogy of our sense of honour and shame in *Fable I*, for example, in *Remarks*, remark C, pp. 63–80, or in his *Enquiry into the Origin of Moral Virtue*, pp. 53–54.

contrary affections. Thus we glory in fortitude, veracity, candour, openness of mind, and the desire of honour itself; tho' the pleasure of receiving praise is known to be so strong, and there are <86> such suspicions of our being envied for it, that men are averse to let any impatience for this pleasure appear, or to discover their high delight in it, least it should argue too much selfishness.

V. The force of the *moral sense*, and that of *honour*, is diffused through all parts of life. The very luxury of the table derives its main charms from some mixture of moral enjoyments, from communicating pleasures, and notions of something honourable as well as elegant. How universally despicable is the character of one who in solitude pursues eagerly the pleasures of the palate without society or hospitality.

The moral sense and that of honour affect all parts of life.

The chief pleasures of history and poetry, and the powers of eloquence are derived from the same sources. History, as it represents the moral characters and fortunes of the great and of nations,⁹ is always exercising our *moral faculty*, and our social feelings of the fortunes of others. Poetry entertains us in a way yet more affecting, by more striking representations of the same objects in fictitious characters, and moving our terror, and compassion, and moral admiration. The power of the orator consists in moving our approbation or condemnation, and the ensuing affections of esteem or indignation, by presenting fully all the moral qualities of actions and characters, all the pityable circumstances which may extenuate or excuse, to engage our favour; or all the aggravating ones, to encrease our indignation; displaying all the high colours on both sides, as he is either praising or making invectives. <87>

The very arts of musick, statuary, and painting, beside the natural pleasures they convey by exact imitations, may receive an higher power and a stronger charm from something *moral* insinuated into the performances.

The chief beauties of countenance, and even of behaviour, arise* from indications of some sweet affections, or morally esteemable abilities, as

9. GUL Ms., p. 58: "and of nations" is inserted.

* See *Inquiry into Beauty* &c. § vi. [Cf. *Inquiry* II.6.3–4, pp. 167–70, on "The Charm in Beauty."]

it appears by almost all the epithets of commendation. 'Tis always some real or imagined indications of something vicious which chiefly causes our dislike, as we see from the qualities censured and condemned. Hence it is that such deformity is* observed in the countenances of the angry, the envious, the proud, and the selfish; and so much alluring sweetness in those which display the tender gentle and friendly affections.

We see how these moral indications affect the natural desires between the sexes. Could one attain to maturity without having any moral notions, which however scarce ever happened in one instance, except in idiots; he might be moved by this instinct as the brutes are. But we find that beauty raises first some favourable notions of an inward temper; and, if acquaintance confirms them, we feel an high esteem and a desire of mutual friendship. Thus we are admiring wit, good-nature, prudence, kindness, chastity, a command over the lower appetites, while the instinct is <88> also exciting to its natural purpose. Hence it is that this passion is often observed to make considerable improvements of the temper in several amiable virtues.

'Tis in like manner some *moral worth* apprehended, some justice or goodness of intention in persons and causes, which occasions most of that keen zeal for certain parties and factions, and those strong attachments to them, in people who have no hopes of those advantages which the leaders of them may have in view.

Our intimacies
not from
interest.

To alledge that our† chusing persons of knowledge, courtesy, and good-nature for our intimates, and our avoiding the ignorant, the morose, or selfish, argues all our intimacies to arise from selfish views, is

* See *Cicero de Offic.* l. i. c. 29. *Appetitus qui longius evagantur—a quibus non modo animi perturbantur, verum etiam corpora. Licet ora ipsa cernere iratorum, aut eorum qui libidine aliqua, aut metu commoti sunt, aut voluptate nimia gestiunt* &c. and often in his other works. ["When appetites overstep their bounds . . . not only minds but bodies as well are disordered by them. We need only look at the faces of men in a rage or under the influence of some passion or fear or beside themselves with extravagant joy." *Cicero, De officiis*, I.29, pp. 104–5.]

† See *Hobbes, Bayle, Mandevil*, in many places, after *Rochefoucault*. [La Rochefoucauld's maxime 83 in his *Réflexions ou Sentences et maximes morales*, for example, makes the following claim: "Ce que les hommes ont nommé amitié n'est qu'une société, qu'un ménagement réciproque d'intérêts, et qu'un échange de bons offices; ce n'est enfin qu'un commerce où l'amour-propre se propose toujours quelque chose à gagner." The idea that friendships in fact are motivated by selfishness may also be

plainly unjust. 'Tis true the one sort of companions are improving, pleasant, obliging, safe; and the other useless, unpleasant, dangerous. But are all friendships and intimacies mere grimace and hypocrisy? does one feel no inward esteem of certain characters, and good-will to the persons? does one only desire his own improvement or pleasure or gain, as when he hires a master to teach him a mechanick art, or a musician to entertain him, or a labourer to do a piece of common work? do we only intend a fair outward appearance with our best friends, that we may not lose these advantages? On the contrary does not every one feel an inward esteem and good-will toward any virtuous acquaintances, which shall remain when we are separated, and hope not to meet them again?

Were there no such *moral sense* and sense of *honour* <89> in our constitution, were we as entirely *selfish* as some *refiners* alledge, human life would be quite different from what we feel every day, *a joyless, loveless, cold, sullen state of cunning and suspicion*.¹⁰

'Tis worth our notice here that however by the early prejudices of the external senses we are apt to imagine little reality in any thing which is not the object of one or other of them, and to conceive what is not thus sensible to be fictitious and imaginary; yet if we attend to the inward feelings of our hearts, the greatest realities, our very happiness and misery, that dignity or worth in which alone we can have the most entire satisfaction with ourselves, or for which we love, esteem, and admire another, and count him excellent or happy, or chuse him for a friend, are qualities entirely insensible, too noble and excellent to fall under the cognizance of these powers which are chiefly destined for the support of the body.

Things insensible are most real.

VI. Many suspect that no such senses can be natural, because there are such different and opposite notions of morality, among different nations. But granting that their relishes were different, that different men

These senses uniform.¹¹

found in Thomas Hobbes, e.g., *On the Citizen*, I.2; and in Bernard Mandeville, *Fable of the Bees*, e.g., part II, fourth dialogue, pp. 177.]

10. This may be a general reference to Hobbes's notorious description in *Leviathan* I.13, p. 89, of human life in the state of nature as "solitary, poor, nasty, brutish, and short."

11. For the discussion in this and the following sections, see *Inquiry* II.4, pp. 136–47. This may constitute a response to Mandeville's claims regarding the diversity of manners in his *Fable of the Bees*, e.g., in those passages in the *Search into the Nature of Society*, pp. 325–31, which are directed against Shaftesbury's *pulchrum & honestum*.

and nations approved and condemned actions upon different accounts, or under different notions; this only proves that their senses are not uniform; and not that no such principles are natural. Men's palates differ as much; but who thence denies a sense of tasting to be natural?

But the uniformity is much greater in our *moral faculty* than in our palates. The different reasons given by different persons for their approving or condemning will all lead us at last, when we examine them, into the same original species or notions of moral good and evil.

In approving or vindicating of actions, in all nations, men generally alledge some tendency to the happiness of others, some kind intention more or less extensive, some generous affections, or some dispositions naturally connected with them. When we alleviate any imprudent conduct, we say, the agent intended well; did not foresee the bad consequence; or had such provocation as might have transported even a kind temper, or a man of justice. When we inveigh against bad conduct, we shew that all the contrary affections or dispositions were evidenced by it, such as cruelty, wrath, immoderate selfishness, or a want of such kind affections as we generally expect in our species. If we blame imprudent conduct, without this reference to evil affections, or to the want of the good ones, 'tis sometimes from our good-will and pity toward the agent, with some contempt of his mean abilities, his sloth, stupidity, or indolence. And yet how are we softened by the thought that "the poor creature intended no harm, or occasioned none to others." This is often indeed a false excuse, as the publick suffers by any one's making himself less capable of serving it, as well as his more peculiar friends.

The immediate object approved is generally the same.

Nay we shall find that men always approve upon some opinion, true or false, that an action has some of those qualities or tendencies, which are the natural objects of approbation. We may indeed often imagine without ground, that actions have good effects upon the publick, or that they flowed from good affections, or that they are required by the Deity and acceptable to him; and then under these appearances we approve them. 'Tis our reason which presents a false notion or species to the *moral faculty*. The fault or error is in the opinion or understanding, and not in the *moral sense*: what it approves is truly good; tho' the action may have no such quality. We sometimes chuse and like, in point of

interest, what is in event detrimental to ourselves. No man thence concludes that we are not uniform in self-love or liking of our own interest. Nor do like mistakes about the moral qualities of actions prove either that we have no *moral sense*, or that it is not uniformly constituted. The passions of spectators, as well as those of agents, prevent a mature examination of the moral natures of those actions which are subservient to the designs of the passions; as lust, rage, revenge, will hurry men into what a calm man would discern to be ruinous. But these things do not prove that men are dissimilar to each other, either in their *moral faculty*, or their *self-love*.

To prove that men have no *moral faculty*, or very dissimilar ones; we must shew either that nations or great numbers of men hold all actions to be indifferent which don't appear to them to affect their own private interest; or that they are pleased with cruelty, treachery, ingratitude, unprovoked murders, and tortures, when not practised toward themselves, just as <92> much as with their contraries: they should in some nations be deemed as reputable and lovely as humanity, compassion, liberality, faith: the action of Sextus Tarquin, or Claudius the decemvir, should be approved as much as that of Scipio with his Spanish captive.¹²

12. Hutcheson is alluding to some of the most popular illustrations of the republican theme that personal virtue, liberty, and self-government are closely connected. The first two tales were commonly derived from Livy, *From the Founding of the City*, I.57–60, pp. 200–209, and III.44–49, pp. 142–63. According to Roman tradition, when Sextus Tarquinius (Superbus), king of Rome, raped the chaste Lucretia, wife of Tarquinius Collatinus, the people of Rome, led by Lucius Junius Brutus, rose against him, drove him and his family into exile, and founded the Roman Republic, Brutus and Collatinus being the first two consuls (509 BC). The second episode was the suspension of the constitution in 451 BC, when ten men (*decem viri*) of the patricians were given absolute power in order to carry through a major codificatory-legislative project, the Twelve Tables. The *decemviri* were suspected of tyrannical intentions and of being anti-plebeian. Therefore, when one of the leading *decemviri*, Claudius Appius, tried to gain for himself the young Verginia, daughter of a plebeian centurion, through a fraudulent claim that she was really the slave of one of his clients, and the father saw no other way to protect her honour than by stabbing her to death in the Forum, the people revolted against the *decemviri*, who resigned. The old constitution was restored, and the new consuls for 449 BC published the Twelve Tables. The third reference is to an episode during the capture of New Carthage in Spain in 210 BC. The Roman general Publius Cornelius Scipio (234–183 BC), afterward Scipio Africanus (major), became a symbol of restraint and

But such nations have not yet been discovered to us, not even by the invention of the boldest traveller.

The causes of
different ap-
probations and
censures, dif-
ferent notions
of happiness.¹³

VII. The chief causes of different approbations are these three. 1. Different notions of happiness and the means of promoting it. Nations unacquainted with the improvements which life receives from art and industry, may see no occasion for encouraging them by securing to each man a property in the fruits of his labours, while the bare necessities of life are easily obtained. Nay they can see no harm in depriving men of their artificial acquisitions, and stores beyond their present use, or of superfluities tending to dissolve them in pleasure and sloth: hence no evil may appear in theft. If any nation saw no use in the ascertaining of their offspring to the fathers, or had no desire of it; they might discern no moral evil in practices which more civilized nations see to be destructive to society. But no nation has yet been found insensible to these matters.

The causes of
barbarous
laws.

In some civilized states laws have obtained which we repute barbarous and impious. But look into the reasons for them, or the notions under which they were approved, and we generally find some alledged tendency to some publick good. There may no doubt <93> be found some few instances where immoderate zeal for their own grandeur, or that of their nation, has made legislators enact unjust laws, without any moral species recommending them. This only proves that sometimes a different principle may over-power our sense of justice. But what foolish opinions have been received! what fantastick errors and dissimilitudes have been observed in the admired power of reasoning, allowed to be the characteristick of our species! Now almost all our diversities in moral sentiments, and opposite approbations, and condemnations, arise from opposite conclusions of reason about the effects of actions upon the publick, or the affections from which they flowed. The *moral sense* seems ever to approve and condemn uniformly the same immediate objects, the same affections and dispositions; tho' we reason very differently about the actions which evidence certain dispositions or their contraries. And

moderation in public office because he refused to take advantage of a young woman presented to him by his soldiers. See Polybius, *The Histories* X.19.3–7, pp. 166–69.

13. Cf. *Short Introduction* I.1.13, pp. 42–43, *Inquiry* II.4.3, pp. 138–41.

yet reason, in which all these errors happen is allowed to be the natural principle; and the *moral faculty* is not, because of the diversities of approbation; which yet arise chiefly from the diversity of reasonings.

2. A second cause of different approbations are the larger or more confined systems which men regard in considering the tendencies of actions; some regarding only their own country and its interest, while the rest of mankind are overlooked; and others, having yet narrower systems, only a party, sect, or cabal. But if we enlarge our views with truth and justice, and observe the structure of the human soul, pretty much <94> the same in all nations; none of which wants multitudes of good men, endued with the same tender affections to kindred, friends, benefactors; with the same compassion for the distressed, the same admiration and love of eminent virtue, the same zealous concerns for their countries which we think so lovely among ourselves; we must find a sacred tie of nature binding us even to foreigners, and a sense of that justice, mercy and good-will* which is due to all. To men of small attention their own countrymen or partisans are the only valuable part of mankind: every thing is just which advances their power, tho' it may hurt others. The different approbations here arise again from different opinions about a matter of fact. Were certain nations or sects entirely impious, cruel, and fixed upon such measures as would involve all men in eternal as well as temporal misery, and possessed of such arts of fascination as no reasonings could effectually withstand; one could scarce blame any violent destruction made of such monsters by fire or sword. Under this very notion all persecutors out of principle behold such as they call hereticks; under it they raise a general abhorrence of them. The like notions many little sects form of each other; and hence lose the sense of moral evil in their mutual hatreds and persecution.¹⁵

Different
systems
regarded.¹⁴

14. Cf. *Inquiry* II.4.4, pp. 142–44.

* See this often inculcated in *Marc. Antonin.* [In 1742, Hutcheson and his Glasgow colleague James Moor published an anonymous translation of the *Meditations* by Marcus Aurelius under the title *The Meditations of the Emperor Marcus Aurelius Antoninus*. Their edition included important notes and a rich introduction. Hutcheson here refers to a pervasive theme found, e.g., in *Meditations* IX.9, pp. 109–10.]

15. Cf. the discussion in *System* I.8.9.

Different
opinions
about God's
commands.¹⁶

3. A third cause of different sentiments about actions, as frequently occurring as any one, are the different opinions about what God has commanded. <95> Men sometimes from desire of rewards, and fear of punishments, counteract their *moral sense*, in obedience to what they conceive to be divine commands; as they may also from other selfish passions: they may have some confused notions of matters of duty and obligation, distinct from what their hearts would approve were the notions of divine commands removed. Habits and associations of ideas affect men's minds in this matter. But where there are different opinions in different nations about the objects of the divine command, there are such strong *moral colours* or *forms* in obedience and disobedience to God, that they must necessarily cause very different approbations and censures, even from the most uniformly constituted *moral faculties*. *God* is generally conceived to be good and wise, to be the author of our lives, and of all the good we enjoy. Obedience must be recommended to our approbation generally under the high species of gratitude, and love of moral excellence, as well as under the notion of advantageous to the public: and disobedience must appear censurable, under the contrary notions. Disobedience therefore to what one believes *God* has commanded, from any views of secular advantages or sensual pleasure, or the inveigling others into such disobedience, must appear grossly ungrateful, sensual, selfish or cruel. Where different opinions about God's commands prevail, 'tis unavoidable that different approbations and censures must be observed in consequence of these opinions, tho' the natural immediate objects of praise and censure were the <96> same to all men. This accounts for the different rites of worship, different notions of sanctity and prophanity, and for the great abhorrence some nations may have of some practices in which others can discern no pernicious tendency, and repute indifferent, having no opinion of their being prohibited.

Different rites
of religion and
notions of
impiety.

These considerations account sufficiently for the approbation of human sacrifices and other monstrous rites: tho' 'tis probable they have been often practised merely from fear, without moral approbation, by such as scarce were persuaded of the goodness of their gods: they like-

16. See *Inquiry* II.4.5, pp. 144–45.

ways shew how incest and polygamy may be generally abhorred in some nations, where a few only can show their pernicious consequences; and yet be deemed lawful in other nations.

Let no man hence imagine that such actions flowing from false opinions about matters of fact, or about divine commands, are light matters, or small blemishes in a character. Where the error arises from no evil affection, or no considerable defect of the good ones, the action may be very excusable. But many of those errors in opinion which affect our devotion toward the Deity, or our humanity toward our fellows, evidence very great defects in that love of moral excellence, in that just and amiable desire of knowing, reverencing, and confiding in it, which is requisite to a good character; or evidence great defects in humanity, at least in the more extensive and noble kinds of it. Where these principles are lively, they must excite men to great diligence and caution about their <97> duty and their practical conclusions: and consequently must lead them to just sentiments in the more important points, since sufficient evidence is afforded in nature to the sincere and attentive. No man can have sufficient humanity of soul, and candour, who can believe that human sacrifices, or the persecution of his fellow-creatures about religious tenets which hurt not society, can be duties acceptable to *God*.¹⁷

Errors often
criminal.

VIII. Our having a *moral sense* does not infer that we have innate complex ideas of the several actions; or innate opinions of their consequences or effects upon society: these we discover by observation and reasoning,¹⁹ and we often make very opposite conclusions about them. The object of this sense is not any external motion or action, but the inward affections and dispositions, which by reasoning we infer from the actions observed. These immediate objects may be apprehended to be the same, where the external actions are very opposite. As incisions and

No innate
ideas
supposed.¹⁸

17. Similar criticisms of religious persecution appear in the introduction to Hutcheson's and Moore's edition of Marcus Aurelius' *Meditations*; see pp. 21–23. See furthermore below, III.9.1. GUL Ms., p. 64: This entire paragraph is inserted from an additional paper slip.

18. Cf. *Inquiry* I.6.10, pp. 67, II.1.8, p. 100.

19. GUL Ms., p. 65: "Its object is no extended motion or action," is here crossed out.

amputations may be made either from hatred, or from love; so love sometimes moves to inflict painful chastisements, and sometimes to confer pleasures, upon its object. And when men form different opinions of these affections in judging about the same actions, one shall praise what another censures. They shall form these different opinions about the affections from which actions proceeded, when they judge differently about their tendency to the good or the hurt of society or of individuals. One whose attention is wholly or chiefly employed about some good tendencies of the actions, while he overlooks their pernicious effects, shall imagine that they flowed from virtuous affections, and thus approve them: while a mind more attentive to their pernicious effects, infers the contrary affections to have been their spring, and condemns them.

Why it is
necessary to
consider the
connexion of
virtue with
interest.²⁰

Were nothing more requisite in laying the foundation of *morals*, but the discovering in theory what affections and conduct are virtuous, and the objects of approbation, and what are vicious, the account now given of the constitution of our *moral faculty* would be sufficient for that purpose; as it points out not only what is virtuous and vicious, but also shews the several degrees of these qualities in the several sorts of affections and actions; and thus we might proceed to consider more particularly the several offices of life, and to apply our power of reason to discover what partial affections, and actions consequent upon them, are to be entirely approved, as beneficial to some parts of the system, and perfectly consistent with the general good; and what affections and actions, even of the beneficent kind, tho' they may be useful to a part, are pernicious to the general system; and thus deduce the special laws of nature, from this *moral faculty* and the generous determination of soul. But as we have also a strong determination toward private happiness, with many particular selfish appetites and affections, and these often so violent as not immediately to submit to the *moral power*, however we may be conscious of its dignity, and of some considerable effect it has upon our happiness or misery; as strong suspicions may often arise attended with great uneasiness, that in following the impulse of our kind affections and the

20. This paragraph connects the previous reflections on the disinterestedness of the moral sense and of benevolence with the subsequent discussion of the pleasures of virtue.

moral faculty we are counteracting our interest, and abandoning what may be of more consequence to our happiness than either this self-approbation or the applauses of others; to establish well the foundations of morality, and to remove, as much as may be, all opposition arising from the selfish principles, that the mind may resolutely persist in the course which the *moral faculty* recommends, 'tis necessary to make a full comparison of all human enjoyments with each other, and thence discover in which of them our greatest happiness consists. <100>²¹

21. GUL Ms., p. 67: At the very top of the page, the manuscript has the Latin expression "De summo bono" crossed out.

❧ BOOK I. PART II¹ ❧

*An Enquiry into the Supreme
Happiness of Mankind.*²

1. The indication “Part II” has no corresponding “Part I” at the beginning of Book I. See I.1, n. 1, and the Note on the Text, p. xxix above.

2. The basic order of discussing first the powers of human nature and then the structure of happiness is analogous to *Short Introduction*.

How far the several Sensations, Appetites, Passions and Affections are in our power.³

I. The chief happiness of any being must consist in the full enjoyment of all the gratifications its nature desires and is capable of; or if its nature admits of a great variety of pleasures of different and sometimes inconsistent kinds, some of them also higher and more durable than others, its supreme happiness must consist in the most constant enjoyment of the more intense and durable pleasures, with as much of the lower gratifications as consists with the full enjoyment of the higher. In like manner; if we cannot ward off all pain, and there be different kinds and degrees of it, we must secure ourselves against the more intense and durable kinds, and the higher degrees of them; and that sometimes by bearing the lower kinds or degrees, or by sacrificing some smaller pleasures, when 'tis necessary for this end.

Wherein
happiness
consists.⁴

To direct us in this conduct 'tis necessary to premise some distinct account in what manner we have power over our several affections and desires, and how far any meditations or self-discipline may affect our <IOI> very perceptions of good and evil, of happiness or misery, in the several objects.

3. For the discussions in this chapter, cf. Hutcheson, *Essay* V, pp. 87–110, and VI, pp. 110–32, as well as *Short Introduction*, pp. 52–67. Hutcheson's discussion shows broad inspiration by a variety of thinkers, such as the Stoics, Descartes, Henry More, and Carmichael.

4. Cf. esp. *Essay* V.1, p. 87, and more generally the discussion in *Essay* V, pp. 87–110.

How we have
power over our
desires.⁵

I. As the calm desires and aversions of the soul naturally arise from our opinions of good or evil in their objects, so they are proportioned to the degrees of good or evil apprehended. We have power over the selfish ⁶ desires of any particular good only by means of the calm original determination toward the greatest happiness; and by the power of reasoning and comparing, which may discover what are the values of the several objects of desire. 'Tis by the correcting our opinions of their values that the several desires are kept in their due proportion. 'Tis also by means of the other original determination toward publick happiness of the most extensive kind, and by a like exercise of reason in comparing the values of the objects desired for others, that we can regulate the several kind affections and desires: since where a greater good is discerned, the calm desire of it is stronger than that toward a smaller inconsistent good, whether pursued for ourselves or others. ⁷

Here too the *moral faculty* displays much of its power. As the several narrower affections may often interfere and oppose each other, or some of them be inconsistent with more extensive affections to whole societies, or to mankind; our *moral sense* by its stronger and warmer approbation of the more extensive, both points out the affection which should prevail, and confirms this nobler affection by our natural desire of *moral excellence*.⁸ < 102 >

5. For a discussion of the power we have to direct our affections and passions, see Essay IV, pp. 66–87. For the distinction between calm affections and turbulent passions, see *Essay* II.5, pp. 39–40, and III.2, pp. 49–52; *Short Introduction* I.1.7, pp. 30–32, as well as above, *System* I.1.6–7.

6. GUL Ms., p. 67: “particular” is crossed out and replaced by “selfish.”

7. GUL Ms., p. 68: At the top of this page, there is an insertion sign that refers to the text of the following paragraph. This text has first been written in Hutcheson’s hand in the left-hand margin, in a version that differs in a few words from the printed version, and then again in Hutcheson’s hand on an inserted slip of paper, the wording of which is identical to the printed version.

8. The “desire of moral excellence” is mentioned neither in the *Inquiry* nor in the *Essay* (see I.4, n. 24 above).

The turbulent appetites and particular passions whether of the selfish or generous kind, are governed by the same means. They naturally arise on certain occasions, and that often with great vehemence. To govern and restrain them an habit is necessary, which must be acquired by frequent recollection and discipline. While we are calm we must frequently attend to the danger of following precipitantly the first appearances of good or evil; we must recollect our former experiences in ourselves, and our observations about others, how superior and more lasting enjoyments have been lost by our hasty indulgence of some pressing appetite, or passion: how lasting misery and remorse has ensued upon some transient gratification: what shame, distress, and sorrow have been the effects of ungoverned anger: what infamy and contempt men have incurred by excessive fear, or by their aversion to labour and painful application. We may thus raise an habitual suspicion of unexamined appearances, and an habitual caution when we feel any turbulent passion arising. When the calm principles are thus confirmed by frequent meditation, and the force of the passions abated, then it is we obtain the true liberty and self-command: the calm powers will retain and exercise that authority for which their natural dignity has fitted them, and our reason will be exercised in correcting all appearances of good and evil, and examining the true importance of the several objects of our appetites or passions.

How we have power over the passions.⁹

II. To this purpose 'tis necessary to observe the ordinary causes of our deception, and of our unjust estimation of objects: such as, I. The strength of the impressions and keenness of the desires raised by things present and sensible, beyond what the insensible or future objects presented by the understanding and reflection can raise. Frequent meditation alone can remedy this evil. Our younger years are almost totally employed about the objects of sense: few can bear the pains and energy of

Causes of false estimates of objects.¹⁰

Presence to the senses.

9. Cf. *Essay* VI.1, pp. 110–11. In the *Short Introduction*, I.6, Hutcheson adapted the natural law topos of duties to ourselves and developed it with intensive use of Stoic sources. Cf. furthermore Carmichael's commentary on Pufendorf on the duties to ourselves in *Natural Rights*, pp. 59–72.

10. For the discussions of the following paragraphs, cf. esp. *Essay* VI, pp. 111–32, and *Short Introduction* I.1.17, pp. 46–49.

mind requisite to fix the attention upon intellectual objects, and examine the feelings of the heart. Strength is acquired by those powers which are most exercised. The recurring motions of the appetites annex confused notions of high felicity to their objects, which is confirmed by the intenseness of some sensations while the appetite is keen. Few deliberately compare these enjoyments with others, or attend to the consequences, to the short duration of these sensations, and the ensuing satiety, shame and remorse. And yet 'tis evident to our reason that the duration of any enjoyment is as much to be regarded as the intenseness of the sensation; and that the ensuing state of the mind when the brutal impulse is sated, is to be brought into the account as well as the transient gratification.

Indulging the
imagination.

2. Again—Allowing the imagination to dwell much upon some objects presenting hopes of high pleasure inflames our passions and byasses our judgments. Little indeed is hereby added to the enjoyment when we obtain it: nay our pleasure is rather diminished, as it seldom answers the previous expectation, and brings with it the air of disappointment. But by roving over all the pleasures and advantages of certain stations, certain pitches of wealth or power, our desires of them are made more violent, and our notions represent an happiness in them, much higher than we shall find it to be when we attain to them. And this uncorrected imagination never fails to increase the torment we shall find upon a disappointment.

Associations of
ideas.

3. But no cause of immoderate desires, or unfair estimates is more frequent than some groundless associations of ideas, formed by instruction, or our usual conversation, annexing confused notions of happiness, and even of virtue, and moral perfection, or their contraries, to what has little affinity to them. Seldom are objects of desire presented to the mind as they are, without some disguise. Wealth and power are truly useful not only for the natural conveniencies or pleasures of life, but as a fund for good offices. But how many notions are there often likewise annexed of great abilities, wisdom, moral excellence, and of much higher joys than they can afford; which so intoxicate some men that they forget their natural purposes, begin to love them for themselves, affect the ostentation of them; and dread the lower stations as abject, miserable, and inconsistent with moral worth or honour. Some natural pleasures too by

like associations are estimated far above their worth, and immoderate desires of them torment the soul.

4. Some perverse superstitions also, instilled by education, cause groundless aversions to tenets and practices of the most innocent nature, by annexing to them notions of impiety, enmity to God, and obstinate wickedness of heart; while contrary tenets or practices, not a whit better, are made indications of piety, charity, holiness and zeal for the souls of men. Hence arises that rancour in the hearts of unwary zealots of all sorts against those who differ from them; and that persecuting spirit, with all the wrathful passions, which have been so long a reproach to human nature, and even to that religion which should inspire all love and meekness.

Superstitious opinions.¹¹

III. It is the more necessary to observe these several causes of the wrong estimations made of the objects of our desire, and of the several enjoyments of life, because scarce any of mankind can live without some solicitation or other from every one of these several sorts of enjoyments; nor can one hope to be wholly unexperienced in contrary evils. The pleasures and pains of the external senses are in some degree felt by all who have the natural powers, and must raise desires and aversions. The impulses of the appetites too are unavoidable: they recur after certain intervals, nor can their uneasy sensations be otherways prevented altogether, than by gratifying them with their natural objects. But, according to the benign order of nature, such gratifications as may prevent the pain of the appetites may very generally be obtained; and where some moral reason prevents the gratification, there are higher moral joys accompany<106>ing this abstinence, which fully make up the loss. Bodily pain seldom employs a great part of life; wise men find out many preservatives, which are generally effectual; and when they are not, may obtain strong consolations and supports under it.

All men feel the several original desires pleasures and pains.

'Tis more difficult to gratify other most uneasy desires, arising from some opinions of great happiness in certain enjoyments. Had we formed no such opinions or confused notions, we had felt no misery in the want of these enjoyments; which is not the case with the appetites. But when

Other desires more difficultly gratified than the appetites.

11. See also *System* I.5.7(3).

12. In the 1755 edition, the page number is erroneously indicated as "104."

we can change these opinions, and rectify our confused imaginations, the desires and their attendant uneasinesses cease or abate. A greater share of the misery of life is chargeable on these desires than upon the appetites. Of this kind are the desires of wealth, power, the grandeur and elegance of living, and of fame; and our aversions to their opposites are of the same nature. Our affections to others, and our kind desires, are affected by opinions in the same manner with our selfish ones. What we conceive as a great good we must warmly desire for those we love; we must be uneasy upon any disappointment.

The necessity of
correcting our
opinions and
imagination.¹³

Now when these opinions are true and natural, we cannot alter them, nor would it be desirable. Reason and reflection will confirm them. But many opinions and confused notions which raise our desires are false and phantastick; and when they are corrected we are freed from much pain and anxiety. Some enjoyments are still in our power, which too may be found to be the highest. If this be true, it is our highest interest to be fully persuaded of it; that our strongest desires may be raised toward such things as may certainly be obtained, and can yield us the noblest enjoyments.

In general, the greater any good or evil is imagined, the stronger are our desires and fears, the greater is our anxiety while the event is in suspense, and the higher shall our sorrows be upon disappointment and our first transports upon success: but where the previous imagination was false, this joy soon vanishes, and is succeeded by uneasiness: on the other hand, the sorrow upon disappointment may remain long and very intense, as the false imagination is not corrected by experience of the enjoyment. This shews the great importance of examining well all our notions about the objects of desire or aversion. Thus we should break off from sensual enjoyments, in our estimation of them, all these foreign notions of moral dignity, liberality, elegance, and good-nature, which dispositions we may display in a much wiser and more virtuous manner, without expensive luxurious tables or sumptuous living. These additional notions inflame the desires of splendid opulence, and are a fund of perpetual anxiety.

13. Cf., e.g., *Essay* V.11, p. 109, and the discussion in Shaftesbury, *Miscellaneous Reflections*, pp. 119–24.

IV. Ideas once firmly associated in this manner give lasting uneasiness to the mind; and a full conviction of the understanding will not break the association, without long meditation and discipline. There are only confused imaginations, and not settled conclusions, or direct opinions, in the minds of the luxurious, the miser, the ambitious, the lover, representing some wonderful excellence in their favourite objects proportioned to their eager desires. But long indulgence and repeated acts of desire, in a mind called off from other objects, the strain of conversation, and the airs of countenance, and the very tone of voice of the men of the same turn with whom they have haunted, associate high notions of felicity to the favourite gratification so firmly, that a long attention and reflection is necessary to rectify the confused imagination.

Associated ideas not easily separated.

A full persuasion of the excellence and importance of virtue above all other enjoyments, provided we have just notions of it, must always be for our interest. The opinion will stand the test of the strictest inquiry, as we shall shew hereafter; and the enjoyment is in our power. But disproportioned admirations of some sorts of virtue of a limited nature, and of some inferior moral forms, such as mere fortitude, zeal for truth, and for a particular system of religious tenets, while the nobler forms of goodness of more extensive good influence are overlooked, may lead men into very bad affections, and into horrid actions. No natural sense or desire is without its use, while our opinions are true: but when they are false, some of the best affections or senses may be pernicious. Our *moral sense* and kind affections lead us to condemn the evil, to oppose their designs; nay to wish their destruction when they are conceived to be unalterably set upon the ruin of others better than themselves. These very principles, along with the anger and indignation naturally arising against what appears evil, may lead us into a settled rancour and hatred against great bodies of mankind thus falsely represented as wicked, and make us appear to them, as they appear to us, maliciously set upon the destruction of others.

Just notions of virtue necessary to happiness.

When our opinions and imagination are corrected, the natural appetites and desires will remain, and may be attended with some uneasiness; but the strength of many will be abated and others will acquire more. The simpler gratifications of appetite, these of the easiest purchase,

Correcting our opinions abates many desires.

may by good management be as satisfying, nay almost as joyful and exhilarating as any. The pleasures of the imagination may be highly relished, and yet no distress arise from the want of them. Much of this pleasure is exposed to all, and requires no property, such as that arising from the exquisite beauties of nature, and some of the beauties of art. Nor are even these either the sole or the highest enjoyments.

The sympathetick feelings unavoidable.¹⁴

V. The sympathetick pleasures and pains in some degree or other must affect us; no management can prevent it. We must live in society, and by the aid of others, whose happiness, or misery, whose pleasures, or pains, we cannot avoid observing. Nay mankind universally feel the conjugal and parental affections; eminent goodness too, when it occurs, must excite strong love and friendship. Thus we must experience the sympathetick joys and sorrows of the higher kinds. In this matter too we must watch carefully over our opinions and imagination, that our minds be not inflamed with vain desires about mean transitory or unnecessary goods for others, or oppressed with sorrow upon such evils befalling them as are small and tolerable. But unless we get the imaginations of our friends corrected, we shall still have occasion for sympathy. All misery is real to the sufferer while it lasts. Whoever imagines himself miserable, he is so in fact, while this imagination continues.

Where choice binds the tie of love, the previously examining well the character of the person, his opinions and notions of life, is of the highest consequence. In the stronger bonds of love with persons of just sentiments and corrected imaginations, we have a fair hazard for a large share of these higher social joys, with fewer intense pains; as the happiness of such persons is less uncertain or dependent on external accidents.

No necessary causes of ill-will.

As there are not in human nature any necessary causes of ultimate ill-will or malice,¹⁵ a calm mind considering well the tempers, sentiments, and real springs of action in others, will indeed find much matter of pity and regret, but little of anger, indignation or envy, and of settled ill-will none at all. And thus we may be pretty free from the uneasinesses

14. Cf. *Essay* VI.4, pp. 120–23, and *Essay* III.5, p. 58, as well as the critical discussion of the “lower rate” Stoics in *Essay* IV.5, pp. 83–86, and *Essay* IV.4, pp. 75–78.

15. For a similar claim, cf. *Inquiry* II.2.4, p. 105. Cf. also Hobbes, *Leviathan* I.6 on cruelty.

and misery of the unkind affections and passions. Human nature is indeed chargeable with many weaknesses, rash opinions, immoderate desires of private interest, strong sensual appetites, keen attachments to narrow systems beyond their merit; and very subject to anger upon appearance of injury to themselves, or those they <III> love: but 'tis free from all ultimate unprovoked malice; much influenced by some moral species or other; and abounding with some sorts of kind affections. Many of their most censurable actions flow from some mistaken notion of duty, or are conceived by the agent to be innocent, and are the effects of some partial and naturally lovely affection, but raised above its proportion, while more extensive ones are asleep.

VI. As soon as one observes the affections of others or reflects on his own, the moral qualities must affect the mind. No education, habit, false opinions, or even affectation itself can prevent it. A Lucretius,¹⁶ an Hobbes, a Bayle, cannot shake off sentiments of gratitude, praise, and admiration of some moral forms; and of censure and detestation of others.¹⁷ This sense may be a sure fund of inward enjoyment to those who obey its suggestions. Our own temper and actions may be constant sources of joy upon reflection. But where partial notions of virtue and justice are rashly entertained, without extensive views and true opinions of the merit of persons and causes, the pursuit of some moral forms may occasion grievous distaste and remorse. False notions of virtue may be less lasting than other mistakes. Persons injured by them seldom fail to remonstrate; spectators not blinded by our passions and interest will shew their disgust. And thus our ill-grounded joy and self-approbation may soon give place to shame and remorse.

Moral forms
universally af-
fect mankind.

The sense of honour too must occasion pleasure or pain, as the world about us happen to disclose their <II2> sentiments of our conduct: and as we have not the opinions of others in our power, we cannot be sure

The sense of
honour affects
all.¹⁸

16. Titus Lucretius Carus (c. 98–55 BCE), Roman poet and philosopher, whose work *De rerum natura* followed Epicurus.

17. Cf. *Essay* IV.4, p. 76. The language of “moral forms” is new to the *System*. Also, compare this point to Hume’s remarks on Hobbes, Locke, and the Epicureans in Appendix II to the *Enquiry concerning the Principles of Morals*, pp. 90–91.

18. Cf. *Essay* VI.5, pp. 125–26.

of escaping all censure. But we can make a just estimate of men and of the value of their praises or censures, in proportion to their qualifications as judges of merit; and thus we may turn our ambition upon the praises of the wise and good. The approbation of our own hearts, and the approbation of *God*, give satisfactions of an higher nature than the praises of men can give. We can repress the desire of this lower enjoyment, when it proves inconsistent with the higher.

The desires of
wealth and
power
universal.¹⁹

VII. The desires also of wealth and power must affect the mind when it discerns their obvious usefulness to gratify every original desire. These pursuits in men of corrected minds may be easy and moderate, so that disappointment will not give great pain. But when the notions not only of external convenience and pleasure, and of a fund for good offices, but of all valuable ability, and moral dignity, and happiness are joined to wealth or power, and of all baseness and misery joined to poverty and the lower stations; when the natural use of these things is overlooked, and the mind is constantly intent upon further advancement, anxiety and impatience must imbitter and poison every enjoyment of life.

How fantas-
tick desires
arise.

When the mind has been diverted from its natural pursuits and enjoyments, fantastick ones must succeed. When through indolence and aversion to application men despair of success in matters naturally honourable; when any accidents have called off their <113> minds from the affections natural to our kind, toward offspring, kindred, and a country; the desires of some sort of eminence, and of amusement and pleasure, in an incapacity for all valuable business, must set them upon any pursuits, which have got reputation among their fellows of like sloth, incapacity, or depravation, under some confused notions of genteelity, liberality, sociableness, or elegance. How else shall one account for years spent by young people of easy fortunes in hunting, gaming, drinking, sauntering, and the silly chat and ceremonies of the places of rendezvous for gayety and amusement.

Many
enjoyments
opposite and
inconsistent.

VIII. Now it is obvious our nature is incapable of the highest pleasures of all kinds at once, or of pursuing them together. There are manifest inconsistencies among them, and the means of obtaining them. An high

19. Cf. *Essay* VI.6, pp. 127–26.

relish for one kind is inconsistent with a taste for some others. Sensuality and indolence are plainly opposite to all the higher active enjoyments. The pursuits of knowledge and the ingenious arts are opposite to avarice, sensuality, and to some sorts of ambition: so are the pursuits of virtue. Nay the highest enjoyments of some kinds are much increased by consciousness of our having sacrificed other inferior pursuits and enjoyments to them, as those of virtue and honour.

'Tis equally manifest that in our present state, one cannot constantly secure to himself any one enjoyment dependent on external things, which are all subject to innumerable accidents. The noble enjoyments of <114> piety, of which hereafter, and those of virtue, may be stable and independent on fortune. But a virtuous temper, whatever sure enjoyment it may afford upon reflection, ever carries a man forth beyond himself, toward a publick good, or some interests of others; and these depend not on our power. There's great pain in the disappointment of virtuous designs, tho' the temper be ever approved. In this, as in all other things, we depend on providence, which, as it gave us at first all our perceptive powers, and their objects, so it disposes of them, and particularly of the happiness or misery of others, the object on which the virtuous affections terminate. This sufficiently shews that the Deity must, for this reason, as well as many others, be the supreme object of our highest happiness: since we can never be secure, nor can we enjoy true serenity and tranquillity of mind, without a firm persuasion that his goodness, wisdom, and omnipotence are continually employed in securing the felicity of the objects of our noblest affections.

Few enjoyments are certain.

It would not be improper to consider here the plain evidence for the existence of God and his moral perfections; not only as a firm persuasion of these points is an high matter of duty, but as the Deity and his providence are the foundations of our tranquillity and highest happiness. But as the most persuasive arguments on some of these points are derived from the very constitution of human nature, and that *moral administration* we feel within ourselves, that structure of our souls destined to recommend all those kind and <115> generous affections which

No solid tranquillity without religion.²⁰

20. Cf. *Essay* VI.7, pp. 129–32, as well as VI.4, pp. 123–24.

resemble the moral perfections of God; we shall postpone the sentiments and duties of piety to be considered afterwards as the highest perfection of happiness, as well as of moral excellence.

How our endeavours have some effect.

IX. As to other enjoyments which are uncertain; tho' pure unmixed happiness is not attainable, yet our endeavours are not useless.²¹ We hinted already that having had high previous expectations, tho' it may increase the first transports of success, when the preceeding anxiety is removed; yet rather lessens the subsequent enjoyment, and still embitters disappointments, and makes misfortunes, in their own nature light, become unsupportable: so having our notions lower about these uncertain objects, and our desires moderate, rather encreases our stable sense of pleasure in the object obtained, and abates the sense of disappointment.

Thus the temperate, the sober, the chaste, the humble, have senses as acute at least as others, and enjoy all the good in sensual objects, and in honour. Abstinence and restraint, when virtue requires, vitiates no sense or appetite. Moderation in prosperity, temperance, humility, and modesty, low notions of happiness in sensual objects, prevent no sense of pleasure in advantages obtained. Men of this turn have their reason calm and active to procure the gratifications they desire, and to find out other preferable enjoyments when they are disappointed. In this uncertain world their prosperity and success is as joyful as <116> that of others. And then under misfortunes,

A lively sense of the instability of human affairs very useful.

*Si quis, quae multa vides discrimine tali,
Si quis in adversum rapiat casusve, deusve**

(And sure such disappointments are as incident to the inflamed admirers of external things as to others) the difference is manifest. The one had other funds of happiness: he foresaw such accidents; the loss to him is tolerable. To the other; *he is deprived of his gods; and do you ask what aileth him?* So necessary is frequent consideration of the uncertainty of

21. For this point and for the following paragraphs, cf. *Essay* IV.5.2, pp. 82–84, where the criticism of seeking “pure unmixed happiness” is connected to a criticism of Stoic ideas.

* *Virg. Aeneid.* ix. vers. 210. [Virgil, *Aeneid* IX, 210f., p. 129: “But if—as you see often in like hazards—if some god or chance sweep me to disaster.”]

human affairs; the accidents we are subject to; and the proper resorts, and springs of relief, and the other enjoyments which may still be in our power. This abates no solid joy in prosperity, but breaks vain associations, and corrects the imagination; gives strength of mind, and freedom from that terror and consternation which distracts the unprepared mind, and deprives it of the good remaining in its power.

A Comparison of the several sorts of
 Enjoyment, and the opposite sorts
 of Uneasiness, to find their
 Importance to Happiness.¹

To discover wherein our true happiness consists we must compare the several enjoyments of life, and the several kinds of misery, that we may discern what enjoyments are to be parted with, or what uneasiness <117> to be endured, in order to obtain the highest and most beatifick satisfactions, and to avoid the most distressing sufferings.

Enjoyments
 valuable by
 their dignity
 and duration.²

As to pleasures of the same kind, 'tis manifest their values are in a joint proportion of their intenseness and duration. In estimating the duration, we not only regard the constancy of the object, or its remaining in our power, and the duration of the sensations it affords, but the constancy of our fancy or relish: for when this changes it puts an end to the enjoyment.

1. For the discussion in the following paragraphs, cf. esp. *Essay* V, pp. 87–110, where Hutcheson focuses first on comparing different pleasures according to their “intenseness,” and then according to their duration.

2. For the following paragraphs, cf. *Essay* V.1, pp. 87–88. Compared to the *Essay*, the idea that kinds of pleasure have a dignity is new. Campbell, in his *Enquiry*, pp. 275–81, proposes another model to compute the value of pleasurable experiences. See furthermore Hutcheson’s account of moral mathematics in *Inquiry* II.3.11–12, pp. 128–32, which was intended to make moral values of actions and characters comparable, not values of pleasure. This was replaced in the fourth edition of the *Inquiry* by a textual rendering of the mathematical formula.

In comparing pleasures of different kinds, the value is as the duration and dignity of the kind jointly. We have an immediate sense of a* dignity, a perfection, or beatifick quality in some kinds, which no intenseness of the lower kinds can equal, were they also as lasting as we could wish. No intenseness or duration of any external sensation gives it a dignity or worth equal to that of the improvement of the soul by knowledge, or the ingenious arts; and much less is it equal to that of virtuous affections and actions. We never hesitate in judging thus about the happiness or perfection of others, where the impetuous cravings of appetites and passions do not corrupt our judgments, as they do often in our own case. By this intimate feeling of dignity, enjoyments and exercises of some kinds, tho' not of the highest degree of those kinds, are incomparably more excellent and beatifick than the most intense and lasting enjoyments of the lower kinds. Nor is duration of such importance to some higher <118> kinds, as it is to the lower. The exercise of virtue for a short period, provided it be not succeeded by something vicious, is of incomparably greater value than the most lasting sensual pleasures. Nothing destroys the excellence and perfection of the state but a contrary quality of the same kind defacing the former character. The peculiar happiness of the virtuous man is not so much abated by pain, or an early death, as that of the sensualist; tho' his complex state which is made up of all his enjoyments and sufferings of every kind is in some degree affected by them.† Nor is it a view of private sublime pleasures in frequent future reflections which recommends virtue to the soul.³ We feel an impulse, an ardour

* See above chap. iv. § 10. [Hutcheson refers to his discussion of the different degrees of approbation according to the dignity of the object, the highest dignity being exemplified by calm universal benevolence.]

† The Stoicks have run into extravagance on this head. See *Cicero de Fin.* l. iii. c. 10. *Haec de quibus dixi non fiunt temporis productione maiora. — non intelligunt valetudinis aestimationem spatio indicari; virtutis, opportunitate.* [Cicero, *De finibus* III.xiv, pp. 264–67 (*not* III.x): “These things that I speak of are not made greater by prolongation. . . . This ignores the fact that, whereas the value of health is estimated by duration, that of virtue is measured by opportuneness.” Cf. Hutcheson’s similarly critical remarks on the Stoics in *Essay* IV.5, pp. 83–84, where he calls some of their conceptions of virtue a “*private sublimely selfish Discipline.*”]

3. This point connects, again, to the remarks in Leechman’s preface, pp. 12–13, on *System* I.4.12, regarding Hutcheson’s account of our reasons to be virtuous.

toward perfection, toward affections and actions of dignity, and feel their immediate excellence, abstracting from such views of future pleasures of long duration. Tho' no doubt these pleasures, which are as sure as our existence, are to be regarded in our estimation of the importance of virtue to our happiness.

Now if we denote by intenseness, in a more general meaning, the degree in which any perceptions or enjoyments are beatifick, then their comparative values are in a compound proportion of their intenseness and duration. But to retain always in view the grand differences of the kinds, and to prevent any imaginations, that the intenser sensations of the lower kinds <119> with sufficient duration may compleat our happiness; it may be more convenient to estimate enjoyments by their dignity and duration: dignity⁴ denoting the excellence of the kind, when those of different kinds are compared; and the intenseness of the sensations, when we compare those of the same kind.

The different tastes of men.⁵

II. Tho' the several original powers above-mentioned are natural to all men, yet through habit, associated ideas, education, or opinion, some generally pursue enjoyments of one kind; and shew a disregard of others, which are highly valued by men of a different turn. Some are much given to sensuality; others to more ingenious pleasures; others pursue wealth and power; others moral and social enjoyments, and honour. Wealth and power have some few faithful votaries adoring them for themselves: but the more numerous worshipers adore them only as ministring spirits, or mediators with some superior divinities, as *pleasure, honour, beneficence*.

These must be examined.

Thus different men have different tastes. What one admires as the supreme enjoyments, another may despise. Must we not examine these tastes? Are all persons, all orders of beings equally happy if each obtains the enjoyments respectively most relished? At this rate the meanest brute or insect may be as happy as the wisest hero, patriot, or friend can be. What may make a brute as happy as that low order is capable of

Hutcheson argues that virtue gives us the highest pleasures, but that we are virtuous for other reasons.

4. Cf. I.7, n. 2 above. The numbering of the previous section was omitted.

5. See *Short Introduction* I.I.17, p. 48, and *Essay* V.2, pp. 89–91, for these paragraphs.

being, may be but despicable to an order endued with finer perceptive powers, and a nobler sort of desires. Beings of these higher orders are immediately conscious of the superior dignity and importance to happiness in their peculiar enjoyments, of which lower orders are incapable. Nature has thus distinguished the different orders by different perceptive powers, so that the same objects will not be sufficient for happiness to all; nor have all equal happiness when each can gratify all the desires and senses he has.

The superior orders in this world probably experience all the sensations of the lower orders, and can judge of them. But the inferior do not experience the enjoyments of the superior. Nay in the several stages of life each one finds different tastes and desires. We are conscious in our state of mature years that the happiness of our friends, our families, or our country are incomparably nobler objects of our pursuit, and administer proportionably a nobler pleasure than the toys which once abundantly entertained us when we had experienced nothing better. God has assigned to each order, and to the several stages of life in the same person, their peculiar powers and tastes. Each one is as happy when its taste is gratified as it can then be. But we are immediately conscious that one gratification is more excellent than another, when we have experienced both. And then our reason and observation enables us to compare the effects, and consequences, and duration. One may be transitory, and the occasion of great subsequent misery, tho' for the present the enjoyment be intense: another may be lasting, safe, and succeeded by no satiety, shame, disgust, or remorse. <121>

Superior beings by diviner faculties and fuller knowledge may, without experience of all sorts, immediately discern what are the noblest. They may have some intuitive knowledge of perfection, and some standard of it, which may make the experience of some lower sorts useless to them. But of mankind these certainly are the best judges who have full experience, with their tastes or senses and appetites in a natural vigorous state. Now it never was alleged that social affections, the admiration of moral excellence, the desire of esteem, with their attendant and guardian temperance, the pursuits of knowledge, or a natural activity, impaired any sense or appetite. This is often charged with great justice upon

What men
are the best
judges.

luxury, and surfeiting, and indolence. The highest sensual enjoyments may be experienced by those who employ both mind and body vigorously in social virtuous offices, and allow all the natural appetites to recur in their due seasons. Such certainly are the best judges of all enjoyments. Thus according to the maxim often inculcated by Aristotle, "The good man is the true judge and standard of every thing."⁶

The vicious
seldom can
judge well.⁷

But it may justly be questioned, whether men much devoted to sensual pleasures, to those of the imagination, or to wealth and power, are sufficiently prepared to judge in this question. Such pursuits indeed are seldom continued long without some notion of their innocence, nay of some duty or moral obligation. Habits sometimes deface natural characters and powers. Men of vicious habits have small experience <122> of the generous affections, social joys, and the delights of true impartial uniform goodness. Bad habits weaken social feelings, and the relish of virtue. And yet even such men on some occasions give a strong testimony to the cause of virtue.

III. Having premised these things we may first compare the several sorts of enjoyment in point of dignity and duration; and in like manner their opposites, sufferings. And then compare a little the several tempers or characters in point of inward satisfaction.

Sensual
pleasures are
the meanest.⁸

The pleasures of the external senses, are of two classes; those of the palate, and those betwixt the sexes. Both these we call sensual.

Those of the
palate.

The pleasures of the palate how grateful soever they may be to children, must appear the meanest and most despicable enjoyments to all men of reflection who have experienced any others. The uneasiness felt when the body needs support may be pretty intense; as 'tis wisely contrived, to engage us to take necessary care of the body. The allaying this pain may give a strong sensation of pleasure at first. But the proper pleasure of taste, the positive enjoyment, must be despicable to all who are above the order of brutes. The differences in point of pleasure among the sev-

6. See, e.g., *Nicomachean Ethics* IX.3, 1166a10–29, pp. 533–35. In *Essay* V.2, p. 89, Hutcheson refers to Plato's *Republic* IX and to Shaftesbury's *Inquiry* to argue for this point. See also Henry More, *An Account of Virtue* I.3.4 and I.4.1.

7. Cf. *Essay* V.2, pp. 89–91.

8. Cf. *Essay* V.3, p. 91.

eral kinds of food is so small, that the keenness of appetite is allowed to make a much greater. The most exquisite cookery can scarce give such high sensation of this kind to a satisfied appetite, tho' it be not surfeited; as the plainest fare will give to a brisk appetite after abstinence and exercise; even altho' <123> there was no pain, inconsistent with mirth and gayety, to be allayed. When therefore the allaying so gentle an uneasiness causes more pleasure than any exquisite favours without it, the positive pleasure must be very inconsiderable. The preventing of appetite, or the increasing or prolonging it by incentives of any kind, are vain efforts for pleasure; so are all arts, except exercise and abstinence, till the natural appetite returns. The greatest Epicures have acknowledged this when business or diversions have casually led them to make the experiment.

Men would universally agree in this point, were not these pleasures generally blended with others of very different natures. Not only nice oeconomy, art, and elegance in fine services and grandeur of apartments, but even moral qualities, liberality, communication of pleasure, friendship, and meriting well from others, are joined in our imaginations. Strip sensuality of all these borrowed charms, and view it naked and alone as mere pleasing the palate in solitude, and it is shameful and despicable to all.

Reasons of mistakes, a mixture of moral pleasures.

Imagine a life spent in this enjoyment without interruption, and that, contrary to the present order of nature,⁹ the appetite still remained; but that there was no social enjoyment or affection, no finer perceptions, or exercise of the intellectual powers; this state is below that of many brutes. Their appetites allow intervals for some pleasures of a social nature, and for action; and when thus employed, they shew an higher joy than in feeding. <124>

The duration too of these sensations is inconsiderable. Such indeed is the bounty of *God*, that the means of allaying the cravings of appetite may be easily procured; and thus by good management we may all frequently enjoy almost the highest pleasures of this kind. But the appetite

The duration small.¹⁰

9. GUL Ms., p. 82: "against nature" is crossed out and replaced by "contrary to the present order of nature."

10. For another discussion of the duration of different kinds of pleasures, see *Essay* V.10, p. 105.

is soon satisfied, and recurs not till after long intervals. Artificial incentives may raise an unnatural craving, but the allaying of this gives little pleasure. 'Tis a real depravation and sickness; and, when long continued, turns to such bodily indisposition as must stop all enjoyments. Where grandeur and variety are affected, the fancy grows capricious and inconstant, and the objects uncertain. The humour may grow too expensive for our fortunes, and increase, while the means of gratification are diminished.

The same true
of amorous
enjoyments.

Many of the same considerations deprectate the other species of sensual pleasure, which much depends upon the allaying the uneasy craving of a brutal impulse, as the positive good is of itself mean and inconsiderable. Conceive the sensation alone, without love or esteem of any moral qualities, or the thought of communicating pleasure, and of being beloved; it would not equal the delights which some of the finer brute beasts seem plainly conscious of.¹¹ And then this enjoyment is the most transitory of all. Indulgence, and variety, and incentives, bring upon the mind a miserable craving; an impatient ardour; an incapacity of self-government, and of all valuable improvement; a wretched slavery, which strips the mind of all candour, integrity, and sense of honour. Add to this the capriciousness of fancy, the torments of disappointment, which such wandering dissolute desires must be exposed to; and that after the transient sensation, there can scarce remain any thing agreeable, to one who has not lost all manly sense of good. The reflection on any past sensual enjoyments gives no sense of any merit or worth, no ground of self-esteem, or scarce any sort of joy except from the low hopes of repeating the same, which may a little revive the appetite after intervals. The remembrance is no support under any calamity, chagrin, pain, provocation or sorrow, or any inward disturbance of mind, or outward misfortune. The very nature of these sensations we call sensual, and the inward sentiments of our hearts about them, abundantly declare

11. GUL Ms., p. 82: "be a sufficient happiness for some of the finer brute beasts" is crossed out and replaced by "equal the delights which some of the finer brute beasts seem plainly conscious of."

that the supreme happiness of human nature must consist in very different enjoyments of a more noble and durable nature.

IV. 'Tis often occurring, on the other hand, that we see multitudes who prefer such pleasures to all others, and make the pursuits of sensuality the business of their lives; and that therefore the bent of the mind is naturally toward them; and their power superior to our *moral sense*, and to the generous affections.

Objections removed from the practice of the dissolute.

To remove this cause of suspicion; let us recollect that the constant pursuits of sensuality are seldom ever observed without an opinion of their innocence. Our *moral faculty*, our sympathetick sense, and our kind affections are seldom set in opposition to them, or combat with them, in the minds of men much devoted to sensuality. Where without this notion of innocence men are hurried into sensual enjoyments by impetuous appetites, the state is miserable and full of abject remorse after the transient gratifications. The professedly dissolute have some specious reasons by which they are deluded into a persuasion of the innocence of their pursuits.

Nay some moral notions, such as communication of pleasure, love, friendship, meriting well, and being beloved, make the main charm even in sensual enjoyments. This is manifest in the luxury and intemperance of such as are not sunk below the beasts, and universally despised. It holds too in the unchaste passions: and hence some notions of moral excellencies, good nature, friendliness, sweetness of temper, wit, and obligingness recommend their objects. But on the other hand; such as by generous affections, and love of moral excellence and honour, are led into a virtuous course, avowedly despise sensual enjoyments; nor does any confused imaginations of them, or hopes even of immunity from labour and pain recommend it to their choice. The external evils, toil, expence, and hardships are known and despised as well as the allurements of ease and pleasure: the moral forms by their own proper power are superior to them. In the voluptuous, the *moral sense* is seldom conquered; the enjoyments seem innocent, or at least the guilt is so diminished by the sophistry of the passions, that 'tis only the smallest moral evil which seems to be incurred for the highest sensual good; and the weakest efforts of

the moral kind overcome by the strongest of sensuality; and often, even by the assistance of some mistaken moral species.

The sensual
enjoyments
consistent with
virtue as high
as any.

It is here likewise proper to observe that all sensual gratifications are not opposite to moral enjoyments. There is a moderate indulgence perfectly innocent, sufficient to allay the uneasiness of appetite; which too by wise oeconomy may frequently be as high as any sort of sensual enjoyments, and even subservient to the moral. The temperate, and such as, after proper self-government in coelibacy, have made a wise choice in marriage, may have as high sensual enjoyments as any. In recommending of virtue we need not suppose it opposite to all gratifications of sense; tho' its power in our hearts should be maintained so high that it may be able to controll all the appetites which by accident may oppose it. Its gentle sway generally allows such gratifications as may be the highest of the kind; or where it does not, it makes abundant compensation for the loss, by the joyful approbation of such abstinence and self-government. What rich compensation is made by the joyful approbation one must feel of fidelity, friendship, and meriting well, and by the returns of a constant affection from a worthy heart, for the want of the irregular, shameful, perplexing, joyless passions and indulgences, with persons of no moral worth or steadfastness of affection.

The pleasures
of knowledge
and the inge-
nious arts
superior to
the sensual in
dignity.¹²

V. We come next to consider the pleasures of the imagination in the grandeur and elegance of living, and the perceptions of beauty and harmony, to which we <128> may add those of the ingenious arts, and knowledge. Here there is no brutal uneasy previous appetite, the sating of which might enhance the pleasure; and yet one may immediately find that these are enjoyments superior to the sensual, and more recommended by the constitution of our nature. When the cravings of appetite are grown painful, one will readily quit these pleasures till the pain is removed; especially when there are no apprehensions of our not being at liberty of speedily returning to them. But the beholding beautiful forms, the curious works of art, or the more exquisite works of nature; the entertainments of harmony, of imitation in the ingenious arts; the discovering of the immutable relations and proportions of the objects of the pure

12. Cf. *Essay* V.9, pp. 104–5, and V.10, p. 105.

intellect and reason, give enjoyments in dignity far superior to any thing sensual, where the sensual are considered alone without borrowed charms of an higher nature. These more manly pleasures are more suited to our nature; and are always more esteemed and approved when we are judging of the pursuits of others.

These pleasures too far surpass the sensual likewise in duration. They can employ a great part of life without satiety or cloying, as their pleasure is so much positive enjoyment independent upon the allaying of any previous uneasy sensations. They are the proper exercises of the soul, where none of the higher social offices, or those of rational piety claim its activity. They partake of its lasting nature, and are not transitory, as all enjoyments are which are merely subservi<129>ent to the perishing body. Thus, as often as the more important offices of virtue allow any intervals, our time is agreeably and honourably employed in history natural or civil, in geometry, astronomy, poetry, painting, and musick, or such entertainments as ingenious arts afford. And some of the sweetest enjoyments of this sort require no property, nor need we ever want the objects. If familiarity abates the pleasure of the more obvious beauties of nature, their more exquisite inward structures may give new delights, and the stores of nature are inexhaustible.

They are also superior in duration.

Such objects of these tastes as require property are more uncertain, and the pursuit of them more solicitous and anxious, and the fancy more inconstant, as long possession abates the relish. The imagination here needs strict reins, that it may not run out into excessive admiration by associated notions of moral dignity, and liberality; and thus involve us in innumerable vexatious pursuits of what is not essential to happiness.

VI. Pleasures of the sympathetick kind arising from the fortunes of others are proportioned to the strength of the kind affections we have for them. Our nature is exceedingly susceptible of these affections; especially the stronger sorts of them toward offspring, parents, kinsmen, benefactors, or eminently worthy characters; toward sects, parties, countries. They furnish the far greater part of the business, and of the happiness or misery of life.

Sympathetick feelings very intense.¹³

13. Cf. *Essay* V.7, pp. 98–99, and V.10, pp. 105–6.

Compare these with others: Consider the joy of <130> heart upon any considerable prosperity, or any eminent virtue of one whom we heartily love, of a child, a brother, a friend: upon any glory or advantage to our party, or country; to any honourable cause we have espoused, or any admired character; or upon their escaping any imminent danger. Where there is an hearty affection these joys are incomparably superior to any of the former. What pleasure of sense or imagination would we not forego to obtain these events? Some ecstasies of joy upon the escaping of great imminent personal dangers have been too violent for nature, and have proved fatal: we have more* instances of sympathetick joys which proved also unsupportable and fatal. And if some tempers cannot bear life after some misfortunes befallen themselves; more instances are found of such as throw it away upon the misfortunes of others. The enjoyments must be very high which can sweeten all the toil and labour about offspring and friends, even in common characters. Having affluence of all things desired for one's self, abates very little of the diligence of mankind.

And may be of
long duration.

These pleasures endure as long as the person continues to be beloved and to be prosperous. New successes of our own, or of our friend, raise greater commotions at first than advantages long possessed. But while the affection continues, the sense remains; and the sympathetick pleasure never cloy. Where indeed affections are founded upon wrong sentiments of the <131> merit of persons, or causes, they can have no stability,¹⁴ and the sympathetick joy may be lost, and succeeded by disgust and indignation. But the chief cause of instability in this branch of happiness is the uncertainty of the fortunes of those we love; for their misery must occasion the most severe distress. In this we wholly depend on providence.

* See two instances in Livy upon the defeat at Thrasyman, l. xxii. c. 7. See on this subject *Cicero de Fin.* l. v. c. 24. [Cf. Livy, *From the Founding of the City*, XXII.7, p. 13. Livy reports that upon the massive defeat of the Roman army at Thrasyman, the city was in uproar. He mentions the cases of two women dying of excessive joy upon finding their sons alive. Cicero, *De finibus* V.24, p. 473, evokes the pleasures felt by Scipio Africanus the Elder upon his victory against Hannibal (206 BC), and of the pleasures felt by Lucius Aemilius Paullus upon his victory against Perseus of Macedonia in the third Macedonian war (171 BC).]

14. GUL Ms., p. 86: "of the affections" is crossed out.

All that we can do to secure any fund of joys of this kind is to examine well the merit of persons, and causes, and by these means to turn our stronger affections toward the superior merit of men of true goodness and correct imaginations, whose happiness is less inconstant than that of others; to have a firm persuasion of the wisdom and goodness of providence, and to cultivate the most extensive affections. The stronger our universal good-will is, if our joys be so much the higher upon the general prosperity, the greater also shall our regret be upon apprehended general misery. But what makes this affection ever safe in all events, and a fund of superior joy, is a firm persuasion of a good Providence governing the universe for the best, amidst all the apparent evils and disorders. Of this more hereafter.

Belief of providence the sole security.¹⁵

VII. The fourth class of enjoyments are the *moral*, arising from the consciousness of good affections and actions. These joys are different from the sympathetick, which may arise from that happiness of others to which our affections and actions contributed nothing. But our affections and actions themselves, abstracting from the state of others, cannot be indiffere<132>rent to us when we attend to them. When we find our whole soul kind and benign, we must have a joyful approbation; and a further and higher joy arises from exerting these affections in wise beneficent offices. These joys we find the highest and most important both in respect of dignity and duration.

Moral enjoyments are among the highest in our nature.¹⁶

How much inferior are the highest sensual pleasures, or even those of the imagination, or speculative knowledge, to the stable joy of conscious goodness of heart; and to that high approbation one feels of himself in any important offices for the good of his country, or his friend; and to the joyful thought of meriting well of mankind, and deserving their applauses? The kind affections alone sit easy in the heart; there is an inward complacency in them, and we joyfully entertain them for life.* But our nature is fitted for more than unactive affection. An high happiness arises from the exerting our powers; and the nobler the power is, the more

In respect of dignity.

15. Cf., esp., *System* I.10.5, and *Essay* VI.4, p. 123.

16. For these three paragraphs, cf. *Essay* V.2, p. 89, V.7, pp. 98–99, and V.10, pp. 106–7.

* This is often justly observed by Aristotle and Cicero.

beatifick is its exercise: when the virtuous efforts are successful, there is such an assemblage of pure joys from conscious goodness, sympathy with others, and the expected love and approbation of all, especially the complacency of our Maker, as far surpasses all other enjoyments. If we should fail of success, we may want the sympathetick joy, and may be touched with compassion; but the other sources of joy remain: the moral enjoyments can sweeten these distresses¹⁷ from the misfortunes of the person or cause espoused; which without the consciousness of our having acted our part well, must have been much more intolerable.

These
pleasures are
most durable.

The fancy here is not inconsistent. Our taste for virtue increases by exercise; and habits make it still more pleasant. The remembrance is ever delightful, and makes the enjoyment lasting, where there have been just notions of virtue, and of the merit of persons and causes. One end proposed in the creating different orders of beings, and ordaining the different states of those of the same species, some more, some less perfect, is probably this, that the nobler minds should never want opportunities for the joyful exercise of their good dispositions toward the inferior either in perfection or in fortune. These joys too are seated above the power of fortune while men retain soundness of mind. A low station, and a hard condition of life, or external disadvantages may prevent our doing the most important services to others in external things; but can neither hinder the sound inward affections of heart, nor a course of action suited to our abilities; and this is the highest virtue.

Just notions
of virtue
necessary.¹⁸

Unexamined admirations of some partial moral forms, and some narrow affections, without true notions of merit in persons and causes, may lead us into such conduct as upon better information may be matter of shame and remorse. But where by close reflection we have attained just notions of virtue and merit, and of the effectual means of doing good, virtuous action, as it is the natural purpose of a rational and social species, so it is their highest happiness, and always in their power.

Among these moral enjoyments, the joys of religion and devotion toward God well deserve to be particularly remarked, which in the class

17. GUL Ms., pp. 87–88: “which otherways might have been deep” is crossed out.

18. Cf. *Essay* V.7, pp. 98–99.

of moral enjoyments are the highest of all. But as these enjoyments are of a pretty different nature from the rest of the moral ones, they shall be considered apart hereafter, for reasons above-mentioned; and we shall shew their high importance to a stable and sublime happiness above all others.

IX. The pleasures of honour from the approbation, esteem, and gratitude of others as they naturally ensue upon virtue, so when they are founded on it, are among the most grateful feelings of the soul. These joys of honour and virtue and the sympathetick joys are naturally connected, nor need we minutely compare them; as the same conduct is naturally subservient to them all: and where they concur, no words can express the happiness enjoyed. The sympathetick feelings may be more intense in some tender affectionate hearts: active spirits in publick stations may be more affected with conscious virtue and merited glory. But where the three are united, with a firm persuasion of a good *God* approving our temper, and ensuring the universal order and happiness, our state must come nearest to *that joy unspeakable and full of glory*, which we hope for as the perfect consummation of the rational nature. <135>

Pleasures of honour very intense.¹⁹

True glory is also durable, not like the sensual enjoyments, which pass like the shadow of a cloud leaving no trace behind them. The approbation and esteem of others, when founded on virtue, may probably continue during life, and survive us: and the approbation of God shall be everlasting. The pursuits of extensive fame for eminent abilities and virtues may indeed be subject to disappointment, and be full of labour and liable to excess. Ordinary virtues, or even the highest virtues in the low stations will not obtain the extensive applauses of nations. But a wise and virtuous man may generally obtain such honour either in a narrower or larger sphere as may give great joy. And a good heart, persuaded of a good providence observing all things, is sure of the approbation of the best judge, and that to eternity.

And of great duration.

X. Among such solemn subjects the pleasures of mirth and gayety must be of small account. And yet even children despise sensuality in comparison of them: and sensual enjoyments borrow from them

The pleasures of mirth are on the side of virtue.

19. For this and the following paragraph, cf. *Essay* V.8, pp. 100–104, and V.10.4, 107. None of the previous paragraphs are numbered as section VIII. This is presumably an oversight.

many of their charms, without which they would be despicable and shameful. They are an agreeable seasoning to other enjoyments, and some relief from the fatigues of serious business. The nobler joys are grave, severe, and solemn. But human life must have relaxations. Now whatever value we put upon mirth and gayety it must be cast into the side of virtue: since that mind is always best disposed for the reception of all cheerfulness and pleasantry where all is kind and easy; free from anger, ill-will, envy, or remorse. These pleasures <136> are always social, and fly solitude. They are best cherished amidst love, good-nature, and mutual esteem.

Wealth and power are more beatifick to the virtuous than others.

As wealth and power are not immediately pleasant, but the means of obtaining pleasures; their importance to happiness must be in proportion to that of the enjoyments to which they are referred by the possession. The virtuous man therefore who refers them to generous and virtuous purposes, has a much nobler enjoyment of them than those who refer them to the pleasures of the imagination, or the elegance of life; and yet this is a finer reference than that to sensuality. Where through confused imaginations they are not directly referred to their natural purposes, but pursued for themselves, avarice and ambition become wretched insatiable cravings, hateful to all mankind; and the possessions become joyless to the person who obtains them.

Ill-natured gratifications mean, and not durable.²⁰

XI. As to some other pretended enjoyments in gratifying the passions of anger, malice, envy, revenge: 'tis certain there is no small sense of joy in these gratifications, where the passions were intense. But then 'tis obvious, that as good-will, love, esteem, gratitude, and every kind affection are natural and original pleasures sitting easy in the mind; so the happiness of any innocent person observed is the occasion of pure unmixed joy, not arising from the allaying any previous pain. If the person has been in misery, and thus has raised our compassion: his being relieved adds also another joy from stopping our sympathetick pain. But the misery of another is naturally uneasy to the ob<137>server: it must then be

20. For this and the following paragraphs, cf. *Essay* V.5, pp. 95–97.

by some accident that it ever becomes grateful: by some previous anger, or envy; some injury apprehended, or some opposition to the interests of some person beloved.

These passions of the unkind sort are not useless parts in our constitution. Upon apprehension of injury or damage done to us, or to those we love, anger naturally arises to rouse us for defence. When persons we do not esteem are preferred to those of higher merit, an honest concern and indignation arises. A like indignation arises against all such as appear grossly immoral. Indulgence may make these passions strong and habitual. The feelings attending them are original uneasiness and torment; to which however it was reasonable for the general good that we should be in some degree subjected on certain occasions, as we are to bodily pain. The sweetest tempers have experienced some short fits of them, and have felt how uneasy these moments pass. Where such passions are high and lasting, degenerating into rancour and stated malice and envy, the misery must be very great: no wonder then that the removal of it should give at first a considerable pleasure. The misery is removed by the sufferings of the person hated or envied. But this turbulent joy, even while it lasts, is not to be compared with the sweet sympathetick joys, the sense of merited love and esteem, or the self-approbation of forgiving, where no publick interest requires punishing. And then this ill-natured joy soon ceases after the passion is sated, as the misery of the most hated object cannot <138> please us long; nor is it ever the object of approbation, either in ourselves or others, upon reflection; nay 'tis generally succeeded by remorse, regret, and sorrow. The calm mind can have no pleasure in the misery of another, tho' it may acquiesce in such sufferings as a publick interest requires. We cannot wish to prolong vengeance but upon some notion of repeated acts of unrelenting wickedness; or from some remains of the preceeding fear with which we were tormented. And this shews one reason why "the brave are not cruel." The pleasures then of this ill-natured kind are to the calm joys of humanity, as the slaking the burning thirst of a fever, or the sating a gnawing diseased stomach, to the enjoyment of grateful food with an healthy and vigorous appetite.

Such passions
not useless
in our
constitution.

Our moral
sense values af-
fections and
enjoyments in
proportion to
their tendency
to the general
good.²¹

XII. We may observe concerning these several enjoyments, that with the most benign counsel our minds are so constituted that we value them upon calm reflection in proportion to their importance to the happiness of the whole system. These which only regard the safety and animal gratifications of the individual are felt to be the meanest; such as may be of more extensive use, and incite men to be serviceable to others, are naturally more esteemed, and that in different degrees according to their extent. Thus we value more the pleasures of the ingenious arts, and such exercises of body or mind as may naturally be useful to many. The partial narrow affections are lovely and joyful; but still the more stable and calm and extensive, as they are more useful, are also more joyful both in the exercise, and in the remembrance, where there has been any tolerable attention and reflection. We see then that the *moral faculty* most approves and recommends such dispositions as tend most to the general good, and at the same time such as may give the noblest enjoyments to the agent upon reflection. And thus the two *grand determinations* of our nature, by a thorough consideration of our constitution, may appear perfectly consistent, and be generally gratified by the same means. The same conclusion will be confirmed by a comparison of the several sorts of pain.

The several
sorts of pain
compared.²²
Bodily pain
not the
highest.

XIII. We come next to compare the several sorts of uneasiness, or pain. And first it immediately occurs, that the several sorts of pain are not in the exact proportion of the pleasures of these senses. Mere bodily pleasure is the lowest and least intense, and yet bodily pain may be very violent. But we cannot thence conclude that it may be the greatest possible misery, as some have maintained. In pain, as in pleasure, the kind is to be regarded as well as the intenseness. The preservation of the body required this strong connection with the soul, and that the sensations indicating its sufferings should be very strong; such as sometimes wholly to occupy the weaker minds, making them incapable of any attention to other things. But the soul finds that it cannot approve the sacrificing its

21. Cf. the often debated passage in *Inquiry* II.3.8, p. 125, according to which “that Action is best, which procures the greatest Happiness for the greatest Numbers.”

22. Cf. *Essay* V in various places, esp. V.6, pp. 97–98, and V.II, pp. 108–9.

duty to the avoiding of any bodily pain; and that moral evil is still something worse. Some kinds of pain have a quality contrary to that dignity <140> we mentioned, which makes them the causes of greater misery than any bodily pain, how intense soever it may be. This debases not the worth of the person; nor causes such an abject state of misery, as the consciousness of the more odious moral evils, which occasion remorse, and self-abhorrence. We rashly conclude otherways from seeing persons of ordinary virtue breaking all ties of affection, duty, and honour, to avoid tortures; and betraying their friends and country under such temptations.

But in such cases the highest bodily pain is compared with some lower sympathetick pain, in some weaker bonds of affection, or with some lower moral species; whereas the highest of both sorts should be compared to find their importance. One who has no high sense of virtue betrays his friend, or country, in some point not conceived absolutely necessary to their safety, nor certainly involving them in ruin by the discovery of it; whereas his tortures are present and unavoidable any other way. The cases should be put of men of high virtue, where the point to be extorted would be certain unavoidable ruin to their friends, or country. Brave men in such cases have endured all tortures; and such as cannot, yet feel they have acted wrong, and disapprove their own choice of incurring moral evil rather than the highest pain. There is a fine machinery of nature here; that men of small reflection who may conceive tortures as the greatest evil, yet some way expect it as natural conduct, and highly approve it, that men should sacrifice what they <141> take to be their highest private interest, by suffering the greatest misery, for a publick good. This confirms what we said above of a calm determination toward a publick good without any reference to the private interest of the agent, how sublime soever; and that this determination should controll all others in our nature.

In the more common cases, how often do parents, friends, patriots, endure the highest sufferings to free others from the like? The direct sense of hunger, toils, wounds, and bodily pain, is lighter than the sympathetick with the like sufferings of others. And in parental affection there is seldom any view to duty, honour, or compensation. Some crimes are so horrid

The causes of
mistake in this
matter.

that many ordinary characters would endure tortures rather than commit them; and freely expose their lives to avoid the imputation of them.

What cases are
proper and
what not.

In the cases where duty yields to torture; the private evil is present, certain and sensible: the publick detriment absent, uncertain, and otherways perhaps avoidable. The moral turpitude is extenuated by the greatness of the temptation, and the effort of the *moral faculty* is thus made more languid. Where virtue conquers pain, the pain appears in its full strength; but is over-powered, by the generous affection, or the abhorrence of what is base. Put both sensations in their full strength without alleviation. Whether would one chuse to commit the worst crimes without such extenuating necessity, or to be in the condition of one <142> tortured with the gout or stone, as severely as any tyrant could torture him?

Put cases, as in some antient fables; that, upon such false information as nothing but a faulty, passionate, impetuous, and cruel temper could have entertained, one had tortured to death a person unknown, who is afterwards found to have been his tender parent, his dutiful son, or his generous friend, or affectionate brother; what bodily pain could equal the remorse and sympathetick sorrow which must arise? and yet here the guilt is alleviated by ignorance. When men have thrown away their own lives from remorse, the crimes have generally flowed from ignorance, inadvertence, or some furious passion; all which are some alleviation of guilt. What must the torment have been had men knowingly, and unprovoked, committed the like crimes, and soon after recovered a sense of virtue? But 'tis hard to find instances of such guilt; as our nature is scarce capable of it, or if it is, the *moral sense* is irrecoverable.

Take the sympathetick sense alone. Where is the great difference, in point of misery, between enduring tortures, and beholding the tortures of a beloved or only child, or of a tender parent; or beholding them subjected to something more ignominious? *Would to God I had dyed for thee*, is no feigned wish on such occasions.

In considering the state of such as are dear to us, moral evil appears always superior to bodily pain. <143> Who could wish a son or friend to be rather sunk irrecoverably in all vice and baseness of soul, but free from pain, and abounding with sensual pleasures; than exposed to the great-

est tortures in some act of heroism, with a lively sense of integrity and self-esteem, and the sympathetick joys in the prosperity of every interest that is dear to him?

The natural strength of the human mind in resisting pain would appear much greater, were it not for the terrors of death which generally attend the severer kinds of it. Remove this fear, and the soul can bear it much easier. In some diversions, and in the accidents which attend them, where there is no fear of any thing fatal, men without dejection of mind, nay sometimes with gayety, can bear very acute pain, and despise it.*

Pain in the extremities of the body may be very lasting. But all bodily pain differs in this from moral feelings, that it leaves no sense of evil when the uneasy sensation ceases. The reflection on it is rather pleasant than uneasy, when there is no fear of its returning. The soul is often bettered by it, as experience gives it more strength and fortitude. Where pain was endured in any honourable cause, it always remains matter of joy and glorying.

Bodily pain
may be very
lasting.

XIV. Our higher senses by which we receive the pleasures of the imagination, admit far less pain than pleasure, if the mind is under good discipline. Bodily deformity or distortion may be very uneasy to the person who is so unfortunate; and so may meanness, or the want of the decencies and elegancies of life, to such as have high desires and notions of happiness in such things. But there is no uneasy craving, as in the appetites, previous to these imaginations of great good in the objects; and the correcting of these imaginations may remove all the pain, especially where nobler enjoyments compensate the want of these pleasures. And then beauty, harmony, and ingenious works of art, and true imitation of every kind, without any property in the external objects, give pretty high positive pleasures; whereas the deformity of external objects, dissonance, bad imitations, or rude works of art, give no other pain than that trifling sort from a disappointment of expectation in a matter of no necessity in life. Knowledge is attended with exquisite

By the imagination we receive more pleasure than pain.

* On this subject many noble sentiments are to be found in *Cicero's Tusculan*. I. ii. [See Cicero, *Tusculan Disputations* II.14 onward. Cf. also Hutcheson, *Essay* V.10, pp. 106–7.]

pleasure; but the want of it only occasions pain where there is an high desire and admiration of it, or a fear of shame for the want of it. The uneasiness even to an inflamed imagination from the want of the grandeur and elegance of life is generally lighter than bodily pain, or the sympathetick, or the sense of moral turpitude and infamy; and 'tis wise and just that it should be so, as these other senses are intended to guard mankind against evils more pernicious to the system. If men expose sometimes their friends, families, and country, to many evils by immoderate expences on grandeur and elegance; the distant miseries of others are unexpected, or not attended to: there are hopes of new friends, of support, of profitable employments by the <145> friendship of the great, the approaching evils are not apprehended, and the guilt is unobserved.

The sympathetick and moral pains the highest of all.

XV. The sympathetick, and moral pain of remorse, and infamy, are the highest our nature admits, as their opposite joys are the highest: they can make life quite intolerable. The misery of one beloved, while it continues and is attended to, is incessant pain to the observer. When it ceases by death, the painful remembrance long survives in an affectionate heart; till business diverts the thoughts, or deep reflection suggests consolations. The sure refuge in such cases is to a good providence, and that future happiness provided for all worthy objects of kind affections.

Why we are prone to tragical sights.²³

'Tis vain to alledge that all sympathy carries with it pleasure superior to the pain. We should not then incline to change the state of the object. 'Tis true we are prone to run to spectacles of misery, and are fond of tragedies: and yet misery alone observed is the cause of misery only. But there is a natural impulse, implanted for the kindest reasons, forcing us to such spectacles of misery, which generally brings relief to the sufferers. And we can restrain this impulse where we foresee that it can do no good. Let none be surprised at such impulses where no pleasure is in view, or any removal of our own pain: do not we observe

23. For Hutcheson on our attraction to tragic sights and tragedies, see *Inquiry* II.2.8, pp. 110–12, and II.5.8, pp. 160–62, as well as *Essay* III.5, pp. 60–61. In this and the following paragraph, Hutcheson rejects explanations of this attraction by self-interest, as found for example in Lucretius, Hobbes, Dubos, Addison, and Mandeville.

after the death of a dear friend, when we can serve him no more, nor enjoy any sympathick pleasures with him, the tormenting thoughts of his dying agonies and groans are for many weeks, and months, and years recurring to our minds. Our many efforts to <146> banish the painful useless thoughts are long ineffectual. When these efforts are repeated frequently and vigorously, they may at last banish them; but when we intermit our watch they return again and torment us. Can that sensation have superior pleasure which upon reflection we shun to retain, and guard against as a torment, which in tenderer constitutions turns into bodily sickness?

In tragedy there is a lively imitation of manners, of heroick virtues, struggling against fortune; and noble sentiments and affections are expressed. Our sympathick feelings indeed of every kind are exercised; and compassion and terror are gently raised upon distresses which we know are feigned. Can one say that terror has superior pleasure in it; and yet we sometimes court such stories as terrify ourselves. But when the imitations by sculpture, painting, and musick, please us so much that we can bear toil and hunger, in prolonging the entertainment; what wonder is it that such noble imitations of manners delight us, notwithstanding the gentle uneasiness of sympathy with imaginary sufferings? what pleasure is there in an infirmary or lazaret-house, and in hearing real groans, where there is abundant matter of compassion, but without such virtues discovered? should one forget that the distresses in tragedy are feigned, his pain will increase; but the lovely virtues and noble sentiments affect the mind with the higher pleasure.

The delights in tragedy.

Remorse may be the highest torment, and make life and all its enjoyments hateful. 'Tis not like ex<147>ternal sensations referred to a body, a material system, indicating its disorders, but not abating that inward worth for which a man esteems himself or his friend. We seem conscious that the body is not the *person*, the *self* we esteem; and that its disorders or decays of any kind do not abate the excellence or worth of a rational active being. Moral evil we feel to be the immediate baseness of

Remorse the greatest and most lasting torment.²⁴

24. Cf. *Essay* V.11, pp. 108–9.

this *self*. It makes our inmost nature odious and distasteful to ourselves, and to all who know it.

These feelings are not transitory; the remembrance is always tormenting. They* are less acute while the unsated passion continues impetuous: their violence appears when the crime is committed. They gnaw the soul a long time, nor cease unless habit brings on a stupor on this power, and men become abandoned to every thing that is bad. And even here any considerable adversity or danger, which checks a while the vicious passions, may revive the *moral principle*, and renew the torment.

Infamy a great
misery.

XVI. Infamy and reproach when they justly befall us, are a great misery. But when we unjustly suffer this way, while our own hearts approve our conduct, the suffering is much lighter, and we may have many strong supports under it. The evil in this latter case is less durable; as the truth often breaks out beyond expectation. The omniscient God knows we are injured, and the wiser part of men with whom we have to do will sooner or later discern our innocence, and we are sure of their compassionate regards. Reproach however is generally a greater evil and more afflicting than most of the bodily pains, and may be pretty lasting. It overbalances all sensual pleasures with such as are not abandoned: to repel it many would sacrifice their all, and many have hazarded even life itself.

After this impartial enquiry into our several sorts of pleasures and pains, how unnatural must that account of the supreme good and evil given by the old Cyrenaicks and Epicureans, and by some moderns likewise, appear, which places the origin of both in the bodily sensations, and refers both ultimately to them.²⁵

* *Quum scelus admittunt superest constantia. Quid fas
Atque nefas, tandem incipiunt sentire, peractis
Criminibus.* Juv. Sat. 13.

[Juvenal, *Satires* 13, lines 237–39, p. 453: “When they do something wicked, they have more than enough resolution. It’s only long after the crime has been committed that they begin to get a sense of right and wrong.” On this point, cf. also Hutcheson, *Essay* V.11, p. 108.]

25. See I.3, n. 2 and I.4, n. 1 above.

A Comparison of the several Tempers and Characters in point of Happiness or Misery.¹

The grounds of suspecting a great opposition between one's private interest and the indulging of the social affections in all generous offices of virtue, may be pretty well removed by what is already said of the high enjoyments of the sympathetick and moral kinds.² But the unreasonableness of all such suspicions will further appear by considering which of the several sets of affections constituting the various characters of men, are of themselves the sweetest enjoyment, the most easy and serene state of mind. <149>

As all the senses and affections above-mentioned are parts of our inward fabrick, so each of them have their natural use either to the animal itself, or to the system of which it is a part. Moral goodness indeed consists principally in the social and kind affections carrying us out

All our affec-
tions are useful
in the system.³

1. Compare this chapter with the discussions in Shaftesbury, *Inquiry* II.1.1, p. 47, II.1.3, pp. 56f–57, and throughout *Inquiry* II.2, pp. 57–100. With its strong emphasis on the idea of a system, the present chapter in Hutcheson seems somewhat more reminiscent of Shaftesburian language than other chapters.

2. Cf. Hutcheson's preface to the *Essay*, p. 5. The claim that private interest and social affections are distinct yet ultimately not opposed is made in similar ways by numerous contemporaries of Hutcheson—for example, Shaftesbury and Butler. However, Hutcheson's account of the hierarchy of different kinds of pleasures is particularly elaborate.

3. Cf. *Inquiry* II.3.5, p. 122. For similar points, see, e.g., More, *An Account of Virtue* I.6, pp. 33–34; and Shaftesbury, *Inquiry* II.1.3, pp. 50–51.

beyond ourselves. But there is a natural subserviency of the private or selfish affections, while they are kept within certain bounds, not only to the good of the individual, but to that of the system; nor is any one compleat in his kind without them. And as the happiness of a system results from that of the individuals, 'tis necessary to it, that each one have the selfish affections in that degree which his best state requires, consistently with his most effectual services to the publick.

The best constitution of a species.⁴

The most benign and wise constitution of a rational system is that in which the degree of selfish affection most useful to the individual is consistent with the interest of the system; and where the degree of generous affections most useful to the system is ordinarily consistent with or subservient to the greatest happiness of the individual. A mean low species may indeed be wholly subjected to the interests of a superior species, and have affections solely calculated for these higher interests. But in the more noble systems it would be a blemish if in fact there was an established inconsistency between the two grand ends to each rational being, personal enjoyment and publick happiness, and in consequence, an irreconcilable variance between the affections destined for the pursuit of them. <150>

No natural affection absolutely evil.⁵

None of our affections can be called absolutely evil, in every degree; and yet a certain high degree, beyond the proportion of the rest, even in some of our generous affections, may be vicious, or at least a great imperfection, detrimental both to the individual and the system. At the same time the greatest strength of any one kind is not of itself necessarily evil: nay it may be innocent, if the other affections have a strength proportioned to this kind, and to the dignity of their several natures, and of the purposes for which they were implanted. But where the mind is not capacious enough to contain this high degree of other affections, any one of the selfish, and many of the generous, may be excessive. The calm extensive good-will, the desire of moral excellence, the love of God, and resignation to his will, can never exceed: as they exclude not any partial good affection as far as it is useful, nor any just regard to private

4. Cf. the reflections in Shaftesbury, *Inquiry* I.2.1, pp. 8–12.

5. Cf. *Inquiry* II.2.4, p. 105; and again More and Shaftesbury as in I.4, n. 24 above.

good. But the more confined affections even of the generous sort may exceed their due proportion, and exclude or over-power other affections of a better sort: as we often see in parental love, pity, party-zeal, &c. The moral turpitude consists, not in the strength of these affections, but in the weakness of the more extensive ones in proportion to their dignity and superior use.

'Tis still more evident that the selfish affections may be excessive and vicious. But it ought also to be observed that there may be a degree of them too low and defective with respect to the intention of nature. If a creature exposed to dangers, and yet neither armed by nature or art, were fearless, and had no concern for its own safety in its services to others; we do not count this temper vicious, but 'tis manifestly imperfect, hurtful to the individual, and useless to the system. In the lower orders we discern the wise economy of nature giving courage to the males along with their superior strength or armour, and denying it to the females, unless where the defence of their young requires it. Strong social passions, little self-regard, with ardent desires of honour, in men of very small abilities, would be an excess on one hand, or a defect on the other. The same generous ardours in men of great abilities, with proportional caution, would be useful and well proportioned: such social affections and relishes for some fine enjoyments of the imagination, as sit easy in some characters, and exclude no duties of life, might to others occasion useless misery, and starve all their other parts or faculties.

II. Now as we shewed the social and moral enjoyments, with those of honour, to be the highest; we shall briefly shew that the affections pursuing those objects with which these enjoyments are connected, when they are all kept in due proportion to their dignity and use in the system, are the most advantageous and easy to the individual; and that the selfish affections when they are too strong and inconsistent with the generous, are hurtful to the individual.

The evil consists in want of proportion.

Affections toward social and moral enjoyments are the most advantageous;⁶

6. For this and the following paragraphs, cf. various arguments in *System* I.7, esp. I.7.7. and I.7.9, and the passages there indicated from *Essay*, esp. V and VI. None of the previous paragraphs above have been numbered as section I.

they are
capable of
the greatest
strength.

Our nature is susceptible of such ardour toward moral and social enjoyments as generally to be able to surmount all other desires, and make men despise all <152> bodily pleasure or pain. We see instances not only among the civilized, or where notions of virtue are strengthened by a finer education, but even among rude barbarians and robbers. From a point of honour, from gratitude, from zeal to a clan, or resentment of wrongs done to it, they can joyfully embrace all hardships, and defy death and torments.

Moral distur-
bance destroys
all pleasure.

On the other hand, place one amidst the greatest affluence of sensual enjoyments, but let him feel some social or moral disturbance from some distress of his friend, some danger to his party, or to his character from the imputation of cowardice, or treachery; sensual pleasures become nauseous, and wounds, and death appear little to him. He scorns one who tells him, "that befell his party, his friend, his character, what will, he may still enjoy his sensual affluence." He finds within himself superior springs of action, which are likewise superior sources of happiness, or misery.

Since then these social and moral enjoyments are the highest; that taste, those affections, and that course of action which tends to procure a constant train of such enjoyments, and secure us from their contraries, must be the natural means of the chief happiness, and preservatives from the deepest misery. Now these highest enjoyments are either these very affections and suitable actions, or the natural concomitants or consequences of them.

Social affec-
tions the most
joyful.

Have we felt the state of mind under lively affections of love, goodwill, bounty, gratitude, congratula<153>tion? What when we have acted vigorously and successfully from such affections; served a friend, relieved the distressed, turned sorrows into joy and gratitude, preserved a country, and made multitudes safe and happy? The sense of every man tells him this state is preferable to all others. The vicious themselves, who seem wholly devoted to sensuality, yet are not void of such affections and sentiments. They have their friendships, their points of honour, and engagements to parties, how rash or capricious soever. Some delights of this kind, some social affections, and imperfect virtues are their highest en-

joyments: 'tis* the general voice of nature that where these pleasures are excluded there is no happiness. And as sensuality cannot sufficiently employ or gratify human nature, affections of a contrary sort, sullenness, moroseness, suspicion, and envy must arise, which are both immediate misery, and the fruitful sources of it, wherever the social affections are suppressed.

Tho' the tendency of the social affections is to prevent misery, and thus prevent sympathetick sorrows; yet when this cannot be effected we must necessarily feel some degree of uneasiness of this generous sort. Here we should have recourse to some higher considerations, of the wisdom and goodness of the Divine Providence, of the duty and the moral excellence of an entire resignation to the supreme wisdom and goodness, and of the firm grounds of hope thence arising, that such evils as our best efforts cannot prevent, are <154> destined by our universal Parent for the best purposes. Upon less presumptions than these our sympathetick sufferings are often alleviated; when we have probable hopes that what at present moves our compassion is subservient to some superior future interest of those we love. This trust and resignation, with hope, upon a firm persuasion of the divine goodness, should be maintained by frequent meditation in such strength and vigour as to controll all narrower affections, and support the soul under the social distresses occasioned by them. Of this hereafter.⁸

But require belief and trust in Providence.⁷

To root out or abate the social affections, if it would prevent or abate our social sorrows, must also destroy or abate proportionably all our social and most of our moral joys. The abatement of even the narrower affections is rather a detriment to the human character. The most natural and perfect state which our minds at present seem capable of, is that where all the natural affections, desires and senses are preserved vigorous, in proportion to the dignity of the object they pursue; so that the inferior

Restraining the social affections immoral and hurtful.⁹

* *Cicero de Amicit.* l. 23. and often elsewhere. [*Cicero, De amicitia*, sec. 23.]

7. Cf. *Essay* VI.4, pp. 120–24.

8. See I.9 and, in particular, I.10 below.

9. Cf. again Hutcheson's criticism of the "lower rate" Stoics in *Essay* IV.5, pp. 83–84; see also I.6, n. 14 above.

are still kept under the restraint of the superior, and never allowed to defeat the end for which God intended them; or to controll either of the two grand determinations of our souls toward the happiness and perfection of the individual, and that of the system.

All the unkind
affections
uneasy.¹⁰

III. The several unkind affections and passions, 'tis plain, are originally uneasy. Nature clearly shows that they should not be the ordinary state of the mind. The very degrees of them which are innocent, nay necessary to the system, are attended with uneasy sensations, and little approbation can for any length of time accompany them. Such is anger, even in that degree which is necessary for defending ourselves or our friends, and repelling injuries: such is that deliberate resentment against the insolent and injurious, which aims at no more punishment than the safety of society requires: such that honest indignation against men advanced far above their merit. These all are uneasy affections; and there is little lovely in them. The same is true of that selfish desire of being superior to others, or the emulation or strong desire of eminence in some valuable qualities. This affection may be innocent, and is an useful spur to some tempers; but 'tis generally uneasy; and there is no moral beauty which the heart can calmly approve of this fondness of surpassing upon comparison.¹¹

And only
transient
emotions.

Beside the uneasiness which attends these passions, 'tis plain they naturally tend to make such changes upon their objects, as shall put an end to themselves, and raise contrary motions of regret and pity; when the objects are so depressed that we cease to fear evil from them, or are brought into an hearty repentance for any thing in them vicious or injurious: whereas the kind affections which we constantly approve, aim at such ends as remain delightful, and prolong and strengthen the affections. Good-will, and pity, aim at the happiness of their objects, and this, when obtained, is matter of permanent delight to the agent: and such offices

10. Cf. *Essay* VI.4, pp. 124–25, on “The Conduct of the unkind affections.” On Hutcheson’s critical discussion of Locke’s more general analysis of desire as uneasiness, which is not directly the subject matter here, cf. *Essay* I.3, pp. 22–27, and above, *System* I.3.2.

11. GUL Ms., p. 101: The following paragraph is an insertion from an interleaved slip of paper.

done to worthy objects increase our love <156> to them. This shews that the former set of affections are destined by nature to be only transient occasional emotions; but the latter to be the stable permanent dispositions of soul.

We have stated names for the excesses of these unkind passions, or when they arise without just or proportional causes, and are habitual; to wit, *malice, revenge, envy, ambition* or *pride*. But we have no such settled names for the innocent degrees. Hence some have too rashly imagined that some of our natural passions are absolutely evil in all degrees.¹³

These not absolutely evil in all degrees.¹²

But these unkind passions, thus uneasy even while innocent, were implanted partly for the interest of the individual, and partly for that of the system. As the external senses by grateful perceptions point out the safe state of the body, and the ordinary enjoyments, to the individual; and rouse him on the other hand by uneasy sensations occasionally, to ward off what is destructive: so the *moral faculty* in a like subserviency to the publick, recommends to the agent, and to every observer too, by a grateful approbation, all kind affections and actions; and on the other hand by an uneasy reluctance and remorse deters the agent from such affections as are pernicious to the system; and by the uneasy impulses of anger and indignation rouses every observer to oppose his designs.

These passions of anger, resentment and indignation even while they are innocent, or useful, are uneasy: and this, as well as the foregoing observation, shews that they never were destined to be the ordinary permanent dispositions of the soul: they should only arise occasionally, when something pernicious to the individual or the system must be repelled. They are a sort of ungrateful medicines for disorders, and not the natural food: they were implanted to repel injuries, and so far only as they are thus employed can they be deemed innocent. Now as a sense or appetite is depraved in an individual, which loaths its natural food, or craves what is not nourishing; as the organs of feeling must be disordered and sickly when they are pained with the salutary air, or necessary

Not intended by nature as permanent dispositions.

12. See I.8, n. 5 above.

13. This is presumably a general reference to Augustinian theologians and philosophers.

cloathing; surely that temper of mind must be as much depraved, where anger arises without hurt or injury received; or aversion and hatred, where there is no moral evil in the object; or envy upon the success of merit; or ill-will toward any innocent part of a system formed for, and preserved by, a social life, and an intercourse of good offices.

'Tis therefore our interest to examine well the merit of persons and causes, and to keep a strict rein over the unkind passions, which are uneasy while innocent; and so apt to exceed, that even in their moderate degrees they look so like something evil that they are little approved. The calmer affections of the soul toward the good either of the individual or the system, are more generally effectual than the turbulent passions, whatever use these passions may have in minds not enured to reflection. 'Tis desirable therefore to have our lives committed to these safer conductors, and to have an habitual caution against all violent <158> commotions of the unkind sort, as what are frequently dangerous.

Imperfections
incident to our
kind affections
of two sorts;¹⁴

IV. If the social affections are in themselves and their consequents the noblest enjoyments, 'tis plain the calm and extensive are the best of that kind, when they are in their full vigour, and enjoy their natural authority to direct or restrain the several narrower affections.

Two imperfections are incident to our kind affections; one when they extend only to a part, and yet without any bad dispositions toward any other part; the other is, where in the course of the operation of strong kind partial affections towards some, unkind and mischievous affections are apt to be excited towards others.¹⁵

not of full
extent,

In the first case; Men of smaller reflection may never form that most diffused calm purpose or desire of good to all, which is the highest moral excellence; and yet have friendly dispositions as far as their views and sphere of action extend, without ill-will to any. This temper is very ex-

14. On the discussion in this and the following paragraphs of the potential weaknesses of the kind affections, such as undue partiality, see also *System* I.5.7(2), as well as Shaftesbury's discussion of the dangers of a narrow "spirit of faction" in *Sensus Communis* III.3, p. 72.

15. GUL Ms., p. 103: "there are stronger kind affections toward some parts, and unkind affections toward others" is crossed out and replaced by "in the course of the operation of strong kind partial affections towards some, unkind and mischievous affections are apt to be excited towards others."

cellent, nor can more be expected from the generality of mankind: nor is more needful; as very few can have power to do the most extensive services. 'Tis no unjust partiality, when men generally follow the stronger ties of nature, or bonds of gratitude, or the motions of hearty esteem toward their worthy friends; provided they neglect no such offices as occur toward others, and can restrain these narrower affections when opposite to any more extensive interest which they discover. <159>

The dangerous partiality is when there are strong affections to a few, without any regards to other parts of the system equally valuable which are within the compass of our knowledge and sphere of action; or, perhaps, malicious dispositions toward them without natural causes, or quite beyond the proportion of them, or any subserviency to a publick interest. These social tho' partial affections are often occasions of pleasure; but the aversions may create as great uneasiness. When the kind affections are thus capriciously placed, there is little merit in them; they must be inconstant, and the self-approbation must vanish upon reflection. The object now admired may presently be disliked, and abhorred, by the same capriciousness which made it agreeable. In these partial affections there is less participation of joy; and what merit is in love without a proportioned cause? what satisfaction in returns of love from favourites injudiciously chosen? whereas the universal good-will, and even the limited affections upon natural causes, which exclude no just affection toward others, must be full of joy, and give the consciousness of meriting well from all; as such affections are subservient to the good of all.

or unjustly
partial.

The unjust aversions from an erroneous conscience and false notions of religion and virtue formed by superstition and wrong education, must lead into innumerable inconsistencies. If men do not banish all reflection there must be grievous remorse and inward displeasure: a bigot, a persecutor, a robber, with a sort of conscience of duty to his party or his system <160> of opinions, opposing natural compassion and the plainest dictates of justice, can have but poor narrow satisfactions. What are services to a party or cause where we have no just persuasion of its worth, and in opposition to the interest of many others? What in pleasing a Demon of whose moral perfections we can have no just or consistent notion? The struggles must be terrible between all the principles of

Danger of ill-
grounded
aversions.

humanity and this false conscience. Reflection must ever raise torturing suspicions that all is wrong. All stable satisfaction must be lost; or they must banish reason and inquiry.

Upon a false point of honour one kills a friend. Compassion and remorse immediately succeed. In persecution too, or cruelty from any party-zeal, may not the remonstrances of the sufferers, the talk of the world, or of the persecuted party, raise inward horrors and remorse, where they are often boldly denied? What is it to offend multitudes, and to be abhorred by them? How hard is it to justify any conduct opposite to humanity? What may our condition be in cooler years, when our present ambition and party-spirit may abate, and we shall see our conduct to have been full of guilt and cruelty toward the innocent; and offensive to God and all wise men? A good mind will never think it can be too cautious against any such superstitions, or party-prejudices, as may im-bitter it against any of its fellow creatures.

The selfish
passions when
too strong are
miserable.¹⁶

V. We next consider the temper where any or all the selfish passions are too violent. They are chiefly <161> these, the *love of life*, and of *sensual pleasure*, the *desire of interest*, or of the means of pleasure and the conveniencies of life, *desire of power*, of *glory*, and *ease*.

Of all these there is a moderate degree, consistent with social affections in their full strength. But, as we shewed above, that the good, the happiness aimed at by them, is inferior to that arising from the social affections; they ought therefore to yield to them and to the pursuits of virtue. When they are beyond their proportion they are called *cowardice* or pusillanimity, *luxury* or voluptuousness, *avarice*, *ambition*, *vanity*, *sloth*.

Thus love
of life.¹⁷

Love of life beyond a certain degree is a great unhappiness. Life in many cases is not worth retaining; and to preserve it on certain terms may be too dear a purchase. Death doubtless in many circumstances becomes an event earnestly to be longed for by the person himself; and others may wish for it as a joyful release to their dearest friends, whilst they studiously decline what others see is eligible. The love of life makes some act against their own interest as enemies to themselves. The dread

16. Cf. the discussion in Shaftesbury, *Inquiry* II.2.2, pp. 80–93.

17. Cf. the discussion in Shaftesbury, *Miscellaneous Reflections* IV.1, pp. 120–21.

of death often defeats its own end, betraying to dangers instead of repelling them, and taking away that presence of mind which in the courageous finds out the means of safety.

The very passion itself is misery; to feel cowardice and to be haunted with perpetual horrors. None live free from danger. The most athletic constitutions are not secured against acute distempers. The dread of death will poison all parts of life and all enjoyments, <162> even in the most fortunate circumstances: it will force men on some occasions into the meanest conduct, and make the heart such a wretched sight that we shall never endure to look into it; when for life, which is an uncertain enjoyment at best, and must be parted with at last, we have lost every thing generous and amiable which could make it worth retaining.

VI. The passions of sensuality, as we shewed above, pursue the meanest enjoyments, and where they engross the man they make the most despicable character. There is nothing in the enjoyments which we can like upon reflection. Nay it requires a long habit to restrain a natural sense of shame when we are keenly set upon such gratifications. Moral ideas must be joined in our imaginations to make the indulgence appear reputable, and to avoid the uneasy checks of that* *natural modesty*, which is designed to restrain these mean desires.

High
sensuality
is miserable.

Where passions of this sort are immoderate, the effects are most pernicious. They impair the health of body and mind; and exclude all manly improvement: the waste of time, the effeminacy, and sloth, and a thousand disorderly passions, break the natural strength of the soul, and the reins of self-government. The detriment to society from the extravagancies of the amorous kind; the bitter miseries occasioned in the dearest relations of life; the distress and infamy this <163> treacherous love exposes its object to, must be obvious to the slightest attention; and must give the most bitter remorse, where any sense of virtue or humanity

* *Humiliorum appetituum moderator pudor*, is the pretty expression of Cicero. The word [*pudor*, that is, "shame" or "modesty"] is indeed often taken more extensively for our *moral sense*; and *αἰδώς* is used in the same extent by the Greeks. [Cf. Hutcheson, *Short Introduction* I.7.1., p. 97, which translates *humiliorum appetituum moderator* as "the controller of our lower appetites"; *Short Introduction* I.1.13, p. 42; and Cicero, *De finibus* II.34, p. 205.]

remains; not to mention the waste this passion makes in the honesty, ingenuity, and modesty of our nature. Must it not then be contrary to our interest to have such passions violent?

Avarice a
wretched
passion.¹⁸

VII. As wealth may be useful in gratifying any of our desires, may promote the good of the individual, or be a fund for offices of humanity, 'tis no wonder that it is very generally pursued by such as extend their views beyond the present moment. A moderate desire of it is innocent, and wise, and subservient to the best purposes: and the possession is most joyful to such as refer it to the purposes of humanity and virtue. But when the desire is violent, and referred only to selfish purposes; or, by some confused notions of dignity and power, terminating almost only upon mere increase of possessions; the temper is as wretched as it is unreasonable, more oppressive to the heart where it resides than it can be to its neighbours. The natural desires are easily satisfied. Frugality and temperance with small expence may equal in pleasure the highest luxury. The thirst for wealth without reference to pleasure or offices of liberality, is an eager, insatiable, restless, joyless craving. Such as entertain high prospects of dignity and happiness secured to their posterity by their acquisitions, frequently by their example and instruction root out as far as they can every joyful and honourable disposition out of their minds; and when <164> the ungainly lesson has not its effect, the deformed example presented to their posterity tempts them into the opposite extreme: and the hope of lazy opulence and luxury quenches all ardour for improvement in the honourable arts of life, and encourages every dissolute inclination.

Ambition is
miserable.

The same things may be said of the desires of power and of glory. A moderate degree is innocent and useful; but when they grow too violent they are restless and uneasy to the individual, and often pernicious to society, and generally break through the most sacred ties of duty and humanity, and ruin every good disposition of heart. To desire reputation for integrity and moral worth is natural to every good temper; and it excites men to be what they desire to be reputed, which is the shortest way to true glory. Nay the desire of eminence in valuable abilities, while it is moderate, is useful in our constitution and innocent. But it may

18. On avarice and ambition, cf. also *Essay* II.7, p. 47.

grow so violent as to be a perpetual torment, and the source of the vilest and most wretched passions. All superior merit will then raise envy, and ill-will, and an humour of detraction. The mind will grow restless, violent, jealous, captious, easily provoked, incapable of bearing the least neglect, uneasy to all, and disliked by all. No passion can more defeat its end than vanity; as nothing is more odious and contemptible than arrogance, nothing more lovely than its opposite, modesty and humility.

VIII. The most opposite temper to ambition is the love of ease. This too while moderate is innocent and <165> useful, as the desire of sleep when one is weary. But when it turns to habitual sloth, not yielding to the social affections, and declining all laborious offices, it must destroy all true worth, all social enjoyment, sense of merit, and hopes of esteem. The languid sickly state of a body incapable of exercise appears in the complexion and weak appetites; a worse disorder seizes the mind that wants its natural exercise in the social offices of life. It must have tedious hours, be suspicious of contempt, jealous, and impotent in every passion. The effects upon interest are obvious. The indolent are exposed to all inconvenience and perplexity in their business; wanting to themselves in every thing, and deprived of the aid of others, as they have merited none from them, and discourage all assistance by their own inactivity.

Sloth and indolence miserable.

Thus the excesses of the selfish passions are certain misery. They make up the character called *selfish*, which is despicable and deprived of all the nobler joys of life.¹⁹ The temper as it is shameful runs into subtilty of conduct, and a feigned behaviour; loses its natural ingenuity and candour, and contracts distrust, suspicion and envy. An interest separate from our fellows is more and more formed every day, and the social motions suppressed. At last the temper becomes compleatly wretched and hateful.

IX. Some extraordinary and rare instances of most immoderate excesses of these selfish passions are in common speech properly enough termed monstrous and unnatural, but seem to have these epithets given

Monstrous passions whence arising.²⁰

19. Cf. Shaftesbury, *Inquiry* II.2.2, pp. 92–93.

20. Cf. Shaftesbury's discussion of what he terms "unnatural affections" in *Inquiry* II.2.3, pp. 93–98.

<166> them by some authors, as if they were of a distinct kind; such as when men seem to delight in torments, or to have an unprovoked desire of insulting, or petulancy, unnatural lusts, enormous pride, tyranny and misanthropy. These are only excesses of some passions naturally implanted, but raised to a prodigious degree without a just cause, upon some false opinions or confused imaginations, and by long indulgence and frequent irritation. Every one sees this to be the case in monstrous lusts, where the natural passion is grown ungovernable; and caprice and curiosity oft make men try all kinds of indulgences.

Tyranny. In the same manner, when the temper from natural constitution and other causes happens to be savage and morose, and where the mind has been long irritated and galled by opposition or some apprehended injuries, and no thorough reflection intervenes to stop the growth of the passion, surprizing rancour and cruelty may appear. One may easily suggest to himself, how long continued self-flattery and ambition, without any check from reflection, and the frequent anger arising from the oppositions which ambitious spirits generally meet with; and the constant causes of suspicion which their own conduct must afford, may make that horrid temper of jealousy, rage, cruelty, and oppression of every thing free and virtuous, which reigns in tyrants.

Petulancy and insolence. Consider the affectation of liberty, the anger at those restraints which the dissolute meet with from the laws of civilized societies, the abhorrence they expect from their soberer fellow-citizens, and the ostentation of fortitude; and they will account for that surprizing petulancy we meet with in some characters.

Savage cruelty. Civilized nations of great humanity, from false conceptions of the spirit and tempers of the rest of mankind, and from some absurd notions of dignity and pre-eminence in themselves, have thought them fit only to be slaves: some have found such entertainment from the surprizing efforts of art and courage, that insensible to the misery which was every moment obvious to their sight, they accounted it a spectacle of high delight, to behold gladiators putting each other to death. We all know the notions entertained by the vulgar concerning all hereticks; we know the pride of schoolmen and many ecclesiasticks; how it galls their insolent vanity that any man should assume to himself to be wiser than they in

tenets of religion by differing from them.²¹ When this insolent pride is long indulged by the enjoyment of power and popular veneration, it grows prodigious; and, it may explain how such men, and their implicate votaries, can behold with joy the most horrid tortures of men truly innocent, but dressed up in all the forms of impiety, and wickedness. 'Tis needless to explain the original of other monstrous dispositions.

As we shewed already the misery which attends the smaller excesses of these selfish and ill-natured²² passions; 'tis plain the more monstrous excesses must be still greater misery.

We have hitherto considered what affections of <168> mind and what temper toward the enjoyments of this world, or toward our fellow-creatures, are the natural sources of the highest enjoyment. There remains another object of affection to every rational mind to be fully considered, and which, from what already hath often occurred in our former inquiry, must be of the greatest importance to our happiness, viz. the *Deity*, the *Mind* which presides in the universe: and then we shall have in view the sources of all the enjoyments our nature is capable of. Our *moral faculty* too finds here its supreme object; as it naturally determines the mind to esteem and reverence all moral excellence, and perceives a duty and moral excellence in such veneration, and in the affections which ensue upon it.

21. Cf. *System* I.5.7(3).

22. GUL Ms., p. 108: "and ill-natured" is added.

The Duties toward God; and first, of just Sentiments concerning his Nature.¹

Our inquiries on this subject are reduced to two heads; first, What are the sentiments concerning the *Divine Nature*? And then, what are the affections and worship suited to these sentiments and what enjoyment or happiness they afford to the human mind?

Just senti-
ments, and
first that there
is a *Deity*.

Previous to our forming just sentiments concerning the Deity there must be a persuasion of his existence.² The world has ever agreed that there must <169> be some superior *Mind*, or *Minds*, endued with knowledge and great power, presiding over human affairs.³ Tradition no doubt from race to race has contributed something to diffuse this persuasion. The experience of evil from unknown causes, the fear of them, and the desire of some further aids against them when all visible powers have failed, may have excited some to this enquiry: the natural enthusiasm and admiration arising when we behold the great and beautiful works of nature has raised the curiosity of others to inquire into the cause: and this probably has been the most general motive: but the certainty of

1. This chapter is the only explicit remnant in the *System* of the traditional natural law arrangement of the duties into duties to God, self, and others. The triad was retained in *Short Introduction* I.4–6, pp. 76–96, but Hutcheson reversed the order to duties to God, others, and self. See I.6, n. 9 above. For Hutcheson's systematic presentation of natural theology, see *Synopsis*, Part III, “De Deo.”

2. Cf. Carmichael's comment on Pufendorf, *Natural Rights* I.6, pp. 54–55.

3. Hume, at the beginning of his *Natural History of Religion*, may be seen to agree with this point, yet he adopts a skeptical perspective regarding the distorting influence of traditions on our judgments.

any tenet depends not on the motives of inquiry into it, but on the validity of the proofs; and its dignity depends upon its importance to happiness. Vanity or avarice may have excited some to the study of Geometry; no man on this account will despise the science, or count it less certain or useful in life. We shall only point out briefly the heads of argument on this subject. The whole of natural knowledge or natural history, is a collection of evidence on this affair.⁴

II. Whithersoever we turn our eyes or our thoughts, there occur as great evidences of design, intention, art, and power, as our imagination can conceive. The most stupendous orbs, the greatest masses, moving in constant order, with great rapidity: forces and powers exerted every where, in worlds as large as this habitation of men: an universe large beyond imagination and all our powers of observation. But as far as we can make observations, manifest footsteps of contrivance and regular design appear in the most exquisite fitness of parts for their several uses, and in mutual connexions and dependances of things very distant in place. The earth, were it alone, would be a stupid mass, inactive and useless; but it is enlivened by the sun: and 'tis impregnated with innumerable seeds, which by warmth and moisture, and the other nutritive principles in the earth and air, extend and unfold their wondrous beautiful parts, and break forth in innumerable regular forms of different orders, from the lowest moss, to the stately oak: and these generally fitted for the nourishment or other conveniences of superior orders of beings, endued with powers of motion, of sense, of reason.

Proofs from
the structure
of the world.

The animal bodies again display new wonders of art, in their innumerable kinds, by the curious structures of their numerous parts, bones, muscles, membranes, nerves, veins, arteries. This wondrous structure appearing, not in a few instances, but in every one of the innumerable individuals of each species; similar to each other in their structures, and endued with the several powers and instincts of the kind, for their

From the
structures of
animal bodies;

4. In the following paragraphs, Hutcheson suggests that the natural world speaks in favour of the existence of a designing Divinity—an argument that is in line with many of his contemporaries, for example, Joseph Butler and the members of the “Moderate Party” of the Kirk of Scotland. This idea is famously subject to many poignant criticisms in Hume’s *Dialogues concerning Natural Religion*.

preservation and the continuance of the species. What nice organs to distinguish, receive, grind, swallow, and digest their food; and to diffuse the nourishment to all their parts! what a variety and nice structure of organs for spontaneous motions, subservient to their pleasure, support, or defence!

And their
propagation.

As all plants produce their curious seeds, many of them with proper mechanism to be dispersed by the <171> winds into their proper places: so animals are endued with instincts for the same purpose, a new form arises of the same kind with the parent-animal; and, where 'tis necessary, a salutary juice is prepared in the breasts or teats of the parent for its nourishment: the young has an instinct to apply to the proper source of its support, and nourishment: and the parent by a like instinct is prone to supply it. A fond care continues in the parent while the young needs protection, and the parent can be of use to it; and ceases when it is of no further use. And, that nothing may appear superfluous or ill designed, where the young of certain kinds needs no such food or protection from the parent, no such juices are prepared, no such instinct is implanted; as is the case with some kinds of *fish*, and *insects*.

Connexion of
the sun and at-
mosphere with
the earth and
animal bodies.

III. The earth and all its beauties depend on the sun. 'Tis placed at the most convenient distance: a considerably nearer, or more distant situation, would make it a less convenient habitation. The eyes of animals are fitted to the degree of light, and to their proper occupations, with the most admirable art; stronger light would be painful and pernicious, and fainter would be inconvenient. Their lungs, their ears, their blood, are suited to the surrounding air, its weight, and ordinary motions. This yielding, pressing, salutary fluid, is the means of life, of breathing, of circulation of blood, of voice to communicate desires and sentiments, and of gratifying their taste for harmony.

Land animals continually need fresh water. Such <172> is the extent of the ocean, itself also full of inhabitants suited to that element, such the heat of the sun, that vast quantities of vapours disencumbered of their salts are daily raised, and float in the air, till grown too dense they descend in fructifying showers; or, meeting with hills or mountains in their motion, are condensed and supply fountains and rivers, which

after carrying water to great tracts of land, are again discharged into the ocean. Thus all is full of power, activity and regular motion, wisely and exquisitely adapted to the uses of the living and sensible parts of the creation.

IV. The several classes of plants, and animals, owe nothing of this wondrous structure to any wisdom of their own or their parents; no art of theirs contrived the material frame, or the inward fabrick of their powers and instincts, or the conveniencies of their habitation. This immense power and wisdom must reside somewhere else; in some other being. Were the world supposed eternal, the argument is the same. The effects, the evidences of wisdom, were upon that supposition in all times. In all times therefore wisdom and power superior to human existed in some other being. If this admirable frame had a beginning, the evidence is more manifest.

No art of men or other visible agents the cause of these things.

Men have some power, and make some changes: we can exert our force in making them two ways; one in which we have no intention of any particular form or effect; as when we throw carelessly any materials out of our hands; another, when we design some end, intend <173> some form, and direct motions for that purpose. By the former manner of action scarce ever arises any thing regular, uniform, or wisely adapted to any purpose: by the other it is that we produce things regular and well adapted. Now the forms of nature in general, the changes and successive appearances in the new plants and animals, are manifestly of this later sort, regular, uniform, curiously adapted, and similar; and hence we justly conclude an original designing wisdom and power.

Two sorts of action, with, or without design.

Had we any evidence that the power or art which modified these materials resided in themselves, we should not perhaps recur to a prior cause. But whence that correspondence, connexion, and similarity? whence the mutual dependences of the several species, and of their individuals, on each other, and of all of them upon the earth, the atmosphere, and the sun? whence this adapted habitation? There must have preceded a concert among the several intelligences of the parts, or there must have been one presiding Intelligence. We have no evidence for such wisdom in the parts themselves as could have contrived their

All nature shews design.

constitutions: and therefore must conclude that there is a superior *all-ruling Mind*.

This not resident in the material world.

This *Mind* must itself be *first* and *original* in nature; nor is there any room for the question, from what cause did it proceed? The order of nature shews that wisdom and power have always existed somewhere; unless at some period existence could commence without a prior cause; or a being void of all power, thought, <174> and wisdom, could at a certain period, without the aid of any powerful or wise being, start into power or wisdom; or a being void of all power or wisdom could convey these perfections to others; all which suppositions are absurd. Since then there is evidence for original intelligence and power, as high as we could have upon a supposition that it existed, where shall we conclude it resides? Whether in this vast material system is there one intelligence or counsel enlivening and moving the whole, and modifying some parts of itself into particular intelligences for certain ends, and still governing them from certain affections toward them, and toward the whole; which was the notion of some Stoicks, who zealously taught many duties of piety and humanity? or does it reside in a spirit, a being simple and uncompounded, distinct from all divisible, changeable, or moveable substance; which was the notion of the Platonists? The grand duties of piety, the foundations of our hopes, and the motives to virtue, subsist on either scheme; but that of the Stoicks is loaded with unsurmountable objections of a metaphysical kind.⁵

The moral dispositions of the original *Mind*.

V. When the existence of original boundless art and power is ascertained, the next point is the moral character, or the dispositions of will toward other beings capable of happiness or misery; which must be the foundation of all piety, and all joy in religion.⁶

That it is benevolent, as this imports pure perfection.

Here first, if we can any way reason concerning the *original Nature* from what we feel in our own, or from any of our notions of excellency or perfection, we <175> must conceive in a *Deity* some *perceptive power*

5. Such criticisms of Stoic theology were quite commonplace. For another Scottish example of such a criticism, see, e.g., Archibald Campbell's *Necessity of Revelation* VI & VII, pp. 213–378.

6. The following arguments and analogies are criticized as anthropomorphism in Hume's *Dialogues concerning Natural Religion*, esp. dialogues IV and V.

analogous to our *moral sense*, by which he may have self-approbation in certain affections and actions rather than the contrary. Such a *power* must bring a large addition of happiness, and that of the noblest sort, along with it; and, in an omnipotent Mind, cannot be inconsistent with any other perfection or source of enjoyment. The ultimate determinations or affections of the *Divine Being*, which can be approved by himself, must either be *that* toward his own happiness; or a desire of the greatest universal happiness; or a desire of universal misery. The desire of his own happiness cannot be the sole ultimate desire or determination; because the desire of the happiness of other beings distinct from himself would be another source of sublime pure happiness, distinct from the former, but perfectly consistent with it, in a mind which always has it in its power to gratify this desire to the utmost, without obstructing any other source of happiness. The approbation and delight in this kind determination must be quite excluded from the *Divine Mind*, if there is no such original determination in it. And 'tis inconceivable that the *original Mind* can want any source of pure enjoyment or happiness, consistent with every other sort of excellence, while yet in other beings formed by the counsels of that which is original we experience such sources of happiness.

The ultimate desire of universal misery cannot be supposed the determination approved in the Divine Mind, nor can any such affection be conceived as original and essential; since there can be no original sense or power of perception corresponding to it in the *Divine Mind*. The *Deity* must have powers perceptive of happiness immediately. But in *that* which is *original* and *omnipotent* there can be no sense of misery, nor any idea of it, but what is suggested by his knowledge of the perceptive powers he has granted to his limited creatures, and the laws of sensation to which he has subjected them. *That* cannot be supposed the object of an original desire, the idea of which is not perceived by some original faculty of perception immediately suggesting it.⁸

No ultimate desire of the misery of others.⁷

7. Cf. above I.8.3 on the transient nature of unkind affections in the human mind.

8. GUL Ms., p. 114: The following paragraph is an insertion in the Ms. from an interleaved folio.

Besides, all malevolent dispositions of will, as they seem to carry along with them some uneasiness and misery to the mind where they reside, so they naturally tend to destroy their objects, and thus to destroy themselves. A resolute malice must ever be uneasy while its object subsists; and can only find rest by an entire removal of it, upon which the affection also ceases. Anger tends to inflict such misery on its object as must at last produce entire repentance, and thus remove the moral evil or turpitude which raised the wrathful indignation; or to bring the object so low that all opposition of interest must cease, and, along with it, the passion raised by it. Envy has the same tendency, and when its purpose is accomplished must in like manner cease. Whereas all the benevolent dispositions are in their own nature everlasting, producing happiness, and delighted with its continuance. Pity tends to remove the misery of its object; and thus <177> its own attendant pain is removed; but the love and good-will remain unabated by this change. 'Tis evident therefore that malevolent dispositions cannot be conceived as *original* in that *Mind* which is omnipotent, the source of all, and the sovereign disposer of all: but original good-will, and propensity to communicate happiness must be its essential permanent immutable disposition.

To suppose a determination toward the universal misery of others to be *original* in the Divine *Mind* is also entirely inconsistent with the constitution of all his rational creatures, in whom no such determination is found; and with that great degree of happiness we experience in life. *Omnipotence* sure would have effectually gratified its desires, by the highest universal misery.

We find in ourselves that all the ill-will we are capable of arises from our weakness, when we apprehend some damage or injury received, or dread it for the future; or find some opposition to our interest, or to the interests of those we wish well to: in that which is *original, omnipotent*, and the *cause* of all existence, there can neither be weakness, nor indigence, nor an opposition of its interests to those of its workmanship. If these more abstract reasonings do not satisfy, let us consider others more obvious from the effects of the Divine counsel and power.

VI. In judging of the design of any mechanism, where we tolerably understand it, we can always discern the *natural intention*, the *proper end* or *effect* of the <178> contrivance; and distinguish it from events which may casually ensue, or be the necessary attendants or consequents of it, tho' they are no part of the end aimed at by the contriver. The finest statue may hurt one, by falling on him: the most regular and convenient house, must obstruct the inhabitant's prospect of the heavens and the earth, more than a field does; and must put him to some trouble and expence in supporting it. By the most benign and wisely contrived course of the sun some severe weather must happen in some places. Some evils may be so essentially connected with the means of the supreme good, that *Omnipotence* cannot make it attainable to some beings, without them. Such evils therefore must exist in a world contrived by perfect Goodness. The goodness therefore of the author of a system, in which some evils appear, may be sufficiently proved, if the natural design of the structure appears to be good and benign, and the evils only such as must ensue upon laws well calculated for superior good. This reasoning will be exceedingly confirmed if we find a great superiority of pleasure, of happiness, actually enjoyed by means of the constitution and laws established in nature. Creatures who have no immediate intuition of the Creator, nor a compleat knowledge of the whole plan and all its parts, can expect no better evidence; nor should they desire it.

Proofs of goodness from the effects of Divine Power.⁹

If the design appears good and the effect a superiority of happiness.

Now all the curious mechanism observed, has conservation of life, pleasure, happiness, in some species or other, for its natural end. The external senses of <179> animals recommend things salutary, and reject what is destructive: and the finer powers of perception in like manner recommend to every one what is beneficial to the system, as well as to the individual; and naturally raise aversion to what is pernicious. The whole inward constitution of the affections and *moral faculty* above explained, is obviously contrived for the universal good, and therefore

The whole contrivance good.

9. The subsequent arguments are similar to the ones criticized in Hume's *Dialogues concerning Natural Religion*, esp. dialogues X and XI.

we only hint at it in this place.¹⁰ Some kinds of animals are plainly subordinated to some others, and the powers and instincts of the superior species may be destructive to the inferior; but they are the means of good to the species in which they reside.¹¹ The effects of them on the inferior is indeed the depriving some of them sooner of their existence; but not in a worse manner than they must have lost it however in a natural death: nay the suddenness of the violent death, to a creature of no fore-thought, makes it preferable to the tedious sort we call natural. And many of such low kinds must have perished as early by want of sustenance, had not nature provided other causes more gentle than famine. An *original malicious being* would have exercised its art in proper engines of torture, in parts formed for no other purposes, in appetites and senses leading ordinarily to what would be useless or pernicious, even in a moderate degree; in impatient ardours for what gave no pleasure or use; in excrescences useless for life or action, but burdensome and tormenting; and in affections pernicious to society, approved by a perverse taste. <180>

Contrary
appearances
are from
ignorance.

Observe all nature as far as our knowledge extends; we find the contrivance good. The objections of the *Epicureans*, and of some *moderns*, arose from their ignorance. The alledged blemishes are now known to be either the unavoidable attendants or consequents of a structure and of laws subservient to advantages which quite over-balance these inconveniences; or sometimes the direct and natural means of obtaining these advantages. The vast ocean, often reputed barren, we find is a necessary reservoir of water for the use of all land animals; itself also peopled with its own tribes, and richly furnished for their subsistence, from which too men derive a great support. The mountains are partly useful for pasture, for fruits, and grain; and partly for procuring rain, fountains, rivers. Storms arise from such causes as are most necessary for life, the exhalation of vapours by the sun, and their motion in the air. The care, attention, and labour, incumbent on men for their support, invigorate both the soul and the body: without them the earth becomes a barren forrest, but by them becomes a joyful copious habitation: and

10. This sentence ("The whole inward . . . place") is a marginal insertion.

11. Cf. the ideas in Shaftesbury, *Inquiry* I.2.1, pp. 8–12.

they are the natural causes of health and sagacity. 'Tis every way our advantage that we have no such slothful paradise as the poets feigned in the golden age.*

VI.¹³ But tho' it be granted that the contrivance naturally tends to good, yet if God be omnipotent, say <181> some authors, "why are we made of such poor materials, that we are often oppressed with pain during life; often tormented by our own passions, and by the injuries of others? Our frame too at last decays, and we yield our places with great pain to our successors of the same species. Why are we of such frail materials? why this succession of generations? why are our minds so imperfect either as to knowledge or virtue? might we not have had too greater strength of understanding, and a better proportion among our affections?"

Why an omnipotent God permits any evil.¹²

In answer to these arduous questions let us consider, what is highly probable, that the best possible constitution of an immense system of perceptive beings may necessarily require a diversity of orders, some higher in perfection and happiness, and some lower. There may be abundant enjoyments to some orders of beings without social action. But this we are sure of from experience, that there are orders of beings pretty high in the scale, whose supreme enjoyments consist in kind affections, and in exerting their powers in good offices from these affections. Nay 'tis impossible for us to conceive an higher sort of enjoyment. The consciousness of good-will to others tho' inactive, is highly delightful; but there is still a superior joy in exerting this disposition in beneficent actions. What if this be the supreme enjoyment in nature, as our

Different orders necessary in the best system.

* Compare the censures of Lucretius on the structure of the earth lib. v. from line 195 to 236, with our present discoveries in Natural Philosophy upon these subjects. His brother-poet Virgil, beautifully defends Providence upon the laborious condition of mankind, I Georg. line 120 to 145. [See Lucretius, *De rerum natura*, pp. 352–57; and Virgil, *Georgics*, pp. 106–9].

12. Many of the subsequent arguments, which may be connected to Leibniz's *Theodicy*, to Shaftesbury (e.g., *Inquiry* I.2.1, pp. 8–12), and to Butler's *Analogy of Religion*, are, again, subject to poignant criticism in Hume's *Dialogues concerning Natural Religion*, esp. dialogues X and XI.

13. This section is again numbered "VI," and the subsequent ones continue accordingly.

minds seem to feel it is? This must be excluded out of nature in a great measure, unless there be imperfection, indigence, pain, and even moral evil in nature. <182> There may be a social congratulation and esteem among well-disposed happy beings, in a state of inactive joy, without any difficulties. But there can be no place for action where there is no evil.

Experience of
evil gives an
higher sense of
good, and ex-
ercises virtue.

Not to mention, what is obvious among men, that our sense of many high enjoyments, both natural and moral, is exceedingly heightened by our having observed or experienced many of the contrary evils. The whole life of virtue among men, which we shewed to be the chief enjoyment, is a combat with evils natural or moral. No place can be for liberality where there is no indigence; or for fortitude where there is no danger; or for temperance where there are not lower appetites and passions; or for mercy and forgiveness, or friendly admonitions and counsels, and long-suffering, and requital of evil with good, where a species is incapable of moral evil. Such lovely offices, the remembrance of which must be eternally delightful, must be excluded; or some moral evils must exist. Nay what patience, resignation, and trust in God can be exercised in a system where misery cannot exist? If then the highest enjoyments we can conceive are fit to be introduced into the universe, some evils must come along with them. Nay what shall we conceive the life of the highest orders, if there were none inferior to them; no good to be done, no kind offices, no evils to be warded off, or good formerly wanting to be communicated? Can we conceive any thing more blessed, or delightful to the *Deity*, than communicating of good to indigent creatures in different orders? And <183> must not the highest goodness move him to furnish to the several higher orders opportunities for such divine exercises and enjoyments, by creating also orders inferior to them, and granting different degrees of abilities and perfection to the several individuals of the same species, that thus they may exercise their good affections in beneficent offices?

Perfect good-
ness must
make all orders
in which good
is superior.

If thus the most perfect goodness would determine the Author of Nature to create different orders of beings, and some of them subject to many evils and imperfections; the same goodness must require that this plan of creation be continued down to the lowest species in which

a superiority of good to the evils in its lot can be preserved, while the creation of such inferior species obstructs not the existence of as many of the superior, as the most perfect universe can admit. The lot therefore of great imperfection must fall somewhere: mankind can no more justly complain that they were not in an higher order, than the brutes that they were not made men.

Don't we see this confirmed in experience? We have no ground to believe that this earth could nourish an higher order than mankind. A globe of this kind may be necessary in the system: it must have such inhabitants or be desolate. Besides all the men it could maintain, there yet is room for other lower orders subordinate and subservient to their subsistence. We find all places peopled with such orders of life and sense as they can support; the inferior occupying what is not fit for the superior, or what is neglected by them. In <184> like manner, let us ascend to higher orders: there may be as many such as the best system of the universe admits; and yet in this great *house of our father there are many mansions* unfit for the higher orders, but too good to be desolate; and they are occupied by men, and lower animals. This was their place, or they must not have existed in the system. This earth perhaps could not furnish bodies incapable of decay, and as this decay comes on, we lose our keen appetites and senses of the goods of life. The scene cloy; we quit it, and give place to new spectators, whose livelier senses and appetites and more vigorous powers make it a greater blessing to them.

This confirmed by experience.

VII. But men will make further complaints. "Why these harsh laws of sensation, subjecting us to such acute pains, to such sympathetick sorrows, and remorse? why such furious passions?" and cannot an "*omnipresent infinite Power* interpose, beyond the common course of nature, in behalf of the innocent, the virtuous? no variety of business can fatigue or distract the *Deity*."

Strict laws of sensation necessary.

But in reply to all this: 'Tis absolutely necessary for the preservation of life that destructive impressions from without, and indispositions from within, should occasion pain to animals. Were it not so, how few would in any keen pursuits guard against precipices, wounds, burning, bruises, or hurtful abstinence from food. How could we be apprized of disorders, or guard against what might increase them? This law is

absolutely necessary to men of maturity and know<185>ledge; and how much more so to the young and imprudent? Nor can we complain of the law as constituting too acute sensations, since they do not universally obtain their end. The experience of the gout, and stone, and fevers, and racking sores, does not restrain all men from the vices which exposed them to these torments.*

So are all social
and moral
feelings.

Can we more justly repine at other laws subjecting us to compassion and remorse? are they not the kind admonitions and exhortations of the *Universal Parent*, delivered with some austerity, to restrain us from what may hurt us or our brethren, and excite us to assist them; or natural chastisements when we have been deficient in our duty to any part of this family.

The laws
should not be
stopped.

VIII. As to the stopping of these laws in favour of the innocent who by means of them are now exposed to many calamities, as by storms, fires, shipwrecks, the ruins of buildings, which make no distinctions; let us consider that the constant stopping or suspending the general laws when they would occasion any evil not subservient immediately to some present and superior good; or the governing the world by a variety of dissimilar wills, and not by uniform rules or laws; <186> would immediately supersede all contrivance or forethought of men, and all prudent action. There could be no room for projecting any kind offices to others, or concerting any schemes for our own interest, since we could find no constant or natural means for executing them.† Nay all such solicitudes

* One would think this common reasoning abundantly clear and certain; but Θερσιτης δ' ἐπὶ μῶνος ἀμετροεπῆς ἐκολῶα. [Homer, *Iliad* II.212. Thersites, a soldier of the Greek army in the Trojan War, is presented by Homer to have insulted Agamemnon before having been reprimanded by Odysseus for his verbal attacks.] Mr. Bayle in his *Reponse a un Provincial* [The GUL Ms., p. 119, has this as “Reponse aux une Provincial”] ch. 77. tells us, “That we might have had an ordinary sensation of pleasure when all was well; and that a sensible abatement of this pleasure might have sufficiently intimated to us our dangers:” Whereas we find that much stronger intimations and motives from the acutest pains, do not always deter from luxury and intemperance; or give sufficient caution even to the aged. And what will deter the rash and young? This abatement he talks of might indeed be sufficient if men were such triflers as to mind nothing but that sensation he supposes.

† To make this more obvious. Were there no fixed laws, no man would attempt to move. Motion would not follow his will, or not in that way he intended; or it

would be useless and vain, as there neither would be any proper means, nor any need of action; since we should find that all evil was prevented, and good obtained, without our activity. Thus all active virtue must be excluded.

Or shall the laws obtain whenever the effect is innocent or useful, but always be suspended when it is pernicious? This would make all human activity vain. No good man would be faint or weary with fasting, or labour; or be cold when he was naked. No occasion for any assistance or good-offices to a good man. Nay our very pleasures would lose a great deal of their relish, which partly arises from experience of pain. Rest is only grateful after weariness; and food has the best savour after hunger. And all active virtues must be superseded as entirely superfluous.

Or shall the laws only then be suspended when God foresees that no good shall arise from these evils which <187> ensue upon them, but take place when good is to arise from them? This may be so in fact, tho' we do not discern the good that may arise from such evils. But do they want that the laws should be stopped when some present visible superior good does not arise from the evils they occasion? that sickness or pain befalling infants or other innocents should be prevented, whenever God foresees that none will, or none can, by any virtuous office relieve them? "Many evils, say they, occasion no exercises of virtue either by the sufferer, or by others. Many injuries do not exercise the virtues of patience,

They cannot be suspended when evils ensue, and obtain when 'tis otherways.

All such suspension hurtful to virtue.

would fail in as many instances as it succeeded. We could not depend on the promises of others, nor hope for the success of any labours. Food would often cease to nourish; nor would the want of it occasion pain or death. Bodies would not persist in their states of rest, or motion; nor their parts cohere. None would build, plant, sow, or provide rayment. If the world remained, yet we could discern no order in it. Poisons would nourish; and wounds sometimes give us pleasure. [This may be read as a reaction to the skepticism in Hume's *Treatise*, especially to I.7. However, that would assume that Hutcheson worked on the *System* as late as the spring or summer of 1739, when we know that he was studying the newly published *Treatise*. See Hutcheson, *Correspondence and Occasional Writings*, letter no. 26. The target of the present text and note may be the classical skepticism that Hutcheson had seen as a moral task to curb: "I have for many years been more and more running into the Old Academy, despairing of Certainty in the most important Subjects, but satisfied with a sort of Probable knowledge which to an honest Mind will be sufficient for the Conduct of Life" (ibid.). His reading of the *Treatise* made that task much more urgent.]

resignation, or forgiveness, but draw after them bitter resentments, and a long train of mischiefs. The laws of nature might in these cases be suspended, and take place in others.”

But again, if the course of nature were still observed to alter in favour of such whom none assisted, all succour would be superfluous. Men would continue in these sins of omission, that *this grace might abound*. The good would ever be exposed to injuries and sufferings; for to such they would give occasion for exercising patience, resignation, and forgiveness; but the obstinate, the haughty, and the proud must remain secure. And why should men study to govern their passions, when the worst of them, they would see, could do no harm.

Or shall the course of nature take its full effect in bringing evils on the wicked, but always alter in favour of the good? Even so, all care about the good would <188> be foolish, and the most delightful virtues would be superfluous. Again, the happiness of the virtuous is often much connected with that of others. Must all their families, friends, and countries be protected? At this rate what shall we call the order of nature, the knowledge of which can direct our actions? The deviation must be as common as the ordinary course. And then there would remain no exercise for the patience of the virtuous, their resignation, fortitude, sacrificing their interests to *God*, and the *Publick*, when they were thus made impossible, and inaccessible to the strokes of fortune.

In fine, if it was worthy of a *good God* to create an order of beings whose chief enjoyments should consist in the vigour and activity of kind affections, and moral pleasures, there must be different orders of beings; the world must be governed by general laws universally obtaining; and many particular evils, natural and moral, must be permitted.

IX. Now as the sole foundation of the most plausible scheme of two independent principles, the one *evil* and *malicious*, and the other *good*, is the mixture we observe of evil and good in this world; since we have abundantly proved that there must be such a mixture intended by the

The Manichean scheme without foundation.¹⁴

14. Manicheism was an ancient Persian religion which taught that two cosmological principles, a good one and an evil one, are struggling for power in this world. Compare this with Hume's comments in *Dialogues concerning Natural Religion* XI.

most perfect Goodness, that supposition must be without any rational foundation. Did we observe some beings perfectly good, and others perfectly evil, there might be some presumption for two opposite principles; or did we discover any laws plainly destined for mischief alone, and others destined <189> for good; this too would be another presumption. But that *two Minds*, with opposite intentions, should always unite and conspire in a mixed system is inconceivable. Now the whole of natural knowledge shews us the contrary of these presumptions: no species is constituted absolutely evil: no law obtains which is not designed for superior good. For this we must refer to all the antient and modern observations on the constitution of nature.

Opposite intentions in *two causes* of equal art and power could have no effect. They could have no motive to unite in forming a world: since each would know that the art and power of the other would introduce as much of what was offensive to him, as his own art or power could effect of what was agreeable.

No effect from two opposite principles.

Upon this supposition should we not plainly observe malicious mechanism in the works of nature, as frequently as we observe what is kind and useful. But nothing of this sort occurs. No malice, original, sedate, and unprovoked appears in the works of nature; but on many occasions we see kindness gratuitous and unmerited, in the tender relations of life, in the esteem of virtuous characters by which we have not been profited, and in compassion toward the unknown. No original or natural joy in misery, it never pleases without some previous notion of great moral evil in the sufferer, or of some opposition to our interest. No *moral faculty* is observed approving what is hurtful to the publick; but in all rational agents we find a contrary one, which immediately approves all kindness, <190> and humanity, and beneficence. Sure the art of a malicious principle must have exerted itself in some original mechanism destined for mischief.

X. But granting the mechanism to be universally good; yet if there appeared a prepollency of misery in this world, as some good men in

Good superior in life.¹⁵

15. This idea is subjected to poignant criticism in Hume's *Dialogues concerning Natural Religion*, esp. dialogue X.

their melancholy declamations have alledged, it would still leave some uneasy suspicions in the mind. This present state is the only fund of our evidence, independent of revelation, from which we conclude about other worlds, or future states. If misery is superior here, 'tis true that even in that case, the *Deity* might be perfectly good, as this misery of a part might be necessary for some superior good in the universe: but then we should not have full evidence for his goodness from the effects of it. The case however is otherways. Happiness is far superior to misery, even in this present world; and this compleats all the evidence we could expect, or require.

Natural good
superior in the
whole.

First as to natural good: How frequent are the pleasures of sense, and the gratifications of appetite; and how rare the acute sensations of pain? seldom do they employ many months in a life of seventy or eighty years: the weaker bodies who have a larger share of it, are not the hundredth part of mankind. If bodily pleasure is of a low transitory nature, so is bodily pain: when the sensation is past, and we apprehend no returns of it, all the evil is gone; and it begins to yield pleasant reflections. Consider the frequent returns of our pleasures, and their duration will appear incomparably greater; and they are pretty near as intense in their kind, as any pain we are commonly exposed to. Such as are well experienced in both are not terrified from some high sensual enjoyments by the danger of pain ensuing. To ballance the acuter pains, which are rare, let us consider the frequent recurrence of very high pleasures. If many perish early in life, the pain they feel is probably neither so intense, or lasting, as that felt by men in full strength; nor is it increased by fears and anxiety.

Pleasures of
sense.

Of imagination
and
sympathy.

The pleasures of the imagination, and of knowledge, are pretty much a clear stock of good, with small deductions,* as there is scarce any pain properly opposite to them: and the pains of sympathy are over-ballanced, by the more lasting joys upon the relief of the distressed, and upon the prosperity of such as we love: not to mention the joyful approbation of the temper itself; the joyful hopes, under a good providence, for all worthy objects of our affection: and this pain we see plainly is a necessary

* See above ch. vii. § 14. [In the section referred to (I.7.14), Hutcheson argues that there are far more pleasures of imagination than pains of imagination.]

precaution in providence, to engage us to promote the happiness of others, and defend them from evil.

The difficulty seems greater as to moral evil. But a person wholly devoid of all virtue is as rare as one free from all vice. For the very kindest purposes, God has indeed planted a very high standard of virtue in our hearts. We expect universal innocence, and a long course of good-offices, to denote a character as good: but two or three remarkably vicious actions make it <192> odious. Fraud, theft, violence, ingratitude, lewdness, in a few instances, ruin a character almost irreparably; tho' the rest of life be innocent, and tho' these actions were committed under great temptations, or flowed from no evil intention, but from some selfish passion or eager appetite, or from even some lovely partial tenderness, such as that to a family. There are few in whose lives we will not find an hundred actions not only innocent, but flowing from some lovely affection, for one flowing from any ill-natured intention. Parental love, friendships, gratitude, zeal for parties and countries, along with the natural appetites, and desires of the means of self-preservation, are the common springs of human action. And seldom do their vices proceed from any thing else than these principles grown perhaps too strong to be restrained by some nobler or more extensive affections, or by a regard to the rules which are requisite for the good of society. We have indeed a standard of virtue set up in our hearts, which we cannot keep up to: and thus are all conscious of guilt in the sight of God. And yet the lower virtues are so frequent, that human life is generally not only a safe state, but very agreeable.¹⁶

The difficulty
as to moral
good and evil.

This circumstance in our constitution, that the standard of moral good is set so high, tho' it is apt to give the mind an unfavourable impression of our species as very corrupt, is yet very necessary and useful, as it is a strong restraint from every thing injurious or vicious, and a powerful spur to a continual advancement in perfection. Indeed without such a standard <193> we could not have any idea of perfection, nor could there be any formed intention in the human mind to make progress in virtue. But when we see so few on whom it has its full effect,

¹⁶. GUL Ms., p. 124: The following paragraph is an insertion from an interleaved folio.

even of those who live to mature age, it seems to carry no faint intimation, that either we once were in a higher state of perfection, or that such a state is still before us. Unless we be destined for such a state, the planting such a standard must have the same unaccountable appearance, as the laying up of great magazines, and trains of artillery, where no military operations were intended.

An appeal to
men's hearts.

XI. To confirm this prevalence of good in life, let us consider, that men can certainly tell what they would desire upon any possible supposition, as well as in matters which actually befall them. Imagine a medicine discovered, which without pain would cast both soul and body into an everlasting sleep, or stop all thought or existence for ever. In old age perhaps, or under some sore diseases, some few might chuse to use this medicine, to escape from all evil by the loss of all good; but not one in a thousand: and the few who would, have enjoyed many years during which life was eligible, for the months in which they would chuse annihilation. Many of them have had their share of life; they should be ready to leave it, as a satisfied guest leaves a plentiful table. What altho' at last death should for a few months become eligible to every one, after an agreeable life for many years? If the judgments of the young, while all the senses, appetites and passions are vigorous, and joyful hopes inflame the imagination, may overvalue the good of life; the judgments of the aged may be equally partial on the other side, when all the powers are become languid, and the memory of pleasures almost effaced. Men in the middle of life, who see the condition of it, who remember the joys of youth, feel their present state, and observe in others the condition of old age, are certainly the best judges. Not one in a thousand would quit all he enjoys, to avoid all he fears. 'Tis high ingratitude in men to pique themselves upon depreciating all the gifts of God, and aggravating all the evils of our lot. Should Mercury come at their requests, when they have fretfully thrown down their burthens, as in the old fable, they would soon intreat him, not to take down their souls to Lethe, but to help them to take up their loads again.¹⁷

17. Hutcheson is here playing with two elements from ancient mythology: Lethe is one of the rivers of Hades that brings complete oblivion to those who drink from

In these debates some recite all the wickedness and misery they have seen, read, or heard related: wars, murders, piracies, assassinations, sacking of cities, ravaging of countries, military executions, massacres, crusado's, acts of faith in the holy inquisition: all the frauds and villanies detected in courts of justice: all the corruption, falshood, dissimulation, ingratitude, treacherous undermining, and calumny, and lewdness, in palaces; as if these were the common employments of mankind; or as if a large portion of mankind were concerned in such things by their stations. Prisons, and hospitals, the abodes of the criminal and diseased, were never so populous as the cities where they stand: they scarce ever contained the thousandth part of a city state. Milton's description of the infirmary,¹⁸ in his vision, must move the hardest heart: but who will estimate the health of a people from an infirmary. A monstrous plant or animal is long exposed to view in the repositories of the curious: the rarity makes the view entertain us, and makes us fond to talk about it. But millions of regular compleat forms exist for one monster; they are so common that they raise no attention or admiration. We retain a lively remembrance of any grievous sickness or danger we escaped, of any horrid calamity, or villany: our souls are pierced with wars, slaughter, massacres, plagues; forgetting the vastly superior numbers which escape all these evils, and enjoy the common peaceful condition of life. The sufferers in these calamities seldom endure more pain than what attends a natural death; and they make not a fortieth part of mankind. Scarce five hundred thousand of our countrymen have perished by these calamities, in any century of the British history: and forty times that number, in the worst of times, have escaped them.

The causes of mistake here.

'Tis that lovely natural compassion which makes us so deeply feel these great calamities and remember them. We wish well to all, and desire an happy state of the universe, from a yet finer principle; and deeply

Compassion the cause of our mistaken reasonings.

it. And according to Aesop's fable, Mercury, the god of commerce, helped workmen to recover their lost axes. Hutcheson seems to insinuate that we will naturally correct our tendencies to underestimate the enjoyments and to overestimate the burdens of this life.

18. Hutcheson refers to Milton's description of the "lazar-house" in *Paradise Lost* XI, lines 477–514.

regret every contrary appearance, even when we have no fears about ourselves. These lovely principles in our constitution should plead more strongly in our hearts for the goodness of the *all-ruling Mind*, than those appearances of evil, were they as great as a <196> melancholy eloquence often paints them, could plead for the contrary.

Histories give
us a view only
of a small part
of life.

While histories relate wars, seditions, massacres, and the corruptions and intrigues of courts, they are silent about those vastly superior numbers who in safe obscurity, are virtuously or innocently employed in the natural business and enjoyments of mankind. We read the actions of the great, of men exposed to all the temptations of avarice and ambition, raised above the common lot of honest labour and industry, with minds often corrupted from their infancy by the elevation of their fortunes, and all their passions inflamed by flattery and luxury. The social joyful innocent employments of the bulk of mankind are no subjects of history; nor even the ordinary regular administration of a state in the protection of a people and the execution of justice. Histories dwell upon the critical times, the sicknesses of states, the parties, and factions, and their contentions; revolutions, and foreign wars, and their causes. These dangers, their causes, and the remedies applied, must be recorded for the use of future ages; and their rarity, in comparison of the natural business of social life, makes them more entertaining. Thus authors in medicine relate not the agreeable enjoyments and exercises of health. The causes, symptoms, and prognosticks of disorders, their critical turns, and the effects of different medicines applied, are the proper subjects of their dissertations.

Lower condi-
tions as happy
as the higher.

Men placed in the higher conditions of life, enured to ease and softness, may imagine the laborious state <197> of the lower, to be a miserable slavery, because it would be so to them were they reduced to it with their present habits of soul and body. But in the lower conditions, strength of body, keen appetites, sweet intervals of rest, moderate desires, and plain fare, make up all their wants in point of sensual pleasure. And the kind affections, mutual love, social joys, friendships, parental and filial duties, moral enjoyments, and even some honour, in a narrower circle, have place in the lower conditions as well as the higher; and all these affections generally more sincere.

XII. How shall a being too imperfect to comprehend the whole administration of this universe in all its parts, and all its duration, with all the connexions of the several parts, judge concerning the presiding *Mind*, and his intentions? We see particular evils sometimes necessary to superior good, and therefore benignly ordered to exist. We see also some pleasures and advantages occasioning superior evils. There may therefore be other like connexions and tendencies on both sides unknown to us. We cannot therefore pronounce of any event that it is either absolutely good, or absolutely evil, in the whole. How does a wise and dutiful child judge of its parent's affections? Or how does one in mature years judge of the intention of his physician when he is a stranger to his art? The child is sometimes restrained in its pleasures, chastised, confined to laborious exercises or studies; the patient receives nauseous potions, and feels painful operations. But the child finds the general tenor to be kind; many pleasures and conveniences supplied; and a constant protection and support afforded; it has found the advantages arising on some occasions from restraint and discipline; it finds its powers, its knowledge, and its temper improved. The patient has found health sometimes the effect of nauseous medicines. 'Tis just thus in nature. Order, peace, health, joy, pleasure, are still prevalent in this great family, superior to all the evils we observe. Human life is universally eligible, tho' it is an unmixed state to none: we can have no such presumptions of any interest of the Supreme Mind opposite to that of his creatures, as may lye against the intentions of the best of men. Should we not then use that equity in our conclusions about the *Deity*, that is due to our fellows; notwithstanding a few opposite appearances.

How men of imperfect views can judge of the whole.¹⁹

XIII. Since then the whole contrivance of nature, directly intended for good, and the prevalence of happiness in consequence of it, proves the *original Mind* to be benevolent; wherever there is any real goodness, a greater happiness must be more desired than a less; and where there is sufficient power, the desire shall be accomplished. If God be omnipotent and wise, all is well: the best order obtains in the whole: no evil is per-

If God be good he is perfectly good.

19. Contrast this to Hume, *Dialogues concerning Natural Religion*, esp. dialogue XI, which argues that our imperfect knowledge does not permit us to make the conclusion suggested by Hutcheson.

mitted which is not necessary for superior good, or the necessary attendant and consequent upon what is ordered with the most benign intention for the greatest perfection and happiness of the universe.

Unreasonable
to demand the
particular pur-
poses of all
evils.

'Tis arrogant to demand a particular account how each evil is necessary or subservient to some superior <199> good. In the best possible scheme many things must be inexplicable to imperfect knowledge. The ends and connexions must be hid, as some steps in the oeconomy of the parent, or the practice of the physician must be dark to the child, or the patient. 'Tis enough that we discern the natural end to be good in all the mechanism of nature which we understand; that happiness is prevalent, and our state very eligible. All new discoveries increase our evidence by shewing the wise purposes of what before seemed an imperfection. A candid mind must conclude the same to be the case of parts whose uses are yet unknown. The very anxieties of men about this grand point, help to confirm it, as they shew the natural determination of the soul to wish all well in the universe; one of the clearest footsteps of our benevolent Creator imprinted in our own hearts. This truth must be acceptable to all, where vanity, affectation of singularity and of eminent penetration, or an humour of contradiction, hath not engrossed the heart.

The hopes of a
future state
universal.²⁰

XIV. Add to all this, that the prevalent goodness observed in the administration of nature leads to an hope which at once removes all objections, that of a future state of eternal existence to all minds capable of moral sentiments, of enquiring about the order of the whole, of anxiety about it, of knowing its author, or of any fore-thought about existence after death. The powers of thought and reflection, as they extend to all times past and future, and to the state of others as well as our own, and are accompanied with exten<200>sive affections and a *moral faculty*, make all orders of being endued with them capable of incomparably greater happiness or misery than any of the brutal kinds. If the duration of men is to be eternal, and an happy immortality obtained by these very means which are most beatifick to us in this life; the evils of these few years during our mortal state are not worthy of regard; they are not once to be compared with the happiness to ensue.

20. Cf. *Correspondence and Occasional Writings*, p. 68, n. 127, as well as *Synopsis* II.4, pp. 145–49.

The boldest Epicurean never attempted²² direct proof that a future state is impossible. Many have believed it who conceived the soul to be material. Mankind in all ages and nations have hoped for it, without any prejudice of sense in its favour. The opinion is natural to mankind, and what their Creator has designed they should entertain. 'Tis confirmed not a little by arguments which shew the subject of thought, reason, and affections not to be a divisible system of distinct substances, as every part of matter is. The simplicity and unity of consciousness could not result from modes dispersed and inherent in an aggregate of different bodies in distinct places.* Nor is the activity of the soul consistent with the passiveness of matter. We feel our happiness or misery, and the dignity and perfection, or their contraries, for which we esteem or dislike ourselves or others, to be qualities quite insensible, no way related to the body or its parts, or affected by any changes befalling the body.

No proofs of the contrary.

The soul seems distinct from matter.²¹

The nature and order of our perceptions shew this distinction. First, *external sensations* present forms quite distinct from this *self*, and no further related to it than that they are perceived. Their changes to the better or the worse affect not nor alter the state of the perceiver. A second set of perceptions approaches a little nearer, those of *bodily pleasure* and *pain*. The state of the perceiving *self* is affected by them, and made easy or uneasy. But *nature* orders in a way quite inexplicable, that these perceptions are connected with parts of the body, or the spaces which they once occupied: and the accident is naturally conceived as affecting the body, and not altering the dignity of the soul. Let *Anatomists* talk of motions propagated by nerves to the brain, or to some gland the seat of the soul:²³ when the finger is cut, as sure as pain is felt at all, 'tis felt in the finger, or in the space where the finger was. *Nature* declares the event

The nature of our perception confirms it.

21. For the following paragraphs, cf. *Synopsis*, II.3, pp. 138–44.

22. GUL Ms., p. 129: "offered" is crossed out and replaced by "attempted."

* This argument from our consciousness of the unity of the perceiver and agent, in all that multitude of sensations, judgments, affections, desires, is well urged by Aristotle, *De Anima*, I. i. and by Dr. Sam. Clarke. See also Mr. Baxter's ingenious book on this subject. [The references are to Samuel Clarke's *A Letter to Mr. Dodwell*, which collects Clarke's extensive polemics against Henry Dodwell (the elder) and Anthony Collins. The second reference is to Andrew Baxter, *An Enquiry into the Nature of the Human Soul*, sec. 3. See also Hutcheson, *Synopsis*, II.3.3, p. 140.]

23. The reference is to the Cartesian theory.

to be an accident to the body, not destroying or abating the excellence of the perceiver: not even when the sensations indicate such accidents as must soon destroy the body altogether. Nay some such sensations of pain increase rather the personal dignity; and some sensations of pleasure abate it. But there is a third sort of perceptions, when we are conscious of knowledge, goodness, faith, integrity, friendliness, contempt of sensual pleasures, publick spirit. These we feel to be the immediate qualities of this *self*, the personal excellencies in which all its true dignity consists, as its baseness would consist in the contrary dispositions. We know these qualities, and their names, as well as we do the sensible ones: we feel that these have no relation to the body, or its parts, dimensions, spaces, figures.* *Nature* thus intimates to us a spirit distinct from the body over which it presides, in regulating its motions, as clearly as it intimates the difference of our bodies from external objects. Nay it intimates a greater difference, or disparity of substance; as all the qualities of the soul are quite disparate and of a different kind from those of matter: and 'tis only by their qualities that substances are known.

Direct proofs
of a future
state.

XV. *God* declares by the constitution of nature, by the *moral faculty* he has given us, that he espouses the cause of virtue and of the universal happiness. Virtue in many instances is born down and defeated in this world. In such events our best dispositions give us much sorrow for others, and virtue sometimes exposes to the greatest external evils. From the goodness of *God* we must hope for some compensation to the worthy and unfortunate; and that the injurious and oppressive shall find cause to repent of their contradicting the will of a *good Deity*. There is no defect of power in *God*; no envy or ill-nature. Shall beings of such noble powers, so far advanced in the perfections *God* approves, with such desires and hopes of immortality, be frustrated in their most honourable hopes? Hopes necessary to their compleat enjoyment <203> of virtue in this world, since without them they could have little joy, in this uncertainty of human affairs, either from their own state, or from that of the

* This reasoning frequently occurs in Plato. See 1 *Alcibiades*. [Plato, *Alcibiades* I.129b–130e, pp. 194–203. Cf. Hutcheson, *Synopsis*, II.3.4, p. 140, where a similar reference to *Alcibiades* was added in the posthumous 1749 edition.]

dearest and worthiest objects of all their best affections. Shall a plan of an universe so admirable in other respects want that further part which would make all compleat? What altho' *God* could not be charged with cruelty or injustice upon this supposition, since he has made virtue itself the chief happiness, and vice the supreme misery? Shall we expect no more from the *original omnipotent Goodness* than what we count a poor degree of virtue in a man, the doing only that good which is necessary to avoid the imputation of injustice? How far is this surpassed by the overflowing goodness of some worthy men? And how unlike to the conduct of that *liberal hand* that *satisfieth the desires of every thing that lives*?²⁴

If there are in the universe any rational agents capable of defection from their integrity, spectators of human affairs, who need motives to perseverance from the sanctions of laws: if such beings discern the external prosperity of the wicked, when their stupified consciences are insensible of remorse, and they live in affluence of all the pleasures they relish, and in a moment go down to the grave free from all future punishment; how must this encourage any imperfect spectator in his vices? Must not such impunity of transgressors destroy the authority and influence of the divine laws? The minds of a nobler relish see indeed that the vicious have lost the supreme enjoyments of <204> life; but the vicious have no taste for them, nor regret for the want of them, and wallow in what they relish. Can such unfelt punishments answer the wise ends of government, the correcting and reforming even of those who are depraved in a great degree? How little effect can they have, if men need dread nothing further?

Should one behold a building not yet finished, the several parts shewing exquisite art, yet still wanting a further part to make all compleat and convenient, room left for this part, and even some indications of this further building intended; would not a candid spectator conclude that this further part was also in the plan of the architect, tho' some reasons retarded the execution of it? This is the case in the moral world.²⁵ The structure is exquisite, but not compleat: we see space for further

24. Psalm 145:16.

25. Contrast this with Hume, *Dialogues concerning Natural Religion* II and then XI, where the building metaphor is criticized.

building, and indications of the design in the desires and hopes of all ages and nations, in our natural sense of justice, and in our most noble and extensive affections about the state of others, and of the universe; and shall we not confide and hope in the art, the goodness, the inexhaustible wealth of the *great Architect*.

We have dwelt long on this head, rather pointing out the sources of evidence than displaying it fully, because the ascertaining the goodness of *God* is the grand foundation of our happiness and the main pillar of virtue. We shall briefly touch at his other attributes, least any mistakes about them should abate that high veneration and admiration due to his excellency. <205>

The other
attributes of
God. A spirit.²⁶

XVI. First all the reasons which prove any thinking being to be a distinct substance from matter, prove that *God* is a spirit, and is not the great material mass of this universe; as all the proofs of his existence are proofs of original thought, wisdom, consciousness, activity, affection; powers quite inconsistent with the nature of matter. By calling him a spirit we do not mean that he must be a substance of the same species or kind with the human soul, and only greater. Tho' all thinking beings differ in kind from all matter, yet there may be innumerable orders or kinds of spirits, with essential differences from each other, from that lowest spirit of life, which is in the meanest animal, to the *infinite Deity*.

Infinite.

Again, what is *original* and *uncaused* cannot be conceived as limited in its nature, either by its own choice, or by the will of any prior cause, to any particular finite degree of perfection, or to those of one kind, while it wants others. No possible reason or cause can be assigned for some sorts or degrees rather than others. We see from the effects, that the original perfections are high beyond imagination: and there was no prior will or choice of any being to confine it to one species or degree. This leads us to conceive an original boundless ocean of all excellency and perfection, from which all limited perfections have been derived.

And One.

The same thoughts lead us to conceive the *original Being* as one, and uncompounded of distinct be<206>ings or parts. No possible reason or cause for plurality, for one number of *original beings*, rather than any

26. For the following section, cf. *Synopsis* III.2, pp. 162–67.

other. No evidence for more, from any effects or appearances which *one original Cause* cannot account for. Nay all the appearances of connexion, mutual dependencies of parts, and similarity of structure, in those which are very remote from each other, lead us to unity of *design* and *power*. This shews sufficiently the vanity of *Polytheism*, if any ever believed a plurality of *original beings*. The wiser *Heathens* had a different *Polytheism*; and that of the *vulgar* arose from low conceptions of the *Deities* as weak and imperfect, subject to distraction and confusion by a multitude of cares, or by an extensive providence, and like men, embarrassed when they undertake too much. *One almighty and omniscient Being* can preside easily over all, without toil or confusion.²⁷

The continual power exerted in all parts of the universe, and the unlimited nature of the *original Being*, leads us to conceive him posset of such *omnipresence* and *immensity* as is requisite to universal knowledge and action. And *that* which is *original* must be eternal.

Omnipresent.

XVI.²⁸ From power, wisdom, and goodness we infer that *God* exercises an universal providence.²⁹ To a Being endued with these perfections the state of an universe of so many creatures capable of happiness or misery cannot be indifferent. Goodness must excite him to exert his power and wisdom in governing all for <207> the best purposes, the universal happiness. Nor can we conceive any exercise of his powers more worthy of *God*, or more delightful to him.

God rules all by his providence.

What other motive to create, but a desire to communicate perfection and happiness? *God* cannot be conceived as ultimately studious of glory from creatures infinitely below himself. And all desire of glory must presuppose that something is previously discerned as excellent, that some determination of his nature, or some affection, is essentially the object of his approbation: and what other determination can we suppose the

Goodness the spring of creation.³⁰

27. In the Cf. Marcus Aurelius, *Meditations*, p. 98, note*, 1755 ed., this paragraph is erroneously numbered "XVI" instead of "XVII."

28. Cf. *Synopsis* III.5.3–4, pp. 182–85, as well as *Correspondence and Occasional Writings*, pp. 362–64.

29. Again, see Hume, *Dialogues concerning Natural Religion*, esp. dialogue X, for a critical perspective on this point.

30. Cf. *Synopsis* III.5.2, pp. 180–82.

object of his highest approbation than perfect goodness, ever disposing him to communicate happiness. This determination must move him to display his own excellencies to his rational creatures by his works, that thus he may be the source of the highest happiness to them, the noblest object of their contemplation and veneration, of their love, esteem, hope, and secure confidence, and the best pattern for their imitation. *God* displays his perfections to make his creatures happy in the knowledge and love of them; and not to derive new happiness to himself from their praises, or admiration.³¹

The holiness
of the Deity.³²

The *wisdom* and *goodness* of *God* shew us his moral purity or holiness. As he is independent, almighty, and wise, he cannot be indigent: he can have no private ends opposite to the universal good; nor has he any low appetites or passions. These are all the incitements to moral evil which we can conceive. In *God* none of them can have place, nothing contrary to <208> that universal goodness in which he must have the highest complacency.

The justice
of God.

His conduct toward his creatures must be such as goodness and wisdom suggest. His laws must be good and just, adapted to the interest and perfection of the whole. No unworthy favourites shall find in him a partial tenderness inconsistent with the general good or the sacred authority of his laws: no private views shall stop the execution of their sanctions, while the general interest, and the supporting the majesty of these laws require it. 'Tis no unjust partiality that the lot of some should have many advantages above that of others. This, we shewed above, the best order and harmony of the whole may require. These are the natural notions of justice in a *moral governor*. 'Tis a branch of goodness conjoined to wisdom, which must determine the *governor* to such conduct as may support the authority and influence of his laws for the general good. <209>

31. Cf. *Correspondence and Occasional Writings*, p. 352.

32. For this and the next paragraph, cf. *Synopsis* III.4.3, pp. 178–79.

The Affections, Duty, and Worship, to be exercised toward the Deity.¹

I. In the consideration of the several enjoyments of our nature we shewed the frequent occasion men must have for recourse to the Divine Providence, for the security of their enjoyments, and a stable tranquillity of mind, under the adversities of this life which may befall ourselves, or the objects of our tenderest affections. We established in the preceeding chapter that grand foundation of our happiness, the existence, and moral perfections of *God*, and his providence. It remains to be considered what affections and duty are incumbent on us toward the *Deity* thus abundantly made known to every attentive mind.

What affec-
tions are suited
to the Divine
Perfections.

In this matter, as much as any, our *moral faculty* is of the highest use. It not only points out the affections suited to these perfections, but sacredly recommends and enjoins them as absolutely necessary to a good character; and as much condemns the want of them, as of any affections toward our fellow-creatures. Nay points them out as of more sacred obligation. The *moral faculty* itself seems that peculiar part of our nature most adapted to promote this correspondence of every rational mind with the great Source of our being and of all perfection, as it immediately approves all moral excellence, and determines <210> the soul to the love of it, and approves this love as the greatest excellence of mind;

This known by
the *moral*
sense.

1. Cf. *Short Introduction* I.4, pp. 76–80; and again to Carmichael, *Natural Rights* I.6, pp. 54–58.

which too is the most useful in the system, since the admiration and love of moral perfection is a natural incitement to all good offices.

Worship is
internal, or
external.

The worship suited to the Divine Attributes is either internal, or external: the former in the sentiments and affections of the soul; the later in the natural expressions of them.

What is due to
the natural
perfections.

Our duty in respect of the natural attributes of *God* is to entertain and cultivate, by frequent meditation, the highest admiration of that immensely great *original Being*, from which all others are derived; and to restrain all low imaginations which might diminish our veneration; all conceptions of the *Deity* as limited, corporeal, resembling any brutal or human form, or confined within certain places: all which seem inconsistent with his infinite power and perfection, and his original uncaused existence.

The affections
due to the
moral perfec-
tions; Love,
esteem,
veneration.

II. Due attention to the moral attributes must excite the highest possible esteem, and love, and gratitude. Extensive stable goodness is the immediate object of approbation, love, and esteem. Wisdom and power joined to it, raise love, esteem, and admiration to the highest. They must excite the most zealous study to please, the greatest caution against offending, and give the highest satisfaction in the consciousness of conformity to the will of a Being possessed of such excellencies. When we are conscious of having offended him, they must fill our souls, not only with <2II> fears of punishment, but with inward remorse, ingenuous shame, and sorrow, and desire of reformation.²

Trust and
resignation.

These divine perfections firmly believed, beget trust and resignation, and entire submission to every thing ordered by Providence, from a firm persuasion that all is ordered for the best, for the greatest universal interest, and for that of every good man. Extensive goodness must desire the best state of the whole; omniscience must discover the means; and omnipotence can execute them. Every thing becomes acceptable in the place where *God* orders, or permits it; not indeed always for itself, yet upon implicit trust or faith that it is necessary for the purposes of infinite good-

2. For these and similar themes in the following paragraphs, cf. *Correspondence and Occasional Writings*, pp. 139–40; *Short Introduction* I.3.4, pp. 74–75; *Essay* VI.4, pp. 120–25, VI.6, p. 129, VII, pp. 131–32. Cf. Marcus Aurelius, *Meditations*, p. 105, note *.

ness and wisdom. We know that the benign intentions of the *Deity* are partly to be executed by the active virtues of good men; and that in these virtues a great share of their supreme perfection and happiness consists. Our dependence therefore upon the Divine Power and Goodness will retard no kind and virtuous purposes of ours, but rather invigorate and support us with joyful hopes of success. The same resignation and trust we exercise for ourselves, and our own interests, we shall also exercise for all who are dear to us by any virtuous bonds, for every honourable cause in which we or others are engaged; that it shall be prosperous in this life, or tend to the future glory and happiness of those who have espoused it.

III. Just apprehensions of the creation and providence of *God* must raise the highest resentments of gratitude, must repress all vanity in his sight, all con<212>tempt of others, and beget true humility. All the good we enjoy, all the pleasures of sense, all the delights of beauty and harmony, are so many favours conferred on us by *God*. To his power we owe our very being, we owe these objects, and the senses by which we enjoy them. If we interpose our activity in improving the objects, or cultivating our own relish, it was *God* who gave us all our powers, all our art or sagacity, and furnished us opportunities for such pleasant exercise, and so agreeably rewards it. All the joys we feel in mutual love, all the advantages we receive from the aids of our fellows, are owing to *God*, who contrived that frame of soul for man, gave him such affections, and made him susceptible of whatever can be the object of love in him. He gave to all animal kinds, human or brutal, their powers, senses, instincts, affections. He bound together the souls of men with these tender and social bonds which are the springs of all good offices. The external advantages we procure to each other by our active virtues, *God* could have immediately conferred by his power without any action of ours; but, such was his goodness, he chose that we should enjoy some share of that divine and honourable pleasure of doing good to others; and, by the exercise of our kind affections and by our *moral faculty*, we do partake of it. The joys we feel in being honoured by our fellows are also his gift to us; by his implanting this sense of moral excellence, and that natural delight we perceive in the approbation and esteem of others. <213>

Gratitude and humility before God, and pity toward our fellows.

All the good natural or moral which we enjoy is due to him.

All the pleasures of knowledge, all the effects of art and contrivance, are owing to him, who *taught us more than the beasts of the field, and made us wiser than the fowls of heaven*;³ to him we owe that we can discern the beauty and kind intention and wisdom of his works, and thus adore the footsteps of his wisdom and goodness; that we can discern moral beauty, the affections and conduct which are acceptable to him, and most resemble the Divine Beauty; that we can discover his perfections, and imitate them; and that we can give secure tranquillity to our souls by an entire confidence in them, and resignation to his providence. By the reason he gave us he converses with us, assures us of his good-will, gives us the most friendly admonitions; and, by the affections of esteem, love, and gratitude he has implanted, calls us to a state of friendship with himself. Thus all our happiness and excellency is from his bounty. *Not unto us, Lord, not unto us, but to thy name be the praise*.⁴

The exercise of
these affections
necessary to
us, not to *God*.

IV. 'Tis vainly alledged, "that these devout affections are vain or useless because *God* needs them not, nor do they increase his happiness."⁵ They are the chief enjoyments of rational souls, their highest joy in prosperity, and sweetest refuge in adversity. The rational heart cannot approve itself if it wants them; if it prefers them not to its chiefest joys. Without love, friendship, gratitude, life is insipid. These affections, when mutual, are the more joyful the more excellent the objects are. What stable and transporting <214> joy must arise from living with an habitual sense of the Divine Presence, with the highest love, admiration, and gratitude, and justly persuaded of being approved and beloved and protected by him who is infinitely perfect and omnipotent.⁶

Without this confidence in *God*, what can we call secure? Our bodies and all external things are obviously uncertain: so is the prosperity of our friends, of all the objects of our generous affections. Their very virtues, tho' among the most stable things of life, are not secured against change. Some accidents can disturb their reason and their virtue. 'Tis

3. Job 35:11.

4. Psalms 115:1.

5. This may be a connection to an argument in Leechman's *Sermon on the Nature, Reasonableness, and Advantages of Prayer*, pp. 17–18.

6. The following paragraph is an insertion from the bottom margin of the folio.

only the soul resigned to *God*, with firm trust in his perfections, that can promise to itself in the whole every thing happy and honourable at last.

In every good temper certain affections must arise upon their natural occasions, whether they can affect the state of the object or not. Tho' we were fully aware of our own impotence, or want of opportunity to do good offices, or make returns, a temper must be odious which had no love and esteem of great excellency, no gratitude for great benefits. Thus joy must arise in a good heart upon the prosperity of one beloved, tho' we cannot add to it; and sorrow upon his adversity, tho' we cannot remove or alleviate it. The want of such affections, where there are such strong natural causes presented, must argue a depravity of soul which we cannot avoid abhorring upon reflection. These affections are as it were the natural attraction of the Divinity upon our souls, and of every excellence which resembles him in his works; and every pure soul feels its force.

Nay, without lively apprehensions of the Divine Providence, and continual resignation to his will, with a joyful confidence in his goodness, which are the main acts of devotion, our noblest affections must expose us to grievous sympathetick sorrows in this uncertain world. But a firm persuasion of an omnipotent, omniscient, and most benign universal parent, disposing of all in this system for the very best; determined to secure happiness in the whole to the virtuous, whatever evils may befall them in this life; and permitting no further evil than what the most perfect constitution requires, or necessarily brings along with it; a persuasion of all this, with like extensive affections in our souls, must afford the strongest consolation in all our tender sorrows, and bring our hearts either chearfully to embrace, or at least calmly to acquiesce in whatever is ordered or permitted by sovereign wisdom and goodness. If our friends or favourites are at present unfortunate: this the very best polity in this grand state required: many more of our brethren and fellow-citizens, of as great virtue, are still happy. They have their dear friends rejoicing with them; their affections are as tender and lovely; their virtues are as valuable, as those in our set of friends. If ours are in distress and sorrow, others with equal tenderness and virtue are rejoicing. One

No stable tranquillity or happiness without them.

generation passeth, and another comes; and the universe remains for ever; and ever as fruitful <216> in virtue, joy and felicity. Nay from the short period we know, we cannot conclude about the future miseries of such as are now unfortunate. We know not what the ever-during course of ages may bring to those very persons whose misfortunes or vices we are bewailing. The thoughts of a future eternity, under a good *God*, make all things appear serene, and joyful, and glorious.

Pious affec-
tions encrease
all virtue
and joy.

A constant regard to *God* in all our actions and enjoyments, will give a new beauty to every virtue, by making it an act of gratitude and love to him; and increase our pleasure in every enjoyment, as it will appear an evidence of his goodness: it will give a diviner purity and simplicity of heart, to conceive all our virtuous dispositions as implanted by *God* in our hearts, and all our beneficent offices as our proper work, and the natural duties of that station we hold in his universe, and the services we owe to this nobler country. Our minds shall be called off from the lower views of honours, or returns from men, and from all contempt or pride toward our fellows who share not equally in his goodness: our little passions and resentments shall be suppressed in his presence. Our hearts will chiefly regard his approbation, our aims shall be obtained when we act the part assigned us faithfully and gratefully to our great Creator, let others act as they please toward us. The mistakes, imperfections, provocations, calumnies, injuries, or ingratitude of others we shall look upon as matters presented to us by providence for the exercise of the virtues *God* has <217> endued us with, by which we may more approve our selves to his penetrating eye, and to the inward sense of our own hearts, than by the easier offices of virtue where it has nothing to discourage or oppose it.⁷

Thus as the calm and most extensive determination of the soul toward the universal happiness can have no other center of rest and joy than the original independent omnipotent Goodness; so without the knowledge of it, and the most ardent love and resignation to it, the soul cannot attain to its own most stable and highest perfection and excellence: nor can

7. GUL Ms., p. 139: The following paragraph is an insertion in the Ms. from an interleaved folio.

our *moral faculty*, naturally delighting in moral excellence, obtain any other compleat object upon which it can be fully exercised, than that Being which is absolutely perfect, and originally possess of all excellence, and the source of all such excellencies in others.

IV.⁹ External worship is the natural expression of these devout sentiments and affections. The obvious reasons for it are these; the exercise and expression of all sentiments and affections makes their impressions deeper, and strengthens them in the soul. Again; gratitude, love and esteem, are affections which decline concealment when they are lively; we are naturally prone to express them, even tho' they give no new happiness to their object. 'Tis plainly our duty to promote virtue and happiness among others: our worshipping in society, our recounting thankfully *God's* benefits, our explaining his nature and perfections, our expressing our admiration, esteem, gratitude, and love, presents to the minds of others the proper <218> motives of like affections; and by a contagion, observable in all our passions, naturally tends to raise them in others. Piety thus diffused in a society, is the strongest restraint from evil; and adds new force to every social disposition, to every engagement to good offices.

The reasons
for external
worship.⁸

The natural expressions are, instructing others in the perfections of *God*, and the nature of piety and virtue, the great end of his laws; praises, thanksgivings, acknowledgements of his providence as the spring of all good by prayers, and expressions of trust and resignation; confession of our sins and imperfections; and imploring his pardon, and future aids for our amendment. We may add solemn invocation of him as the witness and avenger of any falshood in our assertions or promises, wherever it may be requisite to settle some important right of our fellows, or to give them confidence in our fidelity.

The natural
expressions of
devotion.

V. Our praise, admiration, or thanks, add nothing to the Divine felicity; our confession gives no new information; our importunity alters not his purposes from what he had formerly determined as best. Our swearing makes him no more attentive, or disposed to execute justice,

All these re-
quired for our
improvement
in virtue and
perfection.

8. Cf. again Leechman's *Sermon on the Nature, Reasonableness, and Advantages of Prayer*, pp. 17–18.

9. This and the subsequent mistake in the numbering of the sections are also in the Ms., pp. 139–40.

nor gives it any new right to punish. These acts of adoration, praise, thanksgiving, confession, prayer, increase our own piety, love, and gratitude, our abhorrence of moral evil, and our desires of what is truly good, and our resignation to his will. When we have lively dispositions of this kind, we are best prepared to improve all temporal blessings, and may hope for them according to the gracious tenor <219> of Divine Providence. Invocations of *God* by oaths, in a religious manner, and on important occasions, must imprint the deepest sense of our obligations to fidelity, and of the crime of falshood; and thus give the greatest security we can give, by words, to our fellow-creatures. The effect of all these acts is upon ourselves, and not upon the *Deity*, or his purposes, which have been originally fixed upon a thorough foresight of all the changes which could happen in our moral dispositions, which themselves also are a part of the objects of his eternal counsels and power.

The influence
of religion on
human society.

'Tis a needless inquiry whether a society of *Atheists* could subsist? or whether their state would be better or worse than that of men possessed with some wicked superstition?¹⁰ True religion plainly increases the happiness both of individuals and of societies. Remove all religion, and you remove some of the strongest bonds, some of the noblest motives, to fidelity and vigour in all social offices. 'Tis plain too that some systems of religious tenets, where much wicked superstition makes a part, may contain many noble precepts, rules, and motives, which have their good effects upon the minds of such as are not concerned in executing the purposes of the superstition. Thus many of the best moral precepts, and the doctrine of future rewards appointed for virtue, are retained in Pop-

10. Those were leading themes in Pierre Bayle's *Pensées diverses sur la comète*, especially in his extensive discussion in "IV. Reponse: Que l'athéisme n'est pas un plus grand mal que l'idolâtrie" ("That Atheism Is Not a Greater Evil than Idolatry"), §114–20 (cf. *Various Thoughts on the Occasion of the Comet*, pp. 144–49). In response to criticism of similar ideas in the first edition of his *Dictionnaire historique et critique*, Bayle added to the second edition (3 volumes, Rotterdam, 1702) an appendix on atheism that is the most concentrated discussion of his point, namely that an atheistic society is not the worst, for a civil society governed on religiously neutral principles ("atheism") is preferable to idolatrous religious principles (cf. *Political Writings*, pp. 312–20). Since we have no reason to believe that people always are governed by true love of God, other, idolatrous forms of love are always to be guarded against.

ery, and excite many to the most virtuous offices, whilst others by the superstitious political tenets, destined for the aggrandising of the ecclesiasticks, and the enslaving of <220> the souls and bodies of the rest of mankind, are excited to the most horrid cruelties.

'Tis of no importance to determine whether such superstitions have worse effects than *Atheism*. They may, as to men in certain stations; tho' they hurt not the rest considerably. The experiment of a society of *Atheists* has never yet been made. Grant that the effects of some superstitions were worse than those of *Atheism*: this is rather honourable to religion. The best state of religion is incomparably happier than any condition of *Atheism*; and the corruptions of the best things may be most pernicious. A surfeit of nourishing food, may be more dangerous than that of food less nourishing: spoiled wines are more dangerous than bad water. 'Tis the business of rational minds to take all the blessings of a true religion, and guard against any corruption of it, without searching out what motives might remain to some sorts of virtues under the joyless wretched thought that the universe is under no providence, but left to chance, or as blind and undesigning necessity; if religion, when depraved, does great mischief; a pure and good religion is a powerful engine of much good. <221>

The Conclusion of this Book, shewing
the way to the Supreme Happiness
of our Nature.

The sum of
human
happiness.

Having thus considered the several sources of happiness our nature is capable of; and, upon a full comparison, found that the noblest and most lasting enjoyments are such as arise from our own affections and actions, and not the passive sensations we receive from those external things which affect the body: having also compared the several sort of affections and actions, whether exerted toward our fellows in narrower or more extended systems, or toward the *Deity*, whose nature and grand intention in the administration of the universe we have also endeavoured to discover: and having found that, as our *moral faculty* plainly approves in an higher degree, all the more extensive affections toward our fellows than it approves the more confined affections or passions; that these extensive affections are also more noble sources of enjoyment; and that our love of moral excellence; our knowledge, veneration, and love of the Deity, conceived as perfectly good and wise and powerful, and the fountain of all good; and an entire resignation to his will and providence is the source of our sublimest happiness, the grand foundation of all our tranquillity or security as to any other object of the most honourable desires: 'tis plain our supreme and compleat <222> happiness, according to the universal doctrine of the wisest men in all ages,* must consist in the

* This is Aristotle's definition, 'Ενέργεια κατ' ἀρετὴν ἀριστήν ἐν βίῳ τελείῳ. [Cf. Aristotle, *Nicomachean Ethics* I.vii.15, 1098a, p. 32.]

compleat exercise of these nobler virtues, especially that entire love and resignation to *God*, and of all the inferior virtues which do not interfere with the superior: and in the enjoyment of such external prosperity as we can, consistently with virtue, obtain.

II. The course of life therefore, pointed out to us immediately by our *moral sense*, and confirmed by all just consideration of our true interest, must be the very same which the *generous calm determination* would recommend, a constant study to promote the most universal happiness in our power, by doing all good offices as we have opportunity which interfere with no more extensive interest of the system; preferring always the more extensive and important offices to those of less extent and importance; and cautiously abstaining from whatever may occasion any unnecessary misery in this system. This is the cardinal virtue of *justice* which the antients make the supreme one, to which the rest are all subservient. It may include even our duties toward *God*.

The *moral sense* and the two calm determinations, conspire in recommending,

Justice,

As sensual enjoyments are the meanest and most transitory, the desires of which, by the impetuous force of some of our brutal passions, frequently seduce men from the course of virtue, it must be of high importance to be fully convinced of their meanness, and to acquire an habit of self-command, a power over these lower appetites in the manner we explained when we <223> considered the nature of these enjoyments. 'Tis equally necessary by close reflection to make a just estimate of other more elegant enjoyments of the imagination, that, as they are far inferior to moral and social enjoyments, they may yield to them in our choice where they interfere. This is the virtue of *temperance*.

and temperance,

A just estimation of the value of this life, and of the several sorts of evil we are exposed to, must be equally necessary. If moral evils, and some sympathetick sufferings are worse than any external ones, and can make life shameful and miserable amidst all affluence of other things, as we shewed above; if at best, life is but an uncertain possession we must soon lose; we shall see something that is more to be dreaded than death, and many just reasons why it may on certain occasions be our interest to incur the danger of it. Were death an entire

and fortitude.

end of all thought it would indeed put an end to all good, but surely no evil could ensue.

———*num triste videtur*
*Quicquam? nonne omni somno securior extat.*¹

But if we are to exist after death under a good Providence, what a glorious foundation is this for *fortitude* in every honourable cause? what strength of mind must that hope give to every good man upon apprehensions of death, or any of the evils which lead to it? This is the third cardinal virtue.

Prudence
prerequisite
to virtue of
all sorts.

Prudence is that habit of attention to the nature of the several objects which may solicit our desires, engaging us to a thorough inquiry into their importance, in themselves and their consequences, either to the greatest private happiness of the individual, or to that of the system. This virtue is some way prerequisite to the proper exercise of the other three, and is generally first mentioned in order; tho' *justice* is the supreme one to which all the rest are subservient. We leave it to more practical treatises to dilate upon these things. The proper considerations, and the means of acquiring these four habits of virtue must be evident from what is said above concerning the comparative values of the several sorts of good and evil, and concerning the supreme enjoyments of our nature.

Mistakes.

III. Many are discouraged from a vigorous culture of their minds for the reception of all virtues by a rash prejudice. We are dazzled with the conspicuous glories of some great successful actions in higher stations; we can allow such virtues to be the noblest enjoyments; but they are placed so high that few have access to them. Nay persons in higher stations often despair when their power is not absolute. The humours, follies, or corrupt views of others obstruct all their good intentions. They are fretted with such disappointments, and quit the pursuits of virtue, desponding of any valuable enjoyment attending it.

To arm the soul against this prejudice, we should remember that the reality and perfection of virtue, and the inward satisfaction of it too, to

1. Lucretius, *De rerum natura* III, lines 976–77, pp. 236–36: “Is there anything gloomy [in dying]? Is it not more peaceful than any sleep?”

a calm mind, depends not on external success, but upon the inward temper of soul. Persisting under these doubts about the success or glory, in the publick offices of virtue; <225> or if we are excluded from them, in all the lower private offices; in a constant sweetness of deportment in obscurity, and a constant resignation to the *supreme Mind*; embracing chearfully the lot appointed for us, repressing every envious motion, and every repining thought against providence, resolving to go stedfastly on in the path pointed out to us by *God* and nature, till our mortal part fall down to that earth from whence it sprung; must appear rather more noble and heroick to the *All-searching Eye*, and to the judgment of every wise man, than the more glittering virtues of a prosperous fortune. In these there is less purity and simplicity discovered, since the alluring views of glory and worldly interests may have had a large share in the affections, or been the principal motives to the agent.

When we despair of glory, and even of executing all the good we intend, 'tis a sublime exercise to the soul to persist in acting the rational and social part as it can; discharging its duty well, and committing the rest to *God*. Who can tell what greater good might be attainable if all good men thus exerted their powers even under great uncertainties of success, and great dangers of misrepresentations and obloquy? Or how much worse should all matters proceed, if all good men desponded and grew remiss under such apprehensions? If virtue appears more glorious by surmounting external dangers and obstacles, is not its glory equally increased by surmounting these inward discouragements, and persisting without the aids of glory or <226> applause, conquering even the ingratitude of those it serves, satisfied with the silent testimony of our hearts, and the hopes of Divine approbation. Thus the most heroick excellence, and its consequent happiness and inward joy, may be attained under the worst circumstances of fortune: nor is any station of life excluded from the enjoyment of the supreme good.

§§ BOOK II §§

*Containing a Deduction of the more
special Laws of Nature, and Duties of
Life, previous to Civil Government, and
other adventitious States.*

The Circumstances which encrease or diminish the Moral Good, or Evil of Actions.¹

Having shewed, in the former book, that the course of life which GOD and NATURE recommends to us as most lovely and most conducive to the true happiness of the agent, is that which is intended for the general good of mankind in the wisest manner that our reason and observation can suggest; we proceed, in this book, to enquire more particularly into the proper means of promoting the happiness of mankind by our actions, which is the same thing with inquiring into the more special laws of nature. And this we shall endeavour to do first abstracting from those adventitious states or relations which human institutions or actions have constituted, considering only that relation which *nature* hath constituted among all. But it may be necessary here to premise some account of many complex notions of moral qualities, the understanding of which seems prerequisite to the doctrine of the particular laws of nature. This shall be the subject of this and the two following chapters.<228>

1. This chapter correlates very loosely with the first four sections of *Short Introduction* II.3, pp. 116–20.

The ground of
imputation,
that actions
flow from and
discover the
affections.²

I. The ground of all imputation* of actions as virtuous or vitious is, “that they flow from some affection in the agent, and thus are evidences of his temper and affections.” Virtue, as it was proved in the former book, consists primarily in the affections. The highest kind of it is the calm and fixed principle of good-will to the greatest system; and love, esteem, gratitude, and resignation to *God*, upon a full persuasion of his moral perfections, and a constant prevalent desire of making still further progress toward that moral perfection of which we perceive ourselves to be capable.³ The lower kinds, are the particular kind affections and passions pursuing the good of particular societies, or individuals, consistently with the general good.⁴ This, one would think, could scarce be matter of debate among Christians, after the sum of the law delivered to us,[†] viz. *Loving God* and *our neighbour*. If virtue be not placed in the affections, but in some other faculty different from the will, as *reason* or *intellect*, then love is to be called an act of the understanding, contrary to all language.

Qualities and
circumstances
necessary to
the morality of
actions.

II. From this description ’tis easy to find what circumstances affect the morality of actions, or omissions, increasing or diminishing the moral good, or evil, in them; or making actions good, which otherways had been evil; or evil, which otherways had been good.

2. Cf. *Short Introduction* II.3.7, p. 125. Hutcheson’s discussion of the imputation of actions in this chapter relates very closely to that of Pufendorf in *Duty of Man* I.1, esp. secs. 17–27; and in *Law of Nature* I.5. The Latin formulations in the subsequent notes derive from these texts. However, Pufendorf articulated imputation as a concept in juridical logic, namely the inference that a given deed fell within the description of a law so that it could be ascribed or imputed to a person as his or her act or omission. This applied equally to acts prohibited and permitted (in whatever sense) by the law, hence imputation was a morally neutral term, one of the “middle” terms (*voces mediae*) between positive and negative that—in Hutcheson’s very different moral language—applied equally to the ascription of virtue and of vice. This concept of imputation was introduced in Pufendorf’s early *Elementa jurisprudentiae universalis* (1660), Book I, axiom 1 (translated into English by William Abbott Oldfather as *Two Books of the Elements of Universal Jurisprudence*).

* *Imputation* is one of the *voces mediae*, tho’ more commonly used in charging men with guilt.

3. GUL Ms., p. 145: “and . . . capable” is an interlined addition.

4. On the distinction between the higher and lower kinds of affections, see, e.g., *System* I.1.5–8 and I.6, as well as the references in the respective notes.

† Matth. xii. 30, 31. [GUL Ms., p. 145: The correct reference here is *Mark* 12:30, 31, not *Matthew*; the handwriting may have misled the printer. See also Hutcheson’s footnote *, p. 221 below.]

First. 'Tis manifest that whatever action, or rather event, happened not in consequence of one's will, either at present, or in some prior time, cannot be imputed as either good, or evil. Nor can any omission or abstaining from action be imputed as good, or evil, to him who could not have performed it by any efforts, and knew this impossibility. Such events or omissions can evidence no affection, either good, or bad. Events, however, are then only called *necessary* with respect to an agent, which he could not prevent tho' he seriously desired it; not such as, through his strong aversions or habits, he cannot avoid desiring. Those only are called *impossible*, which no efforts of his can accomplish by any means. We call any thing possible, which one who heartily desires it, can get accomplished, whether by his own power, or by any aid of others which he can obtain.*

Liberty.

These alone are the necessary and wholly unimputable events† which neither any present desire or action of ours can prevent, nor could they have been prevented by any prior diligence or care which we ought to have had about such matters. Such events as prior fore-thought and care could have prevented, tho' they be now unavoidable, are in some measure voluntary‡ and imputable; whether they happen from free agency, or from natural inanimate causes. Thus if one by negligence in his office suffers banks or mounds to decay, when a storm comes he cannot prevent the inundation; and yet it is justly counted voluntary and imputable to him. <230>

Necessary events, not moral.

So the omissions of actions now impossible are justly imputed, when they might have been possible, had that previous diligence been exerted which becomes a good man. A slothful profuse man cannot now discharge his debts, yet as a prior course of prudent oeconomy would have prevented

nor the omission of impossibilities.

* This explains the common maxim, *Impossibilium et necessariorum nulla est imputatio*. ["That which is impossible and that which is necessary is not imputed." Like Pufendorf, *Law of Nature* I.5.8–9, and *Duty of Man* I.1.23–24, Hutcheson extends the rule of Justinian's *Digest*, L.17.185, about non-imputability to include also that which is necessary. Concerning the preceding point about the irrelevance of strong passions to imputability, see *Short Introduction* II.3.2, p. 117.]

† *Involuntaria et in se, et in sua causa*. ["That which is involuntary in itself and in its cause." I.e., actions or omissions where also the means or conditions of carrying them out are involuntary; e.g., being forcibly drugged or prevented from having the knowledge required to act.]

‡ *Involuntaria in se, sed non in sua causa*. ["That which is involuntary in itself but not in its cause." I.e., where the means, conditions, etc., of acting or omitting were not incurred involuntarily, but the action or omission itself is involuntary.]

this injury to his creditors, the non-payment is imputable. In these cases, indeed, the unavoidable event or omission, contrary to present strong inclination, shews no present evil affection. But the former negligence, which made one incapable of doing justice, argues a prior culpable defect of good dispositions. And 'tis here that the guilt properly lyes. Two persons may be equally criminal in the sight of God, and their own consciences, when the events of their conduct are very different. Suppose equal negligence in both, and that both become insolvent, but one by an unexpected inheritance discharges his debts; the other, tho' equally inclined, remains incapable of it. They are equally criminal, tho' one by accident does no wrong in the event to his creditors.

What effects
and conse-
quents
imputable.

III.⁵ No distant effects or consequents of actions or omissions, affect their morality, if they could not have been foreseen by that diligence and caution we expect from good men; for then they are no indications of the temper of the agent. For the same reason any prosperous effects which were not intended, do not increase the moral goodness of an action; but an evil action is made worse by all the evil consequents, which would have appeared to a man of such caution as good <231> affections would naturally raise,⁶ tho' the agent did not actually foresee them. They do not indeed prove any direct evil intention; but there are other forms of moral evil. The very want of a proper degree of good affections is morally evil. One studious of the publick good will be cautious and inquisitive about the effects of his actions; the inquisitive will discover such effects as are discoverable by their sagacity. He then who is ignorant of such effects, tho' he had no direct evil intention, betrays a culpable weakness of the good affections.⁷

In judging of the moral characters of such as have not had any considerable reformation made in their affections, 'tis not of consequence whether the guilt be evidenced by some present action, or omission; or by some preceeding one equally criminal. That aphorism therefore is just, that "an

5. Cf. *Short Introduction* II.3.7, pp. 123–25.

6. GUL Ms., p. 147: After "raise," the following words have been crossed out: "in a virtuous man."

7. GUL Ms., p. 147: "a culpable weakness of the good affections" replaces "a defeat of good affections," which has been crossed out.

action can be made virtuous only by such good consequents as are actually intended for themselves: but may be made vicious by any evil consequences which a good and honest mind could have foreseen as probably ensuing.”⁸

But good consequents intended then only prove an action to be good, when the sum of them over-balance all the evil ones which could have been foreseen, and when the good consequents could not be obtained without these evils. If the case is otherways, they may extenuate the guilt, but do not justify the action. On the other hand, evil consequents foreseen, but not desired for themselves, do not always make an action <232> evil. ’Tis only in such cases where they over-balance all the good effects to which this action is subservient, and for which it was intended; and where this over-balance might have been foreseen,⁹ or when the good effect could have been obtained without these evils.

By consequents of an action we understand not only the direct and natural effects, or what the agent is the proper cause of; but all these events too which ensue upon it, and had not happened had the action been omitted. A good man regards whatever he foresees may ensue through the mistakes, follies, or vices of others; and avoids what he foresees will occasion vicious actions, or unreasonable offences, in others,* tho’ otherways it might have been innocent: unless the good effects, not otherways to be obtained, over-balance these particular evils.[†]

IV. Ignorance of the tendency or effects of actions, affects their morality differently, according to the different causes of the ignorance or error, and the difficulty, greater or less, of coming to the knowledge of the truth. If the ignorance or error be absolutely invincible by any

Ignorance and error, vincible, or invincible, affect actions in certain degrees.¹⁰

8. For this and the rest of section 3, cf. *Inquiry* II.3.8–9, pp. 125–26, II.3.12, pp. 130–32, and *Short Introduction* II.3.7, pp. 123–25.

9. GUL Ms., p. 148: “and where this over-balance might have been foreseen” is an interlined insertion.

* Rom. xiv. 21.

† Matth. x. 34, 3 [GUL Ms., p. 148: “34, 35,” not “34, 3,” and the reference is possibly again to *Mark* 10:34, 35, not to *Matthew*, but the context is far-fetched. See also Hutcheson’s footnote †, p. 218 above.]

10. Cf. *Short Introduction* II.3.3, pp. 118–19, and *Inquiry* II.3.12, pp. 131–32; Pufendorf, *Law of Nature*, I.3.10–11, and *Duty of Man*, I.1.7–8, with observations 20–27 of Titius in his edition of the Latin text.

present, or any prior diligence, evil consequents thus unknown cannot be imputed, as they can shew no evil affection, nor any defect in good affections. If that degree of caution which we expect in like affairs from the best men could not surmount the ignorance tho' the utmost possible caution might, we still count it morally invincible, and wholly excusing from guilt, except in cases where all men know that <233> the utmost caution is incumbent on them. But where the ordinary caution of a good mind would have foreseen such consequents, then the ignorance argues a defect of good affections, is vincible, and tho' it may alleviate the guilt, it does not wholly take it away.

Ignorance and error may be at present invincible and involuntary, and yet prior diligence might have prevented them; or it may be invincible and involuntary every way.* The latter only takes away all imputation: the former, shews that there is no direct evil intention at present, but it may evidence a prior want of good affections, and thus be justly culpable.

But as direct evil intention, or insensibility of the evil we plainly see we are doing to others, are much more odious tempers than mere inadvertence, or the want of such warm affections as would raise accurate attention; all ignorance not directly affected or desired is some alleviation of guilt; and that in different degrees, according as the effects were more or less obvious. The easier the discovery was, the less does the ignorance alleviate the guilt.

Ignorance of
the law or the
fact.

Ignorance may either be about the effects of the action, or the true intent and meaning of laws. The same maxims hold about both. Only, since wise legislators take care so to publish their laws that the subjects may always know them by proper diligence, ignorance of the law cannot be deemed absolutely invincible. If any laws are absolutely undiscoverable <234> by the subjects, they are not laws given to them; their not obeying them cannot be culpable.†

* *Involuntaria in se, sed non in sua causa.* or, *Involuntaria et in se, et in sua causa.* ["That which is voluntary in itself but not in its cause." Or, "that which is involuntary in itself and in its cause." Cf. Hutcheson's footnote ‡, p. 219 above.]

† *Ignorantia juris, ignorantia facti.* ["Ignorance of the law, ignorance of the fact." This is a distinction that Titius had brought to bear on Pufendorf's analysis of igno-

V. The questions about vincible ignorance, and consciences erroneous, or doubtful, are only difficult through ambiguity of words. Conscience sometimes denotes the *moral faculty* itself: sometimes “the judgment of the understanding concerning the springs and effects of actions upon which the *moral sense* approves, or condemns them.”¹² And when we have got certain maxims and rules concerning the conduct which is virtuous, or vicious, and conceive them to be, as they truly are, the laws given to us by *God* the author of nature and of all our powers; or when we are persuaded that other divine laws are revealed to us in a different manner, then conscience may be defined to be “Our judgment concerning actions compared with the *law*.”

Conscience
what.¹¹

Now first, “A person purposing to act virtuously, and yet by mistake imagining that action to have a good tendency, and to be conformable to the law, which is of a contrary nature in reality, will certainly during his error follow his conscience: since no man in an error knows that he errs.” The observers only can make the question, whether ’tis better for him to follow his conscience, or counteract it? And this cannot in all cases be answered the same way.

How an
erroneous
conscience
excuses, or
extenuates.¹³

2. “He who follows the erroneous judgment of his mind in doing what he believes to be good, at present evidences a good disposition: and acting against his judgment, during his error, must evidence some vicious disposition; such as neglect of more extensive good, or of

rance; see Gottlieb Gerhard Titius’s observation 24 on Pufendorf, *De officio hominis et civis* I.1.8, p. 62.

11. See *Short Introduction* II.3.1, pp. 116–17.

12. The subsequent discussion of conscience is to be seen in the context of Pufendorf’s analysis in *Law of Nature* I.3, esp. §§ 4–9, and in *Duty of Man* I.1.5–6; Barbeyrac’s notes to these texts; Titius’s observations 16–19; and Carmichael, *Natural Rights*, p. 33. Concerning ignorance and the moral value of actions, see also *Inquiry* II.3.12, pp. 131–32. Pufendorf saw conscience as the activity of judging in accordance with a rule, ultimately natural law. This stood in contrast to the idea of conscience as direct moral insight that was common in a range of theological thinkers. The difference is reflected in the mode of assessing the moral merit of supposedly conscientious behaviour. One may see Hutcheson’s argument as an attempt to combine the two; cf. his adoption of the idea of antecedent and consequent conscience below, II.3.1.

13. See *Short Introduction* II.3.4, pp. 119–20. More broadly, see also Hutcheson’s discussion of the grounds of different opinions about morals in *Inquiry* II.4, pp. 136–47. Cf. also I.5, n. 11 above.

the lawgiver." This holds in general true as to all men who are firmly persuaded of the goodness of *God* and his laws. As we all censure a man who from any narrower affection of a lovely sort should counteract the views of the more extensive affections; the same way we must censure the counteracting such commands of *God*, as we believe are calculated for the most extensive happiness, tho' the agent has been excited to it by some humane and lovely affections of the narrower sort; which, however, in all cases alleviate the guilt.

But when there is no such settled apprehension of *God*, or his laws, as perfectly benevolent; and only a notion of high private interest in obedience, and great private danger to ourselves from disobedience, with a confused notion of duty or obligation to obey; if some very tender humane dispositions of heart should lead one to disobey some severe and cruel orders imagined to come from the *Deity*; whatever convulsions he might feel in his own heart by the struggles between two such opposite principles, a judicious spectator could scarce condemn the counteracting such a conscience from principles of humanity: for example, if one who believed it his duty to persecute hereticks to death, yet were restrained by compassion to his fellow-creatures.

All errors are
not innocent.

3. "The falling into such vincible errors, so opposite to the humane dispositions of the soul, in matters so <236> deeply affecting the interests of our fellows as that of persecution, and some others, must argue great prior guilt and deficiency of good affections." And therefore, during the error, whether one follows his conscience, or not, we have some evidence of a bad temper. If he follows it, his prior negligence is very culpable: if he does not, and yet believes the command to have been given by a good *God* for the general interest, his prior negligence is culpable as in the other case, and now he superadds the guilt of omitting his duty to *God*, and the general interest. But where one has no notions of the Divine Goodness, and the benign tendency of his laws, counteracting the imagined law may be less odious, if it be from a lovely humane disposition.

4. When the conscience is doubtful, the safest way is to defer acting till further inquiry be made, unless some general potent reason urges to a speedy determination. Cases happen in which 'tis plainly better to do

either of the two actions, about the preference of which we are doubting, than to omit both; and there may be no time for delays. In such cases we must fix upon one or t'other, according to superior probability of its importance. If these probabilities are equal, we must do what first occurs.

What is the duty then of one in an error? or what conduct will be entirely approved? 'Tis plain the error already has evidenced a prior culpable negligence. The only conduct which now shall gain entire approbation again is correcting the error by a new unprejudiced inquiry. The erroneous, during their error, do not see this to be their duty; but 'tis the only way to set all right again. And this shews the great advantage of modesty and diffidence as to our own understandings; and the danger of self-confidence and bigotry.

The duty of
such as err.

The degree of diligence requisite in a good man, cannot be precisely determined. We naturally expect very different degrees from different capacities, stations, opportunities. Aristotle* well observes, that "many points in *morals*, when applied to individual cases, cannot be exactly determined; but good men know them by a sort of sensation: the good experienced man is thus the last measure of all things." This holds in general: "the greater the diligence and caution about our duty is, the character is so much the better; and the less the diligence and caution is, so much the worse is the character, when other circumstances are equal." <238>

* *Nicom.* I. iii. c. 4. and I. ii. c. ult. and I. vi. c. 11. and often in the *Magna Moralia*, particularly I. ii. c. 10. Hence the *arbitrium viri probi*, with the *Civilians*. ["The verdict of just men." Cf. Aristotle's *Nicomachean Ethics* III.4, pp. 140–43; II.9, pp. 110–15; VI.11, pp. 358–63; and *Magna moralia* II.10. The Latin expression is also frequently used in Hutcheson's *Short Introduction*. The same reference to *Magna moralia* II.10 is made in a similar context in Henry More's *An Account of Virtue*, I.3.7, p. 16, shortly before More's introduction of what he terms "Moral Noema's" or "Axioms," which are moral rules that are "intelligible, tho men know not the reason why," and which "need no manner of Deduction or Argument." See *An Account of Virtue* (*Enchiridion ethicum*), I.4.1 and I.4.4; pp. 20 and 27 in the English translation.]

General Rules of Judging about the Morality of Actions, from the Affections exciting to them, or opposing them.¹

Altho' men cannot accurately judge about the degrees of virtue, or vice, in the actions of others, because their inward springs are unknown: yet some general rules may be abundantly certain and useful in our judging about ourselves. And we have no great occasion to make application of them to others, which must be extremely uncertain.

General rules
about the im-
portance of
actions.²

1. Where kind affections alone are the springs of action, the good effected by any agent is as the strength of these affections and his ability jointly. The strength of affection therefore is directly as the good effected, and inversely as the abilities; or, in plainer terms, when the good done by two persons is equal, while their abilities are unequal, he shews the better heart, whose abilities were smaller.

How views of
private interest
affect the moral-
ity of actions.

2. Where men are also excited by views of private interest, the effect of these selfish desires is to be deducted, and the remainder shews the effect of the virtuous disposition. Where motives of private interest dis-

1. This chapter corresponds in many ways to *Inquiry* II.3, pp. 116–35, and II.7.9, pp. 189–92; further to *Short Introduction* II.3.5–8, pp. 120–26; and thematically to Pufendorf, *Duty of Man*, I.2: “Of the Rule of Human Actions, or of Laws in general; and the different Qualifications of those Actions.”

2. For this and the following section, cf. *Inquiry* II.3.11, p. 128, as well as 4th ed., pp. 240–41 (points 1 and 2); *Inquiry* II.2.3, p. 104; *Short Introduction* II.3.6, pp. 122–23, and II.3.7, pp. 123–24 (points 1 and 2).

suated from some good action performed, the virtue appears the higher by surmounting these motives.

3.³ In like manner we compute the moral turpitude of unkind or basely selfish affections leading us to injury. The strength of them is directly as the evil effected, and inversely as the abilities. That is, where <239> equal mischiefs are done by two, who had it in their power to do more, in gratification of their evil affections, he shews the worse temper, who had the smaller power but exerted it further.

4.⁴ When private interests excite to hurtful actions, the effect of the selfish desires is not the same way to be deducted to find the pure effect of some inclination wholly vicious. We seldom can have any such inclinations. The moral evils of men generally flow from the immoderate degrees of some selfish affections, which in a moderate degree would be innocent; and the very want of high degrees of some good affections is vicious. This deduction can only be made where the exciting selfish motive was the avoiding some great sufferings terrible even to very good minds; and such temptations much extenuate the guilt. Where great interests known to the agent dissuaded from the evil action, indeed the guilt is exceedingly aggravated, as the depravity of temper surmounts these interests, as well as all sense of duty and generous affection.

The same circumstances affect evil actions.

II. But in comparing actions and characters we not only regard the strength of the exciting affection, but the kind of it, since, as we observed above, our *moral sense*, by the wise constitution of *God*, more approves such affections as are most useful and efficacious for the publick interest. It immediately approves the calm sedate good-will either to particular societies, or individuals, more than the turbulent passions of the generous sort; and of the calm affections most approves the most extensive. And thus tho' the effects <240> of two actions were equal, that one is more approved which flowed from a calm settled principle

The kind of the affections to be regarded.⁵

3. Cf. *Inquiry* II.3.II, p. 128, as well as 4th ed., p. 241 (point 3); *Short Introduction* II.3.7, p. 124 (point 3).

4. Cf. *Inquiry* II.3.II, p. 129, as well as 4th ed., p. 241 (point 4); *Short Introduction* II.3.7 pp. 124–25 (point 5). Cf. furthermore *Inquiry* II.2.4, p. 105.

5. Cf. *Inquiry* II.3.9, 3rd and 4th eds., p. 239 (note 82).

of kindness, than another from some turbulent passion. The superior excellency of these calm dispositions is allowed on all hands; and shews men what temper nature recommends to their culture, by all the power we have over our affections; and what restraints should be laid upon the less extensive affections, whether calm or passionate, that they may never defeat the purposes of the most extensive and excellent dispositions of the soul. Here we see also the reason why no great virtue is imagined in our kindness to our offspring, kindred, or even benefactors. Strong particular passions naturally arise toward persons so related to us, whether we have any of the more extensive affections lively in our breasts or not: and few characters are so depraved as to be void of these natural affections. The want of them indeed, for reasons presently to be mentioned, would argue a temper depraved in the most odious degree.

Hard to fix
precise degrees
of obligation.

III. When promoting the publick good is opposite to the agent's worldly interest, 'tis hard to fix a precise degree of good affection requisite merely to avoid a bad character, or obtain that of bare innocence. One may be called in one sense innocent who never hurts others in pursuit of his own interest. But notwithstanding this he may be a bad man, if he contributes little to a publick interest. God has set in our hearts, if we would attend to it, a very high standard of necessary goodness, and we must be displeased with <241> ourselves when we omit any office, how burdensome or hurtful soever to ourselves, which in the whole would increase the publick happiness after all its consequents are considered. In our common estimations of characters and actions we do not judge so rigidly, nor can one easily tell precisely how far one must sacrifice his private interests to the publick, to avoid a bad character. The extremes of virtue and vice are abundantly known; but intermediate degrees are less discernible from each other when they approach very near, as in colours shaded into each other. The following maxims seem pretty probable, or certain;

Several general
rules.

1. That affections of equal degrees of extent or strength are not expected from persons of unequal circumstances and opportunities, tho' originally of equal tempers. More is demanded from such as have had instruction, leisure for meditation, and access to better stations.

2. Such offices as are useful to others, and of no expence or labour to the agent, are justly expected from all toward all who need them. They are but low evidences of virtue, but refusing them is very hateful, and shews a temper void of humanity.

3. Nay we universally condemn the refusal of such smaller expences or trouble as can scarce disturb the happiness of life, when it is necessary for any important advantage even to a stranger.

4.⁶ The greater the expence or trouble is one submits to for the benefit of others, it must be to others the greater evidence of his virtue.⁷ < 242 >

5. The smaller the advantages are for the sake of which one does what is detrimental to the publick, or declines any useful services, the worse we must conclude his character.

The same difficulties may appear in determining precisely how far the narrower affections in particular cases should yield to the more extensive; or how far the interests of families, kindred, benefactors, friends, our party, or country, should be sacrificed to more extensive interests, to avoid a bad character or the charge of guilt.⁹ A calm mind, solicitous about its own conduct, will blame every defect of that most perfect moral order, which requires sacrificing all narrower interests to the more extensive. But there is something so beautiful and so engaging in many narrower affections of the soul, that we judge less rigidly of the conduct of men who from such lovely principles neglect the highest perfection. And as it is but a small degree of attention and discernment, which can be reasonably expected from men of lower stations and capacities, much encumbered by procuring to themselves and their immediate dependents the necessities of life, nature is far from leading us to pronounce the character bad, which does not in all cases adhere to the most exact rules of perfection. But withal the attentive reflecting mind cannot but see the fairest mark set up by *God* in his heart, a clear idea of perfection.

How narrower
affections
should yield to
more
extensive.⁸

6. Cf. *Short Introduction* II.3.6, p. 123.

7. GUL Ms., p. 154: "the more virtuous he must appear" is crossed out and replaced by "it must be to others the greater evidence of his virtue."

8. Cf. *Inquiry* II.3.6 and 10, esp. the revisions in the 3rd and 4th eds., pp. 236–37, note 50, and p. 240, note 93.

9. Cf. *Inquiry* II.3.3, pp. 118–20.

The nearer he can come to it, so much the better and more excellent he is. Nor was it the Divine intention that we should satisfy ourselves by merely avoiding such <243> conduct as is matter of infamy. Two general maxims are abundantly obvious in these cases.

1. First, that to maintain the calm and most extensive affection toward the universal happiness the strongest principle of the soul, able to control all narrower affections when there is any opposition; and the sacrificing all narrower interests to the most extensive, while yet every tender affection in the several relations of life is preserved in as great strength as the just subordination of it to the superior will admit; is the highest perfection of human virtue.

2. And yet when some of these narrower kind affections exceed their proportion, and overcome the more extensive, the moral deformity is alleviated in proportion to the moral beauty of that narrower affection by which the more extensive is overpowered. Thus 'tis more excusable if we do what is hurtful to the most general interest, from zeal for our country, for a whole people; than if the same had been done for aggrandizing a party, a cabal, or a family. And any of those tender affections extenuate the guilt more than any merely selfish principle could have done, such as avarice, ambition, sensuality.

The ordinary
virtues from
the narrower
causes of love.

IV. The greater part of mankind, by the necessary avocations of life, are incapable of very extensive designs, and want opportunities and abilities for such services. But we have this just presumption, that by serving innocently any valuable part of a system, we do good to the whole. The lives therefore of many of the most virtuous are justly employed in serving <244> such particular persons, or smaller societies, who are more peculiarly recommended to them by the very order of nature. *Nature* constitutes many particular attachments and proper causes of loving some more than others. Some of these causes are of a generous kind, but in different degrees. Such as the *conjugal* and *parental relations*, and the other *tyes of blood; benefits conferred*, which excite a generous gratitude, tho' we expect no more; *eminent virtues* observed; and the very relation of *countrymen*. Of the selfish sort are, a *profitable intercourse of offices, dependence for future preferment, or other favours*. All these are natural causes not only of keener passions, but of a stronger calm good-will in

most of men. On the other hand, tho', to a man of just reflection, there can be no natural cause of any calm ultimate ill-will, yet to the greater part of mankind there are natural causes of the unkind passions, anger, indignation, envy, and aversion; some wholly selfish, such as *private injuries* received, *opposition* to our interest; others of a generous kind, such as *moral evil* observed, *injuries done to the publick, or to friends*, unreasonable *promotion*, to the exclusion of more worthy men.

Now a temper is certainly so much the better, the more susceptible it is of all sweet affections upon smaller causes, especially those of the generous kind, provided it entertains proportionally warmer affections where greater causes appear; and the less susceptible it is of unkind passions upon any causes, especially the selfish. The temper must be very good which retains <245> good-will, where many occurrences would readily banish it from the heart: and that temper must be very bad, where love cannot be kindled by the natural causes.

General
rules of
computing.¹⁰

In general, the stronger the merit or the natural causes of love there are in any person, our want of love to him must evidence the greater depravation: and any low degree below the proportion of the merit, must evidence the smaller virtue. A temper where any thing virtuous remains must be warmed by eminent virtues, or by great benefits conferred. And since there must appear in the *Deity* all the highest causes of love, when one with tolerable attention contemplates him as the author of all good natural and moral, as the supreme moral excellence, as the great benefactor of all; the want of the highest love to him must evidence the greatest moral deformity in any rational mind to whom his perfections are discovered.

V. These principles lead to some more special conclusions. 1. Defect of power, of opportunities, of the means of external good offices, without any fault of ours, will not exclude us from the most heroick virtue.* This maxim is the most joyful to a good heart.¹²

More special
conclusions.¹¹

10. Cf. *Inquiry* II.3.14, pp. 132–33.

11. For this and the following sections, cf. *Inquiry* II.7.9, pp. 189–92: “Corollaries for comparing the degrees of Virtue and Vice in Actions.”

* See conclusion of book i.

12. Cf. *Inquiry* II.3.15, pp. 134–35.

2.¹³ No disappointment of any wise and good attempt, by external force, or accidents which one could not foresee, can diminish the virtue: nor do unexpected or unintended good consequents increase it, * or diminish the guilt of a bad action. In human affairs men must follow probabilities. If the probable good <246> effects intended, which could not be obtained in a safer way, surpass all the ill effects¹⁴ we could foresee, the action is good, altho' superior evil consequents ensue beyond probability.

3. Prospects of private advantage then only abate the moral beauty of an action, when 'tis known by the agent, or justly presumed by others, that without this selfish motive the agent would not have done so much good.

4. Motives of private interest diminish the guilt of an evil action undertaken from them, only in proportion as they would in such cases affect a virtuous mind. The passions raised by the greatest natural evils impending or threatened, more occupy and in-gross the mind than any desires of positive good to be obtained. And hence it is that when a person through fear of death, tortures, or slavery, threatened to himself, or those who are dear to him, or from some high provocation to anger, does what brings superior detriment to society, the guilt is much more extenuated, than if he had been induced to the same conduct by the highest bribes. And resisting the former temptation would show a nobler strength of virtue than resisting the latter, or any inducements of sensuality.[†] In general, the greater the vice is in any action we are

13. For points 2 and 3, cf. *Inquiry* II.3.11, pp. 129–30, and II.7.9, p. 189, as well as *Short Introduction* II.3.7, p. 125.

* B. ii. c. 1.

14. GUL Ms., pp. 156–57: At this point, there is an inserted leaf with the following note in Leechman's hand: "July 3d sent to Mr Foulis from p. 217 to p. 252 Inclusive. This belongs to the 1st Vol: of the Work. November 2d compared from p. 145 to p. 169. for the Press." For an explanation of this note, see the Note on the Text, p. xxvii, and the appendix, item 10.

† See Aristot. *Ethic. Nicom.* I. iii. c. ult. and Antonin. I. ii. c. 10. [See *Nicomachean Ethics* III.4, 1119a21–34, where Aristotle is contrasting the degree of voluntariness in acts of cowardice and of self-indulgence; and cf. Marcus Aurelius Antoninus, *Meditations* II.10, which Hutcheson translated as follows (pp. 35–36):

Theophrastus, as becomes a philosopher, says justly, that in comparing crimes together, (for in a popular style they may be compared) these are greater, which

tempted to by motives of interest, the less is the virtue evidenced by our abstaining from it: and the smaller the vice is to which we have such strong <247> temptations, the virtue of resisting them is the* greater, provided we have proportionally firmer resolutions against the greater vices. Some crimes are so very odious that few amongst the most corrupt order of men can be brought to commit them.

5. The temper is the more depraved the greater the motives to goodness are which it counteracts. He who sins against a known law shews a worse mind, by surmounting the strong motives to obedience from the sanctions, and other circumstances to be mentioned hereafter, than one who does the same action without any knowledge of the law.

6. Offices of no trouble or expence do not prove an high virtue in the agent, tho' declining them shews great depravity, as there are no motives of interest against them.

7. Common offices done to persons of great merit in whom there are high causes of love, are no evidences of great virtue in the agent. He has little virtue who shews no more zeal for a friend, a benefactor, a man of eminent virtue, than another will do from smaller bonds of affection. And yet the neglecting any friendly services due to such high virtues or merit, is more vicious than omitting offices of general humanity where there were no such high claims.

men are incited to, by lust, or desire of pleasure, than those which flow from anger. For the angry man seems to be turned from right reason, by a sort of pain and contraction seizing him unawares. But he who sins from lust, conquer'd by pleasure, seems more dissolute, weak, and effeminate in his vices. He says justly, and as becomes the dignity of a philosopher, that the crime committed for pleasure, deserves an higher censure, than that committed from the impulse of pain. One in the latter case seems like a person who is forced into anger by injuries first received; but one in the former, like him who first injures another, at the instigation of some lust of pleasure.

As Hutcheson points out in his note to this passage, "It was one of the paradoxes of the Stoics, that all crimes were equal, and so no occasion for comparisons." Cf. *Meditations*, II.10, p. 35.]

* Thus 'tis a good rule of perfection, to *abstain from the very appearance of evil*. [1 Thessalonians 5.22.]

8. When one cannot at once do offices of both sorts, and other circumstances are equal, we should follow the stronger ties of nature and the higher causes of love. Thus we should rather do services to a <248> parent, a benefactor, a kinsman, a man of eminent virtue, than to a stranger.¹⁵ As *God* constituted these special bonds for the wisest purposes, 'tis for the general good that, when other circumstances are equal, these stronger bonds should engage our services rather than the weaker. The omission of the other offices, now inconsistent with the more sacred ones, is altogether innocent.

9. When only equal good is done by persons of equal abilities, from whom more might reasonably have been expected, one acting from mere humanity, the other from additional motives of divine laws and promises proposed by revelation; we have better evidence of a good temper in the former. Our good actions should rise in proportion to the stronger motives proposed,* to shew an equally good temper.

10. Yet as the true aim of virtue is to promote the publick good, and not the pleasing one's self with high notions of his own virtue; every good man must desire to present to his mind all these motives which can further prompt him to good offices, and make him steady and resolute against all difficulties. He must desire the firmest persuasion that virtue is his truest interest; that *God* will espouse his cause by making the virtuous happy either in this life, or the next. Settling these points firmly in our minds, and frequently reflecting on them to obtain constancy and vigour in a course of virtue, superior to all temptations of secular interest, shews the truest benevolence: <249> and the rejecting such considerations would shew a wrong temper, negligent of the natural means of fortifying all kind dispositions, and of removing all impediments out of their way. Such will be most constant and vigorous in all good offices, who have the strongest motives to them, and have removed all opinions of any opposite valuable interests. Now such are they only who believe and often reflect upon the Divine Providence as protecting

15. On this point, Hutcheson seems in agreement with Butler, sermon 12, in *Sermons*, pp. 103–4, even if Hutcheson still insists on our duty to cultivate universal over partial benevolence.

* Matth. v. 20. Luke vi. 32,——35.

the virtuous, and ensuring their happiness; who raise an habitual love, esteem, and gratitude to *God*, which strongly co-operate with all our generous affections to our fellows. A like effect, in a lower degree, arises from a just observation on human affairs, that a course of virtue is the most probable way of obtaining outward peace and prosperity, as it never fails to create inward peace and joy. But all this is no proof that one's own happiness of any kind is the only thing he ultimately intends in his virtuous offices.

VI. But as the affections of men are sometimes discovered by the actions of others to which they contributed, 'tis plain any good office of another, to which we have designedly contributed from any good affection, may be imputed in some degree to our honour. And where we have contributed to any bad action of another by acting or omitting contrary to our duty, it may be imputed also as our fault; but in very different degrees, as circumstances may be very different.

How the actions of others are imputed.

1. As they who exhort, advise, or direct others in virtue shew a good disposition, and share in the honourable <250> imputation; so the advisers of wickedness are alike guilty whether their advice has been followed or not. But bad advice may in many instances abate the guilt of the person who perpetrates the wickedness. Human courts indeed seldom punish for mere advice, where there was no power or authority in the adviser; and where no share of the profit by any injury came to him, he is not made lyable to compensation of the damage. 'Tis hard to find what effect such general advices may have had on the agent, who without them might have acted the very same part.

This in various degrees.

2. In many cases the advising, exhorting, or congratulating another in any wicked design may not shew such depravation as the execution of it, as many things occur in the execution to dissuade the undertaker, and make him relent, which do not occur to the adviser or congratulator; such as stronger feelings of compassion and remorse, and views of punishment, and even present danger. The surmounting all these motives which affect men more deeply in the execution, may shew a greater depravity in the executer. On the other hand, when the adviser or applauder has no such motives of interest, or of escaping from some great danger, no such violent passions moving him, and yet advises or applauds

others in mischief; the executer who performs it from these strong motives may not be so entirely debased, so void of moral feelings, as the adviser and applauder.

3. He who of his own pure motion commits a crime, shews a worse disposition than one who under command of a superior, and threatened with severe punishment if he declines obedience, executes a like action with inward reluctance. Where the hurt to others from his obeying the command is much less than the evil he had incurred had he disobeyed, his obedience may be perfectly innocent, especially if he is ready to compensate the damage done to others for his own safety; and the only guilt will be chargeable on the commander. In general, the persons vested with authority or power, are the principal causes of what is executed by their command: the subject is often innocent; and where he cannot be wholly justified, the guilt is extenuated by the temptation. Nay the strong importunities of friends are some extenuation.

4. But whatever is done in consequence of the command of our will or of our choice, which affects the happiness or misery of others, whatever were our motives, is still a moral and imputable action, as it is some indication of our affections. The fear of great evil threatened may, as other pleas of necessity, make that innocent, in some cases, which without that necessity had been criminal; such as delivering money or arms to robbers that our lives may be preserved; throwing our own or other men's goods over-board in a storm, are imputed as innocent actions, nay matters of duty. And even where the publick detriment ensuing is greater than that we escape from by the action, the guilt, tho' not quite removed, is much extenuated. Still such actions are moral, and imputable as morally good or evil. <252>

The general Notions of Rights and Laws explained; with their Divisions.¹

I. From the constitution of our *moral faculty* above-explained, we have our notions of* *right*, and *wrong*, as characters of affections and actions. The affections approved as right, are either universal good-will and love of moral excellence,² or such particular kind affections as are consistent with these. The actions approved as *right*, are such as are wisely intended either for the general good, or such good of some particular society or individual as is consistent with it. The contrary affections and actions are *wrong*.

Right and
wrong in
action.

An action is called *materially good* when in fact it tends to the interest of the system, as far as we can judge of its tendency; or to the good of some part consistent with that of the system, whatever were the affections of the agent. An action is *formally good*, when it flowed from good affections in a just proportion. A good man deliberating[†] which of

Goodness
material, and
formal.

1. The first three chapters of Book II present a different arrangement of Hutcheson's ideas from that in the *Short Introduction*. In the latter work the overall order is that of the law of nature (ch. 1) followed by rights and their divisions (ch. 2) and moral actions characterized in the language of the virtues (ch. 3). In the *System* the sequence is: moral actions in general (ch. 1), the moral qualities of actions (ch. 2), rights in general (ch. 3.1–7) with laws of nature (ch. 3.8–12).

* This is the *rectum*, as distinct from the *jus*, of which presently: the *jus* ensues upon the *rectum*.

2. GUL Ms., p. 160: "a right" and "universal good-will and love of moral excellence" are interlinear insertions, the latter replacing an illegible deletion.

† *Conscientia antecedens*. ["... Conscience ... as it either precedes or follows the action, we may ... branch into *antecedent*, and *consequent*," says Pufendorf,

several actions proposed he shall chuse, regards and compares the *material goodness* of them, and then is determined by his moral sense invariably preferring that which appears most conducive to the happiness and virtue of mankind.³ But in judging of his* past actions he considers chiefly the affections they flowed from abstracting from their effects. Actions materially good may flow from motives void of all virtue. And actions truly virtuous or formally good may by accident, in the event, turn to the publick detriment.⁴

The notion of
rights;

Our notion of *right* as a moral quality competent to some person, as when we say one has a *right* to such things, is a much more complex conception. Whatever action we would deem either as virtuous or innocent⁵ were it done by the agent in certain circumstances, we say he has a *right* to do it. Whatever one so possesses and enjoys in certain circumstances, that we would deem it a wrong action in any other to disturb or interrupt his possession, we say 'tis *his right*, or he has a *right* to enjoy and possess it. Whatever demand one has upon another in such circumstances that we would deem it wrong conduct in that other not to com-

Law of Nature, I.3.4, p. 25, to which Barbeyrac adds that this distinction is "according to the Schools" (note 2), by which he may especially have meant Suárez.]

3. GUL Ms., p. 161: "and then is determined by his moral sense invariably preferring that which appears most conducive to the happiness and virtue of mankind" is an interlinear insertion, replacing an illegible deletion.

* *Conscientia subsequens*. [See Hutcheson's preceding note.]

4. In his notes, Hutcheson gestures toward the scholastic distinction between antecedent and consequent conscience, but he combines it with his own theory of the moral sense and moral judgment. In doing so, he is in accord with Barbeyrac and sets himself apart from Pufendorf. For Barbeyrac the antecedent moral judgment of what to do was typically an immediate judgment of the moral faculty, which was subject to subsequent assessment in terms of the consequences of the act. This is consonant with Hutcheson's idea of the respective roles of the moral sense and the rules for assessing the effects on the common good of *prima facie* good or bad acts. Concerning the range of Hutcheson's possible sources, it has to be remarked that Barbeyrac does not set out these ideas in his notes to Pufendorf's *Law of Nature*, only in his translation of Pufendorf's shorter work, *Les Devoirs de l'homme*, I.5, note 1, pp. 6–7, and this is not included in the English translation. On formal and material goodness, see Pufendorf, *Law of Nature* I.7.4; Carmichael, *Natural Rights*, p. 25; and Hutcheson, *Short Introduction* II.3.1, pp. 116–17.

5. GUL Ms., p. 161: "either as virtuous or innocent" replaces the deleted "a right one."

ply with it, we say one has a *right* to what is thus demanded. Or we may say more briefly, a man hath a *right* to do, possess, or demand any thing,* “when his acting, possessing, or obtaining from another in these circumstances tends to the good of society, or to the interest of the individual consistently with the rights of others and the general good of society, and obstructing him would have the contrary tendency.”⁶

II. The *righteousness* or goodness of actions is not <254> indeed the same notion with *their tendency to universal happiness*, or flowing from the desire of it. This latter is the highest species of the former. Our *moral sense* has also other immediate objects of approbation, many narrower affections, which we must immediately approve without thinking of their tendency to the interest of a system. In like manner we immediately condemn many unkind passions and actions, without considering their distant effects upon society. When one by innocent industry and some kind affections procures for himself and those he loves the means of ease and pleasure, every good spectator is pleased that he should enjoy them, and must condemn the disturbing his possession and enjoyment immediately, without thinking of the effects of such injustice upon a community. Indeed if any grand interest of a community requires his being deprived of some part of his acquisitions, then we see a superior moral form; a publick interest, which a good mind must more regard: and a more extensive affection, appearing more lovely than the narrower, justifies the mind in controlling it. The former approbation was equally immediate; but this latter is of an higher kind, to which the former is naturally[†] subordinate.

not always
referred to a
publick good.

Nay, as in fact it is for the good of the system that every desire and sense natural to us, even those of the lowest kinds, should be gratified as far as their gratification is consistent with the nobler enjoyments, and

Rights seem to
attend every
natural desire.

* This is the same with the common definition, *Facultas lege concessa ad aliquid agendum, habendum, aut ab altero consequendum* [a power granted by law to do something, to have something, or to obtain something from another]; since the end of the law of nature is the general good. [Pufendorf, *Law of Nature* I.1.20; cf. Grotius, *Rights of War* I.1.4–5. Cf. *Inquiry* II.7.6, p. 183; *Short Introduction* II.4.2, p. 129.]

6. GUL Ms., p. 161: The following passage was added in the margin: “or to the interest of the individual consistently with the rights of others and the general good of society, and obstructing him would have the contrary tendency.”

† See B. i. c. 4.

in a just subordination to them; there seems a natural <255> notion of *right* to attend them all. We think we have a right to gratify them, as soon as we form moral notions, until we discover some opposition between these lower ones, and some principle we naturally feel to be superior to them. This very sense of right seems the foundation of that sense of liberty, that claim we all naturally insist upon to act according to our own inclination in gratifying any desire, until we see the inconsistency of its gratification with some superior principles. The several appetites no doubt operate in us before we have any moral notions, pursuing their several gratifications. But after moral notions are obtained, we assume to ourselves, and, where our passions are not raised, we allow a right to others to gratify any desire which is not apprehended opposite to some higher natural principle: and not only look upon it as a damage or hurt when we are hindered without this reason, but deem it immoral and ill-natured in one who assumes a power to obstruct us.⁷ We condemn the man who should by violence, without the just cause, obstruct the enjoyments of a third person with whom we are not concerned.*

None can be
valid against
the publick
interest.

But, altho' private *justice, veracity, openness of mind, compassion*, are immediately approved, without reference to a system; yet we must not imagine that any of these principles are destined to controll or limit <256> that regard to the most extensive good which we shewed to be the noblest principle of our nature. The most extensive affection has a dignity⁸ sufficient to justify the contracting any other disposition: whereas no moral agent can upon close reflection approve himself in adhering to any special rule, or following any other disposition of his nature, when

7. GUL Ms., p. 162: "and ill-nature" and "who assumes a power to obstruct us" are interlinear insertions, the latter replacing a brief illegible deletion.

* This seems the intention of *Grotius de J. B. et P.* l. i. c. 2. §i. where he deduces the notion of right from these two; first, the *initia naturae*, or the natural desires, which do not alone constitute right, till we examine also the other, which is the *convenientia cum natura rationali et sociali* [conformity with rational and social nature]; using the phrases of the Stoicks, tho' not precisely in their meaning. [Grotius, *Rights of War* I.2.1, quoting and referring to Cicero, *De finibus* III.5 and 17; and Seneca, *Epistles* LXXVI, CXX, CXXI, CXXIV.]

8. GUL Ms., p. 163: "principle of our nature. The most extensive affection has a dignity" replaces "Affection."

he discerns, upon the best evidence he can have, that doing so is contrary to the universal interest or the most extensive happiness of the system in the whole of its effects.

When some ingenious and good men conceive some other independent or unsubordinated notion of *justice in punishing, they seem to have derived it from the feelings and impulses of a natural passion, a generous indignation or anger arising against grosser crimes. But this passion, however wisely implanted, must be under the controll of an higher principle. Its sole impulse is to inflict evil on those whose vices have excited it. This passion, and pity too, tho' both are lovely, must often be restrained by wise magistrates, <257> parents, guardians. Nay were it possible to root out all these passions, and substitute in their place a strong calm regard to the most extensive good, ever present to the mind, and ever awake to discern the several duties of life subservient to this general

The causes of mistakes.

* There is a mistake in an argument on this head in an excellent book, Bishop Butler's Analogy. "Ill-desert, or meriting punishment, must be another notion than this that the sufferings of such tend to the publick good; because the sufferings of innocent persons may sometimes tend to the publick good; and in such cases, 'tis just to subject them to such sufferings: and yet here there is no ill-desert." All men grant that under *ill-desert* one other notion is involved than the *tendency of sufferings to the publick good*, viz. the notion of some *moral evil* preceeding. But where moral evil has preceded, what else can justify punishing, but shewing that punishing, in such cases, tends to some publick good? One tendency to publick good in punishing where guilt preceeded justifies the punishment. Another tendency to publick good in a different way justifies the subjecting innocent persons to sufferings. This rather proves that there is no other ultimate measure of justice than some tendency or other to this end; tho' anger moves us to punish without this consideration. [Despite the quotation marks, Hutcheson is in fact summarizing an argument of Butler's in the "Dissertation on the Nature of Virtue" appended to *Analogy of Religion*, an argument that again relates closely to that of chapter 6 in part I of the work. Butler argues that the common recognition of ill desert in human behaviour implies the existence of a moral power of *free* moral agency and that this means that ill desert, as in punishment, cannot be reductively analyzed in terms of the achievement of some common good. Butler seems to have had Hutcheson's earlier works in mind in this attack on a form of consequentialism, and he ends the essay on virtue with a strong criticism of the reduction of virtue to benevolence which seems clearly aimed at Hutcheson. Hutcheson's strong rebuttal in this place is in line with later consequentialist rejection of a conceptually necessary link between crime and punishment.]

end, so much the better would these duties be performed. Superior orders of beings may want these passions altogether.⁹

Rights
perfect, and
imperfect.¹⁰

III. Rights, according as they are more or less necessary to be maintained and observed in society, are divided into perfect, and imperfect. Every proper right is some way conducive to the publick interest, and is founded upon some such tendency. The observing and fulfilling every proper right of others is matter of conscience, necessary to obtain the approbation of *God*, and our own hearts. But some of them are of such a nature that the interest of society requires they should ever be maintained and fulfilled¹¹ to all who have them, and that even by methods of force, where gentler measures prove ineffectual; these are called *perfect rights*; such as every innocent¹² man has to his life; to a good name;¹³ to the integrity and soundness of his body; to the acquisitions of his honest industry; to act according to his own choice within the limits of the law of nature: this right we call natural liberty, of which liberty of conscience is not only an essential but an unalienable branch. These rights should be maintained to all men,¹⁴ when no more general interest of mankind requires any abridgement of them. Society cannot subsist unless these rights are <258> sacred. No individual can be happy where such rights of his are promiscuously violated.

both create a
corresponding
obligation.

Other rights as truly sacred in the sight of *God*, and our own consciences, yet are of such a nature, that for some remote reasons of publick utility, they must not be asserted by violence or compulsion, but

9. GUL Ms., pp. 163–64: A paragraph of 17 lines has been heavily lined through.

10. The distinction between perfect and imperfect rights (and duties) was of fundamental importance in Protestant natural law, beginning with Grotius, *The Rights of War and Peace*, Prolegomena II, and I.1.4–10 (with Barbeyrac's note 3 to the last section, 10). See also Pufendorf, *Law of Nature* I.1.19 (whose main interest, however, is perfect/imperfect duties: *Law of Nature* I.7.7; *Duty of Man* I.2.14); Carmichael, *Natural Rights*, pp. 43–44; Hutcheson, *Inquiry* II.7.6, pp. 182–84, *Short Introduction* II.2.3, pp. 113–14).

11. GUL Ms., p. 164: "and fulfilled" is an interlined insertion.

12. GUL Ms., p. 164: "innocent" is an interlined addition.

13. GUL Ms., p. 164: "to a good name;" is an interlined addition.

14. GUL Ms., p. 164: "this right we call natural liberty, of which liberty of conscience is not only an essential but an unalienable branch. These rights should be maintained to all men," is an interlinear and marginal insertion.

left to the goodness of other men's hearts. These are the *imperfect rights*. The regarding and fulfilling them to every one who has them is of great advantage and ornament to human life, and the violating or declining to fulfil them to others, in many cases may be as criminal in the sight of *God* as the violation of perfect rights: but as they are not of such absolute necessity to the subsistence of society among men, and there are the most obvious reasons why they should be left to men's honour and conscience, they are not matter of compulsion. Such are the rights of the indigent to relief from the wealthy: the rights of all men to offices of no trouble or expence: the rights of friends and benefactors to friendly and grateful returns: the right of every good man to such services as are to him of much greater importance than any small trouble or loss they occasion to men in splendid stations or fortunes.

To make all these rights of so delicate a nature matters of compulsion, especially when it is so hard to determine the several claims of men, and the nice degrees of them, about which there must be great diversity of sentiment, would furnish matter of eternal contention and war: and were they made matters of compulsion, there would remain no proper opportunity for good men to discover their goodness to others, and engage their esteem and gratitude. The most artfully selfish, for fear of compulsion, would be the readiest to fulfil these rights were the measures of them once determined. Nothing too would be left to choice or natural liberty.

Imperfect rights not matter of compulsion.

There remains a third species, but rather a shadow of right than any thing deserving that honourable name, which we call an *external right*; in the use of which no man can be approved by *God*, or his own heart, upon reflection. "When doing, enjoying, or demanding from others is really detrimental to the publick, and contrary to the sacred obligations of humanity, gratitude, friendship, or such like; and yet for some remote reasons 'tis for the interest of society not to deny men this faculty,

External rights.¹⁵

15. External rights are primarily legal rights. As such they are enforceable but are nevertheless immoral in that they are in conflict with imperfect rights. Cf. Grotius, *The Rights of War and Peace* III.10.1–2; Hutcheson, *Inquiry* II.7.6, p. 184, *Short Introduction* II.2.3, p. 114.

but on the contrary in some instances¹⁶ to confirm it.” ’Tis thus the uncharitable miser has this shadow of¹⁷ right even to that share of his possessions which he should have employed in offices of humanity, charity, or gratitude; or to recal money unseasonably or cruelly from an industrious sponable debtor; to demand performance of too severe and unequal covenants, while no law prohibits them. Many such like claims are introduced by civil laws in the cases of wills, successions to the intestate, and contracts, where the equitable and humane part may be very different from the legal claim. This external appearance of right is all that remains when any duty of gratitude, friendship, or humanity requires our receding from what otherways would have been a perfect right.

What rights
may be
opposite.

Now as no action, enjoyment, or demand, and its contrary, can be alike useful to society, so nature has in no instance constituted proper rights opposite the one to the other:¹⁸ imperfect rights of humanity may be opposite to external rights; but as neither the former, nor the latter, entitle one to use force with a good conscience, war can never be really just on both sides. Any obligation in conscience to comply with external shadows of right which others may have, can arise only from prudence with regard to our own interest, or from some remote views of the detriment that may in some cases redound to society from opposing them, and not from any sense of duty toward the person who insists on them in opposition to humanity.

Justice of laws
of several sorts.

There is a like division of the justice of laws. Some systems of them are called just, only in this sense, “that they require only what is of high necessity for every peaceful state, and prohibit all that is necessarily evasive of good order and polity, yet without a nice regard to promote the nobler virtues, and to prohibit all actions of a bad tendency, when they are not absolutely pernicious.” In such states actions are legally just

16. GUL Ms., p. 165: “but on the contrary in some instances” is an interlinear insertion, possibly in a different hand, replacing an illegible deletion.

17. GUL Ms., p. 165: “this shadow of” is an interlinear replacement of “a,”

18. GUL Ms., p. 166: “so nature has in no instance constituted proper rights opposite the one to the other” is an interlinear insertion to replace this deletion: “no proper Rights of two Parties can be opposite.”

which violate none of these necessary laws, and men have legal rights to do whatever the laws permit, tho' often contrary not only to humanity, but to what a finer institution would make necessary. Sometimes a good legislator is constrained <261> to give no better laws, from the bad dispositions of his subjects which would bear no better.* In another meaning of the word, that system of laws only would be called just, "where every thing is decreed in the wisest manner for the best order in society, and promoting the greatest virtue and happiness among individuals." In the former sense only can the Jewish system be called just, while it permitted polygamy, divorces at pleasure, and execution of justice on murderers and all man-slayers by private persons the nearest kinsmen of the deceased; and contained a very burdensome ritual institution of worship.

IV. Our rights are either *alienable*, or *unalienable*. The former are known by these two characters jointly, that the translation of them to others can be made effectually, and that some interest of society, or individuals consistently with it,²⁰ may frequently require such translations. Thus our right to our goods and labours is naturally alienable. But where either the translation cannot be made with any effect, or where no good in human life requires it, the right is unalienable, and cannot be justly claimed by any other but the person originally possessing it.²¹ Thus no man can really change his sentiments, judgments, and inward

Rights alienable, or not.¹⁹

* This is probably the most useful explication of the distinction of Civilians of the *jus naturale* into the *primarium* and *secundarium*: the former unalterable, and the latter variable according to the prudence of civilized nations. To call the one self-evident, and the other not, is trifling: a just conclusion is as sure as the premises. See Grot. l. c. 1, 2. [Grotius makes the distinction as one between natural and voluntary, *Rights of War* I.1.9, claiming that it derives from Aristotle, *Nicomachean Ethics* V.x. Cf. *Short Introduction* II.1.7, where Hutcheson in a note refers to Arnoldus Vinnius, *In quattuor libros Institutionum imperialium commentarius academicus et forensic*, I.2.2 (he could have included paragraph 1); Carmichael, *Natural Rights*, pp. 202–3, with the same reference to Vinnius and to the passages in Justinian's *Institutes* on which Vinnius comments as well as to Ulrich Huber, *De jure civitatis libri tres*.]

19. Cf. *Inquiry* II.7.7, pp. 185–86; and *Short Introduction* II.2.4, pp. 114–15.

20. GUL Ms., p. 167: "individuals consistently with it" replaces an illegible deletion.

21. GUL Ms., p. 167: "originally possessing it," replacing "who originally [illegible] had it."

affections, at the pleasure of another; nor can it tend to any good to make him profess what is contrary to his heart. The right of private judgment is therefore unalienable.

The degrees
from imperfect,
to perfect,
innumerable.²²

V. By dividing rights into the two classes of perfect, and imperfect; we do not intimate that all those of either class are of the same importance or necessity; that the guilt of violating all perfect rights, is equal; or that the violating all imperfect rights is equally criminal. There is plainly a gradation from the weakest claim of humanity, to the highest perfect right, by innumerable steps. Every worthy man, tho' not in distress, has a claim upon the great and opulent for any good office in their way for improving his condition, when none of greater merit, or greater indigence, has an interfering claim. This is among the lowest imperfect rights or claims. A good man in distress has an higher claim. One who has done eminent publick services has an higher still: one who had done singular services of an honourable kind²³ to men now in power has a stronger claim upon them, especially if he is fallen into distress. All these we call imperfect rights. The greater the merit and natural causes of love there are in the person who has these claims, the nearer also they approach to perfect rights. A worthy man in distress has an imperfect claim to the necessities of life²⁴ upon all who can relieve him, but on his children his claim is almost perfect, not only for a bare support, but for such conveniencies of life suited to the parent's station as they can afford without distressing themselves. The sense of an honest man, practised²⁵ in the affairs of life, <263> must determine these points more precisely in particular cases.

Upon what
their strength
depends.

In general, rights are the more sacred the greater their importance is to the publick good, the greater the evils are which ensue upon violating them, the less the trouble or expense is of observing them, the greater the merit or causes of love are in the persons who have them. And the

22. Cf. *Short Introduction* II.2.3, p. 114.

23. GUL Ms., p. 167: "of an honourable kind" is an interlined insertion.

24. GUL Ms., p. 167: "to the necessities of life" is an interlined insertion.

25. GUL Ms., p. 167: "honest man, practised" is an interlined replacement of an illegible deletion. At the beginning of the sentence, the manuscript has an aborted footnote, "See B."

stronger the claim is, so much the greater is the crime of opposing it; and the smaller is the degree of virtue in complying with it.

On the other hand, the less the detriment is which ensues upon violating a right, the greater the trouble or expense is of fulfilling or complying with it, the smaller the merit of the person is, the right is so much the weaker: but then the more virtue is evidenced by regarding it, provided there be a proportionably higher regard to the higher claims of others; and the moral turpitude of neglecting it is so much the less. Small virtue is shewn by paying a just debt, by abstaining from outrages and violence, by common returns of good offices where we have been highly obliged, by common duty to a worthy parent in distress: but the conduct contrary to such sacred claims would be most detestable. Offices of singular generosity to a worthy man who has no special claim upon us, are greater evidences of a good temper (if we show a proportionably higher ardour of goodness where there is equal merit and peculiar claims upon us) than offices equally beneficent toward a kinsman, or great benefactor. <264>

VI. To each right there corresponds an *obligation*, perfect or imperfect, as the right is. The term obligation is both complex and ambiguous. We primarily say one is obliged to an action “when he must find from the constitution of human nature that he and every attentive observer must disapprove the omission of it as morally evil.” The word

Right, and
obligation,
relative.²⁶

26. Cf. *Short Introduction* II.2.2, pp. 112–13, where the anonymous translator in addition to Pufendorf and Leibniz refers to Barbeyrac. The relevant details are, Grotius, *The Rights of War and Peace* I.1.9, with Barbeyrac’s note 5; Pufendorf, *Duty of Man* I.2.3–5, and *Law of Nature* I.1.21 and I.6.5, where Pufendorf refers to Richard Cumberland, *A Treatise of the Laws of Nature* V.27, which Hutcheson is also very likely to have had in mind; Leibniz’s letter criticizing Pufendorf’s *Duty of Man*, often printed with Barbeyrac’s reply in an appendix to that work as “Jugement d’un anonyme sur l’original de cet abrégé; avec des réflexions du traducteur,” now in translation in *Duty of Man and Citizen*, pp. 267–305. Much of this literature takes the form of comments upon the definition of obligation in Justinian’s *Institutes* III.14 princ. as a *vinculum iuris*, a rightful bond, and the central question was how to balance the idea of obligation as self-imposed, which would make the divinity superfluous as humanity’s ultimate moral superior, and the idea of obligation as imposed by such a superior, which seemed to make obligation entirely self-interested. Hutcheson’s is one of many early modern attempts to deal with this dilemma.

is sometimes taken for “a strong motive of interest constituted by the will of some potent *superior* to engage us to act as he requires.” In the former meaning, obligation is founded on our moral faculty; in the later, it seems to abstract from it. But in describing the *superior* who can constitute obligation, we not only include sufficient force or power, but also a just right to govern; and this justice or right will lead us again to our *moral faculty*. Through this ambiguity* ingenious²⁷ men have contradicted each other with keenness; some asserting an obligation antecedent to all views of interest, or laws; others deriving the original source of all obligation from the law or will of an omnipotent Being. This leads us to consider the general doctrine of laws, and the foundation of the right of governing rational agents, to which corresponds their obligation to obedience.

Indications of
the Divine
Will.²⁸

VII. As we shewed in the former book that we all have sufficient indications of the existence and providence of *God*, and that he is the author of all our natural powers and dispositions, our reason, our *moral faculty*, and our affections; we can by just reflection <265> also plainly discern what course of action this constitution of our nature recommends both to our approbation as morally excellent, and to our election in point of interest. We must therefore see the intention of the *God* of Nature in all this, and cannot but look upon all these conclusions of just reasoning and reflection as so many indications to us of the will of *God* concerning our conduct. When we have arrived at this persuasion, these practical conclusions receive new enforcements upon our hearts, both from our *moral faculty*, and from our interest.

The right of
the Deity to
govern all.²⁹

As *God* is justly conceived a being of perfect goodness and wisdom, and the greatest benefactor to mankind, our hearts must be disposed by the strongest sentiments of gratitude to comply with all the indications

* See Leibnitz's censure on Puffendorf and Barbeyraque's defence of him.

27. GUL Ms., p. 168: The Ms. has “great” crossed out and replaced by “ingenious.”

28. For this section, cf. *Inquiry* II.7.10, pp. 194–95, and *Short Introduction* II.1.1–2, pp. 103–5.

29. In addition to the references in the previous note, see Pufendorf, *Duty of Man* I.2.5, *Law of Nature* I.6.9; and Carmichael, *Natural Rights*, pp. 40–41.

of his will, and must feel the strongest disapprobation of all disobedience. His moral excellence must add strength to these feelings of gratitude³⁰ and make a deeper sense of the duty incumbent on us to obey him, as it shews that what he enjoins must be conducive to the universal interest. These practical³¹ conclusions therefore from the constitution of our nature do not suggest mere matters of private interest, or finer taste, which we are at liberty either to follow as the means of more delicate enjoyment, or to counteract, if we please to content ourselves with another sort of enjoyments. They are enforced as matters of sacred obligation by the very feelings of our hearts, and a neglect of them must be disapproved in the highest manner, and be matter of deep remorse under the odious form of ingratitude, and counteracting the universal interest. Thus it is that we are sensible of our moral obligation to obey the will of *God*. The divine perfections which suggest these sentiments are his moral attributes, and the benefits he has bestowed on mankind.

For as it must tend to the universal good that a being of perfect wisdom and goodness should superintend human affairs, assuming to himself to govern their actions, and to declare his pleasure about them; so it must undoubtedly tend to the universal good that all rational creatures obey his will. This shews his right of moral government. For the ultimate notion of right is *that which tends to the universal good*; and when one's acting in a certain manner has this tendency, he has a right thus to act.* The proper foundation of right here is infinite goodness and wisdom. The benefits conferred on us by *God*, superadd a new enforcement to our obligation by the sense of gratitude, and our natural abhorrence of ingratitude. But benefits alone, are not a proper foundation of right, as they will not prove that the power assumed tends to the universal good or is consistent with it,³² however they suggest an amiable motive to obedience.

Founded on
wisdom and
goodness.

30. GUL Ms., p. 169: "of gratitude" is an interlined addition.

31. GUL Ms., p. 169: "practical" is an interlined addition.

* These are the *fundamenta potestatis sive imperii* [foundations of authority or sovereignty]. Power is rather the *conditio sine qua non*.

32. GUL Ms., p. 170: "or is consistent with it" is an interlined addition.

Confirmed
by his
omnipotence.

But as the Deity is also omnipotent, and can make happy or miserable as he pleases, this attribute suggests to us, not a proper foundation of right, but a strong motive of interest to obey his will, and a quality very necessary to execute effectually the right of government assumed. The right itself is founded on his wisdom and goodness, which shew that his assuming of power by giving laws and annexing sanctions will conduce to the greatest good. And if this good cannot be obtained when the laws have no influence on the subjects, nor can they have influence upon minds any way depraved, if they find that the sanctions are not executed; 'tis plain from the same perfections, that 'tis right, or the *Deity* has a right, to execute such sanctions as are thus necessary; which his power always enables him to do.

Human power
not thus
founded.

But as no man can give such evidence as shall satisfy his fellows of his superior goodness and wisdom, and remove suspicions of his weakness and interested views; as there is no acknowledged criterion of superior wisdom for governing; and multitudes at once would pretend to it; as there is no assurance can be given of good intentions, to which the worst might by hypocritical services pretend; and as a people cannot be happy while their interests precariously depend on persons of suspected goodness or wisdom; these qualities cannot be, among men, the natural foundations of power; nor can it serve the general interest that they should be deemed sufficient to constitute such a right of governing, or of compelling others to obedience. Some extraordinary cases may be excepted.

Laws defined.³³

VIII. As a law is “a declaration made by him who has a right to govern, what actions he requires, or for**<268>** bids, for the publick good; and what motives of interest he has constituted to excite to the actions required, and deter from those prohibited.” It contains these two parts, the *precept*, shewing the actions required, or prohibited; and the *sanction*, shewing the rewards to ensue upon obedience, or the evils to be inflicted upon the disobedient. The precept must always be expressed, but the sanction may be understood as reserved discretionary to the governor.

33. Cf. *Short Introduction* II.1.3, pp. 105–6; Pufendorf, *Law of Nature* I.6.14; *Duty of Man* I.2.6–7.

This notion of a law shews how justly the practical conclusions of right reason from the order of nature constituted by *God*, and laid open to our observation, are called *laws of nature*, and *laws of God*; as they are clear declarations of his will about our conduct. And all the private advantages, internal or external, which we can foresee as probably ensuing upon our compliance, from the constitution of our own nature, or that of others, or of the world around us, are so many sanctions of rewards: and all the evils in like manner to be expected from our non-observance of these conclusions, are sanctions of punishment, declared or promulgated by the same means which declare the precepts.

Practical dictates of reason are divine laws.

The sole use of words, or writing, in laws, is to discover the will of the governor. In positive laws it must by such means be discovered. But there is another and primary way by which God discovers his will concerning our conduct, and likewise proposes the most interesting motives, even by the constitution of nature, and the powers of reason, and moral perception, <269> which he has given to mankind, and thus reveals³⁴ a law with its sanctions, as effectually as by words, or writing; and in a manner more noble and divine.*

IX. Laws are divided into *natural*, and *positive*. But these two terms are used in very different meanings. Sometimes the division is taken from the *different manners of promulgation*; and then by *natural laws*

Laws natural and positive in two senses.³⁵

34. GUL Ms., p. 171: This paragraph is heavily revised in the manuscript. The following wording was added interlined: "In positive laws . . . reveals." The partially legible deletion reads: "In positive Laws it must by such means be discovered. But if God can another way discover his Will about our Actions and [illegible] of Interest, even by the [illegible] very [illegible] Constitution of Nature and the Power of Reason & Reflexion he has given [illegible] Mankind, [illegible] was . . ."

* On this subject, see Dr. Cumberland *de Leg. Nat. Prolegom. et. c. i.* [Cumberland, *A Treatise of the Laws of Nature*, introduction and ch. 1].

35. Like other distinctions in scholastic natural law, this one was adapted in Protestant natural law. See Grotius, *The Rights of War and Peace* I.1.9, vol. I, p. 150, and I.1.13, p. 162; Pufendorf, *Law of Nature* I.6.18, and *Duty of Man* I.2.16. In his Latin compend, Hutcheson draws the distinction in an apparently confusing manner, only to have the anonymous translator change the point so that it is in line with the *System* in the present place; see *Short Introduction* II.1.4, p. 106, where the English translation omits to translate "voce promulgatae aut scripto."

are understood the moral determinations of the heart and³⁶ the conclusions of right reason from these determinations and other observations of nature; and by *positive laws*, such as are promulgated in words or writing, whatever the matter of them be.

Laws necessary
or not
necessary.

Others take the division expressed by these words from the diversity of the *matter of laws*; as some laws declare the natural direct and necessary means of supporting the dignity of human nature and³⁷ promoting the publick good; so that either opposite or different laws could not be equally useful, nay would be pernicious to society: these they call *natural*: such are all the laws of justice and humanity. Other laws have indeed in intention some good end, and with a view to it require certain means, but these are not always the sole, or the necessary, or preferable means. The same good end may be obtained by different means, and these equally convenient or effectual, and yet it may be necessary for the good of a society that a certain set of means be agreed upon for all. Nay certain institutions make some practices useful which in their own nature were of no use. Thus some rites <270> of religion, in their own nature of no importance, yet, by being instituted in memory of some great events, the frequent remembrance of which must increase grateful, pious, or humane dispositions, may become very useful to mankind.

The wise ends
of positive
laws.

The most frequent occasions for positive laws are where the same good ends may be obtained different ways, but 'tis requisite that some one way be fixed for all in a certain district. Thus neither can social worship be performed, nor courts of justice be kept, unless times and places are determined: and yet 'tis seldom found that any one time is fitter than another for any natural reason. In like manner, in the execution of justice there are different forms of process, different penalties for crimes, different times for executions. 'Tis convenient all these points should be known and settled for a whole society; and yet no one of the possible determinations can be said to be absolutely best, so that the smallest variation would make it worse.

36. GUL Ms., p. 172: "the moral determinations of the heart and" is an interlined addition.

37. GUL Ms., p. 172: "supporting . . . and" is an interlined addition.

Positive laws are quite different from what we call arbitrary or impetuous, such as are enacted merely from ostentation of power, without subserviency to the publick interest.

They are
useless or
arbitrary.

To the obligation of a law promulgation is necessary; not that every subject should actually know it; but that every one have it in his power, by such diligence as he is capable of, to attain to the knowledge of it. The penalties of laws may be justly exacted, where the laws have not been actually known,³⁸ when <271> the subject is culpably ignorant, and might have known them by such diligence as a good man in his circumstances would have used. But the ignorance of some laws of more difficult discovery may be very excusable in some men because of many avocations, and low abilities, or opportunities, which yet may be very culpable in others placed in more advantageous circumstances.

X. As the laws of nature comprehend not merely the original moral determinations of the mind, but likewise the practical³⁹ conclusions made by the reasoning and reflection of men upon the constitution of nature, shewing what conduct is worthy and tends to publick good,⁴⁰ there needs be little controversy about their perfection, as all must own that the reason even of the most ingenious and most improved is still imperfect. And that it may be very possible that a superior being could see a certain rule of conduct to be conducive to the publick good, which none of human race could ever have discovered to be useful: and as to the bulk of mankind, they may indeed easily discover the general and most necessary rules, but they seldom can find out or even apprehend well the reasons upon which some of the more special laws which yet have a substantial foundation in nature are built.⁴¹ If one by the system of the laws of nature means the very constitutions of nature itself, or the objective evidence laid before rational beings in the whole; this no doubt

How the law
of nature is
perfect.

38. GUL Ms., p. 173: "The penalties . . . known" is an interlined revision. The deletion reads: "Laws may oblige when they are not actually [illegible] known."

39. GUL Ms., p. 173: "comprehend . . . practical . . ." is an interlined correction of "are the."

40. GUL Ms., p. 173: "shewing . . . good" is an interlined addition.

41. GUL Ms., p. 173: "some . . . nature" is an interlined revision; "are built" may be the printer's contribution. The partially legible deletion: "many Laws of Nature are [illegible] founded [illegible]."

is perfect: but its perfection does not supersede the usefulness of the revelation of laws <272> to mankind by words or writing, or of the discoveries of the wiser human legislators or moralists, or of precepts positive as to their matter; since so few of mankind can attain any great knowledge of this constitution, and none can pretend to understand it compleatly.

Its imperfection no blemish in providence.

We should not censure providence on account of this imperfection, for reasons* mentioned above, any more than we censure it for our small bodily strength, or the shortness of our lives. If we use our powers and opportunities well, the condition of human life in this world will be in the main an agreeable and happy state; and yet by divine revelation, or even by accurate reasonings of wise men, much may be discovered for the improvement of this life; and many fine institutions contrived, the reasons for which neither any one in the ruder nations, nor the populace in the more civilized, shall ever apprehend.⁴²

All laws should aim at some good.

But this holds in general, that all wise and just laws have some tendency to the general happiness, or to the good of some part of the system subservient to and consistent with the general good. The moral good in obedience consists in either a direct intention of this good end proposed by the law, whether we know it fully ourselves, or implicitly trust to the goodness of the legislator; or in some grateful affection toward the legislator: where obedience flows only from fear of punishment, or hope of reward, it has no moral excellency, tho' in some cases it may be innocent. <273>

How the law of nature is immutable.⁴³

XI. Precepts of the law of nature, or these practical observations, are deemed immutable and eternal, because some rules, or rather the dis-

* B. i. c. 9. § 12.

42. GUL Ms., p. 174: It seems that Hutcheson at some stage intended to end chapter 3 at this place, for in the manuscript there follows a brief transitional paragraph that has been deleted but remains legible: "In the first Book we considered the Supreme Happiness of Mankind and the Ways of attaining to it, among which a constant Course of good offices to Mankind appeared to be naturally recommended to every one by the inward constitution of his soul. We proceed then to consider the more particular Duties of Life or the ways of doing Good to others and the several Rights and obligations of human Society." Cf. the concluding paragraph of this chapter, pp. 279–80.

43. See *Short Introduction* II.1.7.

positions which gave origin to them, and in which they are founded,⁴⁴ must always tend to the general good, and the contrary to the general detriment, in such a system of creatures as we are. But we must not imagine that all the special precepts of the law of nature are thus immutable as they are commonly enunciated universally. If we make the precepts immutable, we must allow many exceptions as parts of the precept, or understand the precept as holding only generally in ordinary cases. As the precept is indeed no more than a conclusion from observation of what sort of conduct is ordinarily useful to society; some singular cases may happen in which departing from the ordinary rule may be more for the general interest than following it. And some wise human institutions may take away or limit some rights which formerly were sacredly confirmed to each individual by the law of nature. Before civil polity each one had a right by private violence when gentler methods were ineffectual, of obtaining reparation of wrong from the author of it. But in civil polity private individuals cease to have a right to use those means. In like manner civil laws justly limit our use of our own property, and take some share of it for publick exigences, whereas previously to some political institution the general law of nature allowed to each one the full use of all his own acquisitions, and the right of disposing of them at <274> pleasure. Singular cases of necessity are also justly deemed exceptions from the ordinary laws. 'Tis injurious ordinarily to use the property of another without his consent; but an innocent man when he cannot otherways save his life in his flying from an unjust enemy, does no wrong by taking the horse of another when he cannot wait for the owner's consent.

The two fundamental precepts of "loving God, and promoting the universal happiness," admit of no exceptions; nay in the latter precept are founded all the exceptions from the special laws of nature; all the rights of receding, in cases of singular necessity, from the ordinary rules; and all the limitations of our rights by any wise institutions: since all

44. GUL Ms., p. 174: "because . . . founded" is an interlined correction; the deletion is partly illegible: "and conformable Actions called immutably good & the contrary [illegible] Actions called immutably Evil, because [illegible] Actions."

these are justified by their tendency in certain cases, and upon certain suppositions, to a superior good of the system than would ensue from following the ordinary rule.

XII. Some intricate controversies arise among moralists and schoolmen, from not observing sufficiently the difference between these practical observations we call laws of nature, and the laws declared in words and writing by legislators, divine, or human. They may be prevented by the following remarks.

Equity what.⁴⁵

1. As by *equity, they understand, a “correction of any defect in the law by too great or too small⁴⁶ extent of its expression,” when it is justly interpreted according to the true intention of the legislator, extended as far as the reason of it extends,⁴⁷ and not extended to cases where the reason of the law does not <275> hold; there is no room for this sort of equity as distinct from the letter⁴⁸ in the law of nature; as the law is not declared to us by words, in which alone there can be too small or great universality. Whatever right reason shews to be humane and equitable in conduct, is a part of the law of nature.

The doctrine
of Dispensa-
tion arose
from the
Canon Law.⁴⁹

2. The whole doctrine of *dispensations* was introduced by the *canonists*, after many capricious, imprudent, and unnecessary laws were imposed upon the Christian world, with the worst designs, and yet it was often found necessary to free men from the obligation of them. By *dispensation* is understood “some act of the legislator exempting certain persons from the obligation of laws which extended to them as well as others:” and always imports some abatement or derogation from a law.

Dispensation,
ambiguous.

3. The word *dispensation* is very ambiguous; and there are different kinds of it. *Dispensation* may be given either from the sanction, after the

45. See *Short Introduction* II.1.5, p. 107; Pufendorf, *Law of Nature* V.12.21 and *Duty of Man* I.2.10.

* The *Επιεικεια* of Aristotle and the Schoolmen. [Aristotle, *Nicomachean Ethics* V.10.]

46. GUL Ms., p. 175: “or too small” is an interlined addition.

47. GUL Ms., p. 175: “extended . . . extends” is an interlined addition.

48. GUL Ms., p. 175: “as distinct from the letter” is an interlined addition.

49. Cf. *Short Introduction* II.1.6, pp. 107–8; Pufendorf, *Law of Nature* I.6.17, and *Duty of Man* I.2.9.

law is violated, or from the precept, previously to any violation of the law. A dispensation from the sanction is “exempting a person from the legal punishment who has incurred it by violating the law; or the abating or altering of the punishment.” Now, as we shall see hereafter, there are some very strong reasons why a power of such dispensation should be lodged somewhere in every state, when the publick interest may require such dispensations: and, in like manner, as to such punishments as may naturally ensue, and be ordinarily necessary for the general good upon the violation of the laws of nature, it may be perfectly wise and benign that *God*, the great ruler of the world, should sometimes mercifully interpose and prevent these sufferings when the true end of them can be otherways obtained. But as we cannot conceive any such laws limiting *God* himself as may limit even the supreme magistrates of states, nor are any such particular punishments specified by the laws of nature invariably as may be by human laws, there can be little occasion for debating about the divine right of dispensing with the sanctions of the laws of nature.

4. As to previous dispensations from the precepts of laws, if the law itself be wise in all its extent, the previous dispensing with any violation of it must appear unjust and imprudent in any governor. And 'tis plain that no permission or command of any person can alter the moral nature of our affections so as to make the love of God, and our neighbour, become evil; or any contrary affections become good: nor can any permission or command alter the moral nature of the external actions which flow from these affections. No man could approve any such permissions or commands, nor can they ever be given by a good *God*. Some confused notions of the divine right of dominion or sovereignty have led some authors into such sentiments, as if a divine command could justify unkind or inhumane affections, and actions consequent upon them tending to the general detriment of the system.⁵⁰ But if one would consult the feelings of his heart, and examine well the original notion of right in action, or the right of governing, as distinct from

Previous dispensation from just laws must be evil.

50. GUL Ms., p. 176: “tending . . . system” is an interlined addition.

mere superior force, he would see such tenets to be contradictory to themselves.

5. As to external actions required, where nothing is in words prescribed about the affections, the certain command of a being who we are persuaded is possessed of perfect goodness and wisdom, may justly make us conclude that such enjoined actions, contrary to the present external appearances, may truly tend to superior good in the whole, and occasion no prepollent evil: when the evidence for the goodness of the enjoiner, and for this fact that he is the author of this injunction, is so great as to surpass sufficiently the contrary presumption from the external appearances of a bad tendency in the actions commanded. This case can scarce be called a dispensation from the laws of nature, since the agent is acting according to the law, what he believes is tending to good, tho' his opinion about this tendency is founded upon the testimony of another, and not upon his own knowledge.

What dispensation may be vindicated.

6. If by dispensation be understood only "a granting external impunity to actions really evil, or contrary to those rules of right reason which shew the most perfect and virtuous course of actions;" human lawgivers must often grant such external impunity, as we shall see hereafter.⁵¹ And 'tis alledged that many such permissions are in the *Mosaick Law*, which may be justified from the circumstances of that people and of the neighbouring nations: since a more rigidly virtuous institution would have made them revolt altogether from the worship of the true *God*. But then such a grant of external impunity does not remove or abate the moral turpitude of the actions in such men as know their pernicious tendency, or their contrariety to the most perfect and virtuous institutions. By such permissions however, and the general practice ensuing, the populace may be made generally less attentive to any bad tendency of such actions, and secure about it, so that the guilt may be much extenuated by the ignorance prevailing, which in some of the lowest orders of men may become almost invincible. But since the guilt is not entirely removed by such permissions, they are not what the School-

⁵¹ GUL Ms., p. 177: The manuscript indicates that a note should have been inserted here. It should refer to III.9.12.

men and Canonists generally understand by dispensations from the law of nature, which they suppose makes the actions in consequence of them perfectly innocent.⁵²

7. Nor do these cases come up to the common notion of dispensation when a superior acting according to the powers vested in him by the law disposes in an unusual manner of things committed to his disposal; or when the goods of the subjects, who have a right to them valid against their fellows, but not valid by law against their sovereign, are disposed of by the sovereign according to the powers vested in him by the law, and transferred from one to another. Or when the prince empowers others to do in his name what he has a right to do by what officers he pleases, tho' it would have been criminal in any subject without his prince's commission to have done such actions. What is commanded by any one in consequence of the powers constituted to him by the law, and executed accordingly,⁵³ can scarce be said to be done by virtue of a dispensing from the law. A debtor is bound by the law to make payment: but a remission or release from the creditor frees him from this obligation. We should not therefore say that every creditor has a power of dispensing with the laws of nature. The more acute Schoolmen, upon these considerations, do not allow the extraordinary commands given to Moses and Joshua to be dispensations from the laws of nature.⁵⁴ But 'tis needless to debate about words. If the law itself be wise and just in all the extent in which it is expressed, no act of any superior can make the counteracting it innocent or lovely. But most of the special laws of nature are not to be expressed in words⁵⁵ strictly universal, without the exception of many cases; particularly that of God's exerting his rightful dominion.⁵⁶

Mistakes about dispensations.

52. See the extensive discussion in Francisco Suárez, *A Treatise on Laws and God the Lawgiver*, II.14, pp. 301–26.

53. GUL Ms., p. 178: “and executed accordingly” is an interlined addition.

54. The reference is apparently to Suárez, *A Work on the Three Theological Virtues*, Disputation XIII, sec. 16, in *Selections*, pp. 966–97, where Suárez refers to Joshua VI:17 and 1 Kings:15.3 (it should be 1 Kings:16.3). See also Suárez, *A Treatise on Laws and God the Lawgiver* II.15, sects. 9–10, in *Selections*, pp. 332–34.

55. GUL Ms., p. 178: “to be expressed in words” is an interlined addition.

56. GUL Ms., p. 178: “particularly . . . dominion” is an addition at the end of the paragraph.

What is commonly meant by them.

Dispensations therefore, according to the full intention of the Canonists, are only to be made with laws either capricious or imprudent, or too universally expressed without mentioning the reasonable and just exceptions, which ought to have been inserted in the very laws themselves. In the laws of nature there can be no place for them, since the same reason and observation which discovers the ordinary general rule, discovers also all the exceptions, which are therefore parts of the law.

Having premised this general doctrine about the <280> morality of actions, rights and laws, we proceed to the more special consideration of the rights and duties of mankind, and the special laws of nature; and that first, as they are constituted by nature itself previously to adventitious states and relations introduced by human institution and contrivance, and then as they arise and are founded in some adventitious relation or institution.

The different States of Men. The State
of Liberty not a State of War. The way that
private Rights are known. The Necessity
of a Social Life.¹

When we speak of the different states of men, by a *state* we do not mean any transient condition a man may be in for a little time, nor any obligation he may be under to one or two transient acts, but “a permanent condition including a long series of rights and obligations.” The conditions men may be in as to sickness or health, beauty or deformity, or any other circumstances which are considered in the other arts, are foreign to our purpose. The moral states of men always include a series of moral obligations, and rights.²

What is a
moral state.

I. In the first state constituted by nature itself we must discern abundantly from the doctrine of the preceeding book that there are many sacred rights competent to men, and many obligations incumbent on each one toward his fellows. The whole system of the mind,³ especially

The state of
natural liberty
not a state of
war.

1. This chapter corresponds by and large to chapter 4 in Book II of *Short Introduction*.

2. GUL Ms., p. 179: There follows a cancelled but legible paragraph: “We first consider the Rights & Duties of that State in which nature has placed Men, previously to any adventitious state introduced by some Contrivance Institution compact or Deed of theirs by which they may incur a long Series of obligations toward their Fellows. And then consider the Rights & Duties of the Adventitious States.”

3. GUL Ms., p. 179: “system of the mind” is an interlined correction of largely illegible words: “[illegible] Use of our [illegible].”

our *moral faculty*, shews that we are under natural bonds of beneficence and humanity toward all, and under many more special ties to some of our fellows, binding us to many services of an higher kind, than what the rest can claim: nor need we other proofs here that this first state founded by nature is so far from being that of war and enmity, that it is a state where we are all obliged by the natural feelings of our hearts, and by many tender affections, to innocence and beneficence toward all: and that war is one of the accidental states arising solely from injury, when we or some of our fellows have counteracted the dictates of their nature.⁴

'Tis true that in this state of liberty where there are no civil laws with a visible power to execute their sanctions, men will often do injurious actions contrary to the laws of their nature; and the resentments of the sufferers will produce wars and violence. But this proves nothing as to the true nature of that state, since all the laws and obligations of that state enjoin peace and justice and beneficence. In civil societies many disobey the law, by theft and violence, but we do not thence conclude that a political state is a state of war among men thus united.

Frequent injuries do not prove it.

'Tis also true that the natural passions and appetites of men will frequently lead them into mutual injuries. But then the laws of this state are not derived from these principles alone. There are superior <282> powers naturally fitted to controll them, particularly that *moral faculty* which points out the rights and obligations of this state, and shews how far any appetite or passion can be indulged consistently with the inward approbation of our souls, and what indulgences must be matter of remorse, self-abhorrence, and shame. We are also endued with reason which clearly points out even our external interests in this matter, and

4. Hutcheson is criticizing what he took to be Thomas Hobbes's and Samuel Pufendorf's idea of the state of nature as a state of war of all against all. See Hutcheson, *Natural Sociability*: "political writers should unlearn the use of these words (*natural state*). . . . That state . . . which is opposed to the civil state is best called a *state of liberty from human government*" (pp. 200–201). See also *Inquiry* II.7.12, p. 197. Cf. similar rejections of the Hobbesian-Pufendorffian state of nature by Carmichael, citing Titius and Barbeyrac: Carmichael, *Natural Rights*, p. 127; Titius, observations nos. 406 and 461, in Pufendorf, *De officio*; Barbeyrac's notes to Pufendorf, *Law of Nature* II.2.2.

shews that we cannot probably gratify even our selfish desires, except by an innocent and friendly deportment toward others. These powers suggest the rules or laws of this state of liberty, and all states are denominated from what the laws and obligations of them enjoin or require, and not from such conduct as the passions of men may hurry them into contrary to the laws of those states.

The authors of this most unnatural⁵ scheme never fail to contradict their own doctrine, by owning and arguing that that rational faculty, which they allow we are naturally endued with for the conduct of life, will soon shew that this universal war of all with all must be the most destructive imaginable; and that it is to be shunned by every one as soon as he can; and that reason will also shew some obvious rules of conduct proper to preserve or restore peace to mankind with all its blessings. Surely then that conduct which the natural principles of mankind shew to be most necessary and most obviously eligible to every one, should be deemed the natural conduct in this state, and not what a brutal thoughtless appetite may hurry one in<283>to while the governing principles of his nature are asleep, or unexercised.

Contradictions
in that scheme.

'Tis also a foolish abuse of words to call a state of absolute solitude a *natural* state to mankind, since in this condition neither could any of mankind come into being, or continue in it a few days without a miraculous interposition.⁶

II. This state of natural liberty obtains among those who have no common superior or magistrate, and are only subject to *God*, and the law of nature. 'Tis no fictitious state; it always existed and must exist among men, unless the whole earth should become one empire. The parental power of the first parents of mankind must soon have expired when their children came to maturity, as we shall shew hereafter, or at least when the parents died.⁷ This state of liberty probably continued a long

The state of
liberty always
subsists.

5. GUL Ms., p. 180 (the "8" looks like a "9"): "this most unnatural" is an interlined replacement for "that."

6. GUL Ms., p. 181 (unpaginated page): "miracle beyond the ordinary course of nature" is crossed out and replaced by "miraculous interposition."

7. This is directed at Robert Filmer's denial that there could be a state of nature since parental authority existed already with Adam and Eve. See *Patriarcha* (1680), ch. 1.

time among the several heads of families before civil governments were constituted. And 'tis not improbable that it yet subsists in some ruder parts of the world. Nay it still must subsist among the several independent states with respect to each other, and among the subjects of different states who may happen to meet in the ocean, or in lands where no civil power is constituted. The laws of nature are the laws of this state, whether they be confirmed by civil power or not: and 'tis the main purpose of civil laws and their sanctions, to restrain men more effectually by visible punishments from the violation of them. The same reasons which justify the greater part of our civil laws, shew the obligations of men to observe <284> them as laws of nature abstracting from any motives from secular authority.

Rights are
those of indi-
viduals, of
societies, or of
all mankind.

III. As men are said to “have rights to do, possess, or demand from others whatsoever the happiness of the individual requires and⁸ the publick interest of mankind permits that they should be allowed to do, possess, or obtain from others;” and all rights and obligations are founded in some tendency either to the general happiness, or to that of individuals consistently with the general good, which must result from the happiness of individuals; rights may be divided, according to the subject or persons in whom they reside or to whom they belong, and for whose good they are immediately constituted, into those of individuals, those of particular societies or corporations, and those in general belonging to all mankind as a system. The first sort are constituted immediately for the behoof of individuals, by the law of nature; the second for the common interest of a corporation or state, tho’ not more immediately for any one member of it than another; in the third sort of rights neither any one individual, or any one corporation, may be more concerned than another, and yet it may be for the general interest of mankind that such rights be asserted and maintained. And each of these three classes may be either perfect, or imperfect, according as they are more or less necessary to be maintained for the publick interest, and of such a nature as to admit of compulsion and violence in the defence or prosecu-

8. GUL Ms., p. 181 (unpaginated page): “the . . . and” is an interlined addition.

tion of them; or, on the other hand, such as must be left to each <285> one's conscience and sense of duty: this division we explained above.⁹

IV. The private rights of individuals are obviously intimated to us in the constitution of our nature, by these two circumstances, jointly; first, natural desires and senses pointing out the gratifications we are fitted to receive as parts of that happiness the author of our nature has intended for us, and secondly, by the powers of reason and reflection which can discover how far the gratification of our natural desires is consistent with the finer principles in our constitution, which, as we shewed above, are destined to govern and controll all our particular desires. These principles shew the limits to be put, not only to the selfish desires aiming at the private happiness of the agent, but to the several narrower generous affections, and the gratifications which they pursue; and plainly discover that the grand end of our being is indeed the promoting the most universal happiness, but that our heart at the same time may approve our conduct not only in acts of particular beneficence toward persons especially dear to us in some of the nearer relations, while this beneficence does not interfere with more extensive interests; but also in the pursuit of all private gratifications which are consistent with these interests, and do not engross the mind or contract it too much within itself.

How private rights are known.

The natural appetites and desires first intimate the matters of private¹⁰ right, but we can seldom justify to ourselves a compliance with their intimations¹¹ till we <286> have considered whether the gratification to which we are prompted be¹² consistent with the designs of the more

9. See II.3.3, pp. 242–45. Cf. *Short Introduction* II.4.2, p. 128. GUL Ms., p. 182: At this point, the Ms. has a note added, which is crossed out and barely readable. It seems to be to a part of “Bk II,” and in fact the rights common to humankind in general are the subject of II.16 below.

10. GUL Ms., p. 182: “private” is an interlined addition.

11. GUL Ms., p. 182: “seldom . . . intimations” is an interlined revision; the deletion is only partly legible: “never Satisfy ourself? [illegible] in them? [illegible].”

12. GUL Ms., p. 182: “to which we are prompted” is an interlined revision; deletion illegible. As part of the revision of this sentence the following note was cancelled but is legible: “This is intended by Grotius & Some of the Commentators on Grotius, Prolegom. & Lib. I.2.1 in deducing the Notion of Right in any action by inquiring first into its agreement with the *Prima Naturae* and then with the *Natura naturalis & socialis*.” (The Latin phrases are underlined in the manuscript.) In the

noble parts of our constitution, which are the grand objects of the soul's approbation, aiming at a more extensive or the universal happiness. Indeed in many of the objects of our desires, this consistency is so obvious, or there is so little presumption of any opposition, that we are convinced of our right to them at once without much reflection on more extensive interests; nay in many cases we seem to have an immediate sense of right along with the natural desire, and a sense of moral evil in any opposition given to us by others, as we at once apprehend the necessity of certain gratifications to our having any tolerable enjoyment of life; and we must abhor as cruel and inhuman any opposition given to us, or to others, in these gratifications, where we do not see such opposition to be necessary for some more extensive interest.

The necessity
of great cau-
tion on this
subject.

But as the chief dangers to our manners arise from the vehemence of our selfish appetites and passions, which often break through these restraints from the finer principles in our constitution regarding a publick interest, it may be of advantage to satisfy the mind on every side of the justice of these restraints, and to shew that its own interest of every kind conspires to recommend this subjection of the *selfish*, to the *generous* and *social principles*. Our *moral faculty* above-explained shews both the justice and beauty of such subjection; and shews a very sublime internal interest in the inward delight and approbation of our <287> hearts. Our reason by discovering to us the moral government of the *Deity*, and his perfections, presents further motives to preserve this subordination, both of the generous and interested kind: and a just consideration of the circumstances of mankind with respect to external things, will afford also new motives of secular interest to that same external conduct

brief discussion of private rights in *Short Introduction*, II.4.2, p. 128 (note) Hutcheson refers likewise to Grotius, *The Rights of War and Peace*, I.2.1. The passage in the prolegomena to Grotius's work is at sections 6–7. Grotius is adopting what he takes to be the Stoic theory of the balance between natural desires and right reason, referring in particular to Cicero, *De finibus* Book III (presumably chs. 5 and 17) and Seneca's *Epistles* (76 and 124). Pufendorf takes up the issue in some very influential passages where he gives a neo-Epicurean account of the multiplicity and complexity of the passions and desires while also leaving room for "reason," in the form of the edict of law. This is in opposition to what he takes to be Hobbes's more simplistic Epicurean theory. *Law of Nature* II.3.14 (with II.1.8) and *Duty of Man* II.3.1–7.

which these sublimer principles excite us to, as we shall endeavour briefly to explain.

V. In the first place, 'tis obvious that for the support of human life, to allay the painful cravings of the appetites, and to afford any of those agreeable external enjoyments which our nature is capable of, a great many external things are requisite; such as food, cloathing, habitations, many utensils, and various furniture, which cannot be obtained without a great deal of art and labour, and the friendly aids of our fellows.

Again, 'tis plain that a man in absolute solitude, tho' he were of mature strength, and fully instructed in all our arts of life, could scarcely procure to himself the bare necessities of life, even in the best soils or climates; much less could he procure any grateful conveniences. One uninstructed in the arts of life, tho' he had full strength, would be still more incapable of subsisting in solitude: and it would be absolutely impossible, without a miracle, that one could subsist in this condition from his infancy. And suppose that food, raiment, shelter, and the means of sensual pleasure, were supplied by a miracle; yet a life in so<288>litude must be full of fears and dangers. Suppose farther all these dangers removed;¹³ yet in solitude there could be no exercise for many of the natural powers and instincts of our species; no love, or social joys, or communication of pleasure, or esteem, or mirth. The contrary dispositions of soul must grow upon a man in this unnatural state, a sullen melancholy, and discontent, which must make life intolerable. This subject is abundantly explained by almost all authors upon the law of nature.¹⁴

Solitude miserable and indigent.

13. GUL Ms., p. 184: "farther . . . removed" is an interlined revision; deletion illegible.

14. This theory of the necessity to be sociable was a particularly prominent feature of Pufendorf's natural jurisprudence. It is striking that Hutcheson in *Short Introduction*, II.2.2, p. 112 (cf. II.2.1, p. 110) dismisses the subject as too obvious to warrant explanation, while the anonymous translator inserted a reference to Cicero, *De officiis* "II.3, 4, 5, etc.," a reference that is repeated in more general form in the present text, below p. 269. Also, the theory of the division of labour and the enlargement of society that Hutcheson derives from sociability in the following paragraphs of this section in the *System* is absent from the *Short Introduction*. Nevertheless, in the table of contents to the latter work, the translator flags that the passage referred to here shows that "a social life is necessary." This has no warrant in Hutcheson's Latin text.

The mutual aids of a few in a small family, may procure most of the necessities of life, and diminish dangers, and afford room for some social joys as well as finer pleasures. The same advantages could still be obtained more effectually and copiously by the mutual assistance of a few such families living in one neighbourhood, as they could execute more operose designs for the common good of all; and would furnish more joyful exercises of our social dispositions.

The advantages of society.

Nay 'tis well known that the produce of the labours of any given number, twenty, for instance, in providing the necessities or conveniences of life, shall be much greater by assigning to one, a certain sort of work of one kind, in which he will soon acquire skill and dexterity, and to another assigning work of a different kind, than if each one of the twenty were obliged to employ himself, by turns, in all the different sorts of labour requisite for his subsistence, without sufficient dexterity in any. In the former method each procures a great quantity of goods of one kind, and <289> can exchange a part of it for such goods obtained by the labours of others as he shall stand in need of. One grows expert in tillage, another in pasture and breeding cattle, a third in masonry, a fourth in the chace, a fifth in iron-works, a sixth in the arts of the loom, and so on throughout the rest. Thus all are supplied by means of barter with the works of complete artists. In the other method scarce any one could be dextrous and skilful in any one sort of labour.

The advantages of large societies.

Again some works of the highest use to multitudes can be effectually executed by the joint labours of many, which the separate labours of the same number could never have executed. The joint force of many can repel dangers arising from savage beasts or bands of robbers, which might have been fatal to many individuals were they separately to encounter them. The joint labours of twenty men will cultivate forests, or drain marshes, for farms to each one, and provide houses for habitation, and inclosures for their flocks, much sooner than the separate labours of the same number. By concert, and alternate relief, they can keep a perpetual watch, which without concert they could not accomplish.

Larger associations may further enlarge our means of enjoyment, and give more extensive and delightful exercise to our powers of every kind. The inventions, experience, and arts of multitudes are communicated; knowledge is increased, and social affections more diffused. Larger socie-

ties have force to execute greater designs of more lasting and extensive advantage.* These considerations abundantly shew the necessity of living in society, and obtaining the aid of our fellows, for our very subsistence; and the great convenience of larger associations of men for the improvement of life, and the increase of all our enjoyments.

But 'tis obvious that we cannot expect the friendly aids of our fellows, without, on our part, we be ready to good offices, and restrain all the selfish passions which may arise upon any interfering interests so that they shall not be injurious to others. Much thought and caution is requisite to find out such rules of conduct in society as shall most effectually secure the general interest, and promote peace and a mutual good understanding. Whatever generous principles there are in our nature, yet they are not alone, there are likewise¹⁵ many angry passions to which we are subject upon apprehension of injury intended, or executed; and all these powers by which men can so effectually give mutual aid, and do good offices, may be also employed, upon provocation, to the detriment of their fellows. Provoking of others by injury must generally be imprudent conduct in point of self-interest, as well as matter of remorse and self-condemnation. No man can be tolerably assured that his force or art shall be superior to that of those who may be roused to oppose him; multitudes conceive a just indignation against any unjust violence, and are thence prone to repel it. And they are further roused by pity for the sufferer and just apprehensions that such mischiefs unrestrained may soon affect themselves. How dangerous then must it be to rouse such indignation by any acts of injustice toward any of our fellows?¹⁶

Good offices must be mutual, and much self-government.

Nature has also presented to us all a very strong motive to abstain from injuries, and to restrain all the extravagancies of the selfish passions from the delicacy and weakness¹⁷ of our frame. Tho' mankind have no powers which can properly be called engines of mischief, since such as can hurt others can also be employed in kind social offices; and as all the governing

A strong motive from the dangers of violence.

* See this whole subject beautifully explained in the second book of *Cicero de Officiis*. [See II.4, n. 14.]

15. GUL Ms., p. 185: "yet . . . likewise" is an interlined revision of this deletion: "we are subject to."

16. Cf. *Short Introduction* II.4.1, p. 128.

17. GUL Ms., p. 186: "weakness" is an interlined revision of "Imbecillity."

principles of nature rather excite to good offices, all our powers are justly deemed to be naturally destined for promoting social happiness; yet 'tis plain our efforts in hurting others, where we intend it heartily, can more probably be successful and effectual, than our designs to secure the happiness of others, according to a common maxim, that "few have sufficient talents to do much good, but very mean ones may do much mischief." We are of a very delicate texture; our ease and happiness not only requires a right disposition of a great many nice bodily organs which can easily be put out of order, but a great many external objects and conveniences of which we may easily be deprived; and the ease of our minds requires the prosperity of many other persons who are dear to us, whose texture is as delicate as our own, and exposed to be disordered by any malicious efforts <292> of our fellows. To our complete ease and happiness the prosperous concurrence of a great many things is requisite: whereas we may be heartily disturbed by any thing unprosperous in one or two of these circumstances: and 'tis very often in the power of our fellows to create to us this disturbance, tho' they cannot so effectually secure our happiness when they desire it.

This infirm uncertain condition of our external happiness must powerfully move us to cultivate peace and good-will in society, and to shun all offence and provocation of others; since we hazard more by incurring the hatred of others than we can probably hope to gain. Tho' the forces of men are unequal, yet art can supply the defects of force; and an obstinate resolution can supply the defects of both, so as to deprive an adversary of life and all his other enjoyments, as well as of the advantage he aimed at by the provoking injury. Thus when men are not forced into violence for their own defence, peace and justice are still eligible to the powerful and artful as well as to others; since they know not what universal indignation may be raised by any thing injurious, from the *moral sense* of mankind, from sympathy with the sufferer, and apprehensions of their own future dangers: and a friendly just kind deportment, as it naturally engages the good-will, the esteem, and good offices of others, is the only probable method of obtaining security, and all the external advantages and pleasures of life.¹⁸ < 293>

18. Cf. *Short Introduction* II.4.1, p. 128.

The private Rights of Men; first, such as are called natural; and the natural Equality of Men.

I. Private rights of individuals according to their different originals are either *natural* or *adventitious*. The *natural* are such as each one has from the constitution of nature itself without the intervention of any human contrivance, institution, compact, or deed. The *adventitious* arise from some human institution, compact, or action.

Rights
natural and
adventitious.¹

The following natural rights of each individual seem of the perfect sort. 1. A right to life, and to that perfection of body which nature has given, belongs to every man as man,² while no important publick interest requires his being exposed to death, or wounds. This right is violated by unjust assaults, maiming, or murdering. The connate desire of life and self-preservation intimates to every one this right, as does also our immediate sense of moral evil in all cruelty occasioning unnecessary pain, or abatement of happiness to any of our fellows; not to mention the dismal air of the human countenance occasioned by grievous pain, or death, the beholding of which must move every human heart with

The natural
rights to life,
and safety.

1. For this distinction and the natural rights in the following sections, see *Short Introduction* II.4.2–3; cf. *Inquiry*, II.7.6. For the background, see Grotius, *The Rights of War and Peace* I.1.10 (4). Pufendorf draws the distinction as one between absolute and hypothetical duties, *Duties of Man* I.6.1; *Law of Nature* II.3.24 with Barbeyrac's notes and III.1.1. See also Carmichael, *Natural Rights*, pp. 77–80, 213–214, and 365.

2. GUL Ms., p. 187: “man as man” is an interlined revision of “innocent Person.”

pity and terror, and abhorrence of the voluntary cause of such³ unnecessary sufferings.

To liberty of
action.

2. As nature has implanted in each man a desire of his own happiness, and many tender affections to <294>ward others in some nearer relations of life, and granted to each one some understanding and active powers, with a natural impulse to exercise them for the purposes of these natural affections; 'tis plain each one has a natural right to exert his powers, according to his own judgment and inclination, for these purposes, in all such industry, labour, or amusements,⁴ as are not hurtful to others in their persons or goods, while no more publick interests⁵ necessarily requires his labours, or requires that his actions should be under the direction of others. This right we call *natural liberty*. Every man has a sense of this right, and a sense of the evil of cruelty in interrupting this joyful liberty of others, without necessity for some more general good. Those who judge well about their own innocent interests will use their liberty virtuously and honourably; such as have less wisdom will employ it in meaner pursuits, and perhaps in what may be justly censured as vicious. And yet while they are not injurious to others, and while no wise human institution has for the publick good subjected them to the controll of magistrates or laws, the sense of natural liberty is so strong, and the loss of it so deeply resented by human nature, that it would generally create more misery to deprive men of it because of their imprudence, than what is to be feared from their imprudent use of it. The weakest of mankind are not so void of fore-thought but that it would occasion to them exquisite distress, and sink their souls into an abject sorrow, or kindle all the passions of resentment, to deprive them <295> of their natural liberty, and subject their actions, and all interests dear to them, to the pleasure of others about whose superior wisdom and good intentions they were not thoroughly satisfied. Let men instruct, teach, and convince their fellows as far as they can about the proper use

3. GUL Ms., p. 187: "voluntary cause of such" is an interlined addition.

4. GUL Ms., p. 187: "and amusements" is an interlined addition.

5. GUL Ms., p. 187: The manuscript has "interest" and thus tallies grammatically with the verb, "requires."

of their natural powers, or persuade them to submit voluntarily⁶ to some wise plans of civil power where their important interests shall be secured. But till this be done, men must enjoy their natural liberty as long as they are not injurious, and while no great publick⁷ interest requires some restriction of it.

This right of natural liberty is not only suggested by the selfish parts of our constitution, but by many generous affections, and by our *moral sense*, which represents our own voluntary actions as the grand dignity and perfection of our nature.⁸

3. A like natural right every intelligent being has about his own opinions, speculative or practical, to judge according to the evidence that appears to him. This right appears from the very constitution of the rational mind which can assent or dissent solely according to the evidence presented, and naturally desires knowledge. The same considerations shew this right to be unalienable:⁹ it cannot be subjected to the will of another: tho' where there is a previous judgment formed concerning the superior wisdom of another, or his infallibility, the opinion of this other, to a weak mind, may become sufficient evidence. As to opinions about the Deity, religion, and virtue, this <296> right is further confirmed by all the noblest desires of the soul: as there can be no virtue, but rather impiety in not adhering to the opinions we think just, and in professing the contrary. Such as judge truly in these matters, act virtuously: and as for weak men, who form false opinions, it may do good to instruct and convince them of the truth if we can; but to compel them to profess contrary to their opinions, or to act what they believe to be vicious, or impious in religion, must always be unjust, as no interest of society can require it, and such profession and action must be sinful to those who believe it to be so. If any false opinions of a religious or moral nature tend to disturb the peace or safety of society, or render men incapable of such duties of subjects as are requisite for the

Private
judgment.

6. GUL Ms., p. 188: "voluntarily" is an interlined addition.

7. GUL Ms., p. 188: "publick" is an interlined addition.

8. Cf. *Inquiry*, II.7.5; *Short Introduction*, II.2.1, p. III, note.

9. See above II.3.4; *Inquiry*, II.7.7, pp.186–87; *Short Introduction*, II.2.4, pp. 114–15.

publick safety, it may be just to oblige those who embrace them to give sufficient security for their conduct,* and to defray the charge of employing others to perform their duties for them; or to remove themselves from this state with their effects, and make way for better subjects, where the state cannot otherways be safe.

Right over
one's own life.

4. As *God*, by the several affections and the moral faculty he has given us, has shewed the true ends and purposes of human life and all our powers;¹⁰ promoting the universal happiness, and, as far as is consistent with it, our own private happiness, and that of such as are dear to us; in conformity to his own gracious purposes; we must discern not only a right that each one has over his own life to expose it to even the greatest dangers when 'tis necessary for these purposes, but that it is frequently the most honourable and lovely thing we can do, and what we are sacredly obliged to out of duty to *God* and our fellow-creatures. Mankind have often a right to demand this service from us, tho' we had no prospect of escaping. A brave man has a right to act such a part, and the publick interest has this claim upon him, from the constitution of nature, previously to any political constitutions, or any compacts in this affair. Magistrates have a right to compel men to such perilous services, because they were antecedently good and right: and they are the more glorious, the more voluntarily they are undertaken.¹¹

About these cases where the publick interest may require the hazardous life, exposing ourselves to certain death, men must judge, by impartially comparing probabilities, as we judge about all human affairs where

* This resembles the *actio de damno infecto*, which is no diminution of the right of property. [See Justinian, *Digest* Book 39, title 2: "[Actio] de damno infecto, et de suggrundis et protectionibus," action for anticipated injury and house-eaves and projections.]

10. GUL Ms., p. 189: "and all our powers" is an interlined addition.

11. GUL Ms., p. 189: In the Ms. the following paragraph begins with a passage that has been deleted but is discernible: "Nay could such cases occur when one could do more Service by directly taking away his own Life than he could ever hope to do by retaining it, it would be honourable in him to take it away. Suicide is universally condemned only because such cases can scarce happen." Cf. Pufendorf's discussion of one's power ("potestas") over oneself, *Duty of Man*, I.5.4, and *Law of Nature* II.4.17.

absolute certainty is seldom attainable. If we have no right over our lives for the publick interest, we cannot justly expose them to danger; what one has no moral power over, he cannot subject to contingencies. “*God* has indeed placed us in life as soldiers in certain stations, which we are to maintain till we are recalled,” according to the fine sentiment of Socrates, or Pythagoras.¹² But we must discharge the duties of these stations at all hazards. Our sole business is not to prolong life on any terms. As our reason and *moral faculty* shew us our station and its duties, the same powers must shew us when we are recalled, what the duties of life are, when it is to be exposed even to the greatest dangers; when the publick interest requires, then it is that our *Commander* recalls us by the same voice which intimated to us our station and its duties.¹³

5. Each one has a natural right to the use of such things as are in their nature fitted for the common use of all; (of which hereafter:) and has a like right, by any innocent means, to acquire property in such goods as are fit for occupation and property, and have not been occupied by others. The natural desires of mankind, both of the selfish and social kind, shew this right. And ’tis plainly cruel and unjust to hinder any innocent acquisitions of another: when indeed some acquisitions would endanger the liberty, independency, or safety of his neighbours, they have a right either to prevent such acquisitions, or to oblige him who makes them to give sufficient security for the safety of others.

A right to use what is common.

6. For the like reasons every innocent person has a natural right to enter into an intercourse of innocent offices or commerce with all who incline to deal with him. ’Tis injurious in any third person to interfere, or confine his or their choice, when he has not acquired some right to direct their actions.

Right to society with others.

12. See Plato, *Apology* 28d; Cicero, *Cato maior de senectute*, XX.73.

13. The whole passage echoes the Stoic reading of Plato’s *Apology* 28d, including that by Marcus Aurelius, whose quotation of Plato Hutcheson translates as follows: “whosoever one has placed himself by choice, judging it the fittest for him; or whosoever he is placed by his commander; there, I think, he ought to stay at all hazards; making no account of death; or any other evil, but vice,” *The Meditations of the Emperor Marcus Aurelius Antoninus*, VII.45, pp. 88–89. Hutcheson adds a supporting quotation from Epictetus, *Discourses* II.16.42.

To the
character of
innocence.

7. As we all have a strong natural desire of esteem, and the greatest aversion to infamy, every man has a natural¹⁴ right to the simple character of probity and honesty, and of dispositions fit for a social life, until he has forfeited this right by an opposite conduct.¹⁵

To marriage.

8. From the natural and strong desires of marriage <299> and offspring we may discern the natural right each one has to enter into the matrimonial relation with any one who consents, and is not in this matter subjected to the controll of others, or under a prior contract. In this matter, as much as any, an opinion of happiness and a mutual good liking is necessary to the happiness of the parties, and compulsion must create misery.

That all these rights are of the perfect sort, must appear from the great misery which would ensue from the violation of them to the person thus injured; and a general violation of them must break off all friendly society among men.

Natural equal-
ity of men.¹⁶

II. *The natural equality of men* consists chiefly in this, that these natural rights belong equally to all: this is the thing intended by the natural equality, let the term be proper or improper. Every one is a part of that great system, whose greatest interest is intended by all the laws of *God* and nature. These laws prohibit the greatest or wisest of mankind to inflict any misery on the meanest, or to deprive them of any of their natural rights, or innocent acquisitions, when no publick interest requires it. These laws confirm in the same manner to all their rights natural or acquired, to the weak and simple their small acquisitions, as well as their large ones to the strong and artful. The same access to adventitious rights is open, and the same means appointed for all who can use them. If great occupation and much labour employed, intitles the vigorous and active to great possessions; the weak and indolent have an equally sacred right to the small possessions they occupy and improve. There is *equality in right*, how different soever the objects may be; that *jus aequum* in which the Romans placed true freedom.

14. GUL Ms., p. 190: "natural" is an interlined addition.

15. GUL Ms., p. 190: "an opposite conduct" is an interlined revision of: "deliberately persisting in [illegible] Acts of Injustice."

16. Cf. *Short Introduction* II.4.4, pp. 130–31; Pufendorf, *Duty of Man* I.7, and *Law of Nature* III.2; Carmichael, *Natural Rights*, pp. 74–75, 365–66.

Men differ much from each other in wisdom, virtue, beauty, and strength; but the lowest of them, who have the use of reason, differ in this from the brutes, that by fore-thought and reflection they are capable of incomparably greater happiness or misery. Scarce any man can be happy who sees that all his enjoyments are precarious, and depending on the will of others of whose kind intentions he can have no assurance. All men have strong desires of liberty and property, have notions of right, and strong natural impulses to marriage, families, and offspring, and earnest desires of their safety. 'Tis true the generality may be convinced that some few are much superior to them in valuable abilities: this finer part of the species have imperfect rights to superior services from the rest: they are pointed out by nature as the fittest to be intrusted with the management of the common affairs of society, in such plans of power as satisfy the community that its common interests shall be faithfully consulted. But without this satisfaction given, permanent power assumed by force over the fortunes of others must generally tend to the misery of the whole. Mere promises or professions give no security. The darkest and most dangerous tyrants may make the fairest shews till they are settled in power. We must therefore conclude, that no endowments, <301> natural or acquired, can give a perfect right to assume power over others, without their consent.

None naturally slaves.¹⁷

III. This is intended against the doctrine of Aristotle, and some others of the antients, "that some men are naturally slaves, of low genius but great bodily strength for labour: and others by nature masters of finer and wiser spirits, but weaker bodies: that the former are by nature destined to be subject to the later, as the work-beasts are subjected to men. That the inhabitants of certain countries, particularly Greece, are universally of finer spirits, and destined to command; and that the rest of the world are fitted for slavery. That by this subordination of the more stupid and imprudent to the wise and ingenious, the universal interest of

Aristotle's doctrine considered.¹⁸

17. Cf. III.3 below and *Short Introduction* III.3. In these matters Hutcheson agrees with Carmichael, *Natural Rights*, pp. 74–75, 365–66 (equality), and ch. 16 (slavery). A wider context for this discussion is Hobbes, *On the Citizen*, ch. 8, and *Leviathan*, ch. 20; Pufendorf, *Law of Nature* VI.3 and *Duty of Man* II.4. For Hutcheson's rejection of the argument for slavery in terms of compensation for maintenance and protection, see below at II.14.3, where a wider context is outlined.

18. See Aristotle, *Politics* I.3–7.

the system is best promoted, as that of the animal system is promoted by the power of the rational species over the irrational.”

The power of education is surprising! this author in these justly admired books of politicks is a zealous asserter of liberty, and has seen the finest and most humane reasons for all the more equitable plans of civil power. He lived in that singular century, in which Greece indeed produced more great and ingenious men than perhaps the world ever beheld at once: but had he lived to our times, he would have known, that this beloved country, for sixteen centuries, hath seldom produced any thing eminent in virtue, polity, arts, or arms; while great genii were often arising in the nations he had adjudged to slavery and barbarity.

Is it not abundantly known by experience, that <302> such as have a less fortunate capacity for the ingenious arts, yet often surpass the ingenious in sagacity, prudence, justice, and firmness of mind, and all those abilities which fit a man for governing well. And then 'tis often found that men of less genius for arts, or policy, may have the loveliest turn of temper for all the sweet social virtues in private life, and the most delicate sense of liberty. Are such amiable characters to be less esteemed, or their interests and inward satisfaction less regarded, or subjected to the pleasure of the artful and ambitious? The natural sense of justice and humanity abhors the thought.

Had providence intended that some men should have had a perfect right to govern the rest without their consent, we should have had as visible undisputed marks distinguishing these rulers from others as clearly as the human shape distinguishes men from beasts. Some nations would be found void of care, of fore-thought, of love of liberty, of notions of right of property, or storing up for futurity, without any wisdom or opinion of their own wisdom, or desires of knowledge; and perfectly easy in drudging for others, and holding all things precariously while they had present supplies; never disputing about the wisdom of their rulers, or having any suspicions or fore-boding fears about their intentions. But where do we find any such tempers in the human shape?

Wisdom gives
no right to
power.

Superior wisdom or penetration of understanding, were all convinced of it, cannot give a right to govern, since it may be employed by a selfish corrupt temper to the worst purposes, even the general misery of the

<303> community. Goodness must be ascertained too before the subjects can have any satisfaction or happiness under a dominion founded in will.¹⁹ Now 'tis impossible with respect to man to give assurance of the stable goodness of intention. The worst will pretend to it till they are settled in power. Nay do not the most ignorant sometimes sincerely judge themselves to be wiser than their neighbours, and fitter for governing? and how seldom would men of superior abilities agree about the persons most eminent in the arts of government. To found therefore a right of governing others upon a superiority of abilities, without any consent of the subject, must raise eternal controversies which force alone can decide.

IV. As to those natural rights which are of the imperfect sort, almost all the eminent and lovely virtues of life are employed in observing and fulfilling them. We may present to men a view of their duties by considering them as fulfilling some private rights of the persons to whom they are performed which are necessary to their happiness, as a right, perfect or imperfect,²¹ corresponds to every obligation or duty. But most of these duties are recommended by still a nobler moral species, viz. the love of virtue itself, and the dignity there is naturally felt in exercising every amiable tender humane disposition toward our fellows; for, as was observed above, the fulfilling perfect rights rather shews only the absence of iniquity, whereas all the honourable virtues and duties of life rather correspond to the rights called imperfect; and the soul <304> must feel as sacred a moral obligation to these duties on many occasions, and as great a turpitude in omitting them, as in direct acts of injustice against the perfect rights of others.

Imperfect
natural
rights.²⁰

19. GUL Ms., p. 193: "dominion founded in will" is an interlined revision of "government."

20. See II.16.8 below, *Inquiry* II.7.6, pp. 183–84, and *Short Introduction* II.4.5, pp. 131–32. Cf. Carmichael, *Natural Rights*, pp. 75–76, commenting on Pufendorf, *Duty of Man* I.8, and referring to *Law of Nature* III.3 (see sec. xv of that chapter with ample references to the background in ancient literature).

21. GUL Ms., p. 193: ", perfect or imperfect" is an interlined addition.

To offices of
no trouble or
expence.²²

These imperfect rights are, 1. A right each man has to all those useful offices from his fellows which cost them no trouble or expence.* 'Tis horribly inhuman to refuse them.

To offices of
some expence.

2. Any man has an imperfect right to such offices, even of some trouble or expence, as are necessary to relieve him from some great distress or calamity incomparably greater than any little trouble or expence requisite for his relief. 'Tis often very inhuman to decline such trouble or expence, and that in proportion to the greatness of the sufferer's distress.²³

In several
degrees.

3. Men of eminent virtue have still a more sacred claim to more important good offices, and every virtuous heart is sensible of a deeper obligation to such offices, even where one has received no previous favours from them. Such men have a right to be received into the more near attachments or friendship of the virtuous, and to their good offices in promoting them to the higher stations, where they may do more publick good by the exercise of their virtues. To this we are obliged by the more extensive virtuous affections which regard the publick interest.

To social
worship.

4. Every person disposed to piety, and willing to improve in it, has a like right to be admitted into any religious society or institution, that he may improve <305> by the instructions and devotions of the society; provided that he does not forfeit this right by any impious or immoral tenets or practices, which make it opprobrious to the society to entertain him.

To charity.

5. Persons in distress, who are not made unworthy of the liberality of good men by their sloth or vices, should not be excluded from it; nor should the liberality of good men, who incline to exercise it toward them, be restrained, unless more worthy objects in greater or equal distress are unprovided.

22. Cf. Pufendorf, *Duty of Man* I.8.4, and *Law of Nature* III.3.15; Carmichael, *Natural Rights*, pp. 75–76.

* *Officia innoxiae utilitatis*. [Services of innocent (or, harmless) utility. Pufendorf, *De officio* I.8.4, p. 37, has “res (matters) innoxiae utilitatis.”]

23. GUL Ms., p. 194: In the manuscript, a passage of two lines has been crossed out and is only partly legible: “The Right to acts of Gratitude may [illegible] be [illegible] properly be called [illegible] as it is founded upon the Benefits conferred; of this hereafter.”

V. In liberality and munificence the importance of any gift to the receiver is in a joint proportion to the value of the gift and his indigence; and the real loss to the giver is in proportion to the said value, and to his wealth inversely: that is, the greater his wealth is, the less will an honest heart feel the want of what it gives: and that sense of loss which a poor covetous wretch may have about a trifle is not to be regarded. The virtue of any donation is, in the same manner, directly as the value of the gift, and inversely as the wealth of the giver, as far as men can discern it by external evidence; as thus the strength of some generous affection above the selfish is manifestly displayed.

The importance of liberality.

The addition made to the happiness of the indigent may be incomparably greater than the diminution of that of the donor, where the donor is wealthy: and this shews that persons in such circumstances are chiefly obliged to liberality. But there is no determination can be made of the precise quantity or proportion a good man should give. The different attachments in life, the numbers of the indigent, and the degrees of their distresses, make different quantities and proportions reasonable at different times. Laws fixing a certain quantity, or proportion to the wealth of the giver, would be unreasonable; and would much abate the beauty of such actions. Liberality would then appear like paying a tax, or discharging a legal debt. Spectators could conclude nothing about the honourable or generous disposition of the giver, and liberality would cease to be a bond of love, esteem, or gratitude.

Several prudent cautions and general rules are delivered about liberality.²⁴ First, that it be not hurtful to the morals of the object, under a false shew of advantage, by encouraging them in sloth, meanness of temper, or any vicious dispositions; and again, that it be not so immoderate as to exhaust its own fountain, and prevent the like for the future when more worthy objects may occur; or incapacitate the donor for other offices of life toward those whom he may be more sacredly obliged to support.

Necessary cautions.

24. This and the following paragraph correspond to *Short Introduction* II.4.6, p. 132, and the formulations are strikingly similar.

Who to be
preferred.

When many claim relief or support from us at once, and we are not capable of affording it to them all; we should be determined by these four circumstances chiefly, (tho' some more remote ones of a publick nature in some cases may for the general interest be preferred) "the dignity or moral worth of the objects; the degrees of indigence; the bonds of affection, whether from ties of blood, or prior friendship; and the prior good offices we have received <307> from them." The more of these which conspire in any person, our obligation to assist him is the more sacred. Virtuous parents in distress are recommended by all these circumstances in the first place. The ties of blood next recommend our offspring and kinsmen. And next to them the ties of gratitude should ordinarily take place, nay sometimes be preferred to the ties of blood. And when other circumstances are equal, the more virtuous should be preferred to those of less virtue.*

Tho' the duties of mere humanity to persons under no special attachment should give place to the more special ties, yet when they can be discharged, consistently with more sacred duties, they have great moral beauty, and are of more general importance, than one at first imagines. Such offices raise high gratitude, and by the example encourage the more extensive affections: they give amiable impressions of a whole nation, nay of the human species. Thus courtesy and hospitality to strangers, a general civility and obligingness of deportment, even to persons unknown, are justly esteemed high evidences of sweetness of temper, and are the more lovely, that they are unsuspected of interested views.

Claims of
gratitude.²⁵

VI. The duties of gratitude naturally follow those of liberality, and are also exceedingly useful; as the neglect of them is very pernicious. The prevailing of gratitude encourages every generous disposition, and gives lovely impressions of mankind. The truly <308> great mind does good to others as its natural work from its own sweet dispositions and natural impulse to exercise them, whatever returns are made. It has its main

* See *Cicero de offic. l. i. c. 14, 15, 16, 17, 18*. [*Cicero, De officiis* I.14–18. In *Short Introduction* the translator has added to the corresponding passage a note: "This is taken from *Cicero de Officiis* Lib. I. 14, 15, &c."]

25. Cf. *Short Introduction* II.4.6, p. 132, *Inquiry* II.3.2, pp. 117–18, and II.5.2, pp. 148–50; Pufendorf, *Law of Nature* III.3.6 and 17, and *Duty of Man* I.8.6–8.

end when it acts its part well. But the lower virtues of others are discouraged by ingratitude: and the ungrateful are the common enemies of all the indigent, as they discourage liberality, and as far as they can, dry up the fountain whence the indigent are to be supplied.

No precise measures can be fixed for returns of gratitude, more than for liberality. Equality to the benefits received would in many cases be too much, and in many too little. A kind grateful heart with common prudence is to itself the true measure, *as the liberal mind must devise liberal things*. There is the same reason against precise laws in this case, as in liberality.

There is a general obligation of gratitude upon us all, toward those who have done any generous or useful services to any valuable part of mankind, that we should esteem and honour them, and promote their interests, and give them just praise, one sweet reward to noble minds, protecting their characters against envy and detraction. Such conduct encourages every generous disposition, and excites men to imitate such as are eminently virtuous. The hopes of honour over-balance those disadvantages and losses which often deter men of weaker virtue from any generous designs. <309>

The adventitious Rights, real, and personal. Property or Dominion.¹

Rights real and
personal.

I. Adventitious rights are next to be considered, and they are either *real*, “when the right terminates upon some certain goods;” or *personal*, when “the right terminates upon a person, without any more special claim upon one part of his goods than another.” In personal rights our claim is to some prestation, or some value, leaving it to the person obliged to make up this value out of any part of his goods he pleases.

Of real rights the chief is property constituted in these things which are of some use in life. As to the origin of it, we first inquire into the general right which mankind have to the use of things inanimate, and the lower animals; and then into that property which one man may have in certain things to the exclusion of others from all use of them.

The right to
use creatures
inanimate.

II. As the inferior animals are led by their appetites and instincts, without any capacity of considering the notions of right or wrong, to use such fruits of the earth as their senses recommend and their appetites crave for their support, mankind would probably at first act the like part, without considering the point of right, and that from the like instincts. When they attained to the knowledge of a wise and good *God*, the creator of all these curious forms, and <310> to the notions of right, they would soon discover that it was the will of *God* that they should use the inanimate products of the earth for their support or more com-

1. This chapter corresponds in general terms to *Short Introduction* II.5. Cf. *Inquiry* II.7.8, pp. 187–88 and 257–58; Pufendorf, *Law of Nature* IV.3–4 and *Duty of Man* I.12; Carmichael, *Natural Rights* pp. 91–97.

fortable subsistence, and that they had a right thus to use them, from the following obvious reasons. They would perceive their own species to be the most excellent creatures that could be supported by them, that without this support they must soon perish in a miserable manner; that their instincts and senses were plainly destined to lead them into the use of them; that the instincts of lower animals, who had no superior powers to restrain them, plainly shewed the inanimate things to be destined for the support of animals; that these forms, however curious and beautiful, must soon perish of their own accord, and return to the common mass of earth without answering any such valuable purpose as supporting animal-life and increasing its happiness; that to things inanimate all states are alike, and no diminution or increase² of happiness is occasioned by any changes which befall them, except as they are subservient to things animated. These considerations would clearly shew that a great increase of happiness and abatement of misery in the whole must ensue upon animals using for their support the inanimate fruits of the earth; and that consequently it is right they should use them, and the intention of their Creator.

A new created pair indeed could scarce subsist even in the finest climates, without a place cultivated for them artificially, and stored with fruits ready for their <3II> subsistence. Their first days must be anxious and dangerous, unless they were instructed about the fruits proper for their use, the natures of animals around them, the changes of seasons, and the arts of shelter and storing up for the future. They would not need a revelation to teach them their right, but would need one to teach them how to use it.

III. The right to use inferior animals is not so obvious, and here instruction would be more necessary, if there was early any need to use them; and yet reason would pretty soon teach one the right of mankind in this matter. A rational being, who had notions of right and wrong, and in some distress needed the labours or other use of creatures so much inferior in dignity, being conscious of his natural power by means of reason to make such creatures subservient to his support and happiness,

The right to use the lower animals.

2. GUL Ms., p. 198: "or increase" is an interlined addition.

would readily presume upon his right, and a little further reflection would confirm his presumption.

Men the supreme part of the system.

'Tis true these creatures are capable of some happiness and misery; their sufferings naturally move our compassion; we approve relieving them in many cases, and must condemn all unnecessary cruelty toward them as shewing an inhuman temper. Could we subsist sufficiently happy without diminishing the ease or pleasure of inferior animals, it would be cruel and unjust to create to them any needless toil or suffering, or to diminish their happiness. But the human species is capable of incomparably greater happiness or misery: the external senses of brutes may be equally, <312> or more acute, but men have superior senses or powers of enjoyment or suffering; they have sublimer pleasures by the imagination, by knowledge, by more extensive and lasting social affections, and sympathy, by their *moral sense*, and that of honour. Their reason and reflection collect joys and sorrows, glory and shame, from events past and future, affecting others as well as themselves;³ whereas brutes are much confined to what at present affects their senses. Thus mankind are plainly the supreme part in the animal system of this earth.

The right to the labours of beasts.

Now suppose an impartial governor, regarding all animals in proportion to their dignity, and aiming at the best state of all: suppose the highest species, mankind, multiplying so fast that neither the natural fruits of the earth, nor those procured by their own labour, are sufficient for their maintenance; and that they are oppressed with immoderate toil and anxiety, as they must be without the assistance of brute animals. In this case men could give no aid to the tamer species of brutes in defending them against savage beasts, in providing clear pastures, or storing forage for the winter: the tamer kinds must generally perish. Some of these kinds, by their greater strength, could bear any given quantity of labour, or effect certain works, with far less pain than men; and by want of forethought and reflection would suffer much less by any labour. By their assistance men might obtain a great increase of happiness, and be freed from evils much superior to those labours imposed on the beasts.

3. GUL Ms., p. 199: The passage "Their . . . themselves" originally read: "Their reason and reflection extend joys & sorrows past & future."

Men could thus <313> have leisure, and it would become their interest, to defend and provide for their fellow-labourers, and to encourage their propagating. Here is plainly a well ordered complex system, with a proper connexion and subordination of parts for the common good of all. It tends to the good of the whole system that as great a part as possible of the severer labours useful to the whole be cast upon that part of the system to which it is a smaller evil, and which is incapable of higher offices requiring art and reason: while the higher part, relieved from such toil, gains leisure for nobler offices and enjoyments of which it alone is capable; and can give the necessary support and defence to the inferior.⁴ Thus by human dominion over the brutes, when prudently and mercifully exercised, the tameable kinds are much happier, and human life exceedingly improved. And this sufficiently shews it to be just.

But if after all this, men and other animals multiply so fast, that there is not sufficient food for their sustenance; it plainly tends to the good of the whole system, that when both the nobler and the meaner kinds cannot sufficiently subsist and multiply, that the nobler should rather be increased: and perishing by violence, by want of food, or any other cause which can be foreseen, is a greater evil to the kinds endued with fore-thought, than to those who feel only the present pain. The brutes therefore can have no right or property valid against mankind, in any thing necessary for human support. Had God intended for <314> brutes any such right to any parts of the earth, or any goods they once possessed, so as to exclude men in their greatest indigence of such things; this would have been a right opposite to the greatest good of the system, which is absurd. He would certainly have given to brutes some sagacity to have marked out their bounds, to have made known their claims, and treated with men about them.

Beasts no
rights valid
against men.

And yet brutes may very justly⁶ be said to have a right that no useless pain or misery should be inflicted on them. Men have intimations of this right, and of their own corresponding obligation, by their sense of

Brutes may
have rights.⁵

4. GUL Ms., p. 199: "and . . . inferior" is an interlined addition.

5. Contrast this with Carmichael, *Natural Rights*, pp. 91–92.

6. GUL Ms., p. 200: "very justly" is an interlined addition.

pity. 'Tis plainly inhuman and immoral to create to brutes any useless torment, or to deprive them of any such natural enjoyments as do not interfere with the interests of men. 'Tis true brutes have no notion of right or of moral qualities: but infants are in the same case, and yet they have their rights, which the adult are obliged to maintain. Not to mention that frequent cruelty to brutes may produce such a bad habit of mind as may break out in like treatment of our fellows.

Rights of men
to other use of
animals.

IV. But if mankind so increase that all their labours, even with the assistance of that of beasts, cannot procure them sufficient support; 'tis plain they can spare no labour for the defence of such tameable kinds as are unfit for labour, unless they obtained from them some other use: such kinds must be banished from all cultivated lands, and be exposed to savage beasts, and to the winter colds and famine. It must <315> therefore be for the interest of those kinds that men should make any other advantage they can from them by their milk or wool, or any other way, which might purchase to them human defence and protection. By this means these creatures shall have an happier and a longer life, and shall be more encreased.

Right to use
them for food.

But if mankind so increase, that all this use of living animals is not sufficient, men must exclude from their care all such animals as yield no such use; unless some other use of them is found out to engage and compensate human care about them, they must be left to perish miserably in desarts and mountains by savage beasts, or by want of forage: since many of the tameable kinds multiply beyond all necessity for any uses men can derive from them during their lives: nature here points out another use; as we see many animal kinds led by their instincts to feed upon the flesh of other animals. Those of the inferior species thus destined for food to the superior, enjoy life and sense and pleasure for some time, and at last perish as easily as by old age, winter-cold, or famine. The earth and animals must have had quite different constitutions, otherways these seeming evils could not have been prevented. The superior orders must have had some food provided: 'tis better this food be animated for some time, and have some low sense and enjoyment, than be wholly insensible, and only subservient to nourish animals. These

lower orders also during their lives may do considerable service in the world, as naturalists observe that the smaller insects, the ordinary prey of birds and fishes, by feeding on all putrefaction, prevent the corruption of the air, and thus are useful to the whole system.

It would be the interest of an animal system that the nobler kinds should be increased, tho' it diminished the numbers of the lower. A violent death by the hands of men may be a much less evil to the brutes than they must otherways have endured, and that much earlier too, had they been excluded from human care. By this use of them for food men are engaged to make their lives easier and to encourage their propagation. They are defended and fed by human art, their numbers increased, and their deaths may be easier; and human life made agreeable in those countries which otherways must have been desolate. Thus the intention of nature to subject the brute animals to men for food is abundantly manifest, and its tendency to the general good of the system shews that men have a right to make this use of them.

If all these reasonings did not soon occur to men, 'tis probable they had not soon any need of the flesh of animals. When they needed it, their own sagacity might discover their right. And yet this right is so opposite to the natural compassion of the human heart that one cannot think an express grant of it by revelation was superfluous.* <317>

* This point is so little debated in these Northern nations that these reasonings may seem needless. But 'tis well known, that many great sects and nations, at this day, deny this right of mankind. And some great names among ourselves have alledged that without revelation, or an express grant from God, we would have had no such right. Their reasons indeed, if they were solid, would make any grant of it by revelation appear incredible. [Hutcheson is presumably referring to the widespread acceptance in the seventeenth century and still in his time of ideas about the moral standing of animals derived from Pythagoreans, Plutarch, and Porphyry and present in sects such as the followers of Jacob Böhme; in theologians such as William Law; and in medical men such as George Cheyne. Pufendorf has an extensive discussion, coming to the conclusion that since animals are not agents under the law of nature, they cannot be injured in the strictly moral sense, so that the question of humans' treatment of animals is a matter of other considerations, of which he canvasses all the standard ones; see *Law of Nature*, IV.3.2–6; *Duty of Man*, II.5.2; as well as Hutcheson, *Short Introduction* II.5.2–3.]

The right of
property.⁷

V. We next consider the right of private property which one man may have exclusive of his fellow-men.

And here first, the natural appetites and desires of men lead each one to take such things as are fit for present use, and yet lye in common, with full persuasion of his right, if he has attained to moral notions; as he sees that such things are destined for the use of men, and none of his fellows have obtained any prior right to them, to preclude him from using them. He must easily see too, should another take from him what he had thus occupied, that, beside obstructing his natural and innocent design for his own support, which must appear odious, as it is ill-natured; such practice obtaining among men must subject them to the greatest misery. What one man now occupies, another without any preferable claim deprives him of: a third person may in like manner deprive him of what he next occupies; he may in like manner be again defeated by a fourth: and thus the whole grant made to him by God and nature of the inferior creatures for his support, might be defeated by the ill-nature and injustice of his neighbours, without any necessity; since these neighbours might by their own diligence provide for themselves, without interfering with his acquisitions. Thus the first impulses of nature toward supporting ourselves, or those who are dear to us, point out the right of the first occupant to such things as are fit for present use. The obstructing this <318> innocent design must appear morally evil, as it is ill-natured to hinder any man to take his natural support from the things granted for this purpose by God and nature, while others can otherways support themselves. And reflection upon the general tendency of such practice further confirms this right. These considerations establish the first rule of property, that “things fit for present use the first occupier should enjoy undisturbed.” The accident of first occupation may be a trifling difference, but a trifle may determine

7. The immediate context for Hutcheson's argument concerning property is the discussion sparked by Locke's suggestion that property arose through occupation, namely, the application of physical labor upon the natural world that was originally held in negative community. Locke's targets were Grotius and Filmer. In *The Rights of War and Peace* Grotius argues that while property originated in physical occupation, property could only be sustained through compacts that ratified the occupa-

the right to one side, when there is no consideration to weigh against it on the other.*

The difficulties upon this subject arise from some confused imagination that property is some physical quality or relation produced by some action of men.⁸ Whereas in our inquiries about the original of property, we only mean to discover what considerations or circumstances shew it to be morally good or innocent that a person should enjoy the full use of certain things, and that it would evidence an immoral affection in another to hinder him. Now from the natural desires of men, of

Confused notions on this subject.

tion. This opinion was basically shared by Pufendorf. In contrast, Filmer maintains that property, like authority, was the right of the descendants of the first parents whom God had given the world to hold. Locke's argument was adopted by Titius, Barbeyrac, and Carmichael, and it was not least due to Barbeyrac that the cluster of natural law concepts and arguments that we find in Hutcheson remained central through the eighteenth century and beyond. The central ones were: whether and in what sense the world surrounding humanity originally was in positive or negative community, i.e., communally owned for use and distribution, or equally open for any individual to appropriate for use; whether individuation of property in either case depended upon physical occupation alone or upon intended occupation, and whether attempted occupation was necessary or sufficient evidence of intention; whether explicit or implied contractual agreements played a role, either as the sole source of individual property, or to establish physical occupation as the accepted means of occupation, or as the post hoc ratification of occupation. The central texts are Grotius, *The Rights of War and Peace* II.2.1–4 and II.3.1–4; Filmer, *Observations concerning the Originall of Government* (1652); Locke, *Two Treatises of Government*, II.5, esp. secs. 27–30; Pufendorf, *Law of Nature*, IV.4, with Barbeyrac's comments pp. 366–67; Pufendorf, *Duty of Man* II.12 (with Titius's comments in the corresponding chapter of the Latin text); Carmichael, *Natural Rights* pp. 92–96. Cf. Hutcheson, *Inquiry* II.7.8, and *Short Introduction* II.5.3–4. All of these texts operate explicitly and implicitly with the civil law's concepts, authorities, and illustrations, especially as found in Justinian, *Institutes*, Book II.

* By occupation is understood sometimes first discovering by the eye, sometimes touching with the hand, sometimes securing by any instrument, such goods as before were common. 'Tis always immoral, when we can support ourselves otherways, to defeat any innocent design of another. If without any design of defeating the attempts of others, several persons at once occupy the same thing, one by first discovering, another by touching with his hand, a third by any other method, they should naturally be deemed joint proprietors. Where the design of one was previously known, 'tis immoral and unjust for another, without necessity, to prevent or intercept his advantage.

8. This was most prominently maintained by Cornelis van Bynkershoek in chapter I of his *De domino maris dissertatio* (1702).

which we are all conscious, and from the manifest intention of nature, it must appear immoral, cruel, or inhumanly selfish, to hinder any man to use <319> any goods formerly common, which he has first occupied, while there remains abundance of other things which others may occupy for their own support. And such defeating of the first occupiers must give perpetual occasion for the most destructive passions and contentions.

Natural reasons for property of a private kind.

Before mankind were much increased, if the regions they possessed were so very fruitful and mild that there was plenty of all conveniences without any uneasy labour, there was little occasion for any further rules of property.⁹ But as the world is at present, and as mankind are multiplied, the product of the earth, without great labour, is not sufficient to maintain one hundredth part of them. Pastures for cattle as well as corn are plainly owing to human labour, since almost all lands would grow into woods unfit even for pasture, were it not for the culture of man. The very subsistence therefore of our species, as well as all our agreeable conveniences, require an universal laborious industry. Nature hath given to all men some ingenuity and active powers, and a disposition to exert them: and each man has not only selfish desires toward his own happiness and the means of it, but some tender generous affections in the several relations of life. We are all conscious of some such dispositions in ourselves, and justly conclude that others have the like. We know that these are the ordinary springs of the activity of mankind in employing their labour to cultivate the earth, or procure things useful in human life. We all feel a sense of <320> liberty within us, a strong desire of acting according to our own inclinations, and to gratify our own affections, whether selfish, or generous: we have a deep resentment of any obstruction given to these natural desires and endeavours; while accompanied with a sense of innocence or a consciousness of being void of all injurious intention, and ¹⁰ we must disapprove it as unkind and cruel, where no important publick interest requires it, whether we meet with it ourselves, or see others thus opposed in their innocent designs. From these

9. GUL Ms., p. 203: “for any further rules of property” at first read: “for further Property.”

10. GUL Ms., p. 203: The passage “while . . . and” is an interlined addition.

strong feelings in our hearts we discover the right of property that each one has in the fruits of his own labour; that is, we must approve the securing them to him, where no publick interest requires the contrary; and must condemn as cruel, unsociable, and oppressive, all depriving men of the use and free disposal of what they have thus occupied and cultivated, according to any innocent inclination of their hearts.

If we extend our views further and consider what the common interest of society may require, we shall find the right of property further confirmed. Universal industry is plainly necessary for the support of mankind. Tho' men are naturally active, yet their activity would rather turn toward the lighter and pleasanter exercises, than the slow, constant, and intense labours requisite to procure the necessities and conveniences of life, unless strong motives are presented to engage them to these severer labours. Whatever institution therefore shall be found necessary to promote universal diligence and patience, and make labour agreeable or eligible to mankind, must also tend to the publick good; and institutions or practices which discourage industry must be pernicious to mankind. Now nothing can so effectually excite men to constant patience and diligence in all sorts of useful industry, as the hopes of future wealth, ease, and pleasure to themselves, their offspring, and all who are dear to them, and of some honour too to themselves on account of their ingenuity, and activity, and liberality. All these hopes are presented to men by securing to every one the fruits of his own labours, that he may enjoy them, or dispose of them as he pleases. If they are not thus secured, one has no other motive to labour than the general affection to his kind, which is commonly much weaker than the narrower affections to our friends and relations, not to mention the opposition which in this case would be given by most of the selfish ones.¹¹

Reasons of
common
interest.

Nay the most extensive affections could scarce engage a wise man to industry, if no property ensued upon it. He must see that universal diligence is necessary. Diligence will never be universal, unless men's own necessities, and the love of families and friends, excite them. Such as

Confirmed by
the extensive
affections.

11. GUL Ms., p. 204: The Ms. has "the selfish ones" crossed out and replaced by "the opposition which in this case would be given by most of the selfish ones."

are capable of labour, and yet decline it, should find no support in the labours of others. If the goods procured, or improved by the industrious lye in common for the use of all, the worst of men have the generous and industrious for their slaves. The most benevolent temper must decline supporting the slothful in idleness, that their own necessities may force them to contribute their part for the publick good. Thus both the immediate feelings of our hearts, and the consideration of the general interest, suggest this law of nature, "that each one should have the free use and disposal of what he has acquired by his own labour;" and this is property, which may be defined, when it is unlimited, "a right to the fullest use of any goods, and to dispose of them as one pleases."

How community could be tolerable.

VI. These reasons for property, from the general interest of society requiring universal diligence, would not hold if a wise political constitution could compel all men to bear their part in labour, and then make a wisely proportioned distribution of all that was acquired, according to the indigence, or merit of the citizens. But the other reasons would still hold from the natural sense of liberty, and the tender natural affections. Such constant vigilance too of magistrates, and such nice discernment of merit, as could ensure both an universal diligence, and a just and humane distribution, is not to be expected. Nay, no confidence of a wise distribution by magistrates can ever make any given quantity of labour be endured with such pleasure and hearty good-will, as when each man is the distributor of what he has acquired among those he loves. What magistrate can judge of the delicate ties of friendship, by which a fine spirit may be so attached to another as to bear all toils for him with joy? Why should we exclude so much of the loveliest offices of life, of liberality and beneficence, and grateful returns; leaving men scarce any room for exercising them in the distribution of their goods? And what plan of polity will ever satisfy men sufficiently as to the just treatment to be given themselves, and all who are peculiarly dear to them, out of the common stock, if all is to depend on the pleasure of magistrates, and no private person allowed any exercise of his own wisdom or discretion in some of the most honourable and delightful offices of life? Must all men in private stations ever be treated as children, or fools?

The inconveniences arising from property, which Plato and Sir Thomas More endeavour to avoid by the schemes of community,¹² are not so great as those which must ensue upon community; and most of them may be prevented where property is allowed with all its innocent pleasures, by a *censorial* power, and proper laws about education, testaments, and succession. Plato* indeed consistently with his scheme of community takes away all knowledge of the particular ties of blood as much as possible, and all the tender affections founded on them, at least among those of the highest order in his state. He is indeed unjustly charged with indulging any dissolute inclinations of those men: but it seems too arrogant in that fine genius to attempt an overturning the manifest constitution of the Creator, and to root out what is so deeply fixed in the human soul; vainly presuming to contrive something better than the *God* of nature has ordered. The more extensive affections will never give the generality of <324> men such ardors, nor give them such enjoyments, without particular affections, as are plainly necessary in our constitution to diligence and happiness. Leaving a place for all the particular bonds of nature, but keeping them in due subjection to the more noble affections, will answer better all the ends of polity and morals: and such schemes as his will never be found practicable among creatures of our constitution.

The faults in
the schemes of
community.

12. Plato, *Republic*, Book 4; Thomas More, *Utopia*, pp. 38–40.

* See book iii. c. 1.

The Means of acquiring Property. How far it extends. In what Subjects it resides.¹

I. Property is either *original* or *derived*. The original is that which is acquired by first occupation and culture: the derived, is what is obtained from some former proprietor.

Occupation
and culture the
means.

The general reasons for property are already explained, and shew the original means of acquiring it, viz. occupation, and labour employed in cultivating. But to apprehend the natural grounds of property more

1. This chapter on “original” property corresponds generally to *Short Introduction* II.6. On the spectrum indicated in II.6, n. 7 between the idea that property stems from compacts (esp. in Grotius and Pufendorf), and Locke’s idea that it arises as a direct natural bond through labor, Hutcheson is very close to the latter. But a further element had been introduced into the debate by Titius and Barbeyrac, namely that a *declared will* to occupy something in some cases could suffice to create a proprietary relationship. This was rejected by Carmichael, arguing that declaring a will is not labor. To which Barbeyrac responded that physical control was only a *sign* to others of one’s intention to occupy and use a thing and that many other forms of sign-giving to this effect are possible. It is this idea of what can count as a sign and hence a means of coordination with others in the God-given human task of making use of Creation that Hutcheson is elaborating. Already Barbeyrac had argued that in order to work, such communication of intent had to be credible, which meant that the intended action had to be feasible; i.e., the object to be occupied had to be within reach and in that way of use. Hutcheson is in effect interpreting what counts as being within reach and being of use in such a way that limitations are put upon occupation. Since he follows the generality of natural lawyers since Grotius in drawing a close analogy between individual persons and states, his arguments concerning property become the foundation for his critical arguments in Book III.8 about empire. See Grotius, *The Rights of War and Peace* II.2; Pufendorf, *Law of Nature* IV.6, with Barbeyrac’s note to sec. 2; Pufendorf, *Duty of Man* I.12, with Titius’s observation 292 to this chapter in the Latin text; Carmichael, *Natural Rights*, p. 99.

fully, we may observe, that men are naturally solicitous about their own future interests, and those of such as are dear to them, as well as their present interests; and may be miserable amidst present plenty, if they have no probable assurance as to futurity. Again, a great part of those things which yield the greatest and most lasting use in human life after they are improved, require a long previous course of labour to make them useful. Now no man would employ such labour upon them without some security for the future enjoyment of the advantages they afford. 'Tis necessary therefore that a continual property, beyond all possible present consumption, should ensue upon the culture a man has employed upon things formerly common. Of this kind are flocks, herds, gardens, vineyards, fruit-trees, arable grounds, or pastures.

II. Since property thus arises from first occupation of things ready for present use, and labour employed in cultivating goods which require it; we justly look upon property as begun, as soon as any person, with a view to acquire, undertakes any cultivation of what was common, or any labour previously requisite to cultivation or occupation. And the property is completed when he has occupied, begun his culture, and marked out how far he designs to extend it by himself, or those whom he obtains to assist him. 'Tis not always necessary that we have arrived at or touched the goods occupied. Every step taken which is of consequence to this end,* by which goods are made readier, or more secured for human use than they were formerly, gives us a right not to be prevented by others; and it is unjust in another to intercept or prevent our enjoying the fruits of our innocent labours which we have begun and persist in.² He who wounded or tired out any wild creature in the chase, <326> so that it becomes an easy prey, and continues the pursuit; or has entangled it in a net, has a property begun, and is wronged by any who intercept his prey, or frustrate his labours. One who has fitted out ships for a descent upon unoccupied lands, towards the occupation of which no previous labour has been employed by others, would be wronged if

When it
commences.

* *Propius humanis usibus admoventur*. ["They are brought closer to human uses." This is close to the formulation in the Latin *Compendiaria*, II.6.I, p. 137.]

2. GUL Ms., p. 206: "and persist in" is an interlined addition.

another hearing of the design made greater dispatch and prevented him, and afterwards refused to make a division.³ Nay had one without knowing the former's design, arrived first, he could not justly exclude him who arrived later, from a share of the land thus lying in common, if it was sufficient for the purposes of both.

How far it
may be
extended.

III. But as property is constituted to encourage and reward industry, it can never be so extended as to prevent or frustrate the diligence of mankind. No person or society therefore can by mere occupation acquire such a right in a vast tract of land quite beyond their power to cultivate, as shall exclude others who may want work, or sustenance for their numerous hands, from a share proportioned to the colonies they can send. Thus it would be vain for a private man with his domesticks to claim a property, upon the circumstance of his having first discovered or arrived at it, in a country capable of maintaining ten thousand families, and requiring so many to cultivate it. Equally vain would it be in a nation of eight or ten millions of souls to claim, upon the like foundation, a property in a vast continent capable of maintaining three times that number; as no nation can send a <327> third part of their people for colonies in one age, such capricious claims, beyond all possible use or conveniency of the claimants, must not keep large tracts of the earth desolate, and exclude nations too populous from obtaining for some of their people that use of the earth which *God* intended for mankind. At this rate the caprice or vain ambition of one state might keep half the earth desolate, and oppress the rest of mankind.

Agrarian Laws
in natural
liberty.⁴

Nay, as we shall shew hereafter, that some publick interests of societies may justify such Agrarian Laws as put a stop to the immoderate acquisitions of private citizens which may prove dangerous to the state,

3. GUL Ms., p. 207: “, and afterwards refused to make a division” is an interlined addition.

4. The traditional republican idea of securing a distribution of political power through the distribution and, when required, redistribution of land by means of agrarian laws was extensively received in Scotland, especially in the form given it by James Harrington in *Oceana* and his followers. The idea is here merged with natural law ideas of rights and applied to the extra-political state of natural liberty. The limitations on rights to the features of nature referred to by Hutcheson were commonly derived from what was beyond reach and control; cf. II.7, n. 1 above. See below III.6.3 (4) and III.6.8.

tho' they be made without any particular injury; the same or like reasons may hold as to acquisitions made by private men in natural liberty, or by states and nations. If any acquisition is dangerous to the liberty and independency of a neighbourhood, or of neighbouring states, these neighbours have a right either to defeat it altogether, or compell the proprietor to give sufficient security for the safety of all around him. This would be the case if one had occupied a narrow pass, with the adjacent lands; or the lands surrounding a fountain necessary to a whole neighbourhood, or a strait sound, so that he could stop all communication and trade⁵ of multitudes with each other. But of these less ordinary rights we shall treat hereafter.

If it be inquired what is the reasonable time to be allowed to a family or a state for cultivating the lands they pretend to occupy, 'tis plain they may occupy <328> more than the first set of hands they send can cultivate. Private persons may obtain more servants, and a state may send new colonies or new supplies of men. No precise answer can be given. To limit a state to twenty or thirty years for the cultivating all they can justly acquire by occupation may be too great a restraint; and to allow them to keep lands uncultivated for some centuries, in prospect of their sending new colonies, may often be too great indulgence. The measure of time must be different according to the exigences of neighbouring states. If none be overcharged with inhabitants, a larger time may be allowed. If many are overcharged, a less is sufficient. Mankind must not for ages be excluded from the earth *God* intended they should enjoy, to gratify the vain ambition of a few who would retain what they cannot use, while others are in inconvenient straits. Neighbouring states, upon offering a rateable share of the charges of the first discovery and occupation, have a right to obtain such lands as the first discoverers cannot cultivate. In this and all other controversies where there is no common judge, and the parties cannot agree by amicable conferences, the natural recourse is to unbiassed arbitrators; and such as decline arbitration should be compelled by force.

5. GUL Ms., p. 208: "and trade" is an interlined addition.

Right beyond
present use.

IV. But 'tis plain that our acquisition by labour in any one sort of goods may extend far beyond our own present⁶ consumption and that of our families; and they may be stored up for the future: nay it may extend beyond all present or future consumption; as <329> we may employ the surplus as matter of beneficence, or of barter for goods of different kinds which we may need. Otherways each one would be obliged to practise all sorts of mechanick arts by turns, without attaining dexterity in any; which would be a publick detriment.

The several rules of property as they obtain in natural liberty,⁷ like all other special laws of nature, not only admit exceptions in cases of great necessity, but may justly be altered and limited under civil polity, as the good of the state requires.

What things
are still
common.⁸

V. The origin of property above explained, shews the reason why such things as are inexhaustible and answer the purposes of all, and need no labour to make them useful, should remain in common to all, as the air, the water of rivers, and the ocean, and even strait seas, which can give passage to all ships without being made worse. Where the use is inexhaustible, but some expence is requisite to secure it, this may be a just reason for obliging all who share in it to contribute in an equitable manner to the necessary expence, such as that of light-houses, or ships of force to secure the seas from pyrates. But the property in the shores on both sides of such straits can give no right to exclude any who are ready to make such equitable contribution, from passing such straits, or carrying on any innocent commerce with the nations who live within them.

Where indeed the use of any adjacent parts of the sea or shore allowed to foreigners,⁹ may endanger our <330> possessions, such as mooring of ships of force in those bays which run up into the heart of a country; we may justly refuse it, unless sufficient security is given against danger.

6. GUL Ms., p. 208: "present" is an interlined addition.

7. GUL Ms., p. 208: "as they obtain in natural liberty" is an interlined addition.

8. The central natural law texts concerning the Common and about the sea and territorial waters are Grotius, *The Rights of War and Peace* II.2–3; Pufendorf, *Law of Nature* IV.5 and *Duty of Man* I.12.4; Locke, *Two Treatises of Government* II.5; Carmichael, *Natural Rights*, pp. 96–97. Cf. *Short Introduction* II.6.4.

9. GUL Ms., p. 209: "adjacent" and "allowed to foreigners" are interlined additions.

We may likewise refuse to others, or exclude them from such use of things naturally common and inexhaustible, as would occasion some uneasy servitude upon our lands; such as fishing in rivers, or drawing water from them through our ground, tho' the river were not at all appropriated by us, and the fishing were inexhaustible.

'Tis scarce conceivable upon what other foundation than compact, or consent of neighbouring states, any one can claim any property in the sea, or any right in it superior to that of other nations. Each nation indeed for its own defence, seems to have a right to prevent any ships of force of other nations to sail so near its coast that they could annoy any of its subjects in their possessions. But this property can extend no further than a gun-shot. Hovering indeed without necessity upon our coasts, tho' at a greater distance,¹⁰ may give just suspicion of some hostile design, and may be a just reason for expostulation and demanding security, or obliging them by force to withdraw to a greater distance.

Property in the sea.

From what is said we see abundantly, that this earth, and all it contains, was placed by God in that state the moralists call *negative community*, and not *positive*. The negative is "the state of things not yet in property, but lying open to the occupation of any one." Positive community is the "state of things <331> in which not any individual but a whole society have an undivided property." Goods in this positive community neither any individual member of the society, nor any other, can occupy or dispose of without consent of the whole society, or those who govern it. Now from the preceeding reasons 'tis plain, that any man could acquire property, and see his right to acquire any thing he first occupied, without consulting the rest of mankind; and it would be injurious in any other person to hinder him. Thus we need not have recourse to any old conventions or compacts, with Grotius and Puffendorf, in explaining the original of property: nor to any decree or grant of our first parents, with Filmer.¹¹

Things left by God in negative community, not positive.

VI. All things fit for human use either yet remain in this negative community, or are in the property of individual men, or of societies.

Mistakes about the *res nullius*.

10. GUL Ms., p. 209: "tho' at a greater distance" is an interlined addition.

11. GUL Ms., p. 210: "nor . . . Filmer" appears to be a later addition.

Bona universitatum, or the goods of corporations¹² are in the property of societies; the* *res nullius* of the Civilians, viz. things *sacred* as temples and their utensils, and lands for the support of religious orders, and the defraying any expences of worship; burial-places and what things are employed in funeral-rites; and places railed in or secured from promiscuous use, such as the walls of cities; are all in property either of some larger society, or some family; tho' some superstitious laws may restrain the proprietors from a free and full use of <332> them, or from converting them to other uses than what they were first destined to. These laws are often very foolish, and founded upon some confused inexplicable notions. All such goods are truly designed for the use of men alone. The old proprietors, who gave them for these purposes, may have been moved by devotion toward God to make such donations for the use of certain orders employed in religious offices, or of societies, to accommodate such as inclined to worship in these places; or for the burial of their dead; or for defence of societies by fortifications. But none of these lands or goods can yield any use to God, nor can his rights receive any increase or diminution by any deeds of men. Such donations are acceptable to him as far as they do good to his creatures, by promoting their piety, virtue, and happiness. Devotion to God may as justly move men to make donations for civil uses to their country, or friends; and these may be as wise and acceptable to God, as any donations to uses

12. GUL Ms., p. 210: "or the goods of corporations" is an interlined addition.

* *Nullius sunt res sacrae, religiosae, et sanctae. Quod enim divini juris est, id nullius in bonis est.* Instit. l. ii. tit. 1. sect. 7. &c. where these three sorts of goods are explained according to the notions then prevailing. ["Sacred, religious, and sanctified things are owned by nobody. Things under divine law cannot belong to individuals." Justinian, *Institutes*, p. 54. Justinian divides the things of the world into those that are or can be held in individual property and those that are not or cannot be so held. The latter may be outside property either by divine law or by human law, and there are *res nullius* in both categories. The former are especially "sacred things" (churches) and "religious things" (graves). *Institutes* II.1.5–7. The topic acquired some significance in early-modern jurisprudence due to Grotius's contention that such things derive their special qualities only from positive law and that they may therefore be legitimate objects of conquest and destruction in war (*War and Peace* III.5.3), subject to the limitations of "moderation" (III.12.6–8).]

commonly called pious. But none thence imagine that there is some mystical quality infused into such goods that they cannot be applied upon wise occasions to other purposes.

'Tis a natural evidence of piety in any person or society to provide whatever is requisite to accommodate men in publick worship, in proportion to the wealth of a country. It would evidence avarice, and want of piety, if men would not spare from their private use what is requisite to make places of publick worship safe, convenient, and agreeable. When they <333> are mean and despicable in proportion to private buildings, the attending there may be disagreeable. 'Tis yet worse if those whose office it is to preside in publick worship, and instruct men in the duties of life, are not so supported as may enable them to attain knowledge themselves, and discharge their useful office. But when sufficient provision is made for all these purposes, 'tis folly and superstition to employ that wealth which might do more good in trade or other civil purposes, either on expensive ornaments of churches, or on their furniture, or in so enriching the instructors of the people as to give them avocations from their business, or temptations to luxury, ambition, and avarice; or to maintain more of them than are requisite. 'Tis still more foolish to maintain men in sloth, or useless ways of life.

A beautiful metonymy has been artfully abused by some orders commonly called religious, with the basest selfish purposes. Donations to them have been called *gifts to God*, as all wise liberality and charity may justly be called. But these donations alone which are made to their orders, or where they are the trustees, are called consecrations. God is proprietor of all things alike, and can receive no gifts from men. Donations can be made to men only. As far as they contribute to the general happiness of men, so far they are acceptable to God, and no further. When they are pernicious to a country in its trade, or liberty, when they corrupt the clergy, as they are called, by opportunities and temptations to luxury, tyranny, <334> or avarice, they are as offensive to God as any sins of ignorance can be. 'Tis wise and just in any state, when sufficient provision is made for the purposes of religion, to restrain or make void all further donations; to resume any useless grants that have been

The causes of mistakes.

obtained by fraud and imposture, whether from the publick, or private persons; to free the publick from the charge of supporting useless structures, or idle hands, by converting the structures to other purposes, or demolishing them; and by obliging the idle hands to pursue some useful occupation. This must be acceptable service to God.

Some wild notion of consecration or sanctity infused into stones, timber, metals, lands, has made men imagine it impious to convert these things to other uses than what they once were destined to. And yet 'tis obvious that no religion or sanctity can inhere in such materials. We formerly used them when our minds were employed in devotion: but what then? so we did our bodies, our cloaths, our organs of speech: must they never be used to other purposes? The superstitious donors perhaps ordered "that such houses should only be used for accommodating men in worship, and such lands for the maintenance of such as officiated in it." But is it not folly to confine that to one purpose only, which can answer other purposes, and be no less fit for the purpose chiefly intended? The state has a just right to annul superstitious restrictions in any conveyances, and to make void all such conveyances as prove foolish or hurtful to society. <335>

Grant that in the confused imaginations of the vulgar, the devotion in churches would be abated, if they were used for other purposes in the intervals of worship. Should this weakness be encouraged? And then it requires no more but that such edifices while they are used for worship should not in the intervals be used for other purposes. If the worshippers are as well provided with other structures or utensils, and the instructors provided with other sufficient salaries; nothing hinders the state to apply the former structures, utensils, or lands, to any other wise purposes. But in the Popish religion the mystery of consecration is so deeply inculcated that all this appears impious. In that whole institution the chief part God is introduced as acting, is that of a sharpening purveyor, or agent for the religious orders, grasping at and defending whatever they have obtained by any fraud or artifice from the weakest and most superstitious of mankind, for the most foolish or pernicious purposes.

VII. Things once in property may return again into a state of community if the proprietor quits his property by throwing them away, or designedly neglecting them: and then the next occupier may acquire them. If the proprietor lost any goods unwillingly, but being again otherways provided, neglects what he lost, and puts in no claim tho' he knows who has found them; a long neglect of this kind may sufficiently declare that he quitted the property, and so preclude his future claim against <336> the old proprietor, before civil laws. There are just reasons why civil laws should introduce other rules of prescription, partly to engage the subjects to proper care about their goods and claims in due time while they can be ascertained; partly because in a long tract of undisturbed possession against some latent titles, goods may be transferred upon valuable considerations to fair purchasers, or be for like considerations subjected to settlements and entails and mortgages, which cannot be set aside without great injuries to innocent persons; and partly to exclude artful and undiscoverable frauds, which could not be prevented, if any deeds pretended to be very old, the witnesses of which must be dead, should be sustained as valid to overturn a long undisturbed possession.

The right of prescription.¹³

The civil law makes a presumptive title, or the *bona fides*, upon which the possessor may probably have believed the goods to be his own, a necessary beginning to prescription; so that no length of possession, begun without a plausible title, can give a right. But the case of a fair purchaser from an old possessor, without any intimation made to the purchaser of a latent title of another,¹⁴ is so favourable, and his plea so equitable, when he cannot recover his price from the seller, that tho' the seller had begun possession without this just presumption, it would be very hard to set aside all claim of the fair purchaser, at least to recover

13. The central texts for prescription are Grotius, *The Rights of War and Peace* II.3.19 and II.4; Pufendorf, *Law of Nature* IV.12, and *Duty of Man*, I.12.12. Cf. *Short Introduction*, II.6.5.

14. GUL Ms., p. 213: "from an old possessor" and "made to the purchaser" are interlined additions.

the price he paid. Some of the reasons for prescription may hold even where the possession was not begun upon a presumptive title. <337>

The rights to
accessions.¹⁵

VIII. As to accessions or any additional profits of goods in property, these rules are obvious. 1. "All fruits, increase, or improvements happening to the goods in a man's property, to which neither the goods or labours of others contributed, belong to the proprietor, except where another by contract, or civil law, acquires some right in them." But, 2. "Where the goods or labours of other persons have contributed to any increase or improvement, without the fraud or culpable negligence of any concerned, all those who have contributed by their labours or goods have a joint property in the compound, or in the fruits and improvements, each in proportion to the value of what he contributed." If the goods or the fruits can admit of division without loss upon the whole, they should be divided in this proportion among those who contributed to them. If the subject will not admit of division without loss upon the whole, it should be used alternately for times proportioned to the values each one contributed, or be used in common continually if it can admit of such use. If the subject neither admits of common or alternate use, it should fall to that partner to whom it is of the greatest value or importance, in this manner: first, let the proportion of each one's right to those of the other partners be determined, and that partner who bids most for it should have it, upon making compensation to the rest for their shares.* <338> Thus he obtains the goods who values them most, and the compensation to the rest is the greater.† Where any

15. Roman law's broad category of accessions is set out in the *Institutes* II.1.19–38, which was the subject of an extensive commentator literature, also in natural law: Grotius, *The Rights of War and Peace*, II.8.8–21; Pufendorf, *Law of Nature* IV.7, and *Duty of Man*, I.12.7; Carmichael, *Natural Rights*, pp. 99–100. Hutcheson summarizes the material briefly in *Short Introduction* II.6.5, pp. 143–44.

* See cases of this kind in *Cicero de offic.* I. ii. c. 23. and the judgment of Aratus upon them. [Cicero explains how the exiled statesman Aratus (271–213 BCE) on removing the tyrant Nicocles from Sicyon settled the property "cases both of those who were holding possession of other people's property and of those who had lost theirs" during the preceding reign.]

† This section may determine in a natural manner most of the questions of the civilians about the accessions, viz. the *nativitas*, *alluvio*, *specificatio*, *commixtio*, *confusio*, *edificatio*, etc. [These are all in Justinian, *Institutes* II.1: *nativitas*: "the offspring

debate arises about the values of the several shares contributed, there is no other remedy, previous to civil polity, but the arbitration of wise neighbours who understand the goods.

Where by the fraud or blameable negligence of one, his labours or goods are blended with the goods of others, so that the compound or the new form ceases to be desirable to the other innocent proprietor, this proprietor has a right to full compensation for the value of his goods now made unfit for his use, and for whatever clear profits he could have made by his goods had they been let alone to him. If my goods are improved for my use by another's goods or labour, without commission from me; I am only to pay the value of the improvement to my purposes, and not the value it may be of to the purposes of the culpable intermeddler with my goods. There is no reason that through his fault I should either lose my goods, or be obliged to pay for more expensive improvements than were convenient for my affairs. The proper punishment for this fraudulent or culpable intermeddling with the goods of others, is a subject of inquiry quite distinct from this of property.

IX. The right of property, when it is entire and unlimited as it is first acquired, contains these three <339> parts. I. A right to the fullest use. 2. A right to exclude others from any use of the goods in property. and 3. A right of alienating and transferring to others either in part or in whole; absolutely, or upon any condition or contingency; gratuitously, or for valuable consideration. Civil laws may sometimes justly limit men in the exercise of these rights; and some potent reasons of general utility may even in natural liberty require some limitations, and justify some extraordinary steps contrary to the rules which ordinarily oblige us.

What rights included in property.

To this right of property corresponds a general indefinite obligation upon all not to violate this right or obstruct others in the enjoyment of it. The sacredness of this obligation, we all may find by considering the

of animals you already own also become yours under the law of nature" (19); *alluvio*: gradual deposit of soil by a river (20); *specificatio*: a new item arising "when one man makes something out of another's materials" (25); *commixtio*, *confusio*: substances belonging to different owners are mixed but can be separated (*commixtio*) or cannot be separated (*confusio*) (27–28); *inedificatio*: building upon someone else's land (29–30).]

keen resentment we should feel upon such violation of our rights by others; and by the strong disapprobation we must have of such avarice or selfishness as breaks through all regards to the peace and safety of society, and all humanity to our fellows, for the sake of a little private gain; in those matters too which we look upon it as honourable and the evidence of a great soul to despise. This disapprobation we must feel toward such acts of injustice as affect the property of others, even tho' we ourselves suffer nothing by it. <340>

Concerning derived Property, and the Ways of alienating or transferring it.

I. Adventitious rights are either *real*, or *personal*. All *adventitious real rights* arise from a translation of some of the original rights of *property* from one to another. And all *personal adventitious rights* are constituted by transferring to others some parts of our natural liberty, or of our right of acting as we please, and of obliging ourselves to certain performances in behalf of others. The *real rights* terminate on some definite goods. The *personal* do not.

Rights real and personal.¹

The necessity and use of frequent contracts and translations of property is in a good measure manifest from what is said above,* and will still more fully appear hereafter. The difference between real and personal rights must here be explained, and the foundation too for this distinction, previous to any civil laws.

One may often incline to incur an obligation to another to a certain value, and have all moral certainty and an honest purpose of discharging it faithfully, while yet he is unwilling to put any one part of his goods more than another in the power of his creditor, and keeps it in his own election what part of them he will alienate for discharging this obligation.

The ground of this distinction.

1. For the general idea of derived property, see Grotius, *The Rights of War and Peace*, II.6; Pufendorf, *Law of Nature* IV.9; Carmichael, *Natural Rights*, p. 102; Hutcheson, *Short Introduction*, II.7.1. For the distinction between real and personal rights, see above, II.6.1.

* Chap. vi. and vii.

And a creditor may often be satisfied with such engagements from the debtor, if he is assured of his <341> wealth and integrity, without any specifick goods being subjected to the claim. Such an agreement constitutes a personal, and not a real right. The creditor no doubt in such a case has a general security from all the debtor's goods, since upon the debtor's default, he may in natural liberty seize any part of them for discharge of the debt, if no other creditor has obtained a real right in them. But the advantage of the personal obligation to the debtor is this, that he is still master of all his goods, and² retains it still in his own election, within the time limited, to discharge the claims upon him in the manner he likes best. And the advantage of the real right to the creditor consists in this, that from the goods specially subjected to his claim he may be secure, notwithstanding of any subsequent debts incurred to others, or even prior personal debts which his debtor may be incapable of discharging.

If one has done any damage to another, he becomes indebted to the person who suffered this damage in the full value of it. And yet the sufferer has only a personal right, not preferable to any claims of a third person, not affecting one part of the goods of him who did the damage, more than another. If full compensation is made, he cannot limit the debtor as to the goods out of which this compensation is to be made.

When the lender insists on more security than the faith of the borrower, or suspects his ability, and gets a pledge or a mortgage, this constitutes a real right, <342> as certain goods are assigned and specially subjected to this claim.

Real preferable
to personal.

A just man no doubt will observe and fulfil the personal rights of others, as well as the real, to the utmost of his power; but the security is not the same in both, as 'tis abundantly known, where different claims occur against a person who has not effects to answer them. The real rights must take place of the personal. He who consented to accept of a less security, must not expect to be equally safe with one who insisted upon and obtained a greater, nor would have contracted or lent upon other terms.

2. GUL Ms., p. 215: "is still master of all his goods, and" is an interlined addition.

The preservation of the necessary faith in commerce requires this preference of real rights, to personal. In the full translation of property, and even in assigning goods as real securities by pledge or mortgage, there must be such publick forms as will secure the purchaser or lender against all prior secret contracts with others, tho' these private contracts gave personal rights. But no man would buy goods, if he could not be secured in the possession of what he purchased against former private contracts of sale. Nor could he be secured if prior secret contracts did not yield to such publick ones with the usual forms instituted for conveying real rights. Nor would men lend upon any pledge or mortgage, were there not some publick forms appointed to transfer a real right preferable to any prior personal rights constituted to others by a latent contract.

For what reasons.³

All nations agree in having some publick formalities for transferring full property or real rights, not to be defeated by prior latent personal rights. These formalities should intimate the transaction publicly, or some way prevent the person who transfers to impose afterwards upon others. Delivery answers this end in moveables; and some publick symbolical deeds giving possession, in such as are immoveable; or some publick registration of the conveyance. Where these confirm a contract, a real right is constituted, which no personal one should defeat. And yet the person thus defrauded of his personal right by means of the subsequent real one transferring the property, has a just claim upon the seller who defrauded him not only for compensation of all the damage* he sustains, but for the †full value of all the profit he could have made had he not been deceived. But without this preference of real rights to personal, there could be no commerce.

3. Hutcheson is writing within the framework of Pufendorf's chapter "Of Transferring of Property in General," *Law of Nature*, IV.9, but adapting them to his rights language.

* *Pensatio damni*. [Compensation for (a) loss.]

† *Pensare quod interest*. [To compensate for what follows; i.e., consequent loss.]

Derived real
rights parts of
property often
separated from
the rest.

II. Derived real rights are either some parts of the right of property transferred to another, and separated from the rest, or compleat property derived from the original proprietor.

The parts of property frequently transferred separately from the rest of it are chiefly of these four classes. 1. *Right of possession*, thus one may have a right to possess the goods he knows belong to others, until the true proprietor shews his title. This right is valid against all others, and often may be turned into compleat property. 2. The right of *succession*, which one <344> may have to goods, while another retains all the other parts of property except that of alienating. 3. The rights of a *mortgage* or *pledge*. 4. Rights to some small uses of the goods of others, called *servitudes*.⁴

As to the right of possession. The possessor by fraud or unjust violence has no right: any one who inclines to recover the goods to the owner may justly disposses him. But he who possesses without fraud or unjust violence the goods he knows belong to others, has a right valid against all except the proprietor, or such as claim under him. If none such can be found, or if the proprietor quits his claim, the possessor becomes proprietor by occupation. The possessor is always obliged to make publick intimation that he has such goods, and to use all reasonable means to make it known to the proprietor. Designed concealment of them is no better than these. When the possessor restores, he may justly demand to be repaid all prudent expences made upon the goods, or upon giving publick intimation about them.

Rights of the
presumptive
possessor.

III. In instances where one possesses goods belonging to others which yet he obtained upon some plausible title, such as donation, legacy, succession, or purchase, and believes them to be his own;* the following

4. For the general distinction between complete and partial property, see Grotius, *The Rights of War and Peace*, I.1.5 and II.3.2; Pufendorf, *Law of Nature*, IV.4.2, and *Duty of Man*, I.12.9. Hutcheson's arrangement of the four forms of partial property here and in *Short Introduction*, II.7.2–5, is different from that of Pufendorf, who deals with possession and servitudes in *Law of Nature*, IV.8.5–12 (*Duty of Man*, I.12.8), between original and derived rights, while pledge and mortgage are dealt with as part of the law of contract at V.10.13–16 (*Duty of Man*, I.15.15). See also Hutcheson, *Short Introduction*, II.13.9, and below II.14.10.

* This is the *bonae fidei possessor* [lit., a good faith possessor] of the Civilians, not importing that all other possessors are fraudulent. [In the *Short Introduction*, II.7.2,

rules seem equitable. 1. If the goods have perished by any accident without any fault of the possessor, he is not obliged to any compensation. 2. If he has consumed them he is obliged to restore as far as he <345> was profited by them, or in proportion to the advantage or pleasure he obtained by them, which other-ways would have consumed like goods of his own: for he is so far enriched as he spared his own goods. But as to pleasure enjoyed and not necessary maintenance, if the possessor enjoyed it only because he believed these goods to be his own, and otherways would not have been at such expence in matters of pleasure, one cannot pronounce universally that he is obliged to compensate the value. 'Tis the honourable part to do it whenever the proprietor is indigent, and the possessor wealthy; or if they are in equal circumstances; or if the compensating would not distress the possessor in his affairs. But if compensating would distress him, if he obtained the goods by an onerous title, such as by paying a price for them which he cannot now recover he would at least in most cases seem to be under no other obligation than that of humanity, which might perhaps direct to sharing the loss, where it would be too sensibly felt were it to fall singly on the original possessor.⁵

3. When the goods yet remain, the possessor is obliged to restore them with all their accessions after deducting all prudent expences he has made about them. If he purchased them, he has recourse for the price upon the seller.

4. If the seller is not to be found, or is insolvent, the case is more difficult. Here a certain loss must be sustained either by the proprietor, or the presumptive possessor: both are supposed alike innocent: which <346> of them must bear it? The case of both is equally favourable, and no publick advantage requires the casting the whole loss on one rather than the other. If freeing the proprietor from it will make purchasers more cautious and inquisitive about the titles of those they deal with,

bonae fidei possessor is rendered as "presumptive owner." That work lists six rules, using more directly Pufendorf, *Law of Nature*, IV.13, and *Duty of Man*, I.13, which again have reference to Grotius, *Law of Nature*, II.10; Justinian, *Institutes*, II.6, and *Digest*, XLI.2.]

5. GUL Ms., p. 218: "he would . . . possessor" is an interlined revision. The original read: "from the other, his[?] case is more favourable, and he seems[?] under no obligation." The words "his" and "seems" are hypothetical readings.

and thus thefts may be detected; the subjecting the proprietors to the loss, will make men more vigilant to prevent thefts, and prevent their goods thus becoming a snare to honest purchasers. In strict justice one would think the loss should be divided equally among all those through whose hands the goods passed without fraud, along with the proprietor, until they can recover the whole from the author of the fraud.

A confused
imagination to
be avoided in
this matter.

In⁶ these questions our reason is disturbed by some confused imagination of property as some physical quality or chain between the goods, and the proprietor, conceived to found a more sacred right than many other most equitable claims. And yet it cannot be of a more sacred kind than the rights arising from contracts and fair purchases; since 'tis by contracts and purchases that property is most frequently acquired: and there is no reason that an innocent man should suffer because of any vice of another in which he had no hand.

Abstracting from such imaginations; property is thus determined by the law of nature; in certain circumstances we see at once that it would be cruel and inhuman toward an individual, to deprive him of the full use of certain goods; as when they were acquired by his own innocent labour, or by any fair contract; and we see also that like practices generally prevailing would be detrimental to society. In these circumstances we pronounce that the man has the right of property. When equal circumstances of particular humanity plead for two persons in opposition to each other; we then consider any circumstance on one side which some remote interest of society may require to be regarded; and we deem the right to go along with that circumstance: or at least, when a law or custom is once received on account of this remote⁷ utility, we deem the property to be on that side, and do not regard the weaker claim of the other: tho' a humane man would not disregard it altogether. Other cases happen where the pleas from remote utilities of society are also equal: and in them, there is no other remedy but dividing the loss among all concerned, in some proportion or other.

6. GUL Ms., p. 218: This and the two next paragraphs were inserted in the manuscript on a separate smaller sheet of paper with the instruction "add these Parag. in Page 218."

7. "remote" is an interlined addition on an inserted sheet (see previous note).

One sells me an horse this hour, in discharge of an old debt he owed me: and next hour, upon a price paid down, sells and delivers him to another who knew nothing of my bargain. If the seller can be found, and is solvent, there is less difficulty: but if he is not; on whom shall the loss be cast? The contract and price paid, the grand foundations of the titles and pleas of humanity, are the same on both sides. 'Tis equally hard that either of the innocent men should suffer. Custom and civil laws regarding a remote interest of ascertaining commerce, and preventing frauds, make the delivery a most important circumstance for the <348> later. But were it not for this remote interest, the priority in time would plead for the former. Suppose that the horse had also been delivered to the former, but the seller allowed to keep him some hours in his stables. When other circumstances are now equal, priority of time is of great importance, and is much regarded in all contracts; as there can be no suspicion of fraud in the first purchaser; and as a regard to this circumstance too is of great necessity to ascertain commerce. In our present question about the claim of the fair purchaser to obtain the price he paid from the proprietor, when he can have no recovery from the seller, all pleas, both of a private and publick nature, are pretty near equal on both sides. And the same general observation about the original notions of property will be of considerable use in other questions, particularly these concerning the rights by testament, and by succession to the interstate.

Some
Examples.

In this and many like cases there are obvious reasons of humanity and mercy to shew a good man what is the lovely and⁸ honourable part. If the possessor be poor, and the proprietor rich, it would be barbarous if the proprietor did not indemnify the honest possessor as to the price he paid. If the possessor is wealthy, and the proprietor poor, it would be inhuman in the possessor to insist on the price paid, when it bore no such proportion to his wealth that the want of it could distress him. If their fortunes are nearly equal they should divide the loss, whatever civil laws may determine; or should bear it in proportion to their wealth, when <349> their wealth is unequal, but neither in distress. The want

The honour-
able part al-
ways clear.

8. GUL Ms., p. 218: "lovely and" is an interlined addition.

of obvious reasons for casting all the loss on one side in this and some other cases, will be little regreted by any but such selfish wretches as are grasping at every advantage they can obtain without incurring the infamy of direct injustice, and have no humanity to others.

In general, as far as such possessors are enriched or profited by means of the goods of others, so far they are obliged to restore; but they are enriched only by what remains after all expences they made in preserving, improving, or cultivating are deducted; and these expences the proprietor is obliged to restore when he obtains his goods. Goods obtained by donation, succession, or any gratuitous title, should plainly be restored without any other compensation from the proprietor⁹ than that of those expences for preservation and improvement.

Right of
succession
in entails.¹⁰

IV. The next class of real rights often separated from property is that of successions in entails. When one who has unlimited property conveys a right of succession to several persons, in a certain series, upon certain contingencies, these persons have a right to this succession just as valid as men acquire by any donation; as unlimited property includes a right of disposing upon any contingency or condition, as well as absolutely. Such entails may be made imprudently, or contrary to reasons of humanity, and so may donations. When they are so, the present tenant for life who has all the other rights of property except <350> that of alienating, is not culpable in taking all methods consistent with the peace and order of society, to break the entail: as a man would not be culpable who used such peaceful methods to prevent imprudent or inhuman donations, or to get them revoked. But where there is nothing imprudent or inhuman in the entail, the tenant in reversion has as good a right to succeed as the present possessor has to enjoy for life; and it would be criminal to defraud him of it. And the peace of society often requires the

9. GUL Ms., p. 219: "from the proprietor" is an interlined addition.

10. Entail is a legal settlement whereby the heirs to an estate are prevented from dissolving the estate by sale or otherwise, and the line of succession is secured in perpetuity. Entails in Scotland were regulated by the Entail Act 1685. Increasingly a hindrance to the capitalization of land for agricultural improvement, commerce, etc., entails became a reform cause for Scottish improvers in the high Enlightenment, and Hutcheson's final sentence in this section indicates his concern about this already in the 1730s.

confirmation even of imprudent and inhuman conveyances, of which hereafter; tho' the person to whom they are made cannot with a good conscience insist on them. Civil laws however may justly limit this power of entail as the interest of the state, or the necessity of encouraging industry may require.

V. The third sort of real rights separable from the rest of the property are those of the mortgagee, and of the person to whom moveable goods are pledged, and delivered for security of some debt. By either of these a right is given to the creditor, in case the debt is not duly discharged, to appropriate to himself the lands mortgaged, or the goods pledged,* notwithstanding any prior personal rights of others against the debtor. The assuming a property in the lands mortgaged, or the moveables pledged, upon non-payment, has no iniquity in it if the pledger or mortgager obtain all surplus of the value of the lands or goods <351> above what discharges the principal debt with all interest and expences.

Rights by mortgage or pledge.¹¹

VI. The fourth class of real rights separable from the rest of the property are *servitudes*, when one has a right to some small use of the goods of another. All servitudes are real rights terminating on some definite lands or tenements, or goods. But some are constituted in favour of a person and only for his behoof; and others for the advantage of some adjacent

Servitudes.¹²

11. In the *Short Introduction*, II.7.4, the translator has added this explanatory note to the subject: "Here no mention is made of the difference between the *pignus*, and *hypotheca* as in the original [the *Compendiaria*]. Our words *pledge* and *mortgage* don't fully express it. *Pignus* is like a mortgage with possession, and *hypotheca*, one without possession, whether of lands or moveables." Cf. Justinian, *Institutes* III.14.4, and *Digest*, XX. The more immediate references are Pufendorf, *Law of Nature* V.10.16, and *Duty of Man*, I.15.15.

* *Lex commissoria in pignoribus*. [The *Short Introduction*, II.7.3, note, calls this "the clause of entire forfeiture" of pledges.]

12. For the distinction between real and personal servitudes, see Justinian, *Institutes* II.3–4, and *Digest* VIII.1.1; Pufendorf, *Law of Nature* IV.8.6–12, and *Duty of Man* I.12.8. Whereas the *Compendiaria* mentions nearly the full range of servitudes that is in Pufendorf and in Roman law, the treatment here is shortened and generalized, as it is in the *Short Introduction*, where the translator comments: "The several servitudes mentioned in the original could not have been explained to an English reader without a very tedious and useless discussion, as the Roman servitudes differed much from ours. They are found in every compend of the civil law." Cf. *Short Introduction* II.7.5, note.

farm or tenement be the proprietor who he will. The former, from the subjects of these rights, and not from the object on which they terminate, are called personal servitudes, expiring with the person; the later for the like reason are called real servitudes, and may be perpetual. Thus the use of an house or a farm granted to a friend for his life-time when the property is in another, is a personal servitude, which cannot be conveyed by him to another: but when a farm is subjected to a road for the convenience of the possessors of an adjacent farm, or the possessors of one tenement in a town have a right to put in beams into the gables of the contiguous house for supporting the floors or roof, these are real servitudes, which may be constituted for the convenience of lands or tenements, and may be perpetual.* The nature of the contracts or deeds by which such servitudes are constituted shews the rights, and obligations of the parties, which too depend much upon the customs of the places where they are received. <352>

Translation of
compleat
property sev-
eral ways.¹³

VII. The complete property may be transferred either by the *voluntary deed* of the proprietor, or by the *disposition of the law of nature*, without his consent, for the interest of others. By deed of the proprietor it may be transferred either *during his life*, or *upon the event of his death*. And by disposition of the law of nature, without his consent, property may be transferred either during the proprietor's life, or on the event of his death. Of these four in order.

Voluntary deed
during life.

1. By voluntary deed of the proprietor during his life, either gratuitously by donation, or for a certain price or valuable consideration; of this we treat in the following chapter about contracts.

By testament.

2. Property is conveyed by the voluntary act of the proprietor upon the event of his death by last will or testament. This right of devising by will is naturally included in the property, which contains a right of disposing upon any condition or contingency. Take away this right and industry shall be much discouraged after men are tolerably provided with

* See Instit. l. ii. tit. 3, 4, 5.

13. For these several ways, see Pufendorf, *Law of Nature* IV.10.1; see also *Duty of Man* I.12.10, 13–15; Carmichael, *Natural Rights*, p. 102; Hutcheson, *Short Introduction* II.8.1.

necessaries for themselves and their families during life; or men must be forced into a pretty hazardous conduct by actually giving away during life whatever they acquire beyond their own probable consumption in their lifetime. Not to mention that they must give away as soon as they acquire any surplusses, since the suddenness of death, or a delirium, may make them incapable of donations upon the approach of death. This right therefore of devising by will seems manifestly founded in the law of nature, tho' civil laws may li<353>mit the exercise of it in common with all other rights respecting property,¹⁴ such as the disinheriting or passing by a child without any fault of his, or the conveying almost all a man's wealth to one of his numerous posterity from a foolish desire of raising one great family. Civil laws also justly oblige men to such forms as shall best prevent forgeries. By the law of nature every declaration of a man's will of which credible evidence can be given, is valid and obligatory on those concerned: but that all men may be engaged to use the most convenient forms, civil laws may confirm no testaments made without them.

That the law of nature and the interest of society establish this right of devising by will is as plain as that they establish other rights of the proprietor. The natural design of mankind in any acquisitions beyond their own consumption is to promote by them the happiness of those they love; this happiness one desires they may obtain not only during his life, but after his decease. These kind affections and suitable offices to make others happy, whether we are to live with them or not, are the natural, joyful, and honourable¹⁵ exercises of the human soul while we live. And 'tis cruel and unjust to hinder a man either from such good offices while he lives, or to deprive him of the joyful hope that his surviving friends shall be profited by the fruits of his labours. 'Tis cruel to these friends to intercept the benefit designed them by their friend now deceased. There is no method so convenient for individuals, or for the society, by which goods can be <354> transferred to survivors as that by

The foundation of this right of testaments.

14. GUL Ms., p. 221: "limit . . . property" is an interlined revision of an illegible passage.

15. GUL Ms., p. 221: "joyful, and honourable" is an interlined addition.

testament, or a “declaration of the will of the proprietor revocable, and not to take effect till after his death.”* To leave the goods of the deceased in common open to occupation must occasion the most odious contentions and mischiefs. To all these reasons we may add that a wisely contrived will is generally in consequence of moral obligation, and a fulfilling of the rights or claims either of a perfect or imperfect kind which the survivors had upon the goods of the deceased. All which proves abundantly the right of devising, and the obligation upon all to observe and maintain the will of the testator, where it is tolerably prudent, and not contrary to some strong principles of humanity. Where it is contrary, there may be no injustice in annulling it.

* Some improper use of metaphysics in this subject has raised great controversies to little purpose, as if the validity of wills imported some physical action done when the agent was dead; some trifling objections are raised too from the nature of other transactions. The question is truly this, whether it is not requisite for an innocent satisfaction of men that their testaments be observed after their death? and whether the interest of society does not require it? which are obvious. See Barbeyrac’s notes on Puffend. *de jure nat. et gent. lib. iv. c. 10.* and authors there cited. [The passage in the text associated with this note is a quasi-quotation from Grotius, *War and Peace*, II.6.14. The metaphysics in question is Pufendorf’s “will-theory” of obligation applied to testaments: in order for an obligation to arise in the absence of a third-party authority to enforce it, two acts of will must “meet,” i.e., have each other as their object; this requires some sort of signaling or communication which in the case of gifts, sales, etc. consists in or includes a transfer (real or symbolic; complete or partial) of the object of the two acts of will; in the case of testaments in the state of nature these conditions cannot exist; therefore testaments are not the creation of the law of nature but of the civil law, for it can enforce that the current will of the testator to give can “meet” the future will of the heir to receive an object (Pufendorf, *Law of Nature*, IV.10.6). A further target for Hutcheson, following Barbeyrac, is Bynkershoek, whose idea of natural property as dependent upon physical control (see II.6, n. 8, above) led also him to the idea that testaments must be instituted by civil law. For Hutcheson the obligation of testaments is a matter of the moral happiness that they secure for those concerned, and this applies in the natural as well as the civil state. The “other transactions” mentioned by Hutcheson are cases of lifetime alienation, which Pufendorf himself rejects as irrelevant to the issue of testaments. It is also likely that Hutcheson’s pejorative reference to “metaphysics” includes Leibniz, whom both Pufendorf and Barbeyrac criticize for the idea that since the soul is immortal, it retains its rights in eternity, so that a testament only makes an heir into the manager (*procurator*) of the goods inherited. Pufendorf, *Law of Nature*, IV.10.4, with Barbeyrac’s note I, p. 422; G. G. L. [Leibniz], *Nova methodus descendae doctendaeque jurisprudentiae* (1667), in *Frühe Schriften zum Naturrecht*, pp. 52–54.]

VIII. The third manner of transferring property is by the plain law of nature, without consent of the proprietor, during his life, whenever it is requisite to satisfy any just claim another had against him which he declines to comply with. This will be considered hereafter among the rights arising from the injuries done by others.¹⁶ Thus for compensation of damage, or discharging a just debt, a man's goods are justly seized, <355> and the property of them acquired by the persons who had such claims.

Translation by the law of nature during the life of the proprietor.

The fourth manner of translation is by the law of nature, without the deed of the proprietor, upon the event of his death, in the successions to the intestate. The grounds of it are these. The intention of the deceased in all his acquisitions beyond his own use, was contributing to the happiness of such as were dear to him, as 'tis abundantly known to all. We see that one's posterity, and failing those his kinsmen, are dearer to men universally than others, tho' they may happen to have conversed more with others, in matters of business or pleasure. When men declare their wills, we see the general inclination to improve the fortunes of their posterity and kinsmen, and justly presume the same where it is not expressly declared. 'Tis cruel, without some publick interest requiring it, to defeat this natural hope of succession founded by the ties of blood. Our children, and failing these our kinsmen have plainly a right where some undutiful conduct has not forfeited it, not only to support from us in their indigent state, but to have their condition improved by any surplus of goods we have beyond our own consumption. 'Tis contrary to nature, as well as humanity, to defeat this claim when no publick interest requires it. 'Tis plain also that leaving the goods of the intestate in common to be occupied would cause the greatest confusion.

In succession to the intestate.¹⁷

If friends were admitted along with kindred, it <356> must be in some proportion to the degrees of friendship; but these cannot now be determined; and much less could they be determined if the hopes of succession invited all flatterers. We justly too presume upon the will of

16. See II.15 below.

17. Cf. Justinian, *Institutes*, III.1–10; Grotius, *The Rights of War and Peace*, II.7.2–11; Pufendorf, *Law of Nature*, IV.11, *Duty of Man*, I.12.10–11; Carmichael, *Natural Rights*, pp. 102–3; Hutcheson, *Short Introduction*, II.8.3–4.

the intestate from this, that since the custom has universally obtained, in all nations almost, to admit only kinsmen to succession, had the deceased intended that others should be admitted, he would have expressly declared this peculiar and less usual desire.¹⁸

The natural
way of
succession.

The natural affections of men shew that their posterity should be admitted in the first place, viz. children and grandchildren; grandchildren at least admitted to their parents share among them, where a deceased child has left more than one: and along with posterity parents should be admitted, if they are in straits. In default of both, brothers and sisters, and along with them the children of a brother or sister deceased, at least to the share their parent would have got had the parent been alive. Reasons of humanity would recommend other proportions sometimes, but they would occasion great controversies. In default of such relations all kindred of equal degrees should generally come in equally, and exclude the more remote.

Unnatural
customs.

The notion of having some one representative of the person deceased, succeeding to all his rights, and subjected to all his obligations, as the Roman heir was, has no foundation in nature; nor is there any reason why a far greater part of the inheritance should go universally to one of many children, or one of many in the same degree; nor why seniority among children, or kinsmen of the same degree, should have such preference; nor why the distinction of sex should in the first degree of children take place of all other considerations, and yet be quite neglected in the degree of grandchildren, or be postponed to that of seniority of the parent, so that an infant grand-daughter of an elder son deceased, should take before an adult grand-son by a second son, nay before the second son himself. A niece by an elder brother deceased, nay her daughter, take place of even a younger brother himself, as well as the male descendants of younger brothers. All these things are founded only in civil laws. In the succession to private fortunes there is seldom any reason for having one heir rather than many equally related to the de-

¹⁸ GUL Ms., p. 223: "peculiar and less usual desire" is an interlined revision of "unusual Desire."

ceased. Customs of many nations and their civil laws about these matters are very foolish, and have some pernicious effects upon society.

IX. Personal rights are constituted against a man when he has limited some part of his natural liberty, or his power of disposing of his actions and goods, and transferred it to another, who thence acquires the personal right. And when this right or claim of another is fulfilled, or abolished, the natural liberty of the person obliged becomes again in this respect entire, or the personal right is consolidated with it, as <358> it was before the right subsisted. Such rights arise either from some contract, or some deed of the person obliged; and the consideration of them leads to the subject of contracts or covenants, the main engine of constituting either personal rights or real.

Personal
rights, how
acquired.

THE END OF THE FIRST VOLUME.¹⁹ < I >

19. This marks the end of the 1755 volume I, which fell at the end of Book II, chapter 8. Volume II of the 1755 edition repeated the title page of volume I, except for the volume number. This has not been included here. The title page was followed by a table of contents for volume II, namely, Book II, chapters 9–18, and Book III. This material has been added to the table of contents for volume I and is not reproduced here. See the Note on the Text, pp. xxv and xxvii above, concerning the division of the *System* into two volumes.

Concerning Contracts or Covenants.¹

A contract
what. A Contract is “the consent of two or more in the same design, mutually expressed with a view to constitute or abolish some right or obligation.” We have already seen the necessity of frequent translations of property by consent of the proprietor, and of a constant, social intercourse of offices among men in giving mutual assistance. The law of nature requires and obliges us all to be ready voluntarily to do all kind offices in our power, and every good man is thus disposed; and yet express contracts about them are necessary among the best of men.

The necessity
of them. For tho’ men are obliged to social offices, yet they are not bound, except humanity to the indigent requires it, to give their goods or labours to others for nothing. Such obligation would have all the bad effects of a community of goods. The wealthy need more frequently the labours of the indigent, and the indigent must be supported by the compensations they get for them. There must be mutual agreements about these things. <2>

Again suppose the very best dispositions in my neighbours toward me, and toward each other; yet I cannot take my measures in dependance on their assistance, without a previous contract. I must know their leisure hours, the services they can do me consistently with their other duties of life; and they must know how far I can supply their wants, and assist

1. This chapter corresponds in general terms to the *Short Introduction*, Book II, chapter 9. Cf. Pufendorf, *Law of Nature*, V, where the sequence is different in that price comes before contract and promises have been dealt with already in Book III in extension of the common duties to others and prior to ownership. Cf. *Duty of Man*, I.9 (promises), I.14 (price), I.15 (contract). Cf. Carmichael, *Natural Rights*, chs. 11–12.

them in their need, otherways they must concert their affairs with others who can answer their necessities. The reasons therefore which shew the necessity of a social life, shew also the necessity of contracts, and the obligation of faithfully observing them.

Some more immediate principles in our nature first suggest our obligation. Nature has given us the sagacity to contrive means by speech, or sounds appointed to be² the signs of thoughts, to communicate our sentiments, designs, and inclinations to others, and has made us prone to communicate them by a natural openness of mind, till some experience of inconvenience from too much openness restrain us; we have also an immediate natural approbation of this disposition; and a yet higher approbation of a stedfast veracity and candour in speech, whether we are relating facts, or assuring others of our designs and intentions; and on the other hand have a natural immediate dislike of a selfish³ sullen dark taciturnity, and a yet higher disapprobation of falshood and insincerity in narrations, or professions of our intentions or engagements, and of all intentions of deceiving others, and disappointing them of what by our speech we caused them <3> to expect from us. Such conduct also appears plainly injurious and affronting to our fellows, who have a natural desire to know the truth, and an aversion to error and deception; and who from our social constitution have a claim upon us that we shall not disappoint the hopes we have given them about any offices we undertake for them. These parts of our constitution more immediately suggest our obligation to faith in contracts, and the moral turpitude of violating them.

The grounds
of obligation.

The violation of contracts, on this account, is plainly a greater crime, than refusing a like unpromised office of humanity which is in our power, when other circumstances are equal. The later shews indeed a want of the proper degree of social dispositions, but causes no new detriment in life. But infidelity in a contract offends also against a strong moral feeling in our hearts, and disconcerts the measures of others, who in dependance on the contract may have omitted to provide the assis-

The guilt of vi-
olating them.

2. GUL Ms., p. 225: "appointed to be" is an interlined addition.

3. GUL Ms., p. 225: "selfish" is an interlined addition.

tance they might otherways have obtained. Such breaches of faith, were they frequent in society, must destroy all social commerce.

II. Tho' men are on all occasions obliged to act the humane prudent part toward others, and not to grasp at unreasonable advantages from their rash or weak engagements; yet so great is the necessity of maintaining faith in contracts, and the detriment to society from diminishing it, by allowing many evasions and inextricable disputes about contracts; that in all matters of commerce about which men are valid <4> disposers, whatever contracts we make, not induced by any fraud or error in the known and professed conditions⁴ or unjust violence, we are obliged to observe and fulfil, tho' we have contracted imprudently for our own interest, or even contrary to some imperfect obligations toward others. The other party acquires an *external right*, with which we are obliged to comply when it is insisted on; tho' he is acting against humanity and real justice in insisting upon it. To such cases the common maxim* is applicable, that "many things which ought not to have been done, yet when done, are obligatory."

In what
matters they
are valid.

This rule holds generally in all matters of commerce[†] committed to human prudence, in all alienable rights, in such actions or performances as are not directly impious toward God, nor opposite to some perfect right of another, nor to some special law prohibiting our transactions about them: contracts in which men sin against some general law may be obligatory; or such as are against the interests of their friends or families, where their right is only imperfect: such contracts too must likewise be of some detriment to the publick. But the allowing men to recede from all imprudent contracts would be of far greater detriment, as it would obstruct all commerce, or occasion innumerable inextricable debates. Whoever repented of a bargain, could always plead the imprudence of

4. GUL Ms., p. 226: "or error . . . conditions" is an interlined addition.

* *Plurima fieri non debent, quae facta valent*. [The *Compendiaria* gives the same "old rule," which the translator renders thus: "what ought not to have been done, yet in many cases when done is obligatory," *Short Introduction*, II.9.2, p. 157.]

† Here moral writers regard chiefly the moral power, or right of administration or managing such matters: the *principium vel facultas dans validitatem actui*, more than the prudence of what is done. [It may be Grotius, *War and Peace*, II.5.10, that led to the quasi-quotation, which means "the principle or faculty that makes an act valid."]

it, <5> the loss his friends or family would sustain, its opposition to the general command of *providing for our own*, and to our obligations of humanity. All nations appear sensible of this, by confirming imprudent contracts about matters of commerce, and seldom allowing redress, except where the inequality or the loss sustained by one party is very great and manifest.

III. The law of nature as well as civil laws distinguish three forms of speaking about our future actions or prestations. 1. A bare declaring our present intention or purpose: this produces no obligation. One indeed may be censured as inconstant who often changes without cause.

Three forms of speaking about future actions, expressing our design.⁵

2. The second is when we promise something for the advantage of another, expecting his dependence on our promise, and yet not designing to convey to him any right to compel us to observe it. Such promises are well known to be conditional, upon the good behaviour of the person to whom they are made, even when this is not expressed; and we are understood to reserve to ourselves the right of judging of his behaviour. Receding from such promises without a just cause, is very faulty in point of veracity, and must be highly disapproved by every honest heart on that very account, as well as the cruelty and inhumanity sometimes displayed in defeating the just hopes we had raised by another's dependence on our veracity. This consideration should make men both cautious of promising inconsiderately, and religiously careful not to depart from their promises without sufficient cause, such as must justify them to every honest man. But when one departs from such a promise, the other party has no other perfect right than to demand compensation of any damage he sustained by taking his measures in dependence on the promise; submitting it to arbitration whether his deportment gave just cause of departing from the promise, or not; and whether his measures taken in consequence of it were justifiable. If he is justified by proper arbitrators, he has a perfect right to be indemnified; but cannot, even so, compel the performance of the promise.

Imperfect promises.

5. By "civil laws" Hutcheson may be referring to such works as Stair, *Institutions of the Law of Scotland*, I.10.1–6. The tripartite division is a standard topic in natural law: Grotius, *The Rights of War and Peace*, II.11.2–4; Pufendorf, *Law of Nature*, III.5.5–7, and *Duty of Man*, I.9.6–7. Cf. *Short Introduction*, II.9.3.

Perfect contracts. 3. The third form is a perfect contract or promise, not only binding in point of veracity and conscience, but conferring a perfect right to another.

What signs binding. IV. In contracts 'tis by one's own consent that we deem him obliged. And he is justly deemed to consent who uses the signs which commonly import consent. No exception can be allowed upon any alledged secret dissent or different intention not imparted to others,* or upon any roving of mind or inadvertence alledged while he was using such signs as declared his consent; otherways all contracts might be eluded by such pretences, which could not be confuted.

Tacit conventions. Words or writing declare our consent most distinctly, but it may also be declared abundantly by any other signs previously agreed upon by the parties as evidences of consent. When any sign is agreed upon and used with that professed design, 'tis an express contract. But there are also certain actions which in <7> their own nature import a consent to covenants or conditions proposed. Thus if certain advantages are offered to such only as subject themselves to certain engagements or obligations; he who assumes these advantages which he could not claim except upon the offer made, is justly deemed to have subjected himself to the conditions or obligations expected by the other party. So when one acts what no reasonable man would do without consenting to certain articles, or what is universally taken for a consent to them, he is justly reputed to have consented to them. These are tacit contracts or conventions. The obligation of such significant actions may indeed always be prevented by express premonition of all concerned, to the contrary. And in this the tacit contracts differ from the *quasi-contractus*, or the *obligatio quasi ex contractu* of the civilians.⁶ In these later the obligation is founded in some obvious maxims of justice, upon some action of the person obliged, or

* *De non apparentibus et non existentibus idem est judicium*. [“The judgment is the same concerning things that do not appear as it is concerning those that do not exist.” A slightly modified common lawyers' tag deriving from Edward Coke, *Quinta pars relationum/The Fifth Part of the Reports*, p. 6.]

6. The distinction between obligations arising from some act that with reason is understood as tacitly signaling consent, and obligation arising from being in a certain position or role has as its main source Justinian, *Institutes*, III.13 (2), and *Digest*, XLIV.7.1, pr. The latter kind of obligation *quasi ex contractu* (as if from a contract)

his deriving to himself some advantage at the expence of others who neither intended to be at such expence gratuitously, nor were obliged to it. No premonition or remonstrance will free a man from these obligations, of which hereafter. But in tacit contracts the obligation arises only⁷ from consent, which is as naturally intimated by action, as it could be⁸ by words; and therefore an express previous declaration to the contrary may take away all cause of presuming upon consent.

Examples will best explain both. When lands are offered only to such as are willing to settle in a colony <8> upon certain conditions of civil subjection; one who takes possession of such lands, is deemed to consent to the conditions. A foreigner settling with us, and sharing the protection of our laws and polity, tacitly consents to be subject to such of our laws as oblige foreigners, and to our courts of justice. An heir possessing an estate subjected by the ancestor to this condition that all who enjoy it shall be subject to such polity and laws, tacitly consents to this subjection. If he previously declares against this subjection, he is not bound by it; but the state may perhaps justly prevent his possessing these lands, as it would prevent the residence of a foreigner who previously refused subjection to our laws. Addressing speech to another imports a convention of speaking according to our sentiments, and using words in their customary sense; otherways the action would be foolish. But timely premonition that the speaker only pronounces absurd propositions as examples in logick, would prevent the obligation: these are tacit conventions. But an heir possessing an inheritance, or an executor the personal estate, are* lyable to pay the debts and legacies which affect the estate,

Examples of
them.

is important to the natural law of personal rights, especially that of rights in the family; see II.14 and III.2.5 below; for its political implications, see III.5.3.

7. GUL Ms., p. 228: "only" is an interlined addition.

8. GUL Ms., p. 228: "it could be" is an interlined addition.

* In the civil law the obligation of the heir to pay debts is not called a *quasi-contractus*, but he is supposed by a *fiction juris* the same person with the deceased. This is a subtilty of law; the natural reason of obligation is the same as that to pay legacies, which they say arises *quasi ex contractu*. [The example in the text derives from Justinian, *Institutes*, III.27 (5), which is repeated in Carmichael, *Natural Rights*, p. 114. For the topic of quasi-contract, see below II.14, with notes.]

and no premonition of the heir or executor can prevent this obligation which they say arises *quasi ex contractu*.

Valid excep-
tions against
contracts.
Want of
reason.⁹

V. From the nature of property and the ways of conveying it, it may often happen that men become <9> proprietors before they have knowledge of the value of their goods, or the use of reason to manage them. 'Tis plainly for the good of such, and for the publick interest too, that such persons be kept from the disposal of their goods, or entering into any important contracts,¹⁰ till they attain to some tolerable knowledge of human affairs. Men disordered in their reason by sickness, or madness, are in the same case. On the other hand 'tis plainly unjust to restrain men of sufficient wisdom from the exercise of the duties of life, and the enjoyment of their property. Men attain to maturity at very different ages. Before civil laws, the maturity of reason, when any dispute arose upon this exception against a contract, could be determined only by the arbitration of such who knew the ordinary conduct of the person at the time of the contract. By the law of nature one is obliged by any equitable contract he entered into at any age, provided he knew what he was doing. But to prevent frauds and vexatious tryals about the maturity of reason, which too must at several times be determined as to the same person according to the different subjects about which young people may have occasion to transact, and that men may have at last some security against the inextricable exceptions about the mature reason of the persons they have to deal with, 'tis absolutely necessary that in civil society some positive law should fix a certain age in a prudent medium, so as to admit as few as possible to manage their affairs before maturity of reason, and yet exclude as few as may be after <10> they have attained it. The exception of a phrenzy is more easily determined by arbitrators or judges.

9. The general issue of limitations to the possibility of consenting because of madness, intoxication, or immaturity is introduced by Grotius, *The Rights of War and Peace*, II.11.5. Pufendorf, whom Hutcheson follows particularly closely here, elaborates these points, *Law of Nature*, III.6.3–5, and *Duty of Man*, I.9.10–11. Cf. *Short Introduction*, II.9.4; and Justinian, *Institutes*, III.19.

10. GUL Ms., p. 229: "or . . . contracts" is an interlined revision of an illegible passage.

The Roman law about minors, now partly received over Europe, had great conveniencies. To the age of fourteen compleat in males, and twelve in females, they acted nothing validly. Tutors acted in their names. After these years the minor acted, but nothing was obligatory, without the consent of curators, until he had compleated his twenty-first year. In earlier times this term was delayed to the twenty-fifth year. In this period a minor was made acquainted with his affairs, as the curator could not act without him, and he might be a check upon any fraudulent design if he had attained to any wisdom; while the superior prudence of the curator prevented the minor from hurting himself. The law to prevent the frauds minors are exposed to, gave them leave to recede from any contract entered into without consent of curators before maturity, tho' they might be obligatory in conscience, and are so always where there is no iniquity in them, and the minor knew what he was doing at the time of contracting. After the twenty-first year compleated, they were capable alone of all legal action, except finally discharging their curators; for doing this validly they were allowed the further experience of four years.

Minority.¹¹

But as a minor should not be injured by imprudent contracts; so he is obliged, after coming of age, to let no man suffer by any equitable contract entered into with him during his minority, out of real kindness <II> or confidence of his integrity, without any fraudulent design, even tho' civil courts do not confirm such contracts. And courts of equity always sustain whatever was prudently advanced for the maintenance or education of a minor in the absence of his parents, or curators, as a just debt upon him.

'Tis pleasant to observe how those authors who paint out our nature as a compound of sensuality, selfishness, and cunning, forget themselves on this subject in their descriptions of youth, when the natural temper is less disguised than in the subsequent parts of life. 'Tis made up of many keen inconstant passions, many of them generous; 'tis fond of present

11. For the following points about minors, tutors, and curators in Roman law, see Justinian, *Institutes*, I.22.pr., and I.23.pr.; *Digest*, IV.1, and XXVII.13.

pleasure; but 'tis also profusely kind and liberal to favourites; careless about distant interests of its own; full of confidence in others; studious of praise for kindness and generosity; prone to friendships, and void of suspicion.

Drunkenness.

VI. The contracts of such as are manifestly disordered in their reason by drunkenness, are not obligatory, as 'tis fraudulent in one to entice them into contracts during such disorder. If my disorder was not known to others, I am plainly obliged to compensate any damage occasioned by my contracting, tho' I am not bound by it. A disorder I have culpably brought on myself can never free me from this obligation; tho' it may from that of a contract. Men are not obliged to preserve themselves always in a capacity for contracting with others, otherways they should never fall asleep.¹² But they should always prevent their doing hurt to others, and take precautions against any <12> thing in their conduct that may be injurious. If they do not, they are bound to make full compensation.

Mutual
consent
necessary.¹³

VII. To the validity of contracts mutual consent is necessary; and that even in donations, as well as other translations of right. In donations indeed the consent of the receiver is easily presumed; and yet if he accepts not, the property is not altered. The proprietors can suspend their conveyances upon any lawful conditions or contingencies they please. Present acceptance is not always necessary; as in legacies to persons absent; and in all conveyances to infants. No man indeed acquires property against his will, or untill he consents to it; but the granter may order the property to remain in suspense till it can be accepted by the grantee; or may commit the goods to trustees till the grantee shews his will to accept them. Goods may thus be preserved in suspense for the benefit of persons unborn.

All this is very intelligible if we remember that property is not a physical quality; and that all intended in this doctrine is this,* that such man-

12. GUL Ms., p. 230: "otherways . . . asleep" is an interlined addition.

13. This section touches briefly upon the main points in an extensive discussion of the juridical criteria for a contract to be complete. This is set out in Pufendorf, *Law of Nature*, III.6.15, where Barbeyrac supplies a wealth of references to the Roman law sources.

* See the preceding chap. §3.

agement of goods is humane to individuals,¹⁴ and consistent with, nay conducive to the good of society; and that a different conduct would be inhuman toward the grantees, or the persons concerned for them, and hurtful to society. If property were a physical quality, it must indeed have a present subject.

If the child when come to maturity declines to accept, no man can force him to it; the goods remain <13> with the granter, or such as have a right to succeed to him. But from the sure prospect we have that valuable grants will be accepted, we usually call the grantees proprietors, as soon as the conveyance is compleated.

VIII. In contracts made upon a *condition* there is no obligation unless the condition exists. A *condition* is properly “some event, now uncertain, upon the existence of which the force of the contract is suspended.” And ’tis always distinct from the mutual prestations stipulated, and from the consent of the parties. In the Civil law a condition is an event which has not yet happened. If the event existed at the time of the contract, tho’ unknown to the parties, the contract was called absolute. If it was then impossible, there was no contract. This needless distinction was of no moment in contracts, tho’ it made a great difference in conditional legacies, and inheritances. If the heir died before the existence of the condition, tho’ it afterwards existed, the estate passed from his family to another. If it existed before his death, tho’ it was unknown, the estate continued in his family. These are unreasonable subtilties.

Defects of the
Conditions.¹⁵

These conditions alone can affect the obligation of a contract which are either expressed in the contract as conditions, or which are understood as such from the nature of the affair by all men of understanding; or such events as one party asserted to another and undertook for the existence of them in the transaction, which consequently the other party may be presumed <14> to have made the condition of his consenting. To allow exceptions against contracts from the non-existence of any event

14. GUL Ms., p. 231: “to individuals” is an interlined addition.

15. This section corresponds to *Short Introduction*, II.9.7, and it follows in its main lines Pufendorf, *Law of Nature*, III.8, where the Roman law background is extensively discussed in Barbeyrac’s notes; cf. *Duty of Man*, I.9.20. Justinian, *Institutes*, III.19 [20]. Parts of Grotius, *The Rights of War and Peace*, II.11, are also relevant.

or circumstance which one of the parties alledges he secretly had in view, while such things are not commonly expected or understood as conditions in such transactions, would make all contracts uncertain.

Many tacit
conditions.

In¹⁶ many of our common promises and contracts many conditions are universally understood to be adjected tho' they are not expressed; this all men of sense conclude from the nature and importance of the matter we are employed about. Thus if one promised his assistance to-morrow to his friend in any common business, this condition is always understood "provided he continues in health, and no calamity befalls his own family or friends, in which his aid may be of incomparably greater consequence than the assistance promised." Should a man's own house take fire, or any great distress befall his family, he is free from the obligation. In like manner when one promises implicitly at the desire of another to grant him a request he has not yet expressed, 'tis always understood, "provided the granting it be lawful, not contrary to piety, or any right of another; provided the favour requested be one of these friendly offices which a good man can reasonably ask of his friend." If it have not these qualities, there shall be no obligation.

Error and
fraud as to the
object.¹⁷

IX. He who mistook the very object of the contract, or was deceived in these qualities for which such goods are commonly valued and desired, is not obliged by the contract. He bargained for different things from those obtruded upon him. He should restore or compensate whatever he received on account of the contract from which he now recedes. When one's own folly or negligence occasioned the mistake, by expecting such qualities as are not usually expected in such goods and for which the other did not undertake, he is bound by the contract; otherwise all contracts might be eluded upon pretence of disappointment in some such secret hopes. If the mistake or deception has only been about the current value or market price, or about some fact quite foreign to the present subject of the bargain, without any fraud of the party I deal with, I am bound; but have in the former case a perfect claim to have

16. GUL Ms., p. 232: This paragraph is inserted into the manuscript from a small slip of paper.

17. Cf. *Short Introduction*, II.9.5; Pufendorf, *Law of Nature*, III.6.6–7, and *Duty of Man*, I.9.12.

the price lowered to the current value; and in the later, have a claim in humanity, when I can shew that I was led into the contract by mistake, to be freed from it, if it occasions no loss to the other party; or if I am willing to compensate it. But this I can seldom insist on as a perfect right.

In all contracts good men should use all possible candour in discovering the qualities and circumstances which raise or lower the values of the goods; and are bound to restore where too much is received, or add where too little was given. This conduct tho' not very common, is necessary to satisfy an honest heart. 'Tis also our duty to release others from inconvenient bargains upon receiving compensation of any loss we sustain by the disappointment. In all these affairs 'tis of great use to examine well the feelings of our own <16> hearts, and to consider how we should like such conduct toward ourselves as we are intending toward others.* This prepares the heart for an impartial discernment of what is just and

Obligation to
sincerity.

* *Matth.* vii. 12. This excellent rule is mistaken by some authors, who without acknowledging any prior principle of moral reasoning, or any inward immediate taste of action, would make this proposition an axiom whence they would deduce all rules of conduct. 'Tis not useful this way. A miser desires an exorbitant price when he sells: he's not obliged to give it when he buys. A lewd person desires that others should yield to his solicitations: should he therefore yield to the solicitations of others? The person indicted wishes to be absolved tho' he is guilty. Is it therefore his duty, were he sitting in judgment, to absolve the guilty? The axiom needs these two limitations, 1. that the desire be just, and again that circumstances be equal. The former must presuppose the rules of justice previously known: they cannot therefore be inferences from this axiom. [In his *Philosophical Theses* (1707), XVII (*Natural Rights*, p. 366), Carmichael calls this passage in Matthew (also in Luke 6:31) "the golden and universal rule," which he repeats in his commentary on Pufendorf, *De officio hominis et civis*, I.7.3, p. 147 (*Natural Rights*, p. 75). This section in Pufendorf's shorter work is a précis of *Law of Nature*, III.2.4. The most obvious target for Hutcheson's criticism is Hobbes, who in *Leviathan*, ch. 14, p. 92 (cf. ch. 17, p. 117) identifies the second law of nature with the passage from Matthew 7:12 and uses it together with the first law—to seek peace—as the basis for his elaborate delineation of morals (cf. Hutcheson's "all rules of morality"); cf. also *On the Citizen*, III.26 and IV.23, where, however, the rule is not a law of nature but a test whether the laws of nature are being transgressed. With his second point of criticism, namely that equality has to be qualified, Hutcheson follows Pufendorf, *Law of Nature*, II.3.13, adopting also the latter's examples. Hutcheson would have found Pufendorf's reference to Robert Sharrock, *ΥΠΟΘΕΣΙΣ ΗΘΙΚΗ de finibus et officiis secundum naturae ius* (2nd ed. 1667 and later eds.), cap. II, no. 11, congenial, for also there Hobbes is attacked concerning the need to operate with a relevant concept of universality.]

honourable, and what not, by making the selfish passions operate a little on the other side. And thus the *moral faculty* shall be freed from their byass and their sophistry, and all humane sentiments in favour of the other party shall occur to us. There cannot be a more useful piece of self-discipline in all our dealings with others.

Unjust force
and fear of two
sorts.¹⁸

X. The next class of exceptions from the obligations of contracts are those from unjust force and fear. Fear affecting contracts is of two sorts; sometimes we intend by it a suspicion that after we have performed on our part, the other party will decline his part. In this case 'tis plain that he who contracts with one who disregards avowedly all faith and honesty, without having proper means to compel him, acts very imprudently, and yet the contract is not void. Where there is just ground for this suspicion, one has a right to defer performing on his part, till the other either performs his part first, or gives sufficient security for it. When he <17> does either, a good man should observe his contract with him were he the worst of mankind.

Faith obliga-
tory toward
the worst of
men.

No tenet can be of more horrid consequence than this, that “bad men have no valid rights, or that good men are under no obligations to them,” whether they are deemed bad on account of practices, or of opinions we may call heresies. The laws of God and nature bind us to consult the happiness even of the worst of men as far as it consists with that of the more useful members of the great system, and to do them all good offices which do not incourage them in their vices. To observe lawful covenants voluntarily entered into with them is so far from encouraging their vices that it has the contrary tendency. It shews them the beauty of integrity, and its usefulness even to themselves. The contrary practice gives them an example of injustice, and provokes them to it. They

18. Cf. *Short Introduction*, II.9.8, p. 163. This section is close to Pufendorf, *Duty of Man*, I.9.14, which is a summary of *Law of Nature*, III.6.9. The latter text lays out the problem situation that Hutcheson is addressing with his critical remarks, namely Hobbes's thesis that in the state of nature, mutual fear makes contracting impossible. Pufendorf and Hutcheson take the premise of this argument to be “the general Pravity of Mankind” (*Law of Nature*, p. 282; Hobbes, *On the Citizen*, II.11; *Leviathan*, ch. 14, p. 210). Hutcheson's point at the end of the section echoes Pierre Bayle's argument about the possibility of society of atheists, which Barbeyrac draws attention to in this context (*Law of Nature*, p. 283, note 6).

conclude that there is no honesty; that all pretences to it are hypocrisy; that their own infamy is unjust, since others are no better. The moral characters of men are not unalterable; some who were once distinguished in wickedness have become eminent in virtue: no man is unworthy of our care.

Again, how dangerous must this tenet be while it is so hard to judge of the moral goodness of others, and men are so frequently led by prejudice and party-zeal into the most unfavourable opinions of the best of men, and then by this tenet they are doomed by us to have lost all the rights of mankind. None are free from all faults. And how shall we fix that degree of vice which forfeits the common rights of men, or makes them incapable of acquiring any. This tenet cannot take place even against such as avowedly disregard all laws of God and nature. Even such men forfeit only those rights the denying or non-observance of which is necessary for the safety of others against their injustice and violence, as we shall shew hereafter.

XI. Another species of fear affecting contracts is when one is moved to contract or promise by some evil threatened if he do not.

That threatened by one of the parties, or by others.¹⁹

Here 1. If I contract with any honest man for his assistance against any evil unjustly threatened by a third person; the contract is obligatory: the aid given against such dangers deserves compensation, as well as any other service.

2. If the dread of some great evil unjustly threatened by one, compels me to contract with a third person not in concert with him who compels me, and unapprized of my being compelled: the contract seems void when I can make proof that this dread alone engaged me to it; since it had not that free consent which seems necessary in contracts. And yet I am plainly obliged to compensate all losses any innocent man has sustained by my means, in order to secure me from danger.

3. Contracts to which one is compelled by fear upon the just sentence of a judge, are plainly valid, since the sentence is just. An external right

19. This section corresponds to *Short Introduction*, II.9.8 (the latter half) and 9. Cf. Carmichael, *Natural Rights*, pp. 85–86; Pufendorf, *Law of Nature*, III.6.9–13, and *Duty of Man*, I.9.15.

often attends the sentences of judges which are not just, and men out <19> of duty to the state or civil constitution, to which they have subjected themselves, may be obliged to comply with them, when no peaceable means can prevail with the other party to remit his external claim, as it becomes a truly good man to do.

Rights valid
from publick
treaties.

4. In cases where the person with whom I make the contract has extorted it by his own unjust violence, a distinction must be made between “violence really unjust, yet upon such species of reasons as may impose upon men whose general purpose of life is to act justly;” and that “violence which is used without any shew of right by men who openly renounce all regard to the social laws of mankind.” The former sort of unjust violence at least, must ever be on one side in all the solemn wars of nations, and in all civil wars: and sometimes there is unjust violence of the later sort even in these publick wars. More frequently indeed there are even on the unjust side in publick wars such specious pretences, as through the secret influence of the passions of ambition, zeal for one’s own side, or desires of advantages, may impose upon men to believe their cause to be just: and many in lower stations upon the unjust side are under invincible ignorance of the injustice. The side which is really unjust, cannot by violence obtain any perfect right which they can use with a good conscience: what is taken ought to be restored, and the promises or contracts extorted should be remitted again. And yet where there are such specious reasons on their side, there is an external right acquired by treaties obtained. The other <20> side are under an obligation, out of regard to the general interest of mankind, not to violate such treaties, tho’ very disadvantageous to themselves and naturally iniquitous; at least, while they are not quite inconsistent with their liberty, independency, and enjoyment of the grand rights of mankind, for securing of which all these laws of nature are constituted: unless they can prevail upon the victorious side to release them from their covenants, they are bound by them. Some extraordinary pleas of necessity may make just exceptions from any general rules which can be found out in those matters. Of these hereafter.

The grand reason of our obligation by such treaties really unjust, is this, that if they were held as of no effect, if the exception of the unjust violence by which they were extorted were sustained, no treaty could have any effect to put an end to wars. They must be ended only by the ruin or entire slavery²⁰ of one side, as each side would have this exception of unjust force to renew hostilities upon against the treaty, whenever they inclined. This exception therefore is always understood as precluded in publick treaties of peace.

For what reasons.

5. But where violence is avowedly unjust, without any such colours of right as could impose upon a good man, which sometimes has been the case in publick wars; or when persons by the course of life they betake themselves to, renounce all regards to law and justice, as bands of pirates and robbers; the case is very different. Such persons by the whole tenor of their lives seem to abdicate all rights and claims founded on the <21> social law of nature;²¹ as they directly and avowedly²² oppose the whole foundation and end of that law, the happiness of mankind. The publick interest, the end of all law, requires that such avowed enemies of all should be destroyed, and should hold no benefit by those laws, which they renounce in this very act of extorting promises by unjust violence. The non-observance of such promises cannot hurt society; but the observance may, as it puts good men more in the power of such monsters, and makes this monstrous life more advantageous and inviting. If none regarded such promises, they would not be extorted. Robbers would expect no more than their present spoils. Can one be under obligation in the use of speech to such as renounce all right and obligation? Sure such manifest renunciation may release from the alledged tacit convention in the use of speech. When one allows me to speak without expressing my own sentiments, I may do so without a fault, as the hearer has relinquished his right. As rights are acquired in tacit contracts, and the *quasi-contractus*, by action; rights also may be renounced and abdicated by action, or forfeited by it, whether the agent directly intended it, or not.

These hold not for pirates and robbers.

20. GUL Ms., p. 235: "slavery" is an interlined correction of "conquest."

21. GUL Ms., p. 236: "rights and" and "social" are interlined additions.

22. GUL Ms., p. 236: "avowedly" is an interlined addition.

This not opposite to universal good-will.

We owe indeed good-will to the worst of men, and should do them such good offices as consist with the publick good. But pirates and robbers, or such as shew the same spirit in higher stations or offices, are the avowed enemies of mankind. We should desire their reformation, and avoid useless cruelties toward <22> them when they are in our power. But our regard to the general interest must recommend to us all the necessary means of putting a stop to such a course of life, and to prevent their reaping any advantage by such avowed hostility to mankind, and abdication of all laws.

When they have a right by contracts.

If indeed we have contracted with such persons without compulsion in the ordinary matters of commerce, we are faulty in maintaining commerce with them; and civil laws justly refuse them any action upon such contracts: but yet unless we are prohibited by the laws of our country, we should observe our contract, or restore whatever we have received. In these acts no force was supposed, and by our voluntarily contracting with such men when we knew their characters, we seem to have tacitly renounced that exception founded upon the general tenor of their lives.

If such persons shew any disposition to reform, and return to a social life, as 'tis possible for the worst to amend; whatever a state or community has voluntarily promised to them without immediate compulsion, should be religiously executed as to their impunity, or retaining their present possessions, since in a voluntary treaty with them the exception which arises from their course of life is tacitly renounced. 'Tis foolish indeed to trust their bare promises. But if they offer real securities by first surrendering arms, ships of force, or forts, in which their strength consisted, a treaty securing to them impunity may be sometimes the wisest method of preventing future mischiefs without effusion of blood. Granting such men im<23>punity, and the enjoyment of their spoils, has of itself a bad tendency, and must move our indignation; but there may sometimes be potent reasons to justify it, and then compensation should be made out of the goods of the community to such private persons as for publick reasons are thus precluded from claiming it from those who injured them.

XII. To the validity of a contract 'tis necessary that the matter of it be possible. We call that *naturally*²³ possible which we can get accomplished when we incline, by ourselves or others. And that is called *morally* possible which no law prohibits.*

Impossibility
of the matter
natural and
moral.

As to the exception against contracts from natural impossibility; if what seemed possible when we contracted, becomes or appears afterwards to be impossible, we cannot be bound to it; but whatever was given to us or performed on account of it should be restored or compensated. When one knew at first the impossibility of his part, or designedly afterwards made it impossible,²⁴ but fraudulently engaged the other to perform his part first, the fraudulent party is not only obliged to †compensate the damage, but to make good the value of the bargain, or all the profit the other could have made, had the contract been faithfully executed‡. Where there has been no fraud, but only inadvertence in such contracts, 'tis generally enough that the damage be compensated by him who was culpably inadvertent. <24>

How far the matter of contracts should be lawful may appear from what was said above.[§] We cannot bind ourselves to any thing directly impious toward God, but our duties of worship are not fixed invariably to certain times. A man may be bound by contract to such offices as may vindicate his omission of external worship at the ordinary times of it. But he cannot be bound either to evil affections, or any acts of impiety which naturally evidence such affections, such as blasphemy, or abjuring the religion he judges to be right. Urgent offices of humanity which cannot be delayed, justify the postponing of worship for sometime, for

Moral
possibility
distinguished.

23. GUL Ms., p. 237: "*naturally*" is an interlined addition.

* *Nihil possumus nisi quod jure possumus*. ["We cannot do something unless we can do it in accordance with law." Hutcheson picks up the distinction between naturally possible and morally possible that Pufendorf draws at *Law of Nature*, III.7.1, and develops in that chapter (secs. 2–5 on natural impossibility, 6–11 on moral impossibility). Cf. *Duty of Man*, I.9.17–19; *Short Introduction*, II.9.10–1.]

24. GUL Ms., p. 237: "or . . . impossible" is an interlined addition.

† *Pensare damnum*. ["To pay the penalty."]

‡ *Pensare quod interest*. ["To pay compensation."]

§ Sect. 2. of this chap.

mercy is at all times more acceptable to God than sacrifice.²⁵ Were indeed the omission of publick worship demanded as a symbol or testimony of our concurrence in idolatry, or of renouncing the true religion, no promise or contract, or prohibition²⁶ of a civil superior, could justify such omission. And in many cases the most open* opposition to such prohibitions would be heroic.

In like manner tho' contracts may oblige us in matters of commerce contrary to the imperfect rights of others, when we contracted without a fraudulent design knowable by the other party: yet where the fraudulent design must appear, as if one conveyed† by contract or promise to any person or society all that portion of his wealth which should otherwise be employed in humane or grateful offices, declaring that it was that portion; and that he conveyed it to evade <25> such obligations, the deed is invalid as being fraudulent on both sides. The ascertaining of commerce requires that contracts conveying perfect rights should take place of duties of humanity, where both cannot be fulfilled, provided such contracts are made without a fraudulent design. But where such designs are known on both sides, there is no reason for sustaining them as valid.

No contract binds where there was not a moral power of contracting.

When contracts are made about matters we had no moral power to contract about, if this was known on both sides, or both sides were equally culpable in their ignorance of it, the contracts are void. Either party repenting before any thing unlawful is executed, is free from the engagement; but then one should not retain any price or consideration given in view of it. If the fact is committed by one who was invincibly ignorant of its unlawfulness, he has a right to what was promised; especially when the guilt would only affect the other party. As when any officer of justice executes a writ at my suit against my friend or benefactor whom I am inhumanly or ungratefully prosecuting. If both knew the guilt of the action, and it equally affected both; or both were

25. GUL Ms., p. 238: "for mercy . . . sacrifice" is an interlined revision of an illegible passage.

26. GUL Ms., p. 238: "prohibition" is an interlined revision of "comand" [*sic*].

* *Daniel* vi. 7–11.

† *Matth.* xv. 5. *Mark* vii. 11.

criminally ignorant of its guilt, and the fact be committed; no right should arise to either side from such contracts or actions. The executor should not receive the reward of his iniquity. If it has been previously received, the hirer should not get it restored. No advantages or hopes of gain should attend such engagements or actions; they should be discouraged by all means. If the undertaker has received the price before the execution and relents, he should not indeed retain it; nor yet should he restore it to one more criminal than himself. It should go to some publick use.

One who contracts or promises about the goods of others and mutually known to be so, is only then bound to use all lawful means to obtain them from the proprietor. When these are ineffectual he is in the case of such as contracted for impossibilities. If the promiser may be presumed to know this right of a third person while the other party is ignorant of it, the promise is fraudulent, and binds to the making good of the value of it to the innocent party.

XIII. Of two covenants conveying to different persons the like right to the same thing, the *prior must take effect. All commerce would be uncertain if a subsequent contract could defeat a prior of the same nature. The second contract is in the case of an impossible contract fraudulently made, and is to be judged of by the same[†] rules. Where the contracts are of different natures, one conveying a real, the other a personal right to obtain the same thing, the real right will take place of the personal tho' prior to it, for reasons above-mentioned.[‡] The personal contract is in the case of those made about impossibilities, and has the same moral effects. If indeed the prior personal or unfinished contract was previously known to both the parties in the subsequent real contract, the subsequent <27> being plainly fraudulent on both sides, should be made void.

What contracts are preferable to others.²⁷

27. This section corresponds to *Short Introduction*, II.9.11.

* *Qui prior tempore potior jure*. ["Whoever (is) first in time (has) the stronger right." A common rule, invoked also by Pufendorf here: *Law of Nature*, III.7.11, and *Duty of Man*, I.9.19; cf. e.g., Justinian, *Digest*, XX.4.]

† See sect. 12 of this chap.

‡ See chap. v. sect. 1. of this book.

XIV.²⁸ Men contract with others either in person, or by agents, factors, deputies, ambassadors, or any one they have by their deed empowered to transact validly in their names. Where unlimited general powers are given by the constituents, they seem obliged to ratify whatever is done by their deputies in the matters committed to their management without reservation, unless the constituent can directly prove that their deputies were corrupted by the other party, or the terms agreed to are so manifestly unreasonable as to give sufficient proof of corruption to any wise unbyassed arbitrator. To avoid the dangers of unlimited powers, publick instructions or powers are now given, declaring what matters are committed to these deputies and within what bounds; which powers are mutually made known. The constituents are bound only by such contracts of their deputies of any kind as are within the limits of their powers. <28>

28. This section corresponds to *Short Introduction*, II.9.12; and to Pufendorf, *Law of Nature*, III.9.1, and *Duty of Man*, I.9.21.

The Obligations in the Use of Speech.¹

We mentioned in the former chapter some natural principles which are plainly destined to regulate our speech. As the power of communicating to each other our sentiments, desires, and intentions is one of the great blessings of the human species, so appositely joined with our

Natural principles binding to veracity.

1. The chapter corresponds to *Short Introduction*, II.10. Cf. Pufendorf, *Law of Nature*, IV.1, and *Duty of Man* I.10. Hutcheson's interest in language as part of his analysis of the human mind goes back to his earliest publications: his exchange of letters with Gilbert Burnet in 1725 (*Correspondence and Occasional Writings*, pp. 177–82), *Illustrations* (sec. III), and later in *Short Introduction* II.10. The version in *Illustrations* is the clearest and most detailed, but all the texts contribute to establish a complex context. The starting point was always the criticism of Wollaston's two core ideas, that moral virtue and vice were equivalent to the truth and falsity of propositions, and that actions could express propositions, i.e., be true/virtuous and false/vicious (Wollaston, *The Religion of Nature Delineated*, sec. I). This prompted Hutcheson's display of the many ways in which truth-value and moral worth can deviate from each other. However, in doing so he clearly accepted that actions like language can have meaning, so that the question was what lent human behavior, whether linguistic or otherwise, meaning or "significancy." To clarify this, he set his debate with Wollaston in the context of the natural lawyers' theory of language. Grotius and Pufendorf saw the relationship between a sign and that which it signified as either *natural* (typically causation or similarity) or artificially instituted by *convention*. To explain the conventional character of language, they used the civil law's quasi-contract as an analogy. Hutcheson accepted the distinction between natural and artificial signs but found it inadequate to explain the moral meaning of language (or other behavior). Drawing on ideas already in the natural lawyers, he argued that although conventional signs of course derived from acts of will and thus from intentions, many such signs had no moral meaning, and vice versa, natural signs could be used with meaning but were not therefore of moral significance. It was not intentionality per se that made linguistic behavior subject to moral judgment, but the intention to establish

social feelings and affections; nature has also implanted a moral feeling in our hearts to regulate this power. We are naturally prone to communicate our sentiments. Truth is the natural production of the mind when it gets the capacity of communicating it, dissimulation and disguise are plainly artificial effects of design and reflection, and an immediate approbation naturally attends both this communicativeness, and the steadfast purpose of speaking according to our sentiments. In the exerting these powers of speech in the manner our heart at first approves, we must no doubt have a regard to some of the more general controlling principles in our constitution, so as not to follow any inferior one in opposition to the superior, as we must controll sometimes and restrain the exercise of² pity, gratitude, and other lovely principles when they interfere with the publick happiness: but where candour, openness, and a sincere discovery of our sentiments does not interfere with it, the immediate feelings of our hearts suggest our duty <29> and obligation to it, and that prior to the general obligation of using this powerful instrument of so many blessings in society in that manner which the general interest requires.

a communicative relationship with another intentional agent. How much of this is already in Grotius and, especially, Pufendorf is debatable, but it is clear that Carmichael showed Hutcheson the way in finding the distinction between natural and artificial signs true but inadequate and in clearly developing the idea of intentional communicativeness (Carmichael, *Natural Rights*, p. 87). Hutcheson transformed this in light of his idea of the moral sense. Linguistic behavior was like all behavior subject to evaluation by the moral sense, in both “speaker” and “listener.” This is the premise for Hutcheson’s invocation of the idea of rights and duties. Judging by the moral sense is *prima facie* a right to be exercised subject to the law of nature, also in speech, but the wide variety of circumstances, such as roles played by both “speaker” and “listener,” determine whether the speaking, resp. the hearing, in fact is a tenable right. This is the premise for criticisms that are only indicated in the present text but spelled out in *Illustrations* (pp. 163–64). First Hutcheson criticized what he took to be Barbeyrac’s (and undoubtedly Pufendorf’s) argument, namely that the moral value of speech is to be reduced to its intended public utility. And secondly Hutcheson rejected the opposite extreme (which he seemed to ascribe anonymously to Carmichael) that only the full truth on all occasions can have moral value. See Barbeyrac’s note 1 in Pufendorf, *Law of Nature*, IV.1.7 (pp. 320–22); Carmichael, *Natural Rights*, p. 89.

2. GUL Ms., p. 240: “the exercise of” is an interlined addition.

There are other ways in which we may communicate our sentiments, desires, or intentions, as by symbols, hieroglyphics, painting, motions significant from nature, or custom. But speech and writing are by far the most distinct and useful signs.

II. To understand our duty in the use of signs, we must observe that grand* distinction among them, that some of them either by natural similitude and connexion, or by custom, intimate to the observer a proposition, or give him occasion to infer it, without his imagining that the person who used these signs had any intention, or made any profession of communicating by them his sentiments or designs to him. Thus by seeing smoke, we conclude there is fire; by seeing it arise in many places of an hostile camp in an evening, we conclude that the army is not in motion; by seeing light all night in a window, we conclude that some person is watching; nor do we imagine that by these signs any person professes to communicate to us his sentiments, or to inform us of any proposition. But 2. There is another use of signs, whether natural or customary, which plainly imports such a profession in the man who uses them; and 'tis only by doing so that they suggest to us any proposition. <30>

A necessary distinction of signs.

This division of signs is different from that into *natural*, and *customary* or *instituted*. Both natural and customary signs may be so used as to import a profession of communicating our sentiments to others. The sending little wings or spurs³ to a friend at a distant court, signifies to him that he is in danger; and that only upon this justly presumed profession of ours to intimate to him our opinion about his danger. Designedly to deceive one by such signs, or by any hieroglyphicks, would be as criminal as by a letter; and yet these are natural signs. On the other hand, instituted signs may lead one into a conclusion about our sentiments without his imagining that our using them was a profession of imparting our sentiments to him. A letter intercepted, or speech over-heard by one to whom it was not addressed, may lead him to such conclusions, while

* See *Grot. de J. B. et P. lib. iii. c. 21. § 8. N. ii. et Puffend. de J. N. et G. lib. iv. c. 1.* [The reference to Grotius should be III.1.8, as it is in *Short Introduction*, p. 170n.]

3. GUL Ms., p. 241: "or spurs" is an interlined addition.

he yet knows there was no such intention or profession of communicating any thing to him.

Our duty in these which do not profess to express our sentiments.

III. As to signs importing no such profession, there is this general obligation in the use of them “to do no detriment to any innocent person, or to the publick, by leading men into any false conclusions which may be pernicious to them.” Wherever another has a right, perfect or imperfect, to know our sentiments, there even concealing them by silence, as well as all deception by any signs, is criminal. But where others have no such right, and much more where there is a just cause of war, so that even violence is lawful; or wherever deceiving others may do good; we may deceive them by such use of signs as imports no profession of communicating our sentiments.⁴ Such *stratagems* are justified by all, and may be used toward a friend for any innocent purpose. A studious man may darken his chamber that others may conclude that he is abroad.

In those which profess it there is a tacit convention.

But in that use of signs which imports a profession of imparting our sentiments, upon which their signification depends, the case is different. A great part of the pleasure of a social life arises from mutual confidence in each others veracity in narrations, as well as promises. We often take our measures in dependence on the narrations of others, and derive from them much of our knowledge in human affairs. Deceiving others therefore designedly by signs justly understood as containing this profession of imparting our sentiments, and interpreted by them in the usual manner; as our hearts must immediately condemn the insincerity of it, so upon reflection we see it tends to deprive human life of all these advantages from mutual confidence in conversation.

This use of signs too imports a tacit convention to impart our sentiments to the person we address them to. Were not men persuaded of such an engagement, it would be vain and foolish to address speech seriously to another, or to listen to what is said. Suppose men imagined there was no obligation to veracity, and acted accordingly; speaking as often against their opinion, as according to it; would not all pleasure of conversation be destroyed, and all confidence in narration? Men would

4. The reference to stratagem in war indicates the principal modern source of this debate in natural law, namely Grotius, *The Rights of War and Peace*, III.1.

only speak in bargaining, <32> and in this too would soon lose all mutual confidence. Tho' we are not always obliged to disclose our sentiments, yet from these considerations it must appear that we are obliged, whenever we use signs in a way that imports a profession of imparting our sentiments, to be faithful in this profession; or to "use them so as shall impart our real sentiments according to the reasonable interpretation of such signs." And this is the general law of veracity.

IV. There are some necessary limitations of this rule, or some rules of interpretation of signs, especially of words, to be observed. 1. When the signification of words, or other signs dependent on institution and custom, is changed from the old original one, we are not guilty of falshood if their signification according to the present custom is true. Thus expressions of courtesy, and the ordinary designations of certain orders and offices, import no such opinions of the relations, or moral qualities of the persons they are addressed or applied to, as the words would import on some other occasions; and so no body is deceived by them. They only signify our intention of common civilities, or of paying the ordinary deference to these stations.

Necessary
limitations.⁵

Change of
signification.

2. When in certain affairs 'tis known that men do not conceive it an injury to be deceived, there is no crime in false speech about such matters. This is the case in some diversions. In these trifling matters we see there is no mutual confidence, and thence may discern what would be the effect of falshood in serious <33> narrations. If in some few greater matters men have relinquished their claim to the veracity of others, there is no obligation to it. A tacit remission can free from a tacit convention; or rather in such matters, addressing speech to one imports no convention. No man censures a physician for deceiving a patient too much dejected, by expressing good hopes of him, or by denying that he gives him a proper medicine which he is foolishly prejudiced against: the patient afterwards will not reproach him for it. 'Tis true men cannot be

Allowance
given to
deceive.

5. Most of the cases in this and the following section in which the duty to speak the truth and the right to hear it are suspended or modified derive from the juridical casuistry of Grotius, Pufendorf, Barbeyrac, and Carmichael (see the references in II.10, n. 1, where Hutcheson would have found material also for his distinctive casuistry of politeness in the final section).

often deceived in such matters; confidence is soon lost in them. But the good end may be obtained, the prejudice may be removed, and the patient does not disapprove the deceit. Wise men allow this liberty to the physician in whose skill and fidelity they trust. Or if they do not, there may be a just plea from necessity; of which presently.

Not censured
by parties
concerned.

3. Nay if false narrations are frequently practised on all sides in war; if the custom be so received that none complain of it as an improper artifice: however before the custom was received and known such narrations were unjust and treacherous; yet, when it is avowedly received, they can scarce be called unjust: since men seem mutually to remit their right. Such artifices indeed cannot be often repeated with success, as they are soon suspected.

The case is quite otherways in all serious narrations of men at peace. Nor indeed is the custom universally received in war. But as to any deceptions in any form of treaty or convention, even during a state <34> of hostility, they never were or can be allowed as lawful. 'Tis by means of treaties alone that an end can be put to war without the cruel ruin and devastation of one party; by treaties alone can any humane methods of war be received: to make them engines of deceit and hostility makes them useless, and all horrid devastations must ensue: it must therefore be highly criminal.

Cases of unjust
force.

4. Another limitation or exception allowed by most authors on this subject is, when promises or narrations are extorted by the avowedly unjust violence of men who in their course of life renounce all the laws of nature: as 'tis alledged that they have forfeited all these rights of mankind, the maintaining of which to them would fortify or encourage them, or give them advantages in their wicked courses.

Previous inti-
mation made.

5. Another exception is obvious, when one has previously intimated to those concerned that he does not on a certain occasion speak according to his sentiments, or in the common acceptation of words. Thus when in teaching, men give examples of false propositions; or when men have declared that they appropriate certain ambiguous words to a signification different from what is common; or when friends have previously agreed upon meanings peculiar to themselves in their correspondence; there is no fault, tho' the words would intimate to others a false proposition.

6. Another exception much insisted on is in cases of singular imminent necessity, which 'tis alledged su<35>persedes the obligation of many of the special laws of nature which bind us sacredly in all ordinary cases. As this plea from extraordinary cases of necessity is not peculiar to the subject of veracity in speech, we defer it to be considered more generally* hereafter. And subjoin here some more special useful rules in which good men must agree.

Cases of singular necessity.

IV. [V]⁶ The general advantages of sincerity and of the mutual confidence thence arising in society are so great, and the effects of insincerity and falshood so pernicious, that if any exceptions are allowed in cases of necessity, the necessity must be very great and manifest, that it may overballance the evils on the other side.

Some special rules.

2. Wherever we are under obligation to impart our sentiments, we are bound to use such words as we judge most proper and effectual for that purpose; and to use other words designedly which we foresee will deceive the hearers, tho' in some other way of interpretation they may be true, is criminal. But in cases where we are not obliged to declare our sentiments, on account of the bad conduct or intentions of some hearers, or where our refusing to answer some captious questions might discover, as much as direct speech,⁷ what the inquirers have no right to know, and would abuse to the worst purposes, if they knew it; there it may be lawful to use such evasive answers as to a good unprejudiced mind, according to a just interpretation, would not intimate any thing false, while yet we <36> foresee that others will interpret the words another way, and be deceived by them, through their own temerity, or unjust prejudices. Of such speeches and answers there are instances in some of the most sacred characters.[†]

Evasive speech when lawful.

* Chap. xvii. of this book.

6. In the manuscript (GUL Ms., p. 244) and in the original edition this section is in fact numbered IV, like the previous section. There are clear signs in the manuscript of (later?) re-numbering of sections II, III, and IV, perhaps because the first section had not been numbered. But the revision has clearly not been carried through to the end of the chapter.

7. GUL Ms., p. 244: “, as much as direct speech,” is an interlined addition.

† *Plato de Repub.* l. iii. seems to allow deception to be one of those powerful medicines which none but the skilful state-physician should use, and that too only on extraordinary occasions.

Sincerity to
be inculcated
on all.

3. An habit of sincerity so naturally attends and assists a virtuous disposition, and a contrary one is so pernicious, that all dissimulation and disguises, as well as direct falshood, should be severely restrained in the young; nor ought they before the full use of reason to be allowed in such arts of concealment as a good man in mature years may sometimes justly use.

When declara-
tions honour-
able even
without effect.

4. There are some tenets of piety and virtue of such high dignity, and a good mind must have such an ardour to own and divulge them, that one is justified in openly declaring them at all hazards to himself, even when he has no prospects that others shall be brought into the same sentiments by these declarations. And wherever there is just ground of hope that such declarations shall do more good to the publick by enlightening the minds of others, than what over-ballances all our own sufferings we foresee, there we are obliged to such declarations and cannot innocently decline them: as when God has promised success by these means to a virtuous cause, or an institution most beneficial to mankind. And yet, on the other hand, where there is no rational hope of success, or of having any good <37> influence on others, one cannot be said to be criminal in omitting such voluntary declarations as can have no other effect than his own sufferings.

The strict
obligation on
witnesses.

5. As one most important end of civil power is the taking the decision of controversies, and the execution of justice, out of the hands of the interested and passionate parties, and committing it to unbiassed men of wisdom interested on neither side; and to this all the subjects of a state have implicitly consented: 'tis the duty of a person cited as a witness in judgment, not only to maintain the strictest veracity in what he affirms, but to discover fully what he knows in the cause when required. And 'tis necessary in all states that severe punishments be inflicted on such witnesses as even conceal any thing required, out of pity, or favour to one whose cause they think just, or who has incurred the penalty of a law they may judge to be too severe. Were witnesses allowed with impunity to falsify, or to deny their knowledge of what they truly know, all civil judicatories would be useless: the decision of causes must remain in the hands of the imprudent, or such as are interested one way or another, as the witnesses generally are, by favour, or pity at least. If laws, or judges are too severe, or unjust, one would act the heroick part

who rather than contribute to the sufferings of the innocent would refuse to give testimony, and submit to any penalty of refusing it, when thus he could obtain safety to the person in danger.

6.⁸ As in addressing speech to others who have a right to know our sentiments, we do not merely profess that the words shall in some possible interpretation be true, but that they shall impart the truth in the ordinary acceptation in which a wise man would take them: since one might as well change all the significations of words, and make a new dictionary, according to which he might affirm or deny any thing, as make a new grammar, or way of construction unknown and unexpected by others. Both practices would destroy all use of speech: so, for the same reason, 'tis plainly unlawful to speak what in the terms expressed is false, tho' a secret reservation or addition would make the proposition true. No sentence is so false or absurd that it cannot, in this manner, be made true.

The crime of equivocation and mental reservations.

V [VI]. The former rules are designed to keep men from the crime of falshood: but there are many others pointing out the duties, the virtues, and beauties of conversation, as speech may be the means of great good in human life. An honest heart possessed with kind affections to its fellows will incline to employ his conversation for their service as much as he can: such a one will desire useful knowledge in human affairs as a fund of good offices; his serious discourses will be instructive, or persuasive to something honourable, and even his gayety will either be subservient to the same purposes, or at least innocent. And for these ends a winning courtesy in conversation, and even an agreeable external behaviour, is not unworthy of the regards of the highest characters.

Practical rules of conversation; that it be profitable to others.

2. As all men have a tender sense of honour and reputation, and the utmost aversion to infamy, and the contempt of their fellows; as being esteemed and beloved by our neighbours is one of the sweetest enjoyments of this life, and suffering reproach, and infamy, and contempt,

Not calumnious, this exceedingly criminal.

8. GUL Ms., p. 246: There is a cancelled beginning on point 6: "6. In whatever case Speech directly false is unlawful, tis equally so by ambiguous words to lead others designedly in Error, while they interpret them according to the reasonable Acceptation, even tho some unusual construction on the Words might give a true meaning to them."

is among the bitterest afflictions to the finest spirits; all dispositions of humanity, all our moral notions of justice recommend to men the greatest caution about the characters of others. We may indeed look upon ourselves as at some liberty as to the measure in conferring praises or honours on men for any eminent virtues or services which happen to be ascribed to them. And yet even in this matter, a low envious poor spirit may be evidenced by denying the just praise to eminent merit, or by detracting from it, and studiously diminishing its importance; and such practices discourage all generous dispositions. Yet still each one is some way judge for himself as to the degree of eminent praises he will confer; and the right of others in this matter is only of the imperfect kind, tho' in men's judging wrong, and violating such rights, they often discover a most odious disposition. But as to the simple character of integrity, honesty, and purity of manners, or the reputation of a good honest man, every one has a perfect right to it, unless he has forfeited it by grossly immoral actions. Unjust calumny and detraction therefore must be among the most grievous injuries; and the more odious that they can often be executed by hints, insinuations, shrugs, whispers in the dark.

Such as have any regard to virtue, to the goodness of their own hearts, or any moral worth, should the <40> more carefully observe the first inclinations to such wickedness, and consider how base the roots are from which it springs. At best from want of all examination at home, and a vain humour of talking about and intermeddling with other people's affairs; often from pride, and a mean delight in our own imagined superiority in virtue: often from a baser envy, when others are like to excel ourselves; and sometimes from an habitual sort of malice toward such as seem to vie with us in happiness, in wealth, in knowledge, or in popularity; or who have opposed any of our designs. Seldom are men led into such practices by any of the lovely dispositions of the heart even of a narrower kind; and all the generous and humane principles must make us abhor them.

Secret faults of
others not to
be divulged.

3. Nay suppose we are well assured of the secret faults or vices of others, it seldom can do good to divulge them. The restraint of shame, which is so powerful in life, is taken away when a character is lost. Publick infamy may be too cruel a punishment to such as a private admo-

dition might reform, who perhaps are already sincerely penitent, and repairing all wrongs as far as they can. Suppose a private admonition does not reform the offender, yet if the action can continue secret, and there be no fear of further injuries, or that others shall be seduced, 'tis hard to tell what is the advantage of publishing secret crimes. When there is hope that publick censure may reform where private admonition prove ineffectual; where 'tis necessary to prevent future crimes, or the seduction of others; or to obtain reparation of damage, then it is prudent and just. But where these motives do not recommend it; where the secrecy can prevent the hurt of the example; where damages are repaired, and no new injuries apprehended; what can the divulging of faults do except gratifying our ill-nature, or pride, or envy, or vanity in our superior purity, or an idle inclination to inconsiderate talking. The vicious are easiest reclaimed while the restraint of shame remains; which is lost by publick infamy: the frequency of crimes makes them appear less shameful to others; their vicious inclinations are less restrained when they find that many indulge them, and the virtuous become more suspected of hypocrisy.

When indeed the gross vices of men are publick, 'tis the duty of every society to declare their dislike of them; and yet to retain good-will toward the offenders, and endeavour to reclaim them. But while vice can be concealed, a good friend, or neighbour, has the best opportunity of the kindest office to the offender, whom he may reclaim by admonition, and oblige in the highest manner by concealing his faults.

4. One of the most amiable and useful offices of life comes in on this subject, the reconciling friends, or neighbours, who are at variance, by free conversation with both sides, representing the matters of offence in the most favourable lights, suggesting all extenuations, recalling past kindnesses, and presenting the great motives we all have to mutual forgiveness, <42> since all of us need so often the mercy of God, and the indulgence of good men.

Doing good
offices in
conversation.

5. Under this head of the use of speech comes likewise⁹ in the old logical and moral debate between the Cynicks and the other sects of

9. GUL Ms., p. 248: "Under . . . likewise" is an interlined revision of an illegible passage.

antient philosophy, about obscenity.¹⁰ The Cynicks allege that “there is no work of God, no natural action, which may not be matter of inquiry and conversation to good men, and we must use their names; hence, they conclude there is no obscenity.” The answer to this is obvious.

The nature
and crime of
obscenity.

Many words in every language, beside their primary signification of some object or action, carry along additional ideas of some affections in the speaker; other words of the same primary meaning may have the additional signification of contrary affections; and a third set of words may barely denote the object or action, without intimating any affection of the speaker. We shall find this difference in comparing the terms of contempt and indignation one uses when provoked, with those of the same primary meaning used by a calm man relating the same event. Few objects want these three sorts of names, one barely denoting it, another sort denoting also our joy or approbation, or our relish for it, and a third denoting our aversion or contempt of it. *Adultery, incest, fornication, lewdness*, denote these vices, and the dislike and condemnation of the speaker: other terms for the same actions may denote our liking them, and our lewd inclinations: a serious mournful account of any battle <43> or unhappy riot has its grave words importing also pity and regret: a burlesque poem has its ludicrous words for the same things, importing our indifference and contempt of them. A chirurgion uses middle words, importing no passion of either kind.

An anatomist, or any modest man, can find words denoting any parts of the body, or any natural actions, or inclinations, without expressing any lewd dispositions, or any relish for vicious pleasures. In such words

10. It was a well-known part of the Cynics' campaign to live self-sufficiently by nature and free of all conventions, which create dependence, to train oneself not to be ashamed and hence to call things by their proper name however conventionally offensive this might be. The best-known Cynic was Diogenes of Sinope (c. 400–325 BCE), none of whose writings (if any) have survived, but his supposed views were well known from sources such as Diogenes Laërtius, *Lives of Eminent Philosophers*, sec. VI, ch. 2. Furthermore, Hutcheson would have had in mind Cicero's criticism of the Cynics' use of plain language in *De officiis* I.128, where Cicero also points out that the Stoics held such views of language, which is undoubtedly what Hutcheson alludes to here. In his brief “Dissertation on the Origin of Philosophy,” Hutcheson follows the convention in early-modern histories of philosophy of seeing a continuity between the Cynics and the Stoics. Hutcheson, *Compend of Logic*, pp. 5–6.

there is no obscenity. Other words may import an immoderate keenness for such pleasures, a dissoluteness of mind, a want of the natural modesty, a neglect of all the sober restrictions on our brutal appetites, and a recommendation of a dissolute conduct to others. These are the obscenities of conversation unworthy of a rational being, and opposite to the modesty of our nature, as well as all the manly principles of virtue.

In immoderate sensual enjoyments of other sorts there is vice; and a base despicable soul may be discovered by great delicacy and concern about them. Conversation expressing such a low taste, or recommending it, may also be shamefully vicious. But as the amorous appetite is generally more violent, there is a sense of shame peculiarly fitted to restrain it; the breaking through this strong restraint of modesty, by our conversation, is generally more infectious and corrupting to others, who have not got a finer taste to make it wholly nauseous, than mean conversation about other sorts of sensuality. <44>

Concerning Oaths and Vows.¹

Oaths fall under consideration here, as they are natural confirmations of promises, and testimony or narration.

The nature of
Oaths.

I. As nothing can have greater influence on one who believes a righteous² providence rewarding the good, and punishing the evil, to engage him to truth in narrations, and faith in contracts, than “a solemn invocation of God as the witness and avenger of falshood,” such confirmations have been required to matters of greater importance in all nations, and are called *oaths*. And when devoutly taken, they are natural acknowledgements of the Divine Perfections and Providence. We do not either make the Deity more attentive, or give him any new right of punishing. But by such invocation we present to our own minds the strongest motives to veracity and fidelity, and exceedingly increase the guilt of falshood or infidelity.

Their strong
obligation, and
dangerous
abuses.

As all the moral feelings of the heart must enjoin upon all rational creatures who know their Creator, the deepest reverence, admiration, gratitude, and love toward him, so 'tis of the highest importance to influence men to everything great and honourable in social life, and to deter them from the contrary, that such devout affections toward God should universally prevail. And therefore whatever practice tends to abate this awful reverence of the Divine Majesty, must be extremely criminal.

1. The corresponding chapters are: *Short Introduction*, II.11; Grotius, *The Rights of War and Peace*, II.13; Pufendorf, *Law of Nature*, IV.2, and *Duty of Man*, I.11. Important ancient sources used in these works are Cicero, *De officiis*, III; and Justinian, *Digest*, XII.2.

2. GUL Ms., p. 249: “righteous” is an interlined correction of (possibly) “good.”

Such plainly is the interposing of oaths in trifling or ludicrous subjects; the insisting on them without great necessity even in serious matters which often occur: the requiring them frequently where we could have sufficient security without them, and where there are strong temptations upon men to perjury, with a probable prospect of impunity: or the administering them in a careless manner which neither evidences any devout dispositions in such as enjoin them, nor is apt to raise them in the person who swears, or in the spectators. Such practices must naturally abate the devotion of a nation in all its parts, and particularly as to the sense of obligation in that most sacred bond of an oath. What folly is it in princes to expect that men shall be bound by oaths of allegiance to themselves, when they so little regard the preserving among their people an universal reverence for oaths? Nay when by foolish and unnecessary oaths, every day imposed and irreverently administered, they are debauching the consciences of their subjects, and abating more and more any small remains of religion and integrity among them.

'Tis a monstrous abuse too to employ oaths where they can give little or no security. Such are those required in declaring our assent to long systems of disputable and sometimes unnecessary opinions in matters of religion and promising to adhere to them.³ Not to mention the great hazard of debauching the consciences of men by prevarication about their present sentiments; whensoever by further inquiry they see ground to change their sentiments, such oaths are no security; as they were confirmations of promises now become impossible to be fulfilled. Nor indeed can oaths of allegiance have much further effect. Men of no conscience are not bound by them. Men of virtue would be loyal to their lawful prince without them. If a good man after swearing allegiance should find cause to change his opinion as to the right of the prince in possession, he will conclude too that he is not bound by the oath, since it was contrary to the right of another.

II. As 'tis a foolish and profane action to swear by any being who is not believed to be possessed of divine power, forms commonly received, if they have any meaning, are metonymical oaths by God. Swearing by

Oaths only by
the Deity.

3. GUL Ms., p. 250: "and . . . them" is an interlined addition.

one's life, by his head, or by one dear to him, is invoking the Divine vengeance upon them in case of falshood. Swearing by the sun, the light, or the earth, is imprecating that we may be deprived of all use of them. Other metonymies are more obvious. Using any of these forms in trifling matters is either foolish, if we do not know the meaning of them, or very profane if we do. None of them should be used in common conversation,* nor even without a real intention to incur the obligation of an oath.

Who is
deemed to
swear.

As in covenants, so in oaths, he is deemed to have <47> consented, or sworn, who used the signs which commonly denote such actions, and professed to use them as consenting or⁴ swearing, howsoever his mind was secretly employed at such times. And he is punishable for perjury if he falsifies in testimony, or breaks the promise so confirmed. Men can judge of our inward actions only by the signs.

Oaths a dis-
tinct act.

The oath is properly a distinct act from the profession or promise, tho' it may be involved in the same grammatical sentence by some elliptick form.⁵ The oath is the invocation of God as the witness and avenger of falshood, in some promise or assertion presupposed. It therefore neither increases nor alters the matter of obligation, but confirms what was previously constituted. By it we imprecate vengeance upon our neglect of our duty. A contract therefore which is void because of the fraud of a party, or by any error about the essentials of it, or by defect of some valid condition, tho' it was confirmed by an oath, is not thereby made obligatory, nor is any just exception precluded. Having invoked punishment upon our failing in our duty, has no effect when we do nothing contrary to our duty.

* This is plainly the intention of *Matth.* v. 32. That we should use none of those forms *without intention of obligation*. That this sentence is thus elliptick, appears from the context, and the Jewish casuistry *Matth.* xxiii. 20. [The first reference should be Matthew 5:34: "but I say unto you, Swear not at all; neither by heaven; for it is God's throne" (etc. to 5:37). Hutcheson's discussion of oaths and vows is closely consonant with the confession of faith of the Church of Scotland. See ch. 22 of William Dunlop, *A Collection of Confessions of Faith*, where the relevant passage from Matthew 5:34 is quoted, vol. I, p. 118. By Jewish casuistry is presumably meant the practice of the "scribes and Pharisees" that Jesus is said to condemn in the verses surrounding xxiii.20, which admonishes, "Whoso therefore shall swear by the altar, sweareth by it, and by all things thereon."]

4. GUL Ms., p. 251: "consenting or" is an interlined addition.

5. Here and in Hutcheson's note, "elliptick" means characterized by ellipsis.

III. An oath cannot bind us to what is directly impious toward God, or contrary to the perfect right of another; or to what is specially prohibited by a law excluding our moral power of transacting in those matters.⁶ Could oaths bind us in such cases, they would be the most pernicious engines of evading every obligation to God, or man; and of destroying all the rights <48> of others. The invoking of God as a witness and avenger, can never move him to punish us for omitting any impiety, or injustice: but in the natural matters of commerce committed to human prudence, tho' we have contracted rashly, and offended in doing so against some general laws, we are obliged, as was shown above; and much more when the deed is confirmed by an oath. 'Tis in such matters that a good man *changeth not when he has sworn to his own hurt*.

How far they
can bind.

In a promissary oath there is no obligation without the acceptance of him in whose favour it is made, or if after acceptance he voluntarily remits his right, or when any third person without whose consent we cannot transact in such matters denies his consent. Where we have deceived others by acting as if we had full moral power in such cases, we are obliged at least to compensate the damage.

When one justly demands of us an oath we should either swear in the sense he requires us, or not swear at all. In oaths required by private persons we may always know their sense: in those required by law we must swear in the sense of the legislator, or decline them altogether. No deputy magistrate, or court, has the power of explaining them. 'Tis exceedingly pernicious to enjoin oaths conceived in ambiguous terms, or such as cannot easily be understood by all on whom they are enjoined.

The sense of
the words how
to be taken.

IV. Beside the general division of oaths into *promissary* and *assertory*, there are several sub-divisions. Assertory oaths demanded from witnesses under a penalty, are called *necessary*. When one of the contending parties, with consent of the judge, leaves the cause to the oath

Assertory, and
promissary
oaths.⁷

6. GUL Ms., p. 252: The passage "Could oaths . . . or injustice" was written on a slip of paper with the direction to be inserted in the manuscript here.

7. The general division of oaths into those regarding the past or present, called assertory or affirmative, and those regarding the future, the promissory or obligatory, was developed by Grotius, *The Rights of War and Peace*, II.13.21; Pufendorf, *Law of Nature*, IV.2.18–22, and *Duty of Man*, I.II.10; cf. *Short Introduction*, II.II.3. The nomenclature is clear in Pufendorf's Latin.

of the other, 'tis called a *judicial oath*. When the same is done without order of a judge, by mutual consent, 'tis called a *voluntary oath*. When it is enjoined on the party accused in a criminal action, in which he is to be absolved upon swearing to his innocence, 'tis called a *purgatory oath*. When the oath is demanded only that the person accused may discover his crime, or be deemed guilty upon his declining to swear, it is called *expletory*, as it compleats an imperfect proof. But where one's life or character is at stake, the temptation to perjury is so strong with those who are guilty, and it is so little necessary for any publick good to punish a man of such integrity, as will not swear falsly to save his life or character, for a crime perhaps done in a transient passion, that the humane laws of some states have justly excluded all purgatory or expletory oaths in criminal matters; since by them the impious are not detected, and only such can suffer as have a pretty strong sense of piety. 'Tis certainly better that either direct testimony, or concurring circumstances, should be made the sole methods of convicting any man.

It were to be wished that in matters of property too we could avoid obliging men to swear in their own causes. In civil actions the magistrate does not require the oaths for the sake of any publick right of the state, but as the sole means of deciding justly between the parties. And the temptation to perjury in <50> these cases is not generally so great as in criminal actions, and it can be more easily detected.

The nature of
vows.

V. A vow is an oath in which men are not confirming any conveyance of right properly and immediately to their fellows, or any contract with them; but 'tis "a promise made to *God*, binding us to some performance, and an invocation of divine punishment if we omit it." By vows we convey no right to men in the matters of commerce; we oblige ourselves only to *God*.

Their use.

When men vow what is truly wise, and prudent, and pious and charitable, the omission of such offices becomes more criminal after the vow; and thus by vows men may have deeper impressions made of their obligations to what is good and honourable; and may create in themselves a more firm abhorrence of what is evil, or of any negligence in their duty: and this is the proper use of vows, to confirm every good and wise resolution by solemn engagements in the presence of *God*.

1. But first, what we could not bind ourselves to by a contract, we cannot be bound to by vows; such as actions impious toward *God*, or contrary to the perfect right of another, or contrary to any special precept depriving us of the moral power of contracting in such matters.

How far
obligatory.

2. Again, we may be further obliged by contracts, than we can by vows. When we contract imprudently with men in matters of commerce, against those general laws which require a wise administration of our <51> affairs for the benefit of our families and friends, and the other party insists upon the contract; a regard to a distant good, and the necessity of maintaining the faith of commerce, and of excluding vexatious suits, and endless evasions, obliges us to observe what we have engaged. But when one makes an imprudent vow to *God*, we are sure *God* does not accept of it, or insist on our performing it: nor is there any such reasons as those from the necessity of maintaining commerce, to oblige us to it. Thus should the parent of a numerous family, in any danger, vow to give the half of his goods to the poor, or to certain orders called *religious*, or for building or adorning certain edifices; or should he undertake useless penances; while all the indigent are sufficiently provided otherways, or might be so by a far smaller proportion of the goods of the wealthy; while all useful orders of men have sufficient support, and there are sufficient buildings and utensils for all religious uses; and while the penances vowed are no way useful for his improvement in virtue; he is under no obligation, as *God* cannot be supposed to accept of such promises; and there's no conveyance made of any rights to men.

'Tis impious to conceive *God*, like the worst of our fellows, catching at all advantages from the fears or weakness of men, and insisting on every rash promise of theirs; or like a tricking agent for a party, to the detriment of the rest of his rational creatures, and to that of these very orders of men, by corrupting them in luxury and lazy opulence: much less can we imagine him fond of splendid structures and furniture, to the oppression of his own living temples. All such foolish vows made upon any false notions of sanctity in certain orders, or of piety in enriching them to the oppression and enslaving the rest, or of some promotion of religion by such means as do not conduce to it, are entirely void: and as soon as we come to juster notions, we may conclude we are free from

Foolish or im-
pious oaths do
not oblige.

their obligation. What we have superstitiously given under such mistakes about the true nature of these subjects, we have a right to redemand; as in other contracts where we have erred in what was essential to them. And in these causes we generally have a just exception founded upon the fraud used by those who really get the use of what is thus given to superstitious purposes.

'Tis still more evident that vows proceeding from wrath, ill-nature, or envy, or any vicious or immoderate passion contrary to the ties of humanity, such as those "never to forgive, or be reconciled, or hold any conversation with such as have offended us," cannot oblige; but must be offensive to *God*, and disapproved by good men. We ought to repent of our ill-nature and impiety, and not persist in it by observing the wicked vow. Vows therefore produce no new matter of obligation, nor make that to be our duty which was not just and wise, and becoming us, before we vowed; but like oaths, they make a deeper sense of our obligation to what was our duty before. To violate any just engagement, or any contract confirmed <53> by such invocation of *God*, must evidence the most horrible impiety, and must be infamous in the highest degree.

The Values of Goods in Commerce, and the Nature of Coin.¹

I. In commerce it must often happen that one may need such goods of mine as yield a great and lasting use in life, and have cost a long course of labour to acquire and cultivate, while yet he has none of those goods I want in exchange, or not sufficient quantities;² or what goods of his I want, may be such as yield but a small use, and are procurable by little labour. In such cases it cannot be expected that I should exchange with him. I must search for others who have the goods I want, and such quantities of them as are equivalent in use to my goods, and require as much labour to procure them; and the goods on both sides must be brought to some estimation or value.

Prices must be settled for all commerce.

The natural ground of all value or price is some sort of use which goods afford in life; this is prerequisite to all estimation. But the prices or values in commerce do not at all follow the real use or importance of goods for the support, or natural pleasure of life. By the wisdom and goodness of Providence there is such plenty of the means of support,

The natural causes of prices.³

1. In the *Short Introduction*, this topic is in II.12. Hutcheson follows Pufendorf quite closely by dividing the topic into the nature of value, the measure of value, and the nature of money. The vocabulary reflects Pufendorf's Latin: *Law of Nature*, V.1, and *Duty of Man*, I.14. And several of the examples are supplied in Barbeyrac's notes to Pufendorf, whose discussion is to be seen against the background of Grotius, *The Rights of War and Peace*, II.12.

2. GUL Ms., p. 255: "or . . . quantities" is an interlined addition.

3. For the distinction in the following between value in use and value in exchange, see Pufendorf, *Law of Nature*, V.1.6.

and of natural pleasures, that their prices are much lower than of many other things which to a wise man seem of little <54> use. But when some aptitude to human use is presupposed, we shall find that the prices of goods depend on these two jointly, the *demand* on account of some use or other which many desire, and the *difficulty* of acquiring, or cultivating for human use. When goods are equal in these respects men are willing to interchange them with each other; nor can any artifice or policy make the values of goods depend on any thing else. When there is no *demand*, there is no price, were the *difficulty* of acquiring never so great: and were there no *difficulty* or labour requisite to acquire, the most universal *demand* will not cause a price; as we see in fresh water in these climates. Where the demand for two sorts of goods is equal, the prices are as the difficulty. Where the difficulty is equal, the prices are as the demand.

By the use causing a demand we mean not only a natural subserviency to our support, or to some natural pleasure, but any tendency to give any satisfaction, by prevailing custom or fancy, as a matter of ornament or distinction in the more eminent stations; for this will cause a demand as well as natural use. In like manner by difficulty of acquiring, we do not only mean great labour or toil, but all other circumstances which prevent a great plenty of the goods or performances demanded. Thus the price is increased by the rarity or scarcity of the materials in nature, or such accidents as prevent plentiful crops of certain fruits of the earth; and the great ingenuity and nice taste requisite in the artists to finish well some works <55> of art, as men of such genius are rare. The value is also raised, by the dignity of station in which, according to the custom of a country, the men must live who provide us with certain goods, or works of art.⁴ Fewer can be supported in such stations than in the meaner; and the dignity and expence of their stations must be supported by the higher prices of their goods or services. Some other *singular considerations may exceedingly heighten the values of goods

4. GUL Ms., p. 256: "works of art" is an interlined revision of "Services."

* *Pretium affectionis*. ["Sentimental value." The phrase occurs, e.g., at the end of Pufendorf, *De officio hominis et civis*, I.14.4.]

to some men, which will not affect their estimation with others. These above mentioned are the chief which obtain in commerce.

II. In settling the values of goods for commerce, they must be reduced to some common measure on both sides. Such as “equal to the value of so many days labour, or to such quantities of grain, or to so many cattle of such a species, to such a measure or weight of certain fruits of the earth, to such weights of certain metals.” The standard or common measure would readily be taken in something of very common use for which there would be a general demand: and in fixing upon it different nations would according to their prudence or circumstances choose different materials.

A common measure or standard.⁵

The qualities requisite to the most perfect standard are these; it must be something generally desired so that men are generally willing to take it in exchange. The very making any goods the standard will of itself give them this quality. It must be portable; which will <56> often be the case if it is rare, so that small quantities are of great value. It must be divisible without loss into small parts, so as to be suited to the values of all sorts of goods; and it must be durable, not easily wearing by use, or perishing in its nature. One or other of these prerequisites in the standard, shews the inconvenience of many of our commonest goods for that purpose. The man who wants a small quantity of my corn will not give me a work-beast for it, and his beast does not admit division. I want perhaps a pair of shoes, but my ox is of far greater value, and the other may not need him. I must travel to distant lands, my grain cannot be carried along for my support, without unsufferable expence, and my wine would perish in the carriage. 'Tis plain therefore that when men found any use for the rarer metals, silver and gold, in ornaments or utensils, and thus a demand was raised for them, they would soon also see that they were the fittest standards for commerce, on all the accounts above-mentioned. They are rare, and therefore a small quantity of them easily portable is

Qualities requisite to it.

5. In his note to Pufendorf, *Law of Nature*, V.1.14 (pp. 468–69), Barbeyrac sets the discussion of coinage into the context in which we have to see also Hutcheson's considerations, namely the big debate about re-coinage in England in the 1690s and Locke's role in this.

equivalent to large quantities of other goods; they admit any divisions without loss; they are neither perishable, nor easily worn away by use. They are accordingly made standards in all civilized nations.

Metals by
weight.

III.⁶ Metals have first been used as standards by quantity or weight, without coinage. This we see in antient histories, and in the *phrases of old languages. But this way was attended with two inconveniencies; <57> one the trouble of making exact divisions, the other the uncertainty as to the purity of the metal. To prevent both, coinage has been introduced; in which pieces are made of very different well known sizes in the most convenient divisions: the quantity of pure metal in every piece is known; and finer methods of stamping secure us that they cannot be clipt or filed away without its being discernible at once. The publick faith of the state is interposed by these stamps, both for the quantity and purity, so that there is no occasion for assays or weighing, or making divisions.

The use of
coinage.

These are the sole purposes of coinage. No stamp can add any considerable value, as it is easy workmanship in such valuable materials. But it may be good evidence for the value, when it is impressed by any just and wise authority. Trading nations cannot make the comparative value of their coin with respect to other goods, greater or less than the value of the metal, and of the easy workmanship of coinage. Coin is ever valued as a commodity in commerce, as well as other goods; and that in proportion to the rarity of the metal, for the demand is universal. A law can only fix or alter the legal denominations of pieces or ounces; and thus indeed affect, within the state, the legal claims formerly constituted in those denominations: but commerce will always follow the natural value. If one state had all the mines in the world in its power, then by circulating small quantities, it could make the values of these metals and coins high in respect of other goods; and by circulating more of <58> them, it could make their values fall. We say indeed commonly, that

6. GUL Ms., p. 257: The printer has overlooked this section number in the manuscript.

* *Impendere, expendere nummos*, &c. [Synonymous terms for weighing out or expending money, *nummos*. Both Pufendorf and Barbeyrac refer to a plethora of ancient sources, and Hutcheson may be reflecting this.]

the rates of labour and goods have risen since these metals grew plenty; and that the rates of labour and goods were low when the metals were scarce; conceiving the value of the metals as invariable, because the legal names of the pieces, the pounds, shillings, or pence, continue to them always the same till a law alters them. But a days digging or ploughing was as uneasy to a man a thousand years ago as it is now, tho' he could not then get so much silver for it: and a barrel of wheat, or beef, was then of the same use to support the human body, as it is now when it is exchanged for four times as much silver. Properly, the value of labour, grain, and cattle, are always pretty much the same, as they afford the same uses in life, where no new inventions of tillage, or pasturage, cause a greater quantity in proportion to the demand. 'Tis the metal chiefly that has undergone the great change of value, since these metals have been in greater plenty,⁷ the value of the coin is altered tho' it keeps the old names.

IV. The governors of a state which has no monopoly of silver and gold, may change the names of their coins, and cheat their subjects, or put them into a state of cheating each other⁸ in their legal demands: but in commerce coin will retain the natural value of the metal in it, with little variation. Where the legal denominations of value are considerably changed, the effects are obvious at once; and in smaller changes the effects are proportionable, tho' not so sensible.

Value of coin
not arbitrary.

If the legal names of our crown pieces were doubled so that the ounce of silver were called ten shillings, the nominal prices of all goods would rise as much. We should not get the barrel of wheat for the new ten shillings, as we do now in cheap years: we must give the two ounces of silver as we do now, tho' they would be called twenty shillings. Suppose people so stupid that they were contented with the same names, but half the silver. Coining with any stamp is an easy manufacture, any nation could make our crownpieces, and get for them double the quantity of our goods they got formerly. Our own merchant therefore gets for an ounce of silver from the farmer or manufacturer what formerly cost two

It follows the
quantity of
metal.

7. GUL Ms., p. 258: "since . . . plenty" is an interlined revision of an illegible passage.

8. GUL Ms., p. 258: "or . . . other" is an interlined revision of an illegible passage.

ounces, and yet at foreign mercats he will get as many ounces for these goods as before. Now he doubles his first cost, beside his former profit. This vast gain would invite so many, and make such a demand, that the prices of all our goods would gradually rise, till they came to the same quantities of gold and silver they were at before, but with double nominal values; and then the new exorbitant gain would stop. At first our country would lose one half upon all goods bought from us by foreigners: this loss would fall upon men of estates and manufacturers at last.

As to foreign goods 'tis obvious the nominal prices of them must rise at once upon changing the names of our coin. Foreigners who do not regard our laws, or legal names of coin, must have for their goods the same pieces or ounces they got formerly. Our merchants therefore in selling these goods must have as many pieces or ounces, which now bear a double name.

Again, upon lowering the legal names of coin, the nominal prices of all goods must fall. The merchant cannot afford more pieces or ounces of metal, than he gave before for any goods to our farmer or manufacturer, as he will get no more at any foreign market, and this number now bears a smaller name. Foreign goods are bought abroad for the same ounces they were, and therefore the merchant can afford them here for the same ounces he formerly sold them at, and with the same profit, tho' the name be less. If one merchant refuses to sell so, another will, as all can afford it: or if all refuse, foreigners will send their goods into our country to be sold for the same ounces, now bearing a lower name.

'Tis a fundamental maxim about coin, that "its value in commerce cannot be varied by names," that prices of goods keep their proportion to the quantities of metal, and not to the legal names. No man values a piece more that 'tis called twenty livres, or twenty Scots pounds, than he would have done on account of the Sterling name.

The effects of
legal changes.

V. The changing considerably the legal names of coin must cause innumerable wrongs among the subjects of any state, since the real values of goods continue the same. The lowering of coins wrongs all who are indebted in legal denominations; they must pay more ounces of gold and silver than they received, or engaged for; and yet get no more ounces by any sales of their goods than they got formerly. All duties,

taxes, rents, salaries payable in legal denominations are increased. More ounces are received by the creditors in such claims, and yet each ounce will purchase as much goods for the support or pleasure of life as before the change. The debtors therefore are so much wronged, and so much the creditors are unjustly enriched.

Raising the legal names has the like unjust effects on the other side. Debts, taxes, rents, salaries, specified in legal names,⁹ can then be discharged with fewer pieces or ounces; and yet the debtor gets as many ounces for any goods he sells as before; and the creditor can get no more of the goods necessary for life for an ounce than he got before. He is therefore so much wronged by the change made in the legal names.

The putting disproportioned values upon the several species of current coin must have bad effects on a country. The species under-valued at home will be carried abroad, and the species over-valued will be imported; as the former answers better at foreign markets, where the ounces of metal are regarded, and not the names, and the later answers best at home. Whatever sums are thus exchanged by foreigners, all their gain is so much loss to our country. What we export ourselves, hurts our country only by introducing perhaps a less convenient species. This disproportion often arises after the values were wisely fixed <62> at the time they were made, if either the mines of one metal are more copious in proportion than those of the other; or there be a greater drain of one sort of metal by exportation, or by some consumption of it in the splendour of life.

An increase of both metals by copious mines, naturally abates the value of both, without any change of the names. And thus, properly speaking, the values of gold and silver are fallen within these two centuries above one half: tho' we more commonly say that the rates of goods are increased. Were the mines quite drained and the quantities of these metals much diminished by the various uses of them in plate, dress, and furniture, their value would rise again; or, we would vulgarly say, the rates of goods would fall. The standard itself is varying insensibly; and therefore if we would settle fixed salaries, which in all events would answer the same purposes of life, or support those entituled to them in

How it changes by the abundance or scarcity of metals.

9. GUL Ms., p. 259: "specified . . . names" is an interlined addition.

the same condition with respect to others, they should neither be fixed in the legal names of coin, nor in a certain number of ounces of gold or silver. A decree of state may change the legal names; and the value of the ounces may alter by the increase or decrease of the quantities of these metals. Nor should such salaries be fixed in any quantities of more ingenious manufactures, for nice contrivances to facilitate labour, may lower the value of such goods. The most invariable salary would be so many days labour of men, or a fixed quantity of goods produced by the plain inartificial labours, such goods as answer the ordinary purposes of life. Quantities of grain come nearest to such a standard.

On what the
prices of goods
depend.

In matters of commerce to fix the price we should not only compute the first cost, freights, duties, and all expences made, along with the interest of money employed in trade, but the labours too, the care, attention, accounts, and correspondence about them; and in some cases take in also the condition of the person so employed, according to the custom of our country. The expence of his station of life must be defrayed by the price of such labours; and they deserve compensation as much as any other. This additional price of their labours is the just foundation of the ordinary profit of merchants, on which account they justly demand an higher price in selling, than what answers all that was expended upon the goods. Their value *here* is augmented by those labours, as justly as by those of farmers or artisans.

Contingent
profits in
commerce.

As there are many contingent losses by the perishing of some goods, or their receiving damage, these losses may be justly compensated by a further augmentation of the price of such as are safe. As merchants lose sometimes by the falling of the rates of goods on hand, they may justly take the contingent advantage too of goods on hand, when the rates of such goods rise by any accident which makes them scarce. Men who are fortunate in these accidents may be much enriched, without any fraud, or extortion. The constant profit is the just reward of their labours. Thus tho' the values of what is given and received in buying and selling should still be kept equal on both sides, as we shall see presently, yet there is a natural gain in trade, viz. that additional price which the labour and attendance of the trader adds to the goods; and a contingent one, by the rising of prices.

The Principal Contracts in a Social Life.¹

Contracts are either *beneficent*, where a gratuitous favour is professedly done on one side; or *onerous*, where men profess to give mutually equal values. Of the former there are three sorts known to the *Civilians*, the *mandatum*, *commodatum* and *depositum*; of which in order.*

Contracts
beneficent or
onerous.

The *mandatum* is when “one contracts to manage the business of another without reward.” This may be either with special instructions, or without them. In the former case, if the person employed departs from his instructions, he naturally seems liable to all damages occasioned by it, except he has done so upon such very specious reasons as might mislead a wise man zealous to do the best for his friend. In the other case, he is bound to such diligence and care as a wise man uses in like affairs of his own, and is only liable to compensate such damages as ensue upon a defect of this diligence. This is all that the obliging friend can be <65> presumed to have bound himself to, unless he has expressly

The
mandatum.²

1. The chapter corresponds quite closely to *Short Introduction*, I.13. In both works Hutcheson draws directly on Pufendorf, who organizes the field of contracts in *Law of Nature*, V.2, with the distinction between beneficent and onerous contracts in section 8; cf. *Duty of Man*, I.15.2; for a selection of Carmichael’s comments on Pufendorf, see *Natural Rights*, pp. 108–10. These works collect much from Grotius, *The Rights of War and Peace*, II.12; and the main Roman law passages are Justinian, *Institutes*, III.15 and 26, and *Digest*, XVII.1.

* There are other gratuitous contracts not included under any of these three, but they came under much the same rules, such as loan for consumption without interest.

2. *Short Introduction*, I.13.1; Pufendorf, *Law of Nature*, V.4.1–5, and *Duty of Man*, I.15.3.

undertaken for the very utmost diligence and care, or the singular nature of the business plainly required it; and then indeed he is answerable for every oversight, or neglect, which would not have been incident to the very best of men. We are not to lay severer burdens on the beneficent party than they consented to, or to make kind offices perilous to the undertaker, without the highest and clearest reasons. Nor yet should men on the other hand undertake the business of their friends without hearty purposes of executing them carefully; since by doing so they may have prevented their employing some better hands. The *person employed, is bound to account to the †employer when the business is finished: and to ‡restore his goods with their profits. And the employer is §bound to indemnify his friend as to all losses or expences sustained in his service. The favour undertaken was to employ his labour and care gratuitously, and no more, from the ordinary nature of this contract.

The loan for
use.³

II. *Commodatum* is “the loan for use without any price or hire, where the same individual goods are to be returned.” If a price or hire is given, the contract is not beneficent, it goes by another name, *location*, or setting to hire.^{||} When the same individual <66> is not to be returned, but equal quantities or measures, and this without price or interest, the contract is much of the same moral nature, but the *Civilians* call it *mutuum*

* The *mandatarius*. [Hutcheson’s original footnote combined this footnote and the following one.]

† *mandator*. [This footnote and the previous footnote were originally combined.]

‡ This is demanded in the *actio directa mandati*.

§ This is demanded in the *actio contraria*.

3. *Short Introduction*, I.13.2; Pufendorf, *Law of Nature*, V.4.6, and *Duty of Man*, I.15.4.

^{||} *Mutuum versatur in rebus fungibilibus, quae reddendae sunt in genere, non in specie* [(gratuitous) loan concerns consumables, which are to be restored generally, not specifically]. By *genus* they mean what modern logicians call *species*, equal quantities, weights, measures of goods of the same kind: by *species*, the *Civilians* mean the same individual. *Instit.* I. iii. tit. 15. In this sense the classic authors too use these words. [The Latin passage is very close to the formulation in Hutcheson’s *Compendiaria*, II.13.2, p. 185. In both works he is picking up the points and the vocabulary from Justinian, *Institutes*, III.15 (in modern editions III.14) and is clearly echoing Pufendorf’s discussion in *Law of Nature*, V.7.1, where we also find the point about consumables not being restorable individually but only by equivalents.]

gratuitum, or the gratuitous loan for consumption. If this loan for consumption be for a certain price beside the restitution of equal quantities, 'tis called lending for interest.

In the gratuitous loan for use, the favour is done to the borrower. He is therefore certainly bound 1. to as high care of the goods as any wise man would use about such goods of his own, or rather to greater, out of gratitude. A good heart must recoil at suffering any friend to lose by his kindness. The lender expects this care, and we are justly deemed to have bound ourselves to it. 2. The borrower is bound to apply the goods to no other purposes than those for which they were lent: other conduct is perfidious and ungrateful. And, 3. He must restore them at the time agreed, in as good order as he received them, excepting the natural wear of such goods, by the prudent use allowed. In demanding nothing for the impairing of the goods by this use, consists the favour of the contract. 4. If the proprietor needs his own goods before the term of loan is expired, humanity and gratitude oblige the borrower to restore them, unless he is in some extraordinary strait himself, much beyond that of the lender. But this cannot be matter of compulsion, except in very singular cases of necessity. When the urgent occasions of the borrower hinder him to restore before his time of loan expires <67> as he is bound in gratitude, he must think himself obliged, to compensate any damage the lender sustains by his kindness to him. An honest heart cannot avoid this duty, tho' he cannot be compelled to restore the goods sooner. Could he be compelled, he might sometimes be greatly disappointed; since perhaps trusting to this loan, he has omitted providing himself otherways when he could have done it, whereas now the opportunity may be gone.

Rules in this contract.

If goods lent, perish by such an accident as had reached them in the possession of the lender, the borrower is not obliged to compensate them; the lender suffers no more by the loan than he would have suffered without it. Suppose they would have escaped in the lender's possession, and yet the borrower was guilty of no negligence about them: here a loss must be sustained by one side, or by both: neither is supposed to be in any fault. If no other reason of humanity be on the other side, the borrower seems rather obliged to bear it, out of gratitude; nor is it

The case when the goods lent perish by accident.

so readily to be presumed that the lender, who had no views of gain, consented to bear such losses, as that the borrower did so; since for the advantage of the gratuitous loan, men would readily make themselves liable to such improbable hazards. The truth may be that neither thought of such contingencies; if they did, they would have expressly agreed on whom the loss should fall. And probably it had been on the borrower. There seems little occasion for a general rule to cast all such losses always on one of the parties. If the lender were <68> rich, and the borrower poor, it would be mean in the lender to demand any compensation. If the borrower were rich, it would be base in him not to compensate. If their fortunes were equal, or so good that neither would be distressed by the loss, it would best become the borrower to bear it altogether, as he received a favour in the contract. The lovely and honourable part is easily seen; tho' it is not always easy to find reasons for rules casting the whole damages in this and such like cases, universally on one side.

The lender is bound to refund to the borrower, all expences made in necessary repairs by which the goods are preserved fit for the proprietors use; and no others, unless by express agreement.

The
depositum.⁴

III. The *depositum* is a branch of the *mandatum*, where "the business committed and undertaken is the safe custody of goods." The *keeper, as he professes friendship, binds himself to such diligence as wise men use about like goods of their own; and must restore the goods upon the demand of the proprietor,[†] except only in such cases where one would have a right to oppose him by violence in an unjust design. Thus one may detain arms deposited, when demanded with a view to murder any innocent person, or to make war on our country. The depositor is bound to refund all prudent expences made in keeping his goods.

Onerous
contracts.

IV. In onerous contracts, both sides profess to give or transfer goods or rights of equal values. Most of <69> the necessary rules appear suf-

4. *Short Introduction*, I.13.3; Pufendorf, *Law of Nature*, V.4.7, and *Duty of Man*, I.15.5.

* *Depositarius*.

† *Cicero* gives a decision too general and inaccurate, *De Offic. l. i. c. 10*. [*Cicero* is not discussing custody of goods but the keeping of promises in general.]

ficiently from what was said * above about contracts in general. The chief sorts are,

1. *Barter*, or the exchanging goods of equal values; which differs from mutual donation in this, that in donations there is no obligation to equality. Barter.⁵

2. Buying and selling; the simplest manner of which is when the buyer at once pays the price, and receives the goods. If the price be paid, or security for it accepted, and the goods delivered, as the property is completely transferred, no subsequent sale, or imperfect prior contract about selling, can elude the buyer's right. If the goods are to be delivered on a future day, but the bargain completed about them; if they perish before the day, the loss falls on the seller. If they perish after that day, and the seller was ready to deliver them upon it, he is deemed after that day only as the depositary. All loss, without the seller's fault, must be borne by the buyer. Where an agreement is made about certain quantities of goods which cannot be now delivered, such as about a future crop; and the seller afterwards contracts with a third person not apprized of the prior contract, and delivers the goods upon receipt of the price; the civil law favours the latter, as a fair purchaser, and deems all sales imperfect without delivery; but gives to the person deceived in the former contract a full right against the fraudulent seller, to the whole value of the bargain. If both have paid the price, and the seller <70> proves insolvent, it is not easy to find valid reasons for casting the whole loss on either. There are many[†] additional covenants in the bargains of sale which are sufficiently understood by the terms of the agreement. Buying and selling.⁶

* See chap. 6. of this book.

5. Barter (*permutatio*) is only mentioned briefly in *Short Introduction*, I.13.5, but explained in Pufendorf, *Law of Nature*, V.5.1, and *Duty of Man*, I.15.8.

6. *Short Introduction*, I.13.5; Pufendorf, *Law of Nature*, V.5.2–7, and *Duty of Man*, I.15.9.

† Such as the *lex commissoria*, that is, if the price is not paid on a certain day, that the bargain is void. *Addictio in diem*, where the seller may accept of a better price offered before such a day. *Clausula retractus*, or a right of redemption. *Jus protimiseos* the right of redemption or the first offer, if the buyer inclines to sell again. [These definitions are derived—virtually verbatim—from Pufendorf, *Law of Nature*, V.5.4, where ample references are given, also by Barbeyrac, to the relevant items in Justinian, *Digest*.]

Setting to hire.⁷

V. *Setting* and *hiring* includes all these contracts wherein “one agrees for a certain price to do any work, or to grant the use of any goods, moveable or immovable” In these contracts men are obliged to use the goods they hire, as wise men use like goods of their own; and are truly liable in conscience for all damage done by using them otherways; as it is as injurious as any other sort of wrong. A man of true integrity and humanity would particularly regard the case of such indigent persons as often set houses, furniture, and other goods to hire; and be religiously cautious of doing any unnecessary damage to them.

When materials are given out to be manufactured or wrought by an artist at a certain price, the *Romans* have another* expression for the contract, but it is of the same nature with that of hiring labour. The setter of goods must make them fit for use, and keep them so, or refund any charges the hirer has been put to in doing it. And the hired labourer, as he is bound faithfully to execute his work, so he is not to be defrauded <71> of his hire. If he is hired for a long tract of time, the hirer cannot in humanity make any deductions on account of smaller interruptions given to his service by transient fits of sickness. Such fits are incident to the firmest constitutions; and the hirer is justly presumed to have precluded himself from such exceptions, or deductions from the price agreed to, by hiring for a tract of time.

Loan for consumption.⁸

VI. In loan for consumption at a set price or interest, the lender claims not the same individual, but equal quantities, and the price for the loan. Some goods bear natural fruits or increase, as lands, flocks, herds, gardens. The grant of these fruits naturally deserves a price or rent. Tho’

7. “Setting” is Scottish for letting. *Short Introduction*, I.13.6; Pufendorf, *Law of Nature*, V.6, and *Duty of Man*, I.15.10.

* *Locare opus faciendum* [to contract to have a work done]; where the *locator* [contractor] pays the price. The *locator operae* [contractor of the labors] receives the price. [Hutcheson is reflecting a debate in Roman law about the differences between leasing an object and letting out work power, and he is here indicating the distinction of the latter into (a) the case of one person letting out a piece of work to be done by someone else, and (b) the letting out by a person of his or her own labor. See Justinian, *Institutes*, III.25, and *Digest* XIX.2, esp. para. 2. Pufendorf refers to the issue, and Barbeyrac explains it: *Law of Nature*, V.6.3, with nn. 1 and 2, p. 508.]

8. Cf. Hutcheson’s note ||, p. 374 above; *Short Introduction*, I.13.7; Pufendorf, *Law of Nature*, V.7, and *Duty of Man*, I.15.11.

goods have no fruits or increase, yet if they yield great convenience in life, and have cost such labour or expence as would have acquired goods naturally fruitful, if the proprietor grants the use of them, he may justly demand a price, such as he would have had if he had employed his money or labour on goods naturally fruitful. This is the case in setting of houses.

If in any way of trade men can make far greater gains by help of a large stock of money, than they could have made without it, 'tis but just that he who supplies them with the money, the necessary means of this gain, should have for the use of it some share of the profit, equal at least to the profit he could have made by purchasing things naturally fruitful or yielding a rent. This shews the just foundation of interest upon money lent, tho' it be not naturally <72> fruitful. Houses yield no fruits or increase, nor will some arable grounds yield any without great labour. Labour employed in managing money in trade, or manufactures, will make it as fruitful as any thing. Were interest prohibited, none would lend, except in charity; and many industrious hands, who are not objects of charity, would be excluded from large gains in a way very advantageous to the publick.

The just foundation of interest on loans.

VII. The reasonable interest varies according to the state of trade, and the quantity of coin. In a country newly settled, or but beginning to trade, where few hands and little money are employed that way, great profits are made by small sums: and as in such places more land-rents are purchased for any given sum than in countries flourishing in trade, and abounding with money; an higher interest is reasonable, and¹⁰ no man would lend except upon an high interest. The gain too made by any sum is so large, that traders or purchasers can afford to give it. When many hands and much wealth are employed in trade, as men can be supported by smaller gains in proportion upon their large stocks, the profit made upon any given sum employed is smaller, and the interest the trader can afford must be less. As money grows plentier, and bears less interest in

The measure of just interest.⁹

9. Pufendorf, *Law of Nature*, V.7.8–12; Grotius, *The Rights of War and Peace*, II.12.20.

10. GUL Ms., p. 263: “an . . . and” is an interlined addition.

loans, more incline to purchases of lands than formerly; and this demand raises the rates of lands, so that smaller land-rents can be obtained for any sum. Men are therefore contented with smaller interest than formerly when they could have got greater land-rents. They should <73> be satisfied if it surpasses the annual profits of purchases, as much as compensates the greater troubles or hazards attending the loans: and thus it falls of course, without the force of laws.

The use of
laws about it.

Laws too must follow these natural causes in settling the interest, otherwise they will seldom have their effect, and be iniquitous. If the legal interest is high in wealthy nations, where small gains are made upon any given sum employed in trade, traders will not borrow without abatement of interest, nor will men borrow for purchasing lands, when the annual rents of them are far below the interest. Moneyed men may first run upon purchases, and decline to lend upon smaller than the legal interest; but the demand for lands will soon raise their price, so that they shall get much smaller annual rents for a given sum: many will therefore accept of interest below the legal, but higher than the annual rents of lands. If the legal interest is made too low, few will incline to lend; they will first attempt to purchase lands: if the price of them rise by the great demand, so that small annual profit is made this way, moneyed men will turn to trade and manufactures. Men not educated to such business, or who choose to live without business, will find active traders always fond of borrowing at higher than the legal interest, and will find ways by discount, and annual gifts agreed upon, to elude the law.

The chief use of such laws is to settle the interest decreed by courts on many occasions, where there has <74> been no agreement of the parties; and to prevent the extortions of some grasping wretches upon the incautious, or the distressed. Prudent men will settle this point for themselves according to the natural causes.

If the polity of any state allows little commerce with foreigners, admits of no great increase of wealth in the hands of a few, nor of any alienation of lands to perpetuity; if it is design'd for a *republic of farmers*, which some great authors judge most adapted for virtue and happiness,*

* This Harrington and others judge to be the polity of the Hebrews; and hence interest was prohibited among them, but it might be exacted from foreigners. Deut.

there all interest of money might properly be prohibited. But where the strength of a state depends on trade, such a law would be ruinous.

VIII. In the contracts of partnership, which are of very different sorts, the terms of agreement determine the rights and obligations of the partners. But as they profess mutual friendship to each other in this contract, there is more room for all reasons of equity and humanity in this than other onerous contracts; and all frauds deserve a severer punishment.

Partnership.¹¹

IX. In some contracts a certain price is paid for an uncertain prospect of gain, as in the purchase of annuities for life, or of tickets in lotteries. If the sum of the prizes is no further exceeded by the sum of the prices paid for all the tickets, than what defrays the necessary charge of such projects, and makes a reasonable compensation for the attendance and labour of the projectors; the contract is not censurable upon the account of any inequality; but such projects are often blameable on another account. Private lotteries, wagering, and contracts of gaming, produce no good to the publick, nor avert any evils. Some citizens are enriched by the loss of others, in a way wholly useless to the publick. Through the vain hopes of multitudes, and a sort of self-flattery in their good fortune, were there no restraint put to such practices by law, great sums of money which otherways would have done good to the publick in trade or manufactures advancing the wealth of a nation, would by base artifices be drawn into such useless channels, and men's minds be diverted from all useful industry. 'Tis therefore just to restrain such private projects or contracts, even where there is nothing directly fraudulent in them. Upon some publick exigence no doubt money may be prudently raised by this way of lottery, which can cause no complaint, since none are forced to contribute.

Contracts of hazard lotteries.¹²

There are other contracts of hazard where a small price is paid to obtain security against a great uncertain danger; or to have such losses

Insurances.

xxiii. 19. Psalm. xv. 5. [See James Harrington, *The Prerogative of Popular Government*, Book I, ch. 3, in *Works*, pp. 406–7. Pufendorf, *Law of Nature*, V.7.9, makes the same point.]

11. *Short Introduction*, I.13.7; Pufendorf, *Law of Nature*, V.8, and *Duty of Man*, I.15.12; Grotius, *The Rights of War and Peace*, II.12.4.

12. Concerning these issues as well as insurance, see *Short Introduction*, I.13.8; Pufendorf, *Law of Nature*, V.9.1–8, and *Duty of Man*, I.15.13.

made up when they happen. Such are the insurances against the dangers at sea, or those from fire. Such contrivances are both humane and useful to the publick. The insurers are enabled to indemnify the sufferers by the premiums received from those whose houses and ships are safe. Thus a sort of partnership in losses is established over a nation; as the losses are made up by <76> small contributions from those who have escaped the calamity. Thus many active hands in business are preserved from early ruin by such accidents.

Wagering and
gaming.

In the private contracts of hazard, or partly of hazard, partly of art, such as wagering upon uncertain events, or upon the success of a game; if the sums ventured do not exceed what the persons can afford to spend upon any amusement, without obstructing any duty of life; if no more time is spent in games than what is a necessary refreshment from serious business or study; and no habit of sloth or impatient hankering after such diversions is contracted; the contracts cannot be called criminal or faulty. But when the sums hazarded are so great that the loss of them would any way distress us, or our antagonist, and as no good can arise from such contracts, they are highly criminal. 'Tis most inhumane, as well as foolish, to expose the fortune which should support a family, our friends, or the poor, or even assist our country, to such unnecessary hazard. It is wicked to ly in wait for the ruining our neighbour through his own rashness or imprudence. No man of true virtue or conscience could retain such gains when he got them. And it is amazing how, in ages of luxury and corruption, men can so far forget the true natures and names of things, as not to look upon all such gains as scandalously infamous to men of better condition, when they are plainly acquired by the same mean spirit of injustice, or avarice, that we all abhor in a thief or a pick-pocket. 'Tis wise therefore in <77> every nation to restrain such practices by the severest laws, and most infamous punishments; especially in those orders of men who ought to be most above such baseness of soul, and whose vicious examples must be most extensively pernicious. But *quid leges sine moribus vanae proficiunt*.——¹³

13. "What use are laws, vain as they are without morals . . .," Horace, *Odes*, III.24, 35–36. Concerning wagers and gaming, cf. *Short Introduction*, I.13.8;

X. The common securities given for performance of contracts, are pledges and mortgages (of which already;) and bail, when other persons become bound in case the principal debtor fails. As the loans are often made more upon the faith of the surety than the principal, when the principal neglects to pay, or becomes insolvent, the surety is as much bound in honour and conscience, as the principal was; and can no more use any delays, evasions, or artifices, with a good conscience, than if the money had been lent for his own use; except he discovers some gross negligence in the lender, or some fraudulent collusion with the principal, by which this burden is unjustly, or maliciously cast upon him.

Contracts of
bail or surety.¹⁴

Pufendorf, *Law of Nature*, V.9.4–5, and *Duty of Man*, I.15.13; Carmichael, *Natural Rights*, p. 110. It is unclear whether Hutcheson had read Barbeyrac's massive two-volume *Traité du jeu*.

14. See II.8.5 above; *Short Introduction*, II.7.4 and II.13.9; Pufendorf, *Law of Nature*, V.10.16, and *Duty of Man*, I.15.14–15; Carmichael, *Natural Rights*, p. 111.

Personal rights arising from some lawful
action of the person obliged, or of him
who has the right.

Rights arising
from actions
lawful or
unlawful.

I. Some rights arise, not from any contract, but from some other action either of him who has the right, or of the person obliged. These actions founding rights are either lawful, or unlaw<78>ful. When the actions are lawful, the *Civilians* to avoid multiplying the sources of obligation, or forms of action, call them **obligationes quasi ex contractu ortae*.¹ feigning a contract obliging men in these cases to whatever could reasonably have been demanded by the one party, and wisely promised by the other, had they been contracting about these matters. The obligations indeed appear sufficiently, without recurring to the notion of a contract, from the nature of the actions, and the rights of property, and their effects.² When the action is unlawful, these are the rights arising from injury, of which in the following chapter.

* Instit. l. iii. tit. 28. [Title 27 in modern editions of the *Institutes*.]

1. Literally, "obligations arising as if from a contract." For the general division of the sources of obligation according to Roman law, see Justinian, *Digest*, XLIV.7.1, pr., and *Institutes*, III.13.2. In Pufendorf the relevant references for quasi-contract are *Law of Nature*, III.6.2 and IV.13; *Duty of Man*, I.9.6 and 9 are unclear, but cf. I.13 (with Grotius, *The Rights of War and Peace*, II.10). On this topic, Carmichael's discussion is particularly important to Hutcheson, see *Natural Rights*, pp. 112–17. Cf. *Short Introduction*, II.14. For the implications of quasi-contract for familial and political relations, see also below, III.2.5 and III.5.3.

2. Barbeyrac expresses a similar doubt about the need for quasi-contract as a juridical category, note 1 to Pufendorf, *Law of Nature*, III.6.2, p. 274.

The former obligations *quasi ex contractu* are reducible to two classes. I. These arising from taking possession of goods which one knows belong to others, or are subjected to the just claims of others. 2. Those arising where one derives to himself any valuable advantage at the expence or loss of others, who did not consent or contract to bear this loss gratuitously. These obligations arise either from the nature of property, or mens prior claims; or from the general social law, that none should suffer by any good offices done to others not intended as a gratuity, or be damaged in his property without his consent.

II. Of the first class is the obligation upon the possessor of other mens goods to restore them with <79> their profits: the obligation upon the *heir to pay the debts affecting the inheritance, and upon the executor to pay debts and legacies as far as the effects go. The estate descends subject to such claims, and the heir has a right only to what remains after discharging them: the effects of the deceased are the sole fund out of which such debts should be paid. Nor is there more left to the executor than the surplus after debts and legacies are discharged. The legatees have as just a right to their legacies as the executor or heir by will has to the surplus.³

The obligation by possessing the goods of others.

To this class too are reduced the obligations of all who have possession of the goods of others without contract, such as tutors and curators, or those who preserve and take care of the goods of the absent without commission; who are called *negotii utilis gestores*.⁴ All these are plainly obliged to restore, and account with the proprietors for their goods and the profits of them.

III. The second class contains the obligations on those for whom any important service is done, or to whom any advantage is derived, by the

The claim of the *negotii utilis gestor*.

* The obligation on the heir to pay debts is plainly of the same nature with that of the executor or heir to pay legacies, tho' the *Civilians* called the latter only an obligation *quasi ex contractu*. They feigned the heir, as to the debts, the same person with the deceased, and thus made him liable. [For the legal fiction, see Pufendorf, *Law of Nature*, IV.9.2.]

3. This consideration of heirs is close to Pufendorf, *Law of Nature*, IV.11.19.

4. "managers of [somebody else's] useful affairs." See Justinian, *Institutes*, III.27.1, and *Digest*, XLIV.7.5. Hutcheson was well acquainted also with this aspect of his role as a university professor, as we see evidence of in his correspondence, e.g., *Correspondence and Occasional Writings*, pp. xvii with references.

labours or expence of others, without a commission or contract. The person thus profited is plainly obliged to refund all prudent expences, and compensate all labours not intended gratuitously. The merchant whose shipwrecked goods are preserved by my labour or expence, without my intention of doing such services, or bearing such charges as a favour, is obliged, when he claims his own goods, to compensate if required all my prudent labours and expences. Thus one is obliged to indemnify his tutors and curators in all their prudent management of his affairs; and for these claims there were particular *actions in the *civil law*.

The claim for
maintenance.

As to the obligations upon children for their maintenance, we may conclude, I. What a parent expends upon his children when they have no fortunes of their own left them by some other friend, is universally presumed to be a donation, where the contrary is not declared.⁵ But tho' the parent be strictly obliged, from the strong tie of nature declaring to him his duty, to provide necessaries for his children, and even is bound by the strongest tie of humanity to improve their condition as he has fair opportunities; yet his not placing such offices to an account of debt to be compensated or discharged by the children, is to be reputed an obliging act of kindness, which he could not be compelled to by any perfect claim of the children. A parent may justly claim to have the expence refunded, if he falls into any distress. Nay without being in distress he may justly place to an account of debt all manner of necessary or prudent expences made upon a child who had a sufficient fortune of its own; and may get them refunded, either for his own more easy subsistence, or for the benefit of others of his children. But <81> 2. When one maintains the child of a stranger, whatever prudent expences are made may justly be charged as a debt, where the contrary is not declared. Here there is no presumption from parental affection that they were intended gratuitously.

* *Actio contraria tutelae, et negotiorum gestorum*. ["Reciprocal action on tutelage and for management of affairs." See Justinian, *Digest*, XLIV.7.5 (1) and III.5.]

5. Concerning the relationship between parents and children, see below III.2.

The partiality which appears in the laws of some nations that pretend to pay great regard to the natural rights and liberties of mankind, is very surprising. Whatever expences are made by any one on the child of the meanest citizen, or Fellow-Christian, must be a donation, whether so intended or not. It founds no right to the child's service, nor to claim any compensation. He may leave his supporter when he comes to the use of reason. And yet the equally innocent children of captives in war, or of men of a different complexion, are detained as slaves for ever, with all their posterity, upon no other pretence of right than this claim upon them for their maintenance; as if such were not of our species, and had

The partiality
of many laws.⁶

6. The argument for slavery as a matter of compensation for maintenance or protection was often discussed in the context of familial society that will be taken up below at III.2. See Grotius, *The Rights of War and Peace*, II.5.26–30; Pufendorf, *Law of Nature*, VI.3, and *Duty of Man*, II.4; Carmichael, *Natural Rights*, pp. 115–16 and ch. 16; *Short Introduction*, II.14.3. Cf. the argument against natural slavery above at II.5.2–3. And cf. the argument from conquest, Hobbes, *On the Citizen*, ch. 8, and *Leviathan*, ch. 20; Locke, *Two Treatises of Government*, II.4.23–24. The immediate background to Hutcheson's acerbic comment is that "some nations," namely England and the Dutch Republic, saw intensive political debates and legal proceedings about the status of persons enslaved in the colonies when they entered the European country itself. This was especially controversial when the person in question was the child of slaves sent by their master to Europe for training. Here the question of compensation for such training and the question of the associated right of the master to repatriate the trainee to the colony arose. Arguments from liberty were used on both sides: the liberty rights of the person versus the liberty to make use of property. An important element in this was the question of whether baptism lent the person personhood and liberty. Hutcheson is certain to have seen such debates in the wider context of the sovereignty of the British government to protect its subjects by regulating the loudly proclaimed right to free trade by pro-slavers who secured deregulation in 1712. The often acrimonious debate had more recently been stoked by the influential statement of the English attorney general, Philip Yorke, and solicitor general, Charles Talbot, in 1729: "We are of opinion, that a slave, by coming from the West Indies, either with or without his master, to Great Britain or Ireland, doth not become free; and that his master's property, or right in him is not thereby determined or varied; and baptism doth not bestow freedom on him, nor make any alteration in his temporal condition in these kingdoms. We are also of opinion, that the master may legally compel him to return to the plantations." Quoted in Carterall (ed.), *Judicial Cases concerning American Slavery and the Negro*, vol. I, p. 12. Cf. Cairns, "Enforced sojourners."

not bodies and souls of the same feelings with our own; or as if mens secular rights were founded on their religion, or on their complexions.

The sole just
claim upon the
children of
slaves.

'Tis true indeed the masters of the parent, or he who maintains another's child at his own expence, has a right to claim compensation for all necessary and beneficial expences made on the child, and these only; not such as were for the splendour of his own family. But this right is no higher than that of any creditor in an equal sum over his debtor. If any friend of the child offers to come to account, and refund <82> the past expences, the master cannot justly refuse it, or detain him. If the child when he attains to the use of reason finds another he rather chooses to be indebted to, who will repay his former master's expences, the master cannot justly detain him. The labours of the child, after the time that he could earn any thing beyond the plainest food and cloathing, should be placed to account as discharging so much of his debt as their value surpassed that of his necessary maintenance. And when the sum of their value, after deducting the charge of the annual necessary maintenance, equals the expence of his maintenance in his childhood, the master has no further claim upon him. It would generally be found that the labours of any person sound in body and mind, would sufficiently discharge this debt before he came to thirty years of age: and where there was any considerable dexterity, they would discharge it much sooner. The debtor has plainly a right to choose that labour by which he can soonest discharge the debt.

If greater expences are made on a child for its instruction in any art; the child is no doubt liable for any such higher expences as were made for its real benefit. But then, its labours in this art are so much more valuable that this greater debt would be sooner discharged: otherways the expences were not for its benefit.

The plea in
this case from
hazard.

'Tis pleaded that where any sum is advanced upon any hazard, there one may *justly insist on more than <83> the restitution of the sum advanced, with all the legal interest: that in these *quasi contracts*, men are

* This is the case of contracts on Bottomry, where the only security is given upon the ship. A great premium is deemed just, because all is lost if the ship perish. [For bottomry (*fenus nauticum*), or "nautick Interest," see Pufendorf, *Law of Nature*, V.2.10.]

bound to all that could have been reasonably demanded, or prudently agreed to, if persons had been in a condition previously to have contracted. That to engage a man to advance any sum where there is an hazard of his losing all, he must also have a prospect of some considerable gain in case the event proves fortunate. What is thus advanced for a child will be entirely lost if he dies before his labours discharge it; therefore much more is due than the sum and the common interest. This claim can scarce wholly be denied, nor would it be unjust to insist on something more. And yet in other cases, where a plea of singular necessity is no greater than that a destitute infant has to a bare maintenance, we do not think it reasonable to oblige to further compensation than the principal and interest. If I take another's horse to assist me in escaping from some imminent danger, and return him safe with a proper price for the use of him, or if he is spoiled, if I pay his full value with interest for any time I delayed payment, no more is demanded, and yet had I perished he would have got no compensation.⁷ Sure the necessity of the child is as great.⁸

Allow that there should be some inducement to men to rear such destitute children, of whom some may die without making any compensation. It cannot be alleged that the debt of such as die is chargeable on those who live. But 'tis truly reasonable that each one be charged with something further than <84> was expended, on account of the hazard run in expending it: and this a wise man would consent to in a like case of his own. But this claim cannot make a great addition. Grant that one third of the children born, die within the first three years; this would add justly one third to the charge of these three years and little more. The hazard grows always smaller as they advance in years till their labours could discharge the debt. On account of such hazards it would never be just to demand more than in proportion to the hazards in the several periods of life, and this would scarcely add a fifth part to the sum of the

7. GUL Ms., p. 272: "and . . . compensation" is an interlined addition.

8. GUL Ms., p. 272: The printer may have made a mistake here. Although "allow" is indented, it does not seem to be capitalized, and the word "But" at the end of the previous line has not been printed. In other words, it seems that the intention was "But allow that . . .," and that the previous paragraph should continue.

expences, till they attain to the age of ten or twelve, when their labours begin to compensate their maintenance, nay to abate the debt.

From the pre-
serving them
from slaughter.

'Tis further pleaded, that in some barbarous nations, unless the captives were bought for slaves they would all be murdered. They therefore owe their lives, and all they can do, to their purchasers; and so do their children who would not otherways have come into life. But this whole plea is no more than that of the *negotium utile gestum*, to which any civilized nation is bound by humanity; 'tis a prudent expensive office done for the service of others without a gratuitous intention: and this founds no other right than that to full compensation of all charges and labour employed for the benefit of others. Thus suppose a merchant buys an hundred such slaves; so that his whole charges on the voyage, and prime cost of the captives, adding also a reasonable merchant's <85> profit upon the stock employed, amount to a thousand pounds. These captives are his debtors jointly for this sum; and as soon as the value of their labours beyond their maintenance⁹ amounts to this sum, and the legal interest from the time it was advanced, they have a right to be free; and this it would do in ten or twelve years, tho' a third part of them died; and then all his claim, or that of any one under him, would cease.

Causes of our
mistakes.

A set of inaccurate popular phrases blind us in these matters. Captives owe their lives and all to the purchasers, say they. Just in the same manner, we, our nobles, and princes, often owe our lives to midwives, chirurgeons, physicians, fellow-soldiers, servants, neighbours: one who was the means of preserving a man's life is not therefore entituled to make him a slave, and sell him as a piece of goods. Strange, that in any nation where a sense of liberty prevails, where the Christian religion is professed, custom and high prospects of gain can so stupify the consciences of men, and all sense of natural justice, that they can hear such computations made about the value of their fellow-men, and their liberty, without abhorrence and indignation!

The obligations
from using the
privileges of
necessity.

IV. To this second class of *quasi contracts* are reduced the obligations of such who using the privilege of necessity have done some damage to others; which they are always obliged to compensate as soon as they

9. GUL Ms., p. 273: "beyond their maintenance" is an interlined addition.

can. Such too is the obligation of one who *received <86> as due what afterwards appears not to have been due; or †received a price upon account of a service or prestation which cannot be performed: or received any thing on account of a contract or promise against which there lay a just exception. All these are obliged to restore or compensate what was thus received. Thus likewise, partners are obliged to refund proportionally what any one of them has usefully or by direction¹⁰ expended above his share, upon the common stock. Such too is the obligation of one who by any lawful action, or contrivance, or structure of his for his own behoof, has occasioned damages to others which they were not previously bound to bear without compensation; or had not contracted to bear gratuitously: he is naturally obliged to compensate them.

* For this there was the *condictio indebita*. [This and the quotation in the following note † stem from Pufendorf, *Law of Nature*, V.7, the chapter on *mutuum*, sect. 4: “. . . suppose I should pay a Man Money by Mistake, which I did not owe; or should give a Man Money for some Reason which does not afterwards appear; in this case the Roman Law admits of an *Action for Money paid where not due*, and for some Reason which does not appear.” Cf. *Digest*, XII.6.]

† *Condictio causa data causa non secuta*. [See Hutcheson's previous note *.]

10. GUL Ms., p. 274: “usefully or by direction” is an interlined addition.

The rights arising from injuries and damages done by others: and the Abolition of Rights.¹

An injury
defined.

I. The violation of any perfect right of another, is an *injury*, whether by violence to his person, attacks upon his character, restraints upon his right of liberty, depriving him of his goods, spoiling them, stopping the profits he had a right to, or withholding what he had a right to claim; whether any of these things be done with a malicious design, or a selfish one, or by culpable negligence; <87> whether* by acting or omitting contrary to our duty. The damage includes,[†] beside the value of the goods taken away, spoiled, or detained, all losses or inconveniences ensuing upon the want of them; and all interception of gain which would have accrued.

1. Hutcheson's placement of the topic of this chapter after his account of contractual relations is quite different from Pufendorf's arrangement. In the latter, the corresponding material is presented as part of the general duty to others that is imposed by natural law and thus prior to the theory of contract. See Pufendorf, *Law of Nature*, III.1, and *Duty of Man*, I.6. Cf. *Short Introduction*, I.15; Grotius, *The Rights of War and Peace*, II.17.

* *Faciendo, vel non faciendo secus quam debebat*. [Hutcheson uses this formulation in *Compendiaria*'s chapter on degrees of virtue and vice when describing how "the damages or injuries immediately done by other men or inanimate causes, are imputed as crimes, when one has *occasioned them by any action or omission contrary to his duty*." *Short Introduction*, II.3.8, p. 126.]

† *Lucrum cessans vel damnum emergens*. [Barbeyrac explains that "emergent Damage" is the Loss which one suffers by the diminishing his present Goods," while "a ceasing Profit" is the "Damage one receives by the loss of that Gain which he might make." Pufendorf, *Law of Nature*, III.1.3. n. 2, p. 214.]

The damage one has done he is sacredly obliged to compensate to the utmost of his power. The injury is persisted in till this be done: nor can one other ways sincerely repent, or recover the character of honesty. The person injured has a right to compel the author of it to this compensation: without this right, bad men would trample on all the rights of their fellows. 'Tis generally for the publick interest, as well as that of the sufferer, not to remit this right of compelling even by force to make compensation, and of inflicting further evils as punishments; and that not only for the future security of such who suffered, but for the general safety; that all bad men may be deterred from the like attempts, by fear of the like punishments.

Right to compensation of damages.

When more than one have concurred in an injury, he who by authority or power compelled others subject to him, is the principal cause; *he* ought to make reparation, and suffer the greatest punishment. But when we cannot reach him, as he cannot give impunity to others in injuries, we have not only a right of violent defence against those who injure us at his command, but of obtaining reparation from <88> them; nay often of inflicting punishment upon them when they have acted knowingly against their duty, or through culpable ignorance. If the injury be reparable, and of a lighter sort, and the immediate agent undertook it only to avoid vastly greater evils threatened by those who had him in their power, his action perhaps was not criminal, it was excused by the plea of necessity; (of which hereafter) but this plea will not free him from the obligation of repairing any damages done to other innocent persons, as the means of his preservation.

Who bound to it when many concur.

Where many have by concert done any damage, each one is liable for the whole, when we cannot obtain reparation from the rest, even altho' we knew what share each one had in the action, or the spoil. But when at different times, without concert, different persons spoil a man of all his goods, each one seems liable only for his own part of the damage; tho' more may be demanded by way of punishment. In the former case when one has compensated the whole, no more is due to the sufferer on this head. The rest are bound each to refund his share to him who compensated the whole. In punishments the case is otherways; the sufferings of one do not exempt the rest. *Compensation*, and *punishment*,

have different ends and measures; nay compensation is often due where there has been no fault.

When one employed in any useful perilous service to the publick, does any damage to others by such inadvertence as is scarce avoidable, the damage should <89> be compensated by the publick for the interest of which such services were undertaken. Thus if one in the heat of battle hurts any of his fellow soldiers undesignedly.

Damage done
by servants.

Damages done by hired servants, without orders from their masters, are chargeable only on themselves: when done by orders, they are principally chargeable on their masters. When damage is done by a slave, without his master's fault, the slave is naturally bound to compensate it, as he is a moral agent. But the master having a right to all his labours, by which alone he can compensate, the slave seems in the condition of one indebted to two creditors above the value of all his goods and labours; which therefore must be divided between them in proportion to their claims. Suppose the slave worth forty pounds, this is the master's claim; and that the damage is valued at twenty, this is the sufferer's claim: the master, if he retains the slave, should compensate two thirds of the damage. If the damage had been valued at forty pounds, the master should compensate the half of it. And he is always obliged to give security against future damages upon discovering the injurious disposition of his slave. Should the master compensate the whole damage, or deliver up the slave; in many cases the master would sustain all the loss, and the sufferer none at all, while yet both may be equally innocent; which seems unjust. *Civil laws* sometimes enjoin this, to make masters more vigilant about their slaves. But as slaves are moral agents, they are always liable themselves to such punishments as may be necessary to restrain their vices, whatever way damages be compensated: the change of service might be no punishment to them.

Damage done
by beasts.

When damage is done by the beast of any one who had no ground to suspect such an hurtful disposition in it; a like decision, as to bearing a share of the damage with the sufferer, would seem reasonable. Some **civil*

* Exod. ch. 21. Instit. l. iv. tit. 9. Dig. 9. tit. 1. and others *de actionibus noxalibus et de pauperie*. [Justinian, *Institutes*, IV.9 (8, in modern editions) states (pr.): "Noxal

laws are severer on the proprietor, to engage the greater care that their cattle be not injurious. Where any unusual petulance or viciousness has been previously known to the owner, he is in all cases liable to full compensation; since he was obliged to prevent these damages, and such negligence is justly punishable.

II. When one negligently, or in a sudden passion, has done any damage, he should voluntarily offer full compensation, and any reasonable assurance an unbiassed arbitrator shall appoint, against any future injuries; and upon this the person damaged or² injured should be entirely reconciled. Voluntary submission to compensation, and such assurances for the future, are all that can be reasonably demanded. To refuse them, when demanded, shews an hostile injurious disposition.

The duty of such as do damage to others.

One sort of damage is so common that many seem to overlook the injustice of it, the delaying payment of debts owned to be just. In some settled debts, as <91> those upon bonds and some others, the law estimates the damage of delay at the common interest of the money; but by an unreasonable partiality allows no interest upon current accounts. A man of true honour and justice may think the common interest a sufficient compensation to a moneyed man who is not engaged in trade or manufactures, unless he sustains some other loss by our having delayed payment. But to men in trade, 'tis manifest that the injury and damage of even delaying payment is much more grievous; not to speak of the expensive suits they are forced to, the occasioning their credit to fail, or of defrauding them altogether, which to common sense must appear one of the vilest and most impudent sorts of theft, and should be punished accordingly, when done with design. But the very delay is an injury and a damage always equal to the gain a trader could have made by his money in the same time; which is generally double of the legal

The injury of delays of payment.

actions lie when slaves commit delicts. . . . These actions give the condemned owner an option to pay the damages . . . or to make noxal surrender of the slave. (1) The word 'noxia' denotes the noxious body, here the slave; 'noxia' indicates the wrong itself." Similar actions lie for *pauperies*, which are "the loss caused by unreasoning animals." Justinian, *Institutes*, IV.9 pr.; cf. Justinian, *Digest*, IX.1 and 4.]

2. GUL Ms., p. 276: "damaged or" is an interlined addition. The same addition is made to the subsequent mentions of injury in this section.

interest: for this double interest an action should certainly be allowed, upon all the delays after the time agreed upon in the contract. Not to mention the other grievous distresses occasioned by such delays, when the trader's credit fails, and a family is entirely ruined, which could otherways have had a decent subsistence. Manufacturers and traders must charge an additional price upon all goods to make up these losses by dilatory debtors, and vexatious expensive suits, as well as the losses by insolvent, or fraudulent debtors. These losses fall upon honest and good oeconomists who pay regularly, as well as upon the dilatory, since on account of these losses all goods are sold so much dearer. By these means too the rates of our goods must be raised when sold in foreign markets: so that other nations, where there is a greater regard to justice, are enabled to sell like goods cheaper, and ruin our trade.

Rights to force
in natural
liberty.³

III. In natural liberty men have a right by force to defend themselves and their neighbours, and all their perfect rights; and to compel others by violence to fulfil any perfect claims they have upon them. We are bound no doubt first to try all gentle methods; but when these fail of success, we have a right to use violence, with what assistance we can obtain from any others who are persuaded of the justice of our cause. In civil societies (as we shall see hereafter) the wisdom and force of the state should be employed for these purposes, to prevent the evils to be feared from the passion of interested men under fresh impressions of apprehended injuries. Citizens are generally understood to have committed these rights of violent prosecution and defence to the magistrate, wherever his aid can be obtained; and to have precluded themselves from exercising them in such cases. The rules about violent defence and pros-

3. Sections III, IV, and V correspond to *Short Introduction* II.15.4–8, with some exceptions. In the latter work, Hutcheson integrates the discussion of private and public war, only to elaborate the latter topic in III.9, "The Laws of War." In the present work, the discussion of warfare under the existence of civil societies is concentrated in III.10. Pufendorf maintains a similar separation of the two topics; *Law of Nature* II.2, resp. VIII.6, and *Duty of Man*, II.1.9–10 (cf. the editors' notes 8, 9, pp. 170–72), resp. II.16. Cf. Grotius, *The Rights of War and Peace*, II.1, with the distinction between private and public war in section 16. There is no obvious reference to Locke's "strange Doctrine, viz. That in the State of Nature, every one has the Executive Power of the Law of Nature" (*Two Treatises of Government*, II.2.13, referring to II.2.11–12).

ecution must differ in these different states of liberty, or civil polity, and that in these *three particulars, 1. the causes, 2. the time of beginning violence, and 3. the term to which it may be continued. <93>

1. The causes, in natural liberty, are any violations of perfect rights great, or small. 'Tis true one is obliged in humanity to use all gentle methods at first, and to use no more violence or severity than may be necessary for his own safety, and that of others. We should always be ready to offer a reference, or to submit any disputed point of right to arbitrators. If the injury be the effect of a sudden passion, of which the author will soon repent, and it be reparable; 'tis the humane part to bear it rather than rush into fatal violence in our defence. But if the injury be designed deliberately, and persisted in after friendly remonstrances, one has a right to defend himself by violence even with the death of the invader. To deny men the right of violent defence to the utmost in maintaining their smaller rights of the perfect kind, would expose all good men, and all their properties, as a perpetual prey to the insolent and injurious. A small injury may be repeated every hour by the same person, or by others equally insolent; life would be intolerable without a remedy for such evils. The publick interest and safety requires that men should be violently deterred from such insolent attempts.

The just causes of violence in liberty.

As to the prosecution of smaller rights, 'tis hard to say that inconsiderable injuries can justify our going to the utmost extremity, or that it is necessary to proceed to any fatal violence to compel men to fulfil any trifling contract, or perform some small matter we have a right to claim. We can abstain from all future commerce with such persons: and 'tis better to <94> suffer a small loss than the reflection that for an unnecessary advantage we were intitled to, or for recovery of what was of no great value, we had taken away the life of our fellow, when we could be otherways secured against like injuries for the future.

A subject under civil government should use no violence against such as are amenable to laws, except in defence against injuries irreparable, either in their own nature, or through the insolvency of the invader. In other cases the safer remedy is an action at law. If the

They are different under civil government.

* *Causae, terminus a quo, et terminus ad quem*. [This is the terminology also in the *Compendiaria*, II.15.5, p. 200, where the same point is made as in the text here.]

invaders are not amenable to laws, such as fugitives, robbers, or pirates; the rights of natural liberty remain against them; as they do also wherever the hope of detecting and convicting them fails, as in the case of thieves in the night-time.* 'Tis by actions at law alone that we are to compel such as are amenable to them, to fulfil our claims upon them.

The time of
commencing
violence.

IV. 2. The time when violence is justly begun in natural liberty, is when one has sufficiently declared an unjust and hostile disposition, and desists not upon such admonition, or remonstrance, as we have time to use. One is not obliged to receive the first attack or assault; this may frequently prove fatal; or occasion an irreparable damage. Defence and prevention of injury in this state, is generally less difficult than forcibly obtaining reparation. In all these matters, when our danger is not immediate, since the keenest <95> passions are apt to arise, 'tis best to be directed in all methods of defence and prosecution, by wise arbitrators not immediately concerned in the injury.

Under civil government, tho' the injury intended be irreparable, yet unless the danger be so imminent that we cannot be defended by the magistrate, we should apply to him for defence; as we should always commit to him the violent prosecution of our rights against our fellow-subjects.

* This is probably the reason of the distinction between the *fur nocturnus* and *diurnus* in the twelve tables. The killing is prohibited *nisi telo se defendat*. See also Exod. xxiii. 3. [The cases of the *night thief* and the *day thief* were extensively discussed with reference to, inter alia, the Twelve Tables, in Grotius, *War and Peace*, I.3.2 and II.1.12; and in Pufendorf, *Law of Nature*, II.5.17–18, in all cases with Barbeyrac's extensive notes. The reference in the Twelve Tables is the fragmentary VIII.13: "By daylight . . . if a thief defends himself with a weapon . . . and the owner shall shout." The Latin phrase (*niso* . . .) is a near quotation from Pufendorf, *ibid.* (sec. 18): "(the Day-thief could not be kill'd,) *unless he defended himself*." The background included Justinian, *Digest*, XLVIII.8.9. The point of the reference to Exodus 23:3 is unclear: "Neither shalt thou countenance a poor man in his cause." It may be a mistake for Exodus 22:2: "If a thief be found breaking up, and be smitten that he die, *there shall* no blood *be shed* for him." This was Grotius's reference, *The Rights of War and Peace*, I.3.2.]

V. 3. The term to which violence should be continued in natural liberty, is until the danger be repelled, full compensation obtained of all damage and expences occasioned by the injury, full performance of all we can justly claim, and security against like injuries for the future. The interest of society, as well as that of the individual, requires that all these things be obtained.

How far it may justly be continued.⁴

The publick, or mankind as a system, have even a further right of inflicting such further evils as are necessary to deter others from the like attempts. This last right the person who was in danger of immediate wrong should not execute alone, but in conjunction with others who have no private cause of resentment. Some horrid attempts, such as those of murder, assassination, poisoning, robbery, or piracy, shew so desperate a wickedness, that scarce any sufficient security can be obtained to society against the repetition of the like crimes, but the deaths of the criminals. And as men are much allured to injustice by hopes of secrecy, or of impunity by flight, or successful resistance, it must <96> be necessary for society that the punishments of such as are taken and convicted be made so great as shall generally over-balance the invitation to such crimes from the hopes of impunity, and deter others from the like attempts. This is allowed just under civil government, when crimes abound, and many, one half perhaps, of the guilty escape conviction, that the punishment should be doubled at least, on this very account, that the greatness of the evil should outweigh the hopes of impunity. The very same reasons for punishments, and for increasing, or diminishing them, hold in natural liberty, tho' the execution will not generally be so easy or regular. The punishment of crimes in this state of liberty is rather more necessary, and is justified by all the same reasons. That the execution in this state may be attended with more inconveniences, does not prove that there is no right of punishing, or that all the right must arise from civil polity. For by the same way of reasoning we should deny to men in liberty all rights of self-defence, and hold that they too arise from civil polity.

Punishing may be just in natural liberty.

4. Cf. the discussions of just war, below III.3.3, and of the rights of conquest, below III.8.4.

Under civil government private men should proceed no further in violence against such as are amenable to laws than till the present danger be repelled. All the other rights should be left to the magistrate.

No infinite
right from any
injury.

We should always remember on this subject that no injury or wickedness should make the author cease to be the object of our good-will: and that all our rights to violence are limited by these ends, viz. the repelling the injury, obtaining our right, with compensation of damages, and getting security for ourselves and the society against like injuries for the future. What is inflicted on wicked men for these beneficent and necessary purposes is just, as far as it is naturally subservient to and requisite for them: what is not requisite for them, is unjust and cruel, even toward the worst of mankind. Such are all private tortures, the sating an angry and revengeful spirit by insults, prostitution to any lusts of ours, or forcing the criminal's conscience, if he has any, in matters of religion. 'Tis very cruel and unjust to create further misery than is requisite for these purposes: when these are answered, and as far as consists with them, all humanity, mercy, and compassion toward bad men is amiable and virtuous. The noblest spring of punishment is extensive goodness, or a regard to the safety and happiness of the community.

Duels
unlawful.⁵

VI. From the preceeding reasonings designed duels in civil society must generally appear criminal. They may be lawful when by consent of two states they are appointed to put an end to a war. The method is foolish, to end a debate by the death of a brave man, which arbitration, or the lot, could have decided better. But if one state insists on this method, another may justly accept of it, when they are more diffident of their safety another way. But fellow-citizens are understood to have committed the decision of their controversies to judges.

The injuries which give occasion to duels, in nations where they prevail, seldom can be redressed by the combat, let the event be what it will; and the event is as probably unfortunate to the innocent side as

5. The discussion of duels is in agreement with that of Carmichael, *Natural Rights*, pp. 67–68, who confirms Pufendorf's rejection of the legitimacy of duels, *Duty of Man*, I.5.20, cf. *Law of Nature*, II.5.9. Grotius thought that duels were legitimate under some circumstances: *The Rights of War and Peace*, II.1.15.

to the guilty. The custom indeed was introduced in those ignorant superstitious ages when all sort of fortitude was encouraged by the Popish clergy, after they had by one artifice or other got it employed in extending their dominions, by crusades and holy wars; and the superstitious bravo's had a strange confidence in the interpositions of Providence by miracles in behalf of innocence. The charge of falshood, treachery, dishonesty, or other vices, which often occasions duels, is not disproved even by success. The liar, the cheat, or the knave, the most infamous or faithless wretch, may be successful at the sword, or aim well with a pistol, as well as the worthiest man. The success changes no wise man's opinion of the character, tho' men may be more cautious, on their own account, of expressing their bad opinions. The imputation of cowardice is the only one which duelling can tend to disprove. But some of the vilest of mankind have not been cowards this way; tho' they act the most cowardly part when the most valuable interests of their country require their service and courage either in peace or war.

When a man is charged with some vices, to attempt the life of the accuser may be an inhuman, and unnecessary revenge, as it will not confute the charge, but often rather confirms it. Proper vindication should be obtained by law. Our characters, even for courage, may be better vindicated with the wiser <99> men, and even with the weaker too, if our country needs any hazardous services in war; nay by our resolution in times of peace in supporting its interests against any insidious designs of men in power; or by a resolute maintaining our own rights, and those of our friends, and expressing on just occasions our indignation at the vices of others. Many a combatant shews a dastardly spirit in such matters. A good man who has done nothing contrary to his duty, is not obliged on account of any unjust resentment of others he may have raised, to confine himself, or quit any publick appearances about business or recreation, unless his regard to his own safety persuades him to it. If he is then attacked, he may shew his courage in just self-defence.

One who has wronged another by false accusation, or by divulging inhumanly his secret faults, adds a terrible guilt to the former, by accepting a challenge, and attempting the life of the man he had wronged. The fullest acknowledgment of his former falshood, rashness, or inhumanity

How our reputation may be maintained.

is the only honourable part he can act. When one has done no wrong to the challenger; yet it is generally great folly to expose his own life, and attempt that of another, upon a passionate invitation. What if the world is not persuaded of a man's courage? he may be reputed in other respects an useful and honourable member of society. And to bear such reproach for a good conscience, may sometimes be more honourable than any violent part he could have acted. <100>

Strong pleas
for duels in
corrupt states.⁶

When indeed the laws of a state are so exceedingly defective as to provide no redress for affronts, and very contumelious injuries of our fellow citizens; or for calumnies, which must deeply affect that natural desire of honour, and aversion to contempt, principles which it is the interest of every state to cherish in its members; and when a prevailing tho' imprudent and wicked custom has supplied a remedy, the only one perhaps remaining against these injuries which are much more grievous, and shew a more wicked and hostile spirit in the injurious, than those violations of property which we may repel by the death of the invader, wherever the magistrate cannot interpose, the plea for duelling may appear more favourable. If declining to embrace this remedy generally received, will give a sanction to the calumny, and further encourage the invader of my reputation, and others of like dispositions, to repeat their insults, and extend them to others; and at the same time betray, in the judgment of all around, such a mean love of animal life in me, and a preference of it to all honour and esteem among my fellows, as must be disapproved by ingenuous minds; I may have as strong plea of necessity in such circumstances: nay some high species of moral obligation, where one could overcome all personal animosity or resentment, may often seem to persuade a good man to hazard his own life in asserting his character, and freeing human society from such insolent and injurious invaders of what is justly of higher estimation than our external property. What<101>ever guilt there is in such conduct, it is certainly chargeable principally on the legislator, for such negligence

6. Cf. *Short Introduction*, II.15.9, p. 205. This argument from necessity is also in Grotius, *The Rights of War and Peace*, III.20.43, where he discusses single combat as a means of settling a war.

about the defence of the citizens in their dearest rights, as forces them upon such measures.

VII. But we should always bear in mind that what alone can justify violence must be its reference to the grand ends above-mentioned. When the injurious have offered reparation, complied with all our just demands, and submit to whatever punishment prudent arbitrators shall judge necessary to deter others, we then have obtained all the just ends of violence; and to persist further in it, must be cruel and unjust. Thus that side which began a war with justice, ceases to be in the right, the instant⁷ it persists in violence after the reasonable terms of peace are offered by the other side.

The sole ends of all just violence.

Where injuries cannot be repaired or fully compensated, yet we ought to do all that we can. If one has unjustly taken away life, yet not in such a manner as exposes him to capital punishment, he is bound to the utmost of his power to compensate the loss to the family that suffered, by all liberal and friendly offices. If one is become bankrupt by his own vices, or negligence, and cannot pay his creditor, he is bound to apply all his labours to their service; they have a perfect right to them.

What is due where complete reparation is impossible.

The laws of some states are strangely inconsistent. If one by stealth wrongs his neighbour in a trifle, the punishment is capital. If another by a course of extravagance and debauchery, or by the grossest negligence, ruins all who have been so friendly as to trust him; nay fraudulently takes up loans from friends when he knows himself to be insolvent; there is no other punishment than a foolish one, which burdens either the state, or the creditor, a constant imprisonment. And no other pretence for this than that some are bankrupts without any fault of theirs. Why should such men be imprisoned? Is there not an easy method of trial in this case, to distinguish such as innocently fail, from those who are ruined by their vices? We commit our lives to juries in other matters: a jury of judicious neighbours could examine into a man's stock when he began; could inspect his books, and examine witnesses upon his conduct and manner of life; by which they could find what

Imprudent laws in these cases.

7. GUL Ms., p. 282: "ceases . . . instant" is an interlined revision of: "may cease to have Justice on it side, when."

the calamity was owing to. If to unfortunate accidents, without gross negligence, debauchery, or vanity; the misfortune should be born patiently by the creditors, and the debtor be at liberty; only obliged to discharge his debts whenever he was able; and to apply any profits he could make beyond a moderate maintenance to the discharge of them, if the creditors insisted on it. But as to those who are bankrupt through their own vices, as they are often far worse criminals than thieves, and do greater wrongs, a capital punishment, if it could do any good, would be no more cruel in the one case than the other. To condemn them to perpetual slavery would have a better effect; in contributing a little to repair the wrongs they had done, and to deter others by the example. <103>

How rights are
abolished.⁸

VIII. The originals of these ordinary rights, and the contracts on which they are founded, will shew also how they are abolished. The several ways may be reduced to these three classes. 1. Prestation or fulfilling the claim, either by the person himself, or by any other in his name, by commission from him, or for his behoof. No creditor is bound to transfer his claim upon his debtor to a third person without the debtor desires it, or it be plainly for his interest; this third person may have a malicious intention of distressing him: but upon the debtor's desire he must accept of payment of any common value or service from the person whom the debtor appoints. In homages indeed, or services of honour, the dignity of the person who pays them adds much to the value: and, in works of genius, the ingenuity of the artist is chiefly regarded. In these the person obliged cannot substitute another, without consent of him to whom they are to be performed. Under this head are justly

8. This section corresponds to the *Short Introduction*, II.17.1. Both there and in the present discussion the tripartite arrangement is in line with that by Carmichael, *Natural Rights*, pp. 118–21. The main resources for both are Justinian, *Institutes*, III.29/30, and *Digest*, XLVI; Pufendorf, *Law of Nature*, V.11, and *Duty of Man*, I.16. Also see Grotius, *The Rights of War and Peace* III.19.14–19, especially concerning compensation. In the *Short Introduction*, chapter 17 includes material dispersed elsewhere in the *System*: arbitration “in Natural Liberty” (sec. 2) is in the *System*, II.18.1–3, below; “the Rules of Interpretation” (sec. 3) are excluded in the *System*, as explained in the note to II.18.4 below; the fact that the last resort in natural liberty is force shows the need for political authority (sec. 4), and this point is considered in the *System*, II.18.4, below.

included *compensations*; which are justly made when two persons are mutually creditors to each other in equal values on different accounts.

2. Another way of abolishing rights and obligations is the voluntary remission of the person who had the claim, where the right was wholly constituted for his behoof, and no law prohibits such remissions; and they may either be gratuitous, or for some* onerous cause. <104>

3. The third way is by the defect of some condition upon which the obligation was suspended; under which we may include the perfidy of one party, which sets the other free if he pleases. Among the conditions the defect of which may make obligations void, the life of either party may be one, or his continuance in the same state or office⁹ in some contracts. Such contracts or obligations as presupposed a certain state or office, or¹⁰ respected only the life of the person obliged to any payment or performance, so as not to bind his heirs, expire along with him, or when he loses the station presupposed.¹¹ Such as regarded only the person who had the claim, and were not constituted for the behoof of his heirs, expire in like manner upon his death. It may always be known from the nature of the contract or promise, or other foundations of the several claims, whether they are extinguished by the death of either party, or not.

* Such as *delegation*: when the debtor transfers to the creditor his equal claim upon a third person; or quits some equivalent claim he had upon his creditor, or some friend of his.

9 GUL Ms., p. 284: "or . . . office" is an interlined addition.

10. GUL Ms., p. 284: "presupposed . . . or" is an interlined addition.

11. GUL Ms., p. 284: "or . . . presupposed," is an interlined addition.

Concerning the general Rights of Human Society, or Mankind as a System.¹

Rights of
mankind as
a system.

I. Hitherto we have considered the rights and obligations peculiarly respecting certain individuals, and constituted for their happiness, in consistence with and subserviency to the general interest. But as we not only have the narrower kind affections, and a sense of duty in following their motions by good offices to individuals, and by abstaining from what may hurt them, but more extensive affections toward societies and mankind; and an higher sense of obligation to do nothing contrary to any publick interest, there are many obligations of a more extensive kind upon men to consult the general interest, even where no particular person is more concerned than others; and mankind, as a system, seems to have rights upon each individual, to demand of him such conduct as is necessary for the general good, and to abstain from what may have a contrary tendency, tho' the wrong conduct no more affects one individual than another. Of these rights and obligations some are of the per-

1. Compare the division of rights into "those of individuals, those of particular societies or corporations, and those in general belonging to all mankind as a system" at II.4.3 above. Sections 1–6 correspond closely to the enumeration in *Short Introduction*, II.16.4. Concerning the idea of humanity as a moral system, see Hutcheson and Moor's translation of *The Meditations of the Emperor Marcus Aurelius Antoninus*, VII.13 and IX.23. The basic theme of a general right-cum-duty to the preservation of the world may be seen as an accentuation of the similar theme that runs through the second of Locke's *Two Treatises of Government*. See also Pufendorf, *Law of Nature*, III.3 ("Of the common Duties of Humanity"), and *Duty of Man*, I.8 ("Of the mutual Duties of Humanity").

fect kind, where compulsion may be just; others are of a more delicate obligation, not admitting compulsion, where our duty must be left to our own prudence and sense of virtue. Of the perfect kind are these following.

I. As each individual is a part of this system, the happiness and duration of which depends on that of its part; as every one may be of some service to others in society, were it only by advice and example, if they have such dispositions as they ought to have: as we are formed by nature for the service of each other, and not each one merely for himself; each one is obliged to continue in life as long as he can be serviceable, were it only by an example of patience and resignation to the will of God; when no important interest requires his exposing his life to dangers. Human society has a right by force to prevent attempts of <106> *suicide* from any unreasonable dejection, or melancholy, or chagrin;³ and these general rights of all, each one as he has opportunity, by what assistance he can obtain, may justly execute. No other bond is requisite to intitle a man to interpose in such cases, but the common tye of humanity. Did such immoderate passions prevail; were suicide deemed a proper method to escape from the ordinary vexations of life, or from the severe chagrin upon disappointments, and were there no restraining sense of duty; many of the bravest spirits might rashly throw away those lives, which might have become joyful to themselves, and useful and ornamental to the world. Mankind have a right to interpose against such rash designs.

To prevent suicide.²

II. Another general obligation on the individuals toward the system, respects the continuing the human race. Such as are not hindered from domestick cares by some more important services to mankind, seem obliged to contribute their part to this important purpose, by bearing their shares of the burden of educating human offspring, if they are in such circumstances as enable them to do it. This duty however, must in a great measure be left to the prudence of individuals: it would scarce be

To preserve the human race.

2. Pufendorf deals with suicide in the chapter on duties to ourselves, *Law of Nature*, II.4.17, and, briefly, *Duty of Man*, I.5.11; Locke in the *Two Treatises of Government*, II.4.23.

3. GUL Ms., p. 285: "attempts of" and "from any unreasonable dejection, or melancholy, or chagrin" are interlined additions.

wise in any society to compel them to have offspring, whether they desired it or not; tho' there may be strong reasons for making celibacy burdensome and dishonourable.⁴ In this matter, and that above-mentioned of preserving our own lives, nature by powerful instincts implanted has pretty generally secured the performance of our <107> duty. Such instincts however are so far from preventing or superseding the notion of moral obligation, that they strongly establish it, and are the most direct indications of it.

And compel
parents to
support their
children.

But as to such as desire offspring, or are the occasions of their coming into being, as they are under most sacred obligations, indicated abundantly by the parental affection, to give support and education to their offspring, and to form them into proper members of society; so mankind as a system, and every society, have a right to compel them to discharge these offices. They have a like right to prevent such ways of propagation as would make a proper education impracticable, by leaving the fathers uncertain, and thus casting the whole burden of it upon the mothers. 'Tis the interest of mankind to prevent such abuses, even tho' the deluded mothers voluntarily yielded to the ensnaring solicitations. Of this more hereafter.

To prevent all
monstrous
lust.

Mankind as a system have a like right to prevent any perversions of the natural instinct from its wise purposes, or any defeating of its end. Such are all monstrous lusts, and arts of abortion.

To prevent the
destruction of
any thing
useful.

III. There is a like right competent to mankind, and an obligation on each one, that nothing useful to men should be destroyed or spoiled out of levity or ill-nature; tho' no individual, or society, has a more special right in it than another: that nothing useful should be destroyed, even by those who had acquired property in it, without any subserviency to some pleasure or conveniency of theirs. To do so must evidence <108> an envy or hatred of the rest of mankind. Thus fountains should not be stopped or poisoned; no useful products of the earth, which many stand in need of, should be capriciously destroyed by the owners, because they have abundance other ways for their use: no noxious creatures should be brought in, and turned loose in places formerly free from them.

4. GUL Ms., p. 285: "tho' . . . dishonourable" is an interlined addition.

IV. 'Tis also the right and duty of the system which each one should execute as he has opportunity, to assist the innocent against unjust violence, to repel the invader, to obtain compensation of damage done, and security against like attempts for the future. Without this right all the enjoyments of men would be very precarious, since few could confide in their own strength to repel the combined forces of any cabals of the injurious. As the example of successful injuries tends to invite others to like practices, 'tis requisite for the general good that this bad influence be counteracted as often as possible, by the inflicting of such evils upon the injurious, as by their terror may overballance in their minds, and those of others who may have like dispositions, all allurements to injustice from the hopes of secrecy and impunity. This is the foundation of the right of punishing, which, as we said above, men have in natural liberty, as well as in civil polity. The mistakes and inconveniences which may more frequently attend the execution of this right in natural liberty, do not take away the right, but shews the great use of civil polity.

The right of repelling all injuries and punishing them.⁵

V. A like right we may justly assert to mankind <109> as a system, and to every society of men, even before civil government, to compel any person who has fallen upon any fortunate invention, of great necessity or use for the preservation of life, or for a great increase of human happiness, to divulge it upon reasonable terms. The inventor, no doubt, may have a right to make large advantages of what his diligence, ingenuity, or felicity has discovered; and is justly intitled to a compensation for this advantage, in proportion to the good it brings to society, or the labour which the invention may have cost him, or the profit he could have made by it. But if a man is exorbitant in his demands, or so inhuman as not to employ his discoveries where they are wanted, or will always retain the secret to himself, so that it must perish with him; if the matter appears to be of great importance to mankind, a society has a right to

A right to force men to divulge inventions of general use.⁶

5. The section compares generally with Pufendorf, *Law of Nature*, III.1 ("That no Man be hurt; and if a Damage be done to any Man, that Reparation be made"), and *Duty of Man*, I.6.

6. In Pufendorf's view, sharing inventions is praiseworthy, i.e., an imperfect duty, *Law of Nature*, III.3.2, pp. 242–43.

compel him to arbitration about the proper compensation to be made for the discovery; and to force him, upon just terms, to make it.

A right of
compelling
men to some
industry.⁷

VI. 'Tis justly also reputed a right of human society to compel each person to such labours and industry as he is capable of, that he may not be an unnecessary burden upon the charity or compassion of the industrious: to compel parents so to educate and habituate their children, that they may be able to support themselves, while they continue in health. Enough is allowed to the natural liberty of mankind, and the parental power, that men may chuse occupations as they incline for themselves and their children. But as the universal diligence of all is plainly requisite for the good of mankind, each one is bound to his share of it, and is justly compelled to it, unless he can give sufficient security to the society that he shall be no burden to it. A like right any society has to exercise the parental power over orphans, in educating them to some, useful industry, and obliging them to such reasonable services after they are adult, as may defray all prudent expences made upon them, and for their behoof, during their minority.

The rights of
funerals.⁸

VII. One may justly reckon among these rights of human society that one also of preserving a just veneration toward the dignity of our kind, and preventing any practices which would tend to make it despicable in the judgment of the vulgar; or which would have a tendency to in-

7. GUL Ms., p. 287: Section VI is inserted in the manuscript in the form of a separate smaller sheet of paper, clearly marked for insertion.

8. This subject was made a topic in the natural law literature by Grotius's suggestion that the right to burial was a matter of the conventional law of nations on a par with the right of embassies, not of natural law proper (*The Rights of War and Peace*, II.19.1), a point in which Pufendorf agreed with him (*Law of Nature*, II.3.23). In his comment on this section in Pufendorf (p. 149, n. 4) Barbeyrac makes a case for seeing the right to burial as a proper right of nature and draws the parallel with other cases of rights that are without a subject in the sense of an agent who could claim them, his examples being the unborn child and the lunatic. Barbeyrac argues from the kind of moral sentiments invoked here by Hutcheson, but in addition from the idea that it is an actual injury not to bury the dead. In the following section, Hutcheson seems to agree with Barbeyrac also on the latter point by ranking the right to burial among the perfect rights. His reference in the present section to "our fellow-creatures" gestures toward his idea that also animals have to be considered as bearers of perfect rights though they cannot claim them; see II.6 above.

roduce savage and inhuman dispositions. The dead carcasses of men can have no rights, and yet 'tis plain men cannot so entirely separate in their thoughts the body from its former inhabitant, as to be unaffected with the treatment of the body. All nations have expressed their affectionate or grateful remembrance of the man, by some rites or other deemed respectful toward the body: and repute some sorts of treatment of dead bodies as inhuman and savage, expressing either hatred and contempt of the man, or a disrespect in general for our fellow creatures. Every society therefore should prevent such practices as would incourage savage manners, or such as are the usual testimonies of contempt and hatred, toward any who have not by their vices incurred the just abhorrence of all good men. <III>

VIII. These and many of like nature⁹ we may count the perfect rights of mankind. There are others of the imperfect kind, to be left generally to the prudence and virtue of persons concerned, to which correspond the general duties or offices incumbent on each individual toward mankind in general, previous to any special tye. The same general maxim holds in these rights which we observed about the rights of individuals, viz. "The fulfilling or not-violating the perfect rights, argues rather mere absence of odious vices, than any laudable degree of positive virtue: whereas the matter of praise, and the natural evidence of high virtue consists in a strict regard to the imperfect rights."

Imperfect
rights of
mankind.

The offices indefinitely due to mankind are ever incumbent on all while the system remains, however they are subdivided into several distinct states or polities. The duties are not taken away in a civil state, but the exercise of them may be limited as far as the political relation and the interest of the state may require. The more extensive affections, of which we find our nature susceptible, and that high sense of approbation attending them, plainly shew our obligations toward mankind as to the following duties, tho' no one individual had a more special claim upon us than another; and therefore we may conceive them as answering a general right or claim of the system upon each of its members.

9. GUL Ms., p. 287: "and . . . nature" is an interlined addition.

All obliged to
improvement
of their souls
and bodies.¹⁰

First, each one is obliged to cultivate his own powers of body and mind so as to fit himself for what offices <II2> of goodness and humanity his station may allow; to store his mind with useful knowledge, and with the grand maxims which conduce to a virtuous life; to acquire virtuous habits, and a power of restraining all the lower appetites and selfish passions, which may oppose them; and to prepare even his body by temperance and exercises for such honourable services as his mind may recommend.

To give a good
example in
their own
conduct.

Again: as men are much influenced by example, and our several affections are naturally contagious, 'tis our duty to the publick¹¹ in our whole deportment to shew an example of all kindness, courtesy, and inclination to oblige and assist any of our fellows, where no duty of more importance, or special claim of such as we are more nearly attached to, calls us away: we should acquire habits of this social kind; and guard against whatever may irritate our fellows, or alienate their affections from us, or from each other, or cause animosities and ill-natured passions among them. No wonder that courtesy and good manners are so engaging; they are the natural dress of virtue, the indications of those affections which are truly honourable and lovely. The several duties in consequence of such dispositions may answer to the particular rights of individuals, but the preparing the heart, and acquiring the habit, is an indefinite duty toward all.

To diffuse
principles of
virtue.

'Tis also our duty to our kind to diffuse as far as we can the principles of virtue and piety, which shew that universal goodness is the true interest, dignity, and perfection of each individual; as the universal pre<II3>valence of such sentiments is the greatest advantage to human life. We should concur in every wise institution for this purpose: our whole conversation should evidence this persuasion, and shew it to the

10. The present section does not have an equivalent in the *Short Introduction*, but it may be contrasted with the latter's instruction in *cultura animi* in the first three sections of I.6 ("Concerning our Duties toward Ourselves, and the Improvement of the Mind"). Hutcheson would have agreed with Carmichael's comment on Pufendorf's chapter on duties to oneself (*Duty of Man*, I.5), "Pufendorf passes too lightly over the *cultivation of the mind*," *Natural Rights*, p. 59. Cf. above, p. 122, n. 9.

11. GUL Ms., p. 288: "to the publick" is an interlined addition.

world that wealth, power, or sensual pleasures, are not the supreme objects of our pursuit for ourselves, or such as are dear to us: that the covetous, ambitious, or voluptuous are not the persons whose state or temper we count happy. And thus on our part we may contribute to prevent or break these groundless associations and false imaginations diffused among men by the vicious.

IX. 'Tis also the duty of each individual toward mankind, as well as toward his peculiar friends or relations, to follow some profession or business subservient to some common good. Men of wealth sufficient for themselves and their families, are not perhaps obliged to any lucrative professions; but they are rather more than others obliged to an active life in some service to mankind. The publick has this claim upon them: the divine providence calls them to extend their views of publick good, in contriving wise forms of polity, or prudent laws; in encouraging the more ingenious and useful arts; in supporting distressed innocence; and employing all their weight and influence in society for some generous purposes; as they are exempted from the lower and less honourable employments. When they are deaf to this voice of God, and give themselves up to sloth and sensuality, they are useless and corrupt members of society, unworthy <114> of that external deference they expect: and indeed 'tis only outward ceremony and baser flattery they receive; for they must be inwardly despised by all wise men.

The general obligations to an active life.¹²

In chusing a profession or business for life, regard should be had to these two things, the dignity or use of the business, and the probability of our succeeding in it. Tho' the nobler arts are more desirable in themselves, yet 'tis plainly necessary for mankind that far more hands be employed in the lower; and as a few hands are sufficient for the nobler arts, so there are fewer whose genius and circumstances promise success in them. Nothing is more uneasy to a man of any spirit, or sense of honour, than to be engaged in a charge or office for which he has not sufficient abilities; as he must be continually exposed to envy, and to

How we are to chuse our business or profession.

12. This corresponds to *Short Introduction*, I.6.4, where the background in Cicero's *De officiis* becomes particularly clear. Cf. Carmichael, *Natural Rights*, pp. 66–67.

just censures. 'Tis a man's own interest for his inward peace of mind and his reputation, rather to be placed lower than his merit and abilities, than to be set in a station too high for them. This folly or vanity of aiming at stations or offices too high for us, is also injurious to society; as the office will not be well discharged by us, and worthier men by our means shall be excluded.

The dignity of
certain profes-
sions or arts.

The dignity of arts or occupations depends on these two jointly, the use they afford to mankind, and the genius requisite for them. The profession designed to inculcate true principles of piety and virtue is always justly ranked among the most honourable on both accounts. The corruptions and depravations of the <115> best things may become most pernicious. Such is this office when it is abused to inculcate pernicious superstitions, to foment hatred and rancour about trifles, or made a step to ambition, avarice, or luxury; or an engine of tyranny and oppression.

Legislators, magistrates, administrators of justice, or such whose business it is to protect innocence against fraud and oppression, have honourable offices, both as they are exceedingly useful, and require great abilities. The military offices are honourable for the same reasons. But nothing is more detestable than when these employments are perverted to the opposite purposes, and are engines of tyranny, injustice, or cruelty.

On the same accounts the professions of the arts and sciences which afford sublime pleasures in theory, and great use in the practice, are justly honourable; such as mathematicks, natural philosophy and history, medicine, and others. The arts of sculpture, painting, drawing, musick, and elegant and magnificent architecture;¹³ tho' they are not subservient to the necessities of life, yet have always been reputable in civilized nations for the refined pleasures they afford, and the elegant genius requisite in the artist.

The lower mechanick arts are of great use in life, but they are not so much admired; because talents sufficient for them are more common. And yet men employed in them may be truly honourable in the highest degree for most eminent virtues. Of these agriculture has been gen-

13. GUL Ms., p. 290: "and . . . architecture" is an interlined addition.

erally most relished by the finest spirits, not only for its advantages, but also for its delightful contemplations, variety of sweet exercises, and innocent pleasures.

The probability of success in any profession or art¹⁴ depends on many circumstances. The advantages of fortune, the constitution of health, the authority of parents or friends, our opportunities, and, above all, the impulse of our genius. Fortune without genius never succeeds well: a genius often surmounts the opposition of fortune. In these conflicts our genius, tho' mortal, seems the victorious divinity, and fortune only a mortal, as Cicero[†] expresses it.

What gives
hope of
success.

We should always repute it as our business in the world, the end and purpose of our being, our duty to our kind, the natural use of the powers we enjoy, and the most suitable testimony of our gratitude to our Maker the parent of all good,¹⁵ to contribute something to the general good, to the common fund of happiness to our species.

The more special duties to particular societies in the adventitious states and relations, are the subject of the following book. <117>

* *Cicero de senectute*. c. 15, 16, 17.

14. GUL Ms., p. 290: "in . . . art" is an interlined addition.

† *De officiis*. l. i. c. 33. ["since the most powerful influence in the choice of a career is exerted by Nature, and the next most powerful by Fortune, we must, of course, take account of them both in deciding upon our calling in life; but, of the two, Nature claims the more attention. For Nature is so much more stable and steadfast, that for Fortune to come into conflict with Nature seems like a combat between a mortal and a goddess."]

15. GUL Ms., p. 290: "and the most . . . all good" is an interlined addition.

The extraordinary Rights arising from some singular Necessity.

Narrower
affections
must yield to
the more
extensive.¹

I. We have hitherto considered the common laws of nature, and the ordinary duties, partly discovered by some of these narrower affections of the social kind which are the immediate objects of approbation, and partly by the more extensive ones, which we approve in an higher degree. It was often observed above, that the more extensive affections are naturally designed to controll and limit the narrower, and that the heart can fully approve itself in its calmest reflections, when it has counteracted the warm motions of parental affection, pity, gratitude, friendship, in order to gratify some more extensive generous affection; tho' these narrower affections are in their own nature lovely, and the constant object of approbation when they do not interfere with any more venerable extensive affection. Now 'tis manifest to all men of understanding, who are not culpably deficient in the more extensive affections of soul, that many unusual cases may occur in which our counteracting the ordinary dictates of natural affection, pity,² gratitude, or friendship may in the whole of its consequences do greater good, and prevent greater evils, than adhering to them in those cases. Nay that adhering to them in those extraordinary cases may sometimes occasion greater evils to our country, or to mankind, than all the virtues <118> any one mortal can exert will ever repair: all which evils might have been prevented by our

1. Cf. *Short Introduction*, II.16.1.

2. GUL Ms., p. 291: "natural affection, pity," is an interlined addition.

receding in those extraordinary cases from the ordinary rule founded on these narrower lovely affections. 'Tis not conceivable then that in such cases any principle in our hearts can justify our sacrificing the most important and extensive interests of mankind to the smaller and narrower; or that upon reflection one could condemn himself for a contrary conduct, in following the most extensive affections, which the heart must more approve than any of the narrower, as they are aiming at a more important good. To suppose such a constitution of soul would be as absurd with a view to the publick system, as it would be in respect of the private system in point of prudence, if one approved himself in gratifying any trifling appetite such as thirst or itching, when this indulgence occasioned certain death, and thus defeated the grand selfish determination toward our own preservation and happiness.

To retain every amiable³ disposition of the soul which can give an entire self approbation, in our counteracting these narrower generous affections, 'tis enough that we feel all these narrower affections in their just proportion of strength, so that they could excite us to all wise and generous offices of compassion, gratitude, and friendship, tho' attended with great hazards or expences to ourselves, and could surmount our merely selfish passions; while yet they are subjected to the nobler and more extensive affections of the generous kind. To act the part which we are persuaded tends to the most extensive good, in opposition to all narrower interests,⁴ with an heart quite insensible to these amiable narrower affections, can scarce gain our entire approbation. Some lovely parts of the natural structure of the heart are wanting, and the beneficent office may in such tempers argue no great strength of the extensive affection: whereas when all the narrower kind affections are in their due strength, and yet a more extensive and venerable principle resolutely counteracts their motions, the soul seems in its natural order; and must

The narrower should not be suppressed but over-balanced.

3. GUL Ms., p. 291: "To . . . amiable" is an interlined revision of "To display every."

4. GUL Ms., p. 292: "all narrower interests" is an interlined revision of "the motives of these lovely narrower affections." On this and the following page of the manuscript there is a double pagination (288, resp. 289), presumably reflecting an earlier state of the work.

have an entire complacency with itself, as it feels every disposition within which it naturally approves, and that too in its proper strength.

How the special laws are discovered.⁵

II. For the further illustration of this subject let us recollect how it is that we discover the special laws of nature. We have no universal precepts enuntiated by God, in words, binding us in all cases where God does not by words declare some exceptions. The laws of nature are inferences we make, by reflecting upon our inward constitution, and by⁶ reasoning upon human affairs, concerning that conduct which our hearts naturally must approve, as tending either to the general good, or to that of individuals consistently with it. These inferences we express in general precepts: they are discovered to us sometimes immediately, sometimes⁷ by induction, when we see what conduct ordinarily tends to good. Now 'tis impossible for us to have all possible cases and circumstances in view, so that we could discern that the inference holds in them <120> all. We form our general rule or precept from what we see tends to good in all ordinary cases. But should we see that in some rarer cases a different conduct would in the whole of its effects do greater good than the following the ordinary rule in these cases also, we then have as good a law of nature preceptive or permissive to recede from the ordinary rule in those rarer cases, as we have to follow it in ordinary cases. These exceptions are parts of the law, as well as the general rule.

Two general precepts admit no exceptions.⁸

The two general precepts of piety to God, and promoting the general good of all, admit of no exceptions; as they present to the mind the immediate objects of the highest approbation. The second of these is the

5. Cf. *Short Introduction*, II.16.2.

6. GUL Ms., p. 292: "reflecting . . . by" is an interlined addition.

7. GUL Ms., p. 292: "sometimes immediately, sometimes" is an interlined addition.

8. Cf. *Short Introduction*, II.16.3. This is close to Carmichael's commentary on Pufendorf; see *Natural Rights*, pp. 71–72. The relevant passage in Pufendorf is *De officio*, I.5.18; in *Whole Duty of Man*, chapter 5 has been rearranged and largely replaced with text from *Law of Nature* II.6 (see editorial notes); in the translation by Silverthorne the chapter is true to the original. Hutcheson is here entering into a central discussion of which the main points are these: Grotius had maintained that in cases of extreme necessity the conditions for the contractual foundation for property as the means to relieve the need did not apply (were suspended); *War and Peace*, II.2.6. Pufendorf rejected this with a string of intricate arguments (*Law of*

foundation or ground of all the exceptions from the more special laws. We must not imagine or speak thus, “that a great necessity, or a publick interest, makes it lawful to sin, or to break certain laws of God and nature.” Such propositions contain contradictions in their terms. We say, that “such conduct as in ordinary cases would be vicious, and contrary to law, does in some rarer cases of necessity become good and lawful;” or that “these rarer cases are excepted in the general law.”

III. There are innumerable cases in which if we only consider the immediate effect, it were better to recede from the common rule; and yet the allowing a liberty to recede from it in all like cases would occasion much more evil by its remote effects, than the particular evils in adhering to the ordinary rule. These <121> are not the cases of necessity here intended. For instance. A man has made an imprudent bargain of greater detriment to himself than of advantage to the other party, and yet the other party inhumanly insists on it. In the immediate effect, it were better he did not observe his contract. But such cases happen so often, so many would use this plea upon trifling mistakes and inequalities, men would grow so careless in their dealings trusting to this redress, and so many vexatious disputes would arise, that all faith in commerce would be destroyed; not to mention the inward immediate dislike every man must have of such breach of promise, and such inconstancy, for every trifling interest. The performing therefore of what we contracted, according to the general rule, must be our duty even in these inconvenient cases, when the other party insists upon it; because of the greater remote evils which would ensue from violating such contracts.

Improperly
alleged cases
of necessity.

Where one asks us improper questions, where it were better that the truth were concealed from him; if our silence would discover it, and no true evasive answer occurs to us; did we only regard the immediate

Nature, II.6.6) in favor of the standpoint that extreme necessity could give a person a rightful power, similar to a perfect right, to take—also by force—the things needed; but at the same time the owner of these things had no more than an imperfect duty to supply them. The gap between the perfect right and the imperfect duty that was left by the law of nature could be closed by positive law making the duty of care perfect (*Law of Nature*, II.6.5). This was sharply rejected by Carmichael, and Hutcheson’s text implies the same criticism. For them natural law itself closed this gap.

effect, it might appear eligible to speak contrary to our sentiments. But the inward aversion we feel to falshood should of itself dissuade us from it upon such occasions; and the distant effects of allowing such liberty, for every smaller advantage, or to avoid any little inconveniences, are so pernicious, that we must condemn falshood on such occasions; since were it allowed, there would be such frequent use made of it that there would be an universal suspicion of all conversation, and all mutual confidence in it be destroyed. These therefore are not the intended cases of necessity exempting from the obligation of the ordinary rules.

When the plea
of necessity is
just.

This plea therefore is then only just, when the whole good effects of receding from the ordinary rule, whether immediate or more remote, are so great, and the evils ensuing upon our adhering to it in those rarer cases so pernicious, as will in all probability overballance all the evils to be apprehended from our counteracting the rule in this and such like rarer cases. Receding from such rules for every smaller present advantage, or for avoiding smaller inconveniences, must be very faulty. Such liberty, generally taken, would be highly pernicious, destroying all honesty and mutual confidence. But the case is otherways when men claim this liberty only for very great publick advantages, or for prevention of some extraordinary calamities. This liberty allowed or asserted only in cases of the utmost importance, will not be misapplied to every trifling private inconvenience, except through such unfairness and depravity of temper as would make one violate an acknowledged law of nature under such temptation, even without any tenet about these singular rights of necessity.

The several
rules admit of
exceptions
more easily, as
they are less
important.

IV. 'Tis plain here that some of the ordinary rules are of much greater importance than others; so that fewer cases can possibly happen wherein superior advantages can accrue to mankind from counteracting them. The more important any rule is, and the greater the evils are which obedience to it prevents, and which ensue from the counteracting it, the greater also must be those evils to be declined, or advantages to be obtained, which can justify the receding from it. Some rules are made so sacred by the moral feelings of the heart, and by their continual great importance to the publick good, that scarce any cases can happen in which departing from them can occasion in the whole superior advantages to mankind; or, which is the same thing, some laws of nature admit no exceptions. But other laws are only morally universal, holding in all

ordinary cases, but admitting some exceptions. To deny all exceptions, upon pleas of necessity, contradicts the sense of mankind. In some laws of less importance to the good of men, pleas of necessity are allowed valid by all. As we ascend to more sacred and important laws, the matter grows more doubtful whether any necessity can found a just exception.

'Tis an ordinary law that "no man should use or destroy any part of another's property without his consent." Suppose a good man flying from a murderer, from whom he cannot escape on foot: he sees a neighbour's horse, but the neighbour is absent, or is so inhuman as to refuse the use of him. The taking his horse in such a case is justifiable, tho' the beast should be spoiled, or killed. A populous city or country is endangered by the failing of a dam or dyke, and <124> the lives as well as the fortunes of thousands of innocents are at stake. There is store of timber fit to support and repair it, at hand; but the proprietor is absent, or refuses the use of it, and the danger is immediate, allowing no time to obtain materials elsewhere: 'tis no crime to disregard property in such cases. The immediate feelings of our hearts justify it, as well as a compassionate regard to a greater good.

Examples of these cases.

We must never, indeed, extend this pretence further than the real necessity extends. The *primary right* of the proprietor in the cases above-mentioned, must yield to a great necessity; but his *subsidiary right* to compensation of the loss he has sustained for the sake of others, may remain when the necessity does not extend to it. They are obliged, as far as they can, to make full compensation, who are saved at his expence.

This plea exempts not from obligation to compensate damages.⁹

V. 'Tis vain to justify such steps only by some **eminent rights* of civil governors over the goods of subjects. The pleas of necessity have the same just foundation in natural liberty, upon some plain tendency to

This plea not peculiar to civil polity.

9. Hutcheson clearly derives material from Pufendorf, but the latter follows a clearer sequence of argument. Having established criteria for when necessity permits breach of law, and when such breaches are injurious, the next step is to consider grounds for reparation of injury. This is the topic of *Law of Nature*, III.1.2–II, and *Duty of Man*, I.6.3–10; cf. Carmichael's comments, *Natural Rights*, pp. 73–74.

* *Dominium eminens*, or as others more properly call it, *Jus imperii eminens*. [Grotius calls it *dominium eminens*: *War and Peace*, I.1.6, II.14.7 (directly relevant here), III.19.7; similarly Pufendorf, *Duty of Man*, II.15.4, *Law of Nature*, VIII.5.7. *Jus imperii eminens* was the common phrase in ancient literature, and Hutcheson explains below, III.5.6, why it is the more proper expression, namely that these powers "are not confined to the matters of property only."]

some important interest of mankind. The right of magistrates is founded only in this,¹⁰ that the execution of the rights of the people in such urgent necessities is committed to them, as is also the violent defence and prosecution of all their other rights: from which none can infer that all right of violent defence or prosecution is derived from civil polity. Were there no justifying pleas of necessity in natural liberty, there is no accounting for this eminent right of magistrates in civil polity.

Some higher
cases, as to
property.

Come to higher cases. A ship loadened with provisions and ammunition comes into the port of a city unjustly and cruelly besieged, where a massacre is intended by the besiegers; suppose the citizens almost perishing with famine and wanting military stores, and having neither money nor goods which the merchant would take for his grain or ammunition, whereas he can get an high value from the besiegers. Must the townsmen here regard his property, and expose themselves to perish with their families, either by famine, or a massacre; nay perhaps expose a whole nation to the most cruel slavery? No certainly. They may justly take these goods by force, tho' there be the greatest hazard that they shall not be able to compensate their value; since if the city is taken, they are all ruined.

And life.

'Tis a sacred law of nature not to take away the life of an innocent man, or exclude him from any method of self-preservation in his power; suppose I know that a man just landed is infected with the plague, and furious; that he is running into a throng assembly, that I know not their language to warn them. I can preserve the lives of thousands by shooting this man, who yet may possibly recover. Can this be a crime, if there was no other way of preserving thousands of innocent men and their families from the infection that is so generally fatal? Laws prohibit under pain of death any person to come ashore from a ship that came from an infected place. Some of the crew may be infected, and yet others remain perfectly sound, who might be entirely safe were they allowed to come ashore. Upon the very suspicion of this danger they are often kept aboard, and exposed to perish by the infection. In an overloaded boat not only goods are thrown over board without the consent of the pro-

10. GUL Ms., p. 295: "is . . . this" is an interlined addition.

prietors, but innocent men too, while yet none can demonstrate that the boat with this over-charge could not possibly come safe to shore.

May not a singular necessity supercede the common rule of veracity Veracity. too. Suppose a Genghiscan, or any such Eastern monster, resolved on the massacre of a whole city if he finds they have given any protection to his enemy, and asking a citizen in whom he confides about this fact, whether his enemy had ever been sheltered by the citizens; and that by deceiving the monster, he can preserve the lives of hundreds of thousands, and of their innocent babes; whereas telling him the truth shall occasion the most horrible slaughter: could a wise man's heart reproach him justly for breaking through the common law of veracity, and conquering the natural impulse toward it, upon such strong motives of humanity? Nay who blames Tullus Hostilius, or Eumenes, for deceiving their own soldiers, when it was the only probable means of their safety, and the safety of their country?¹¹ Had either of them declined this step when suggested to them by one of their counsellors, they had justly been charged with too high and superstitious an attachment to one species of morality, and that not the supreme one.

Suppose a just prince defeated by an inhuman brutal usurper, and flying with his family and the bravest men, the only hope of the state; and that they get into an house near the sea whence they hope presently to make their escape; and that the usurper, seeing another party fleeing past that house, asks one whom he takes for a friend to his cause, who yet is secretly faithful to his prince and the liberty of his country, whether the prince be fled into that house? To hesitate, or be silent, on such an occasion discovers the whole truth. But his speaking contrary to his

11. Tullus Hostilius was according to tradition the third king of Rome (673–642 BCE). In an episode in the wars of the Romans against the Etruscans, Tullus gave a bogus order to his army that the enemies overheard and which led them to withdraw, thereby exposing themselves to defeat. The story is told in Livy, *History of Rome*, 1.27. "Eumenes" is presumably a reference to Eumenes of Cardia (c. 362–316 BCE), the secretary to Philip of Macedon and Alexander the Great, who, in order to gain precedence over his rival Peucestes as a general, constructed a false letter to boost his popularity with the army fighting to keep the empire together after Alexander's death. The episode is described in Diodorus Siculus, *Library of History*, XIX.23.

knowledge may preserve the only remaining hopes of a nation. Can this too be criminal?

'Tis ordinarily a crime in a subject, or in any private man, to kill his fellow-citizen, tho' a criminal, without a trial. Shall we therefore condemn the glorious action of Timoleon?¹²

'Tis horribly criminal in ordinary cases to tempt any man to perjury, or breach of faith. But how generally do we justify the corrupting the secretaries, or confessors, of hostile princes to betray the secrets of their masters, when the safety of our country requires it; or when we can by such means prevent much effusion of innocent blood?

The reasons on
the contrary
side.

VI.¹³ 'Tis surprizing upon what principles some divines have denied all these extraordinary rights of necessity. "The common rules or laws of nature, say they, should always be observed, whatever evil may <128> ensue: nor can the highest prospects of advantage justify our departing from them in our conduct." They argue as if certain propositions had been ingraved by God on some pillars,¹⁴ telling us what we are to do in all possible cases, with strict prohibitions of deviating from them in any case, unless where God, by some verbal propositions, had made

12. Timoleon, a Corinthian general, conspired with friends to kill his brother in order to prevent him from governing the city as a tyrant. The event (c. 365 BCE) is recounted, for example, in Diodorus Siculus, *Library of History*, XVI.65; and Plutarch, *Lives*, Timoleon, V.

13. Hutcheson could have had many divines in mind at the beginning of this section, but the two passages within quotation marks suggest that he aimed at George Berkeley in particular. Although not direct quotations, the passages and the rest of Hutcheson's formulation summarize several passages in Berkeley's pamphlet *Passive Obedience* (1712, 3rd ed. 1713), e.g., secs. 9, 26, 30, 31. In the rest of this chapter Hutcheson takes up central points in his critical attitude to the orthodox clergy in the Scottish Kirk. These ideas were well known in his teaching, and in 1738 this led to a public controversy. A former student, Hugh Heugh, severely attacked Hutcheson's moral philosophy and its religious implications in an anonymously published pamphlet: *Shaftsbury's Ghost conjur'd: or, a letter to Mr. Francis Hutcheson* (Glasgow, 1738). This was immediately answered in another anonymous pamphlet, *A Vindication of Mr. Hutcheson from the Calumnious Aspersions of a Late Pamphlet by Several of His Scholars*, namely fourteen very close allies of Hutcheson (Glasgow, 1738). For the two pamphlets, see Hutcheson, *Correspondence and Occasional Writings*, pp. 292–337 and 340–60.

14. This invocation of Jeremiah 17:1 is also in Berkeley, *Passive Obedience*, sec. 12.

exceptions; and ordering us to commit the event to God without reasoning about it, while we keep to the letter of the law. Nay some tell us that “we know not all the remote effects of actions: such as appear to us of good tendency may in the whole have pernicious effects; and those may have good effects in the whole which appear to us of the most hurtful tendency.”

But they should either shew us these verbal propositions thus revealed; or if they cannot, they should consider how we come to know these ordinary rules or laws of nature. ’Tis no other way but by the feelings of our hearts and¹⁵ judging about the tendencies of actions. If our incapacity of judging about the distant effects of actions should preclude all pleas of necessity; it will also preclude all our ordinary reasonings about the tendency of actions, by which we discover the ordinary laws. We should not take upon us, antecedently to revelation, to form any conclusions as laws of nature; but follow every particular affection or kind passion, which we naturally approve, such as pity, gratitude, friendship, at all hazards; without considering its distant effects, about which, they argue, we are not competent judges. The truth is, we must <129> follow such probabilities as the constitution of our nature and our closest attention can suggest to us, both in settling the ordinary rules of life, and in determining the exceptions in some rarer cases. For ’tis only by our reasonings about the tendencies of actions, and these sometimes pretty remote, that we arrive at these conclusions which we call the ordinary laws of nature.

These
examined.

VII. Revelation cannot exclude these pleas of necessity, as we have no collection of precise rules with orders always to adhere to them contrary to all appearances of publick interest. Its precepts, except a few which relate to positive institutions, and some points not knowable by the light of nature, presuppose the law of nature, and the rights and duties of men to be known, or to be discoverable by other means, with all the limitations and exceptions. The origin, nature, and extent of the several rights are not explained in revelation; nor does it tell us when such a right or duty takes place of another. It presents the warmest recommendations,

These pleas
not excluded
by revelation.

15. GUL Ms., p. 297: “the . . . and” is an interlined addition.

and the strongest motives to the several virtues, and the most powerful dehortations from vice: but the several virtues and vices are only denoted in general by their common names, presupposed to be previously known in their true nature and extent.

Revelation
presupposes
the law of na-
ture as known.

The case is plainly thus. Our reason shews what actions tend to the publick good; these we judge lawful; and when they flow from the kind affections of the soul we approve them and call them virtues, by certain settled honourable names. Contrary actions, <130> or some of the same general class with the former, but in different circumstances, tend to the publick detriment, and shew a bad temper in the agent; we disapprove them, and give them the odious names of vices. 'Tis the proper office of that reason God has given us, to observe these tendencies of our dispositions and actions,¹⁶ and to reduce them to their proper classes. Thus we can settle the meaning and the extent of these terms, *justice, mercy, charity, liberality, temperance, fortitude, succour, self-defence, execution of justice on criminals, defence of our country in war*. These are names of virtuous or innocent dispositions and actions. *Cheats, frauds, avarice, cruelty, drunkenness, gluttony, cowardice, treachery, robbery, stealing, murder*, are well known names of vicious dispositions or actions. The Scripture presupposes these names as known or knowable in their just extent and meaning; and by the strongest motives exhorts to all the virtues, and deters from all vices, without descending to any explications of them in their extent and restrictions, which are otherways discoverable.

Without it,
would be
useless.

Abstract from this previous knowledge by reason and reflection, the Scripture precepts would be of no use to us, as they are of none to idiots. *Thou shalt not kill*. All killing is not prohibited, 'tis only *murder*. Now where is the Scripture-definition of *murder*? 'Tis our reason must shew what is the lawful, and what the unlawful killing; the lawful, is in self-defence, in just war, in the execution of criminals: and the same reason will shew some extraordinary cases <131> wherein it may be just, for the defence or recovery of all the valuable rights or liberties of a nation.¹⁷

16. GUL Ms., p. 298: "our dispositions and actions" is an interlined addition.

17. Berkeley, *Passive Obedience*, sec. 32, argues (inter alia) that justifying exceptions to the general moral law "Thou shalt not kill" by referring to the common

Thou shalt not steal is another precept. It does not prohibit all taking either by violence, or secret means, what was sometime possessed by another; 'tis only taking away what another has a right or property in. 'Tis our reason again must teach us the origin, the nature, and extent of property; and it will shew us too that property must often give place to some great publick interests. *Lye not to each other*, is another precept. But what is a lye? how defined? 'Tis not every speech which the speaker foresees will lead the hearer into a false opinion; not every sentence which is false in its most obvious meaning. Our Saviour often spake in this manner. 'Tis our reason again that must shew us what sort of speech hurts society and what not; and when it is that some extraordinary cases may justify receding from the common rule. Without having previously fixed the notion of these duties, and their proper limits, the above-mentioned precepts amount to no more than these vague undetermined sentences, "Take not away the life of another when you should not take it away. Take nothing out of the possession of another, when he should still possess it, or has a right to it. Do not deceive by speech when it is wrong to deceive." What are these precepts, without the aid of moral reasonings?

Revelation was given to rational agents previously made capable of knowing the rights of men, and the tendencies of actions to the good or hurt of their fellows, or of society, and determined to approve what was beneficent, and to condemn the contrary. It was enough, as to our social duties, that every thing virtuous and kind should be enforced in general by revelation with the strongest motives, and with the divine authority; and some such special laws given, the use of which to a social life the common reason of honest men would not soon have discovered.* It was not proper that our sloth in cultivating the powers God had given us should be encouraged by a revelation, or that we should be treated as children or idiots, who could discover nothing by themselves.

good is spurious because in this law "kill" means "murder." As indicated by the title, Berkeley's pamphlet is a criticism of the "rights and liberties of a nation."

* The enemies of revelation have triumphed foolishly on this subject; and some of its friends have defended it injudiciously, by ascribing to it what is not its business.

A vague
maxim
examined.

These pleas of necessity some would exclude by a maxim of late received. *We must not do evil that good may come of it.*¹⁸ The author of this maxim is not well known. It seems, by a passage in St. Paul, that Christians were reviled as teaching that since the mercy and veracity of God were displayed by the obstinate wickedness of the Jews, they should continue in sin that this good might ensue from it. He rejects the imputation upon his doctrine, and hence some take up the contradictory proposition as a general maxim of great importance in morality. Perhaps it has been a maxim among St. Paul's enemies, since they upbraid him with counteracting it. Be the author who they please; the sentence is of no use in morals,¹⁹ as it is quite vague and undetermined. Must one do nothing for a good purpose, which would have been evil without this reference? 'Tis evil to hazard life without a view to some good; but when 'tis necessary for a publick interest, 'tis very lovely and honourable. 'Tis criminal to expose a good man to danger for nothing; but 'tis just even to force him into the greatest dangers for his country. 'Tis criminal to occasion any pains to innocent persons without a view to some good: but for restoring of health we reward chirurgeons for scari-fyings; burnings, and amputations. But, say they, "such actions done for these ends are not evil. The maxim only determines that we must not do for a good end such actions as are evil even when done for a good end." But this proposition is identick and useless, for who will tell us next, what these actions sometimes evil are which may be done for a good end? and what actions are so evil, that they must not be done even for a good end? The maxim will not answer this question; and truly it amounts

18. Cf. Romans 3: 3–8: "But if our unrighteousness commend the righteousness of God, what shall we say? *Is* God unrighteous who taketh vengeance? (I speak as a man) God forbid: for then how shall God judge the world? For if the truth of God hath more abounded through my lie unto his glory; why yet am I also judged as a sinner? And not *rather*, (as we be slanderously reported, and as some affirm that we say,) Let us do evil, that good may come? whose damnation is just." This issue is discussed at length in the pamphlet war; see, e.g., *Correspondence and Occasional Writings*, pp. 292–337 and 340–60.

19. This turn of phrase is nearly identical to one that the former student Hugh Hough attributed to Hutcheson in lecturing, see *Correspondence and Occasional Writings*, p. 335.

only to this trifle; “you ought not for any good end to do what is evil, or what you ought not to do; even for a good end.”

VIII. The main difficulty is how far can this plea be extended? It cannot be refused in many ordinary laws about property and our common labours. Nay it may found exceptions to some of the general laws of nature about the preservation of life. But what are these laws which admit of no such exceptions? This is one of the *desiderata* in morals, and must probably remain so till our knowledge grows more perfect in some higher state. <134>

The difficulties about the extent of this plea.

Many moralists allow speaking against our sentiments in some extraordinary cases. What if a bare false assertion will not attain the end, suppose the preservation of our country, may we employ perjury also? Men of any sense of piety abhor perjury upon any pretence of the highest necessity. The statesman allows it lawful to bribe the secretary of an hostile prince to violate his oath of fidelity by betraying his master's secrets; what if we cannot otherways save our country than by bribing him to poison or assassinate his master? Even the statesman cannot defend this practice. A manifest tyrant or usurper may be cut off by any private man: here killing is no murder. But may he accomplish this design by oaths of fidelity, by all professions of friendship, by the dark arts of poison amidst the unsuspecting pleasantries and friendship of an hospitable table? This must shock the greatest lovers of liberty. We may deceive a dangerous enemy by false narration, say many; may we not, when the safety of our country absolutely requires it, deceive also by a treaty, or truce? The laws or customs of all civilized nations deny it.

It may be impossible to determine precisely how far we may extend this plea in all the possible cases. Men no doubt may often mistake, and upon smaller necessities may violate laws too sacred to admit exceptions in such cases. But this does not prove that the plea is never just. Men often make like mistakes about the rights of violent defence and prosecution, and that of punishing criminals: but we do not thence deny <135> these rights altogether. There is no fixing minutely the degrees of force requisite in defence, or the degrees of pain to be inflicted on criminals. 'Tis still an useful rule for health to live temperately and use exercise; and yet no man can determine to an ounce, the quantity of food he should

take, or to a perch, the length of the road he should walk or ride for his health. Nay some deviations from this regularity are sometimes consistent with health, or may even improve it.

Allowing some
such pleas does
not destroy all
confidence in
men.

If one departs from the ordinary law for trifling causes, abusing this plea of necessity, his own heart must condemn him upon reflection, and all men distrust his integrity. This plainly shews that the evils to be declined, or the advantages in view, must be very great, in proportion to the importance of the law, which can found any exception to it. But when one departs from the ordinary law only in great and manifest exigences, and is known to adhere religiously to the law in all ordinary cases, even contrary to some considerable interests of his own, men will have as full confidence and trust in his integrity in all the ordinary affairs of life, as in those who have stricter tenets in theory. A man of the strictest tenets in opinion, unless he is also known to adhere religiously to them in practice, may incur this suspicion that he will counteract them upon any great temptation: and if he who allows the plea of necessity in cases of singular importance, shews a strict regard to the ordinary law by his practice in all ordinary cases, even when attended with many private inconveniences to himself, he will obtain the confidence of mankind notwithstanding this tenet. We know that men of sincere virtue will be cautious of abusing this plea for any little private advantages; and we can trust their candour in this matter. And men of little virtue will counteract the strictest tenets upon any prospects of advantage. So that we do not confide in men according to the strictness of their opinions, but according to our experience of their honesty.

The allowing some pleas of necessity does not shake loose all morality, as some have alledged. All agree that that conduct is right which tends to the greatest good. 'Tis also agreed what conduct tends to the general good in all ordinary cases; and thus the several laws of nature are undisputed. In some rarer cases, 'tis also generally allowed there are some just exceptions, in which receding from the common laws will do more good than adhering to them. There are some more sacred laws, from which, we doubt if any necessity can justify our departing. This uncertainty does not make the other points uncertain. Geometry is not made uncertain, because the learned know not how to square a circle geometri-

cally. The rules of medicine are not all uncertain, because some singular diseases occur for which there is no cure. Nor is navigation a vain art, because we cannot find out the longitude with that accuracy we desire.

IX. Take the following remarks to prevent abuses of this plea. 1. The more virtuous any man is, and the <137> higher his sense is of all moral excellence, the less apt he will be to abuse this plea in matters of too small importance, or for any interest of his own. In such men there are not only the more extensive affections to mankind, or to large societies, but all the tender social feelings and affections of the heart of a narrower kind, and these also are objects of their inward approbation. They have a just relish of all virtuous affection and action; of compassion, mercy, gratitude, veracity, friendship, and cannot counteract them without great reluctance. From these feelings they will be sufficiently cautioned and restrained from using any contrary pleas, unless some interest of the greatest and most extensive kind rouse the more extensive affections to controul the narrower, by their superior beauty and dignity.

General remarks to prevent abuses.

2. In computing the advantages and disadvantages of receding from any ordinary rule, we must consider not only the immediate effects, but even the most remote, of allowing this liberty in all like cases; and even the dangers from the mistakes of others in using the like plea in unlike cases. Not that every practice, or tenet in morals, is wrong or dangerous which men may readily imitate, or misapply, in improper and unlike cases. This may be the fate of the very best actions, and tenets. But a good man, as he weighs all the advantages expected from an unusual step, must also weigh all the disadvantages probably to ensue even by the mistakes of others, especially of such as have some sense of virtue: and he will decline to take <138> not only such liberties as would be pernicious to the publick if all men took them in like cases, but also such as would have the like bad effects by the misapplication of others in unlike cases, unless the advantages expected from them overballance even these evils ensuing upon the misapplication of them by others. Men often abuse the doctrines of violent defence and prosecution. A good man would decline practising according to them, were not the advantages ensuing from the use of these rights, and the evils prevented by it, so great as to overballance the evils arising from the abuses of these doctrines

in common life. When the plea of necessity is only allowed in cases of very great importance, there is little danger that men of virtue will frequently misapply them. And the gross misapplications by vicious men are not to be computed; as the same effects had happened tho' this tenet had never been known. Such men would have acted the same part under temptation, tho' they had held the strictest opinions, and had no such unfair pretext of necessity.

3. The more important any law is for the internal or external happiness of mankind, the greater must that utility or necessity be which in any singular cases can justify an exception from it.

4. A publick advantage in view, or the prevention of some publick evil, is a more favourable plea than any private advantage of the agent. It shews a noble disposition to adhere to the ordinary rules under private losses, or in opposition to private interests, even <139> when receding from the rule could scarcely have been reputed criminal. But where a publick interest is at stake, and founds a just exception, a good man is not at liberty to sacrifice it to any false notions of his own honour or character. He must be deficient in his extensive affections, or mistaken in his moral notions, if he follows in such cases some lower species of goodness in opposition to the publick interest.

5. Tho' in cases of necessity men may intermit external worship at the usual times, yet no necessity can justify such actions as evidence impiety, or contempt of the Deity; such as blasphemy, perjury, or abjuring the true God, or that worship we believe acceptable to him; or *the omitting any duty he has specially enjoined upon us at all hazards; or the doing, or omitting, any thing required as a symbol of our renouncing our duty to him.

6. As the foundation of all just pleas of necessity is some great publick interest requiring our departing from the common rule, no necessity pressing me can justify my voluntarily occasioning as great evils to an equally innocent man; as the publick reaps no advantage by such conduct. But the publick interest is really promoted, when an innocent man

* Thus the apostles or primitive martyrs could not plead necessity, had they omitted the publishing the gospel for fear of persecution.

saves himself from some great evil by some small damage done to another. In like manner; no society or state can be justified by these pleas in occasioning equal evils to another without any demerit. In these cases indeed the probabilities on both sides must be computed, both as to the impending evils, and the future compensations to be obtained. To avoid a very certain evil on one side, it may sometimes be lawful to do what may possibly occasion an equal evil to another, when there is little probability that the other shall suffer at all by it. But all such damages done to others for our preservation from greater, oblige us to make full compensation when we are able. The great probability or certainty of our making future compensation justifies many steps which otherways would have been unwarrantable.

But after all we can suggest on this head, unless something more precise and accurate be discovered, we must have recourse to the inward feelings of an honest heart. A sense, which Aristotle often tells us, must make the application of general principles to particular cases; and thus the truly good man, and his sentiments, must be the last resort in some of these intricate cases.²⁰ Men truly virtuous will seldom be in danger of abusing these pleas. And no rules or rigid tenets and opinions will bind the unjust, the covetous, the ambitious, or selfish, or bigots in false religions. If they allow the pleas of necessity in important cases, they will misapply them. If they do not allow them in opinion, they will counteract in practice those very laws which they deem strictly universal without any exceptions. <141>

The sense of a good and wise man must be the last resort.

20. See Aristotle, *Nicomachean Ethics*, VI, esp. 1140a24–1140b30.

How Controversies should be decided in Natural Liberty.

Before we pass to the duties of the adventitious states, we may consider how contraversies should be decided, and peace maintained, in natural liberty, when men disagree about the point of right; and this will shew the main use of civil polity, and the first step toward it.

The great use
of arbitrations.¹

'Tis well known that self-interest often byasses the judgment even of good men, whose fixed purpose it is to observe all rules of justice and humanity, and to abstain from all known injuries; and violent passions have often the same effect. Thus men, in the main good, may be disposed, from different opinions of right, to do what is injurious to each other; nor are they capable, when their passions are once kindled, of receiving conviction from those against whom they are provoked: they grow mutually suspicious, and are unfit monitors to each other. When therefore no friendly conferences of theirs can make them agree, the next natural recourse is to one or more *arbitrators*; persons of whose wisdom and integrity both sides are satisfied, and who have no peculiar interest in the success of either side, nor are attached to either by any very strong ties. Such men, tho' but of equal prudence with that of the contending parties, will more easily discern what is just and equitable between them; and therefore all good men in natural liberty, nay in civil polity too, should be ever ready to take this easy expeditious method of obtaining justice in any debated point. And all good men, when they

1. In the *Short Introduction*, the discussion of arbitrations is at II.17.2.

are disengaged from more urgent affairs, should be ready to do this good office, in promoting peace and justice as arbitrators, when they are invited by the parties.

II. Two sorts of debates may arise: one about the *strict point of right*, where neither party professes to shew any liberality or gratuitous favour, nor claims it; but each insisting on their perfect or external rights, and embarrassed by some intricacies, want the assistance of wise impartial men. The other sort is, where the parties wave their external rights, and are willing to act the humane and equitable part as far as their affairs can allow; and leave this to be determined by arbitrators. In cases of this latter sort, arbitrators will find much less difficulty: but in both 'tis necessary that they know the perfect rights and claims of both sides, and all exceptions against them; that in the former sort they may fix the perfect or external right; and that in the latter they may discern what equitable indulgence or abatement is to be made to either party. In the debates of strict right they are much more confined in their determinations, and obliged to insist on stricter proof; since a defect of full proof may reasonably defeat a claim not founded in humanity and equity. But in the other sort of submissions, the arbitrators have full room to consider every equitable circumstance, and every reason of humanity. A truly good man who confides in the integrity of the arbitrators will ever agree to submissions of this equitable sort.

Two sorts of arbitrators.

The submission of the parties should always be absolute as to the matters submitted. A man is not obliged to submit all his rights, even such against which there is no shew of a claim. But over such as he submits he should give full power to the arbitrators. A compromise of this kind, that "the parties shall stand to the award provided it be just," answers little purpose; as the parties reserve to themselves to judge of the justice of the award, the matter remains as before, only that they know the opinion of unbiassed men about it, which modest men may sometimes regard. But to end a debate effectually, the compromise should be absolute as to all matter submitted. And yet after the most absolute submission, either party may justly refuse to acquiesce in the award, if either a fraudulent compact with the other be discovered, or any bribe received; or if the iniquity of the award be so gross as of itself to be an

The compromise should be absolute.

evidence of corruption in the arbitrators to any honest observer. These circumstances may free one from the obligation of a compromise, as a case of necessity supersedes the obligation of the ordinary rules of life.

Why one
witness never
sufficient, and
more than two
not requisite.

III. Arbitrators in their proceedings, when other proofs and documents fail, such as the acknowledgments of the parties, deeds, or contracts signed by them, must have recourse to witnesses testifying upon <144> oath. The characters of witnesses, and their disinterestedness in the present cause, must be observed by arbitrators as they are by civil judges. What is now received by almost all civilized nations about witnesses must hold in natural liberty, that 'tis dangerous to trust any point of importance to the testimony of one witness; and yet the credibility of testimony requires not great numbers. Two unexceptionable witnesses can give sufficient confirmation of any fact, when they shew such sagacity, and had such opportunities of knowledge, that they could not be deceived themselves; and when from their circumstances we are well assured that they have no disposition to deceive others. The knowledge of such witnesses as were invited to the transaction by the parties, or who were present during certain actions, may easily be ascertained. Their fidelity or having no inclination to deceive must often be collected from many circumstances, and chiefly this, that they can have no interest in deceiving, or no prospect of success in such a design.

Now two witnesses to the same fact may give very high security as to this last point. One man of sagacity and presence of mind may forge a story so artfully and consistently that no examination can detect him, or make him contradict himself. But when two witnesses are separately examined, and hear not each others testimony, about every circumstance which would probably be observed by one present at any transaction, 'tis highly probable that some such circumstances will occur to the judge or arbitrator to question <145> them about, which did not occur to the witnesses in their forging any concerted falshood. If the witnesses answer several such questions separately about these circumstances, there is a fair hazard that they will contradict each other in every one of them, and so detect their falshood. If they both frequently declare that they are ignorant about many such circumstances, or both profess that they forgot the same circumstances, they give great cause of suspecting a

forgery. But when upon the most minute separate examination of them about all these circumstances their testimonies wholly agree, or are perfectly consistent, there arises a very high evidence. The addition of one or two more witnesses could give little more credibility to the fact. Nor do human courts ordinarily require more: it is certainly a right maxim not to² judge upon smaller evidence where greater is provided or attainable; and yet it might be a great burthen upon the parties to be obliged to produce many witnesses. They therefore require, except in some specified cases,³ only two as necessary to found their judgment, nor require that more should be called by the parties as witnesses in their transactions. The testimony of one man of veracity may make any matter highly credible to those who know his character, and yet to admit this as full proof would be a dangerous rule, considering how often men who have long obtained a fair character have at last been discovered to have no steady integrity. And if the single testimony of one is admitted in one case, it cannot be refused in others, <146> without proof made of something very infamous in the witness whose testimony is refused. And frequently such proof cannot be found against men of very little worth or integrity.

IV. When neither the conferences of the parties, or the interposal of common friends can end the debate, or persuade both to a submission to arbitrators, there remains, in natural liberty, no other method of redressing wrongs but by violence. As this is always attended with dangers, and may have most pernicious consequences; all other means of obtaining justice, where the nature of the case will admit,⁵ should first be tried. When these prove ineffectual, one should not only procure the assistance of his friends, or such whom indignation at the wrong done may rouse to his aid, but he should consult the calmest and wisest of his neighbours, not under any special attachment to himself, as to the methods of defence, or prosecution of his right, or the punishment to

The last resort in natural liberty, is force.⁴

2. GUL Ms., p. 307: "it . . . to" is an interlined revision of: "as they don't [illegible] to."

3. GUL Ms., p. 307: "except . . . cases" is an interlined addition in a different hand.

4. Cf. *Short Introduction*, II.17.4.

5. GUL Ms., p. 307: "where . . . admit" is an interlined addition.

be inflicted on the invader of it for the deterring of others from like attempts; that thus all unnecessary severity may be prevented, and no more demanded or inflicted than is justly due to the injured, or requisite for the general safety.

The danger of violent defence and prosecution shews the necessity of civil polity.

The dangerous consequences to be apprehended from the immoderate passions of men in the defence and prosecution of their rights by violence in natural liberty,⁶ where the unjust will rouse all their forces, and engage all their friends to their assistance in support of their injuries, as well as those who have <147> the just cause, have probably been among the first motives which excited men to contrive civil government, and arm magistrates and judges with sufficient power to enforce all their sentences about the contraversies of the subjects, and to inflict proper punishments upon the injurious, to deter them and all others from like attempts for the future.* Of this we treat in the next book.

THE END OF THE SECOND BOOK. <149>

6. GUL Ms., p. 307: "in natural liberty" is an interlined addition.

* As some rules of interpretation may be of use in determining the true intent and meaning of contracts, as well as of laws, many authors on moral philosophy subjoin some dissertations on that subject. But as there are no rules of interpretation peculiar to contracts, or laws, which do not hold equally about any other sorts of speech or writing, it seems better to leave them entirely to the art of criticism, which may have laws and contracts as a part of its object. Nor can much be suggested on these matters which would not of itself occur to any man of sound understanding who knew the language and customs of the country where the laws or contracts are made, and the common principles of criticism. [Hutcheson makes the same point in *Short Introduction*, II.17.3, but nevertheless includes a brief version of Pufendorf's rules of interpretation in *Duty of Man*, I.17; cf. *Law of Nations*, V.12; Carmichael, *Natural Rights*, pp. 121–23; Grotius, *War and Peace*, II.16.]

❧ BOOK III ❧

Of Civil Polity.

Concerning the adventitious States or permanent Relations: and first, Marriage.¹

I. The rights and duties founded in nature previous to any adventitious states or lasting relations introduced by some institution, contract, or deed of men, were considered in the former book. The most part of these rights and duties must still remain in all adventitious states; but they are so limited as the nature of the new relations may require for the publick good; and many new obligations are constituted by our entring into these relations. We proceed to consider the principal of these adventitious states, and the special rights and duties arising from them.

Duties in adventitious states.

These states and relations are either *domestick* or civil. The domestick are these three, of *married persons*, of *parents and children*, of *masters and servants*. The civil or political relations are either the general one of all citizens or subjects toward the state, and its governors; or the more special relations of men in certain political offices. <150>

These domestick or civil.

II. The first relation in order of nature is marriage. The several tribes of animals must soon have been extinct if nature had not providently implanted in them all the instinct and power of propagation. The nature

The necessity of a marriage contract.

1. This chapter corresponds closely to the chapter on marriage in the *Short Introduction*, III.1, which again follows Pufendorf, *Duty of Man*, II.2, in all the main points. Pufendorf, *Law of Nature*, VI.1 offers a very detailed analysis with a wide range of historical material. For Carmichael's comments on Pufendorf, see *Natural Rights*, ch. 14. Grotius deals with marriage in *The Rights of War and Peace*, II.5.8–16. The basic theme of the natural lawyers' discussion is to what extent, if any, the forms of marriage are prescribed by natural law; or, what limits, if any, natural law puts upon positive law in this regard.

of the several instincts in brutes is various, according to their several circumstances. As in most species their young need but little care of their parents for their preservation, and that of but short continuance, and but little instruction for the simple purposes of their lives, both which the dams can sufficiently afford them, little more was requisite than the mere instincts to propagate and to provide proper food, and nests or dens for their young where it was requisite, till they attained sufficient strength to support themselves. In some few species we discern something more, a sort of partnership of the two parent-animals, with some appearances of a lasting affection and fidelity. But the preservation of human offspring, and the giving it the education necessary for the higher purposes of a rational life, require a long, a constant, and troublesome attendance of many years, for which the mother without the aid of the father is not at all sufficient: (we speak of the general condition of mankind, to which the natural instincts must be accommodated, and not of the state of a few artificially raised to higher wealth:) and on the proper education of offspring the happiness of mankind exceedingly depends. No part of nature displays the goodness and wisdom of its author more fully, than the contrivance of the several instincts and passions in mankind subservient to this <151> grand purpose. A careful attention to the frame of our nature in this respect,² will clearly shew our duties in this relation of marriage.

From natural
dispositions.

We have all attained to the knowledge of what is intended by nature in this instinct of propagation, before those years in which it arises; and a natural modesty or shame generally restrains us from gratifying it for some time further. We must also have observed that a long series of careful and troublesome attendance is absolutely necessary for preserving and educating the offspring; and that for this purpose nature has implanted that tenderest and most lasting parental affection in both parents, as their joint assistance is highly necessary. As this affection sweetens this labour to both, so it shews the strong obligation upon both to bear it. And thus all such as regard the voice of nature, and the obliga-

2. GUL Ms., p. 342: "A careful . . . respect" is an interlinear correction of an illegible deletion.

tion it imposes, or have any sense of humanity and virtue, must see that, if they gratify this inclination to procreate offspring, they must, both by sense of duty and by a strong affection toward the same objects, be united in intention, and in a long course of labour and common care with the partner they chuse for procreation. This joint counsel, care, and labour, can scarce be tolerable without a mutual affection and esteem between the parents; and to create this, we find that nature has wisely formed us in such a manner;³ that in all those who are under the restraints of the natural modesty, and of any sense of virtue, the inclination to procreate is excited, or at least generally regulated in its choice of a partner, by many delicate <152> sentiments, and finer passions of the heart of the sweetest kind. The sense of beauty prepossesses in favour of a moral character, or acquaintance gives better assurance of it. The esteem of virtue and wisdom, the desire and love of innocence of manners, complacency, confidence, and the tenderest good-will, are the natural incitements and concomitants of the amorous desire; and almost obscure the brutal impulse toward the sensual gratification, which might be had with persons of any character. As we thus previously know the natural design of this impulse, and the obligations toward offspring thence to ensue, as we are endued with reason, we are obliged to restrain this impulse till we have obtained assurance of such harmony of minds as will make the long joint charge of education tolerable to both parents, and till we are in circumstances capable of supporting such offspring as may arise. For the intimacy contracted in this joint lasting charge, and the recurring impulses to procreation, may naturally produce a numerous offspring: and we may easily foresee that the rearing and educating such offspring must fully require the constant joint attention of both parents: nay, that, where there has not been some wretched corruption of heart, destroying the parental affection, all their joint cares come far short of their affectionate and ardent wishes for their children: these instincts and strong natural affections, along with the lasting infirmity and dependent state of human offspring, plainly declare the intention of nature, that they

3. GUL Ms., p. 342: "wisely . . . manner" is an interlinear correction of "so contrived."

should be propagated by parents first united in <153> mutual love and esteem, in an affectionate and lasting partnership, to assist each other in this most important duty toward our kind, of producing, rearing, and educating the rising generation.

These point
out all our
duties in this
state.

This moral machinery of these instincts we find has appeared in all ages and nations, and generally prevailed; tho', no doubt, vicious customs and habits can often weaken or almost extinguish many natural dispositions in some individuals. It will plainly shew us almost all our obligations as to marriage and offspring, all the reasonable terms which should be stipulated in the marriage-contract, and the happy effects upon society, from following the intention of nature, and the mischiefs naturally ensuing from counteracting it, will further confirm our obligations.

An unlimited
indulgence
pernicious.

III. And first, indulging the brutal impulse without entering into any social or friendly bond, without any regard to these tender and generous passions which naturally accompany this desire, beside its counteracting this beautiful contrivance of nature, must have many pernicious effects upon our bodies, our minds, and human society. To follow the brutal impulse, in opposition to the natural restraints of modesty, as early and as frequently as it appeared, would be pernicious to the bodies of the parents, as well as those of their posterity; especially among such as are in more easy circumstances, and freed from constant bodily labour. The weakness of mind, and the dissolute habit, would still be worse effects. Nature indulgent in this matter to mankind, has made them capable of more frequent <154> gratifications than most other animals, as a compensation for the superior toils of educating their offspring. But by a sense of shame, and the many moral passions naturally attending this instinct, as well as by our reason which can discern the distant effects, and the obligations we are under, nature has pointed out the method of gratification which is consistent with all the moral sentiments of the heart, with all the concomitant generous passions, and with the interest of society.

Destroying
parental
affection.

Again, unlimited indulgences in promiscuous fornication would have this effect, that the fathers would generally be uncertain about their own offspring, and have no other incitement to any cares about them than the general type of humanity, which we know is not sufficient. They

must want one of the most natural satisfactions in the knowledge and love of their offspring, and one of the chief incitements to labour and industry. The mothers, upon whom the whole burthen of education would be cast, must find it intolerable. They would grow negligent, and give themselves up to brutal indulgences as well as the fathers. The natural purpose of this instinct would thus be in a great measure defeated, partly by the barrenness of women, and partly by their neglect of their offspring. The mischiefs of a dissolute state, where all followed the brutal instinct without restraint, are but very imperfectly represented to us by the evil effects we see ensuing upon a few irregular indulgences, in a nation where the generality are under the wise restraints of laws, and of modesty confirmed by education. And yet 'tis easy from them to discern what general misery must ensue, if all restraints were removed, and if all gratified the brutal impulse without any controul.

Many instincts of the most useful sort may be monstrously perverted, and this one among others; either by being turned toward a different species, or the same sex. These indignities to the wise and venerable constitution of our nature, and to God its author, must evidence a brutal stupidity, and an insensibility of what becomes rational beings constituted in such a system by a wise Providence. The horrid evils to be apprehended from such perversions, if they frequently prevailed, are obvious; tho' the effects of a few rare instances, in a nation generally educated with an abhorrence of such lusts, be not considerable. Were the restraints of laws removed, and multitudes depraved by bad example, satisfying the worse than brutal inclination, without involving themselves in the toilsome education of offspring, monstrous and unnatural passions would arise, (as we see both by some historians and poets hath happened) which nations unacquainted with such vices can scarce well imagine. Were these passions frequent, a country would soon cease to be populous; and be infested with wretches as abject and depraved in the other faculties and relishes of the soul, as they are in this appetite. Such monstrous lusts are therefore to be severely restrained in every society. <156>

Monstrous
lusts pernicious
to
society.

IV. As from the preceding observations it appears that mankind ought to be propagated by parents united in a friendly partnership for their education; we proceed to consider the reasonable terms of this partnership

The obligation
to marriage.

or contract; since 'tis plain there is a general duty incumbent on all with respect to our kind, which also is strongly recommended by our natural desires, that each one should contribute his part toward the continuance and good education of our race, unless he is engaged in such important services to the publick as are inconsistent with domestick cares, or in such circumstances that he cannot support a family. And without such just excuses it must be unnatural selfishness to decline our part of this necessary trouble.

The articles of
the contract.
1. Fidelity of
the wives.

1. The first and most necessary article is that the fathers should have their offspring ascertained, and therefore the woman who professes to bear children to any man must give the strongest assurances that she will not at the same time cohabit with other men. The violation of this engagement is the greatest wrong imaginable, as it robs men of what is dearest to them,⁴ and the end of all their worldly cares, a certain offspring.⁵ In the marriage-contract therefore this is the first article.

Necessity of
modesty in
both sexes.

'Tis necessary that women from their childhood should be so educated as shall best prevent such distressing injuries. 'Tis well known that their fornication before marriage, beside the dissolute habit it may occasion, founds such an intimacy with these persons they have gratified, and subjects their characters so much to them, and causes such proneness to future indulgences, or takes away their power of resisting their solicitations, that one is not well secured in having his own genuine posterity by marrying women of such conduct. When such previous indulgences are discovered, their character for chastity is lost; nor will men confide in their fidelity after marriage. Thus they are made despicable, excluded from hopes of obtaining any conjugal esteem and affection, and from all reputable condition in life. The guilt therefore of fornication on the part of the man must also be very great, as he for a mean sensual gratification exposes his fellow-creature to a state of infamy, ruins the natural modesty and ingenuity of her mind, and makes her unworthy of that conjugal love and confidence upon which the

4. GUL Ms., p. 345: "as . . . them" is an interlinear revision of "what is dearest to men," possibly a false start.

5. GUL Ms., p. 345: "a certain offspring" is an interlinear revision of "their Children."

greatest satisfaction of her life depends, nor can she obtain it but by falsehood and dissimulation, in which she cannot be assured of success.

We are all sensible how grievous this injury is, whether done by violence or fraudulent solicitations, to a sister or child of our own; the guilt is equal when others suffer by it. It must therefore be incumbent on all who have the charge of educating the young of either sex, to habituate them as much as possible to all modesty in speech and action, and restrain every contrary appearance. 'Tis a strange corruption of manners and sentiments in any nation which boasts of maintaining liberty and equality in rights to all their people, that such cruel injuries to any, even of the lowest condition should escape without severe punishment. The <158> lowest orders of men feel the joys of conjugal love and of a certain offspring; they have the same natural desires and senses with the highest. The crime therefore of depriving any of them of these satisfactions, and of a decent condition in life, and that for gratifying a mean appetite, must be greater than many of those which subject to capital punishments. 'Tis strange that the party less criminal should generally suffer so much, and no punishment abide the chief criminal, the seducer, and that by the basest arts of falsehood and perjury!

The injury
done by
lewdness.

Where more dissolute manners prevail, this infamy may be less felt by the women. Some abject creatures, whose lust has obliterated all modesty, and suppressed all the finer sentiments and passions naturally accompanying the amorous impulse, may chuse a dissolute course of life for its mean pleasures and gains. But, where-ever there is any regard to moral virtue, such courses should be severely restrained: as those who follow them always prey upon the weakness of youth, corrupt their manners every way, and create the most ungovernable habits inconsistent with all valuable business in life; and pervert the wise contrivance of nature in our instincts from their natural purposes.

V. The second essential article in the marriage-contract, is that the husband should confine himself to one wife. 'Tis true the injury by the husband's infidelity is not so great as that by the wife's; he cannot deceive her by imposing on her a spurious brood. But in all other respects the moral turpitude is the <159> same, and there are the same just reasons why a wife should demand this engagement from the husband. The

2. Like fidelity
of husbands.

natural passions of the woman as much require a friendly society, and unity of interest in the joint-education of the common offspring as those of the man.

The iniquity
in the contrary
practice.

'Tis the plainest injustice and inequality in this partnership, which all the finer sentiments of the heart declare should be an equal friendship, that a man and his offspring should be the sole objects of the woman's affections and tenderest cares, and all her worldly solitudes, while his affections and cares are allowed to be divided among other women and their children, and probably wholly alienated from her. Without security for the fidelity of the husband, all her satisfactions in a friendly society, and the preservation and support of her and her offspring, must be very precarious. And thus by the lusts of the husband, leading them either to dissolute enjoyments, or to simultaneous polygamy, for a mean sensual indulgence, one half of the species, which is equally intitled to all social enjoyments and satisfactions with the other, is most injuriously deprived of many of the chief enjoyments of life. All the tender and generous passions attending the amorous instinct in men, declare against such liberty; and point out to them that nature has designed the conjugal state to be a constant reciprocal friendship of two; as these passions are founded on esteem and love of virtue, and where they are heartily raised toward one, cannot admit of any like passions toward others at the same time. The affections of the husband must be turned away from the former wife and her offspring either by adultery or simultaneous polygamy; the later wife and her children will probably engross them altogether, and the former be unjustly despised.

The mischiefs
of polygamy.⁶

The effects upon the rising generation and upon society will be pernicious even from polygamy, as well as from the dissolute indulgences

6. Concerning polygamy, see Grotius, *The Rights of War and Peace*, II.5.9; and Pufendorf, *Law of Nature*, VI.1.15–18, and *Duty of Man*, II.2.5. There is nothing unusual in Hutcheson's argument, but he might be echoing a discussion in one of Barbeyrac's notes to Pufendorf in which the commentator rejects William Derham's suggestion that polygamy is "unlawful" because there are more males born than females. Barbeyrac objects that the fact has not been proven, but even if it were, the excess of males born could have other functions than that of speaking against polygamy; see *Law of Nature*, p. 576, n. 2, quoting William Derham, *Physico-Theology*, pp. 175–78. And there is every likelihood that Hutcheson would have noted Mandeville's reference to polygamy and incest in "A Search into the Nature of Society," *Fable of the Bees*, I, 330.

of husbands. The number of one man's children may be so great, that neither his care can suffice for their education, nor his stock or industry for their support. Many must be neglected, and all the care employed on a few favourites. As providence declares against this polygamy by preserving pretty nearly an equality in the numbers of the sexes, nay rather a surplus of the males; by allowing polygamy, many men must be excluded from all enjoyments of marriage and offspring; and thus disengaged from the natural bonds with mankind, and their natural cares, turn abandoned to all unsociable dispositions. Polygamy obstructs rather than promotes the increase of mankind. A nation is made populous when all the women are kept bearing and nursing of children while they are capable of it. This is done most effectually when every woman has her own husband. When one man has many wives, he will readily neglect the greater part of them, and decline being burthened by their having children. Women in this case too are under the strongest temptations to violate the unequal and most oppressive engagement on their part; and to <161> take all opportunities of adultery. And hence we see in fact that where this practice* prevails, the women are every way treated as slaves: no friendly regards had to their satisfactions; chains, and prisons, and guards must confine them, and not the bonds of love or friendship.

VI. As the joint charge of educating the common offspring requires that the marriage-contract should be for a long duration, since women are fruitful for one third of life and more, and generally the education of their younger children may require the joint attention of the parents for many years after the mother ceases to bear children: this bond must be intolerable without a mutual friendship. Now there can be no real friendship in a partnership merely entered into for propagation and the

The contract
should be
perpetual.

* 'Tis true, that in some civilized nations this polygamy has been allowed to the men; but this takes not away its iniquity. Some good men have practised it, and perhaps not attended sufficiently to the guilt of it, blinded by custom and their own passions. But in like manner good men in civilized nations have practised the slave-trade, or concurred in the custom of making one half of their people slaves without any demerit. Nay some from a mistaken piety or love of their country, finer principles by far than those which excite to polygamy, have practised human sacrifices, and even sacrificed their own children. No man should therefore conceive these practises just, even tho' people enured to them, or those who even suffer by them, do not complain of them as in general unlawful.

rearing of children, and that only for a certain term, and to expire with that term; or in one made dependent on contingencies or conditions not in the power of the parties. Both parties are allured into this contract, as into a society of love, by the tenderest sentiments of mutual esteem: the aim of all sincere friendship is perpetuity. And there can be none in contracts only for a term of years, <162> or such as may be made void by accidents without any fault of the parties. The marriage-contract therefore must be for life, otherwise all true friendship and love must be banished, and that relation of marriage turned into a mere servile bargain for procreation and joint labour.

Divorces,
without
crimes,
unreasonable.⁷

Again, how cruel is it on either side to divorce a person full of the fondest affection, on account of a bodily infirmity? How much more barbarous to divorce upon the death of children a fond partner who suffers equally in that misfortune? There is seldom any loss to the publick by the perpetuity of the bond in these cases. If the husband could have children by another woman, that other woman may bear them to another man, for as good purpose to the publick. The view of increasing of mankind would plead more for allowing a divorce on account of any defect in the husband. But there is such barbarity in casting off a dear friend without any demerit, that while there is no danger of a defect of offspring in a state, the allowance of divorces for this reason is not justifiable.

Upon defect of offspring, either by barrenness or the death of children, some sort of *concubinage would appear more tolerable; but under

7. Concerning divorce, see Grotius, *The Rights of War and Peace*, II.5.9; Pufendorf, *Law of Nature*, VI.1.20–24, and *Duty of Man*, II.2.6; and below III.1, nn. 16, 17, and 18.

* The concubinage allowed in the Roman Law, even after the Emperors were Christian, must not be imagined as an allowance to married men to keep other women. It was an allowance only to men who had no wives, both before and after the empire became Christian, to enter into a sort of marriage perfectly just according to the law of nature, and Christianity too; but such, that the wife and children wanted the honours and civil privileges conferred by the *justae nuptiae*. See *Heineccii Antiqu. tit. de nupt.* The like marriages are now in use in some Christian countries. [Johann Gottlieb Heineccius, *Antiquitatum romanarum iurisprudentiam illustrantium syntagma* (1719), 2nd ed. Strassbourg, 1724 (with several further editions already by the time Hutcheson wrote), pp. 270–72, and cf. pp. 143–44. Heineccius explains the Roman law on marriage as set out in the Law of the Twelve Tables and

such restrictions that the concubine's children should not succeed to the wife's portion, or to above a certain share of the common stock acquired; and that when the husband takes this liberty, the wife might insist on a divorce if she pleased, and have a large share of the common stock: and this she might more justly insist on if she suspected that the want of offspring was not occasioned by any indisposition of hers. But when one considers the difficulty of determining this point, and the cruel use which might be made of the licence of divorcing for such causes, or taking such concubines, the general prohibition of both seems wise, humane, and honourable to our species; and no general laws can be made free from all inconvenience.

VII. The tender sentiments and affections which engage the parties into this relation of marriage, plainly declare it to be a state of equal partnership or friendship, and not such a one wherein the one party stipulates to himself a right of governing in all domestick affairs, and the other promises subjection. Grant that there were generally superior strength both of body and mind in the males, this does not give any perfect right of government in any society. It could at best only oblige the other party to pay a greater respect or honour to the superior abilities. And this superiority of the males in the endowments of mind does not at all hold universally. If the males more generally excel in fortitude, or strength of genius; there are other as amiable dispositions in which they are as generally surpassed by the females. <164>

Marriage
an equal
partnership.⁸

in Justinian, *Institute*, I.10, "De nuptiis" (On marriage); cf. Justinian, *Digest*, XL-VIII.5. Cf. the *Short Introduction*, III.1.5 (note p. 222). Partnership between non-Roman citizens and between a citizen and a non-citizen did not have full status as a lawful marriage, "justae nuptiae." See the discussion of "unequal marriages" in Grotius, *War and Peace*, II.5.15; Pufendorf, *Law of Nature*, VI.1.36.]

8. The idea of marriage as an equal friendship and a shared responsibility for family and fortune is reflected in Hutcheson's references to his own marriage and those of his friends; see, e.g., *Correspondence and Occasional Writings*, letter 12, 29 May 1735, to William Wishart, and letter 39, 8 July 1741, to Thomas Drennan. Also, the idea of family and friends as arbitrators in marital conflicts and advisors in difficulties is a repeated theme in his correspondence, Hutcheson himself obviously being much used in such a role. The natural law references for authority within marriage are Grotius, *The Rights of War and Peace*, II.5.8; Pufendorf, *Law of Nature*, VI.1.11–14, and *Duty of Man*, II.2.4; with Carmichael's comment, *Natural Rights*, p. 130.

Nature founds
no proper
power.

The truth is, nature shews no foundation for any proper jurisdiction or right of commanding in this relation; and, previous to some positive laws and customs, there is no presumption that the parties would stipulate about any. Where positive laws and customs have long obtained, and settled forms of contracting are received, no doubt there is an external right of superiority constituted to the husbands. But this shadow of right is no better than those which any insolent conqueror may extort from the vanquished; or any unjust sharper may obtain by some imperfection or iniquity of civil laws; or by the weakness, or ignorance, or inadvertence of one he is contracting with. To take advantage of such laws or forms, without regard to equity and humanity, must be entirely inconsistent with an honest character. Where husband and wife disagree in points of management; in smaller matters, this deference may be due to the one who has the greatest abilities, and manages the most important affairs, that the other should courteously yield, tho' against his or her private opinion. If ordinarily these superior abilities are in the husband, and his greater strength, and other circumstances of body, fit him to be employed in the more momentuous affairs, it may more generally be the duty of the wife to submit. But in matters of great importance to the happiness of a family, if they cannot agree, nature suggests no other method of deciding such controversies, but a submission to common friends as arbitrators. Domestick matters indeed seem to be divided into two provinces, one fitted for the management of each sex, in which the other should seldom interfere, except by advising.

Many civil
laws very
unjust.

The powers vested in husbands by the civil laws of many nations are monstrous, such as that of life and death. To exercise any such power, or even that of any corporal punishment, must be tyrannical and unmanly. Committing to the husband the whole power over the whole stock of the family, including the wife's portion, is unjust and imprudent, as well as contrary to nature. A wise woman, or any good trustee, retaining a power over a large share of it, would have rescued from beggary the issue of many an unhappy marriage. Affairs of importance should rather be committed to both jointly, so that neither separately could transact validly about them; and a civil judge, or a prudent umpire be appointed to determine important matters of debate between them: or each should

retain the power of managing their own shares. In other partnerships no such absolute powers are vested in any one of the partners, nor are they claimed upon any alledged superiority of genius or fortune; nor is there any occasion for them: nor do we see in them frequent instances of capricious injurious treatment given by one partner to another upon any such alledged superiority, as some saucy, imperious, unmanly wretches afford, as the only recompence to their wives for too much credulity, and an incautious imprudent affection to them: nor does the inferior partner in other societies run into such disingenuous and ungrateful conduct toward the superior, as some wives who have got the ascendant over their husbands practise; as it were in resentment of the unequal condition in which the laws have placed them, and out of ostentation of their art and spirit, by which they have broke through them.

The articles above-mentioned are the most essential. Any contracts of marriage upon other terms, such as contracts for a certain term of years, or those suspended upon the event of children surviving; or upon other conditions not in the power of the parties; or polygamy, even in nations where no positive law has prohibited it, are truly contrary to nature and justice. A good man would not think himself free upon the expiration of the term or the death of all the children, tho' he had expressly stipulated these conditions, if upon reflection he observed the iniquity or cruelty in such conduct. And he would upon like reflection think all subsequent marriages while the former wife lived, to be void; unless she consented to his observing these contracts, upon some reasonable security to her and her issue. The subsequent wives thus disappointed would have a right to such compensations as these cases could admit by some provision for the children they had before separation, tho' they were equally in the fault with the husband, in entring into such a contract.

Articles which are contrary to nature are invalid.

VIII. We proceed to further observations on these circumstances which may either make any contract of marriage null and void from the beginning, or free either party from the bond of a contract formerly valid.

Impediments of marriage natural and moral.⁹

9. For this definition of the subject, see also *Short Introduction*, III.1.6, pp. 222–23; Pufendorf, *Law of Nature*, VI.1.25, and *Duty of Man*, II.2.7–8; with Carmichael's comment, *Natural Rights*, p. 132.

In the first class is a natural incapacity for marriage through an original bodily defect or other accidental causes. To which one may add perpetual incurable madness or idiotism: nay, some other incurable grievous diseases which are ordinarily transmitted to posterity. Some disorders are so calamitous that it were the interest of society to prevent intermarriages with persons afflicted with them, even though the other party knew them, and consented to run the hazard. When both parties are well advanced in years, and there is no prospect of offspring, there is nothing faulty in the desire of mutual cohabitation and domestick society, where no reasons of prudence or duty toward any children by former marriages prohibit it. But since marriages in a great disparity of years are manifestly contrary to nature, and ought to be altogether prevented or made void by civil law, 'tis an affront to that honourable natural relation, that the name of marriage should be given to any contract between a covetous or a dissolute youth and an old doating woman, who is courted only for her wealth: or between an old dotard and a lascivious young girl, influenced by the same or worse reasons. The solemn forms and benedictions used on such occasions are full of profanity, and impious mockery of every thing sacred.

Minors
incapable of
contracting.¹⁰

Another just impediment making void a contract, is the want of sufficient knowledge in minors. 'Tis <168> surprizing that while all civilized nations, because of the imprudence of youth, have made minors incapable of obliging themselves in any matter of commerce, and annul all such deeds of theirs, or contracts entered into without the consent of parents or guardians, yet in an affair of incomparably greater consequence, the disposal of their persons, and choice of a partner in all important affairs for life, a joint-proprietor of their fortunes, and parent of their children, every boy past fourteen years of age, and girl past twelve, can bind themselves irrevocably without any such consent; nay, contrary to the express commands of parents. This doctrine sprung from that fruitful source of all corruption and superstition, the church of Rome; and for securing it she has taken care to¹¹ blind men's eyes so as not to use the resources and ex-

10. The natural lawyers did not specify minority as such as an impediment to marriage, as Hutcheson does.

11. GUL Ms., p. 352: "and for . . . to" is an interlinear revision of a much longer illegible deletion.

ceptions justly allowed in other foolish or iniquitous contracts, by cloathing this one with a cloud of the mystical nonsense of a sacrament.¹²

Common sense would teach that* all the marriages of such as had not attained to wisdom fit for other commerce should be annulled, where the consent of parents or guardians was not interposed, even tho' consummation had ensued. This law, in appearance severe, is yet the most merciful, preventing the crime rather than punishing it. A woman of chastity not willing to prostitute herself would then listen to no solicitations of minors, nor study to enveigle them. If <169> a young man enticed a rash incautious girl with oaths or vows that he would confirm the marriage when he came to maturity, it might be left to the election of the girl's parents or guardians, either to compel him to fulfil them, or to annul the contract, and obtain capital punishment upon the seducer. Such punishment none can call too severe upon such injuries done to families, when we think them just for much smaller ones, which deprive us only of a trifling part of our goods.

Their contracts are void.

12. In the context of discussing divorce (cf. III.1, n. 16 below), Pufendorf suggests that "by the Superstition and the Corruption of the *Papal* See, the Bond of Matrimony was declared indissoluble during the Life of the Parties," to which Barbeyrac adds this note: "For they built upon this false Principle, *That Marriage is a Sacrament*. By this Means, under Pretence of Religion, the Popes endeavoured to appropriate to themselves the Cognizance of all Matrimonial Causes." *Law of Nature*, VI.1.23, p. 582 and n. 2. The reference is to the Council of Trent, which in 1563 decreed that in order to be valid a marriage had to be consecrated by a priest. Hutcheson's polemics throughout this chapter also implies his critical attitude to the retention by the Anglican Church in England and in Ireland of the canon law regulations of marriage. In Scotland, simple consent by the parties sufficed by and large to make a valid marriage, and the same was the case for Presbyterians in Ireland. The immediate background to Hutcheson's discussion was undoubtedly a major dispute in Ireland between Dissenters and the established Church. The former denied that the marriage ceremony was a theologically indifferent matter and hence could be regulated by the civil authority through the established Church. Instead they saw it as natural right to exercise their own conscience in understanding the religious meaning of marriage. Cf. Stewart, "Rational dissent in early eighteenth-century Ireland."

* This was the Jewish law, and the Roman law too, as may be seen *Instit. tit. et Vinnius Comment.* [Justinian, *Institutes*, I.10: "De nuptiis" (on marriage), and the commentary on this by Vinnius, *In quatuor libros Institutionum imperialium commentarius*, I, pp. 47–49.]

Moral impediments. 1. A prior contract.

IX. The moral impediments or incapacities are these. 1. A prior contract makes void any subsequent one of the like nature with a different person. The law of nature requires that marriages should be publicly known, that no married persons may deny them, or impose upon others, as if they were not married. There is some ground here of distinguishing between an *imperfect contract*, obliging to a future marriage, and a *complete marriage*; as in commerce* we distinguish between a contract founding only a *personal right*, and the full translation of property or of a *real right*. A prior contract about a future marriage should make void a subsequent one of the same kind with a third person; even where the third person knew nothing of the prior contract. The persons guilty of such frauds deserve severe punishment: but an imperfect contract without consummation, should not make void a subsequent consummated marriage with a third person who was not apprized of the prior contract. <170> For in this case one of the two innocent persons who contracted with the fraudulent party, must be disappointed, the defeating of the imperfect contract, upon which no cohabitation ensued, is a much less misfortune than annulling the perfect marriage. If the third party knew of the prior contract, this is a just reason why the marriage should be annulled; the punishment is too light for the fraud. The evils occasioned by such frauds are much more grievous, and more deeply resented than those injuries which subject to capital punishment, and the severest laws against them would be merciful, as they would prevent the crimes.

Near degrees of consanguinity or affinity.¹³

X. The nearer degrees of consanguinity and affinity, Christians, and many Heathen nations too, have always looked upon as moral impedi-

* See book ii. c. 8. § i.

13. The reasons for and the extent of prohibited degrees were extensively discussed in the natural law literature. Pufendorf's careful scrutiny of all natural foundations for prohibitions of incest and immodesty (*Law of Nature*, VI.1.28–35, drawing on Grotius, *The Rights of War and Peace*, II.5.12–14) was clearly in Hutcheson's sight in this section. The corresponding section on consanguinity in the Latin version of *Short Introduction*, III.1.6, p. 223, became the object of David Hume's criticism in his considerations of the relationship between nature and artifice in morals; Hume to Hutcheson, 10 January 1743, letter 44 in Hutcheson, *Correspondence and Occasional Writings*. Politically the subject of prohibited degrees was of importance because of its relevance to inheritance of both property and political power. Privately it would have been a matter of importance to Hutcheson when he married Mary Wilson, his cousin-german.

ments of marriage. The natural reasons commonly alledged scarce seem to have force proportioned to the great infamy and the notions of impiety attending such marriages. The most abhorred kind is that between the ascending and descending degrees. Not only the inequality of years, but the natural reverence in these relations are very opposite to the equality produced by marriage. But greater inequalities of years sometimes do not make marriages either immoral, or even imprudent. And it is not every sort of reverence, due to higher merit or authority, or gratitude due for the greatest benefits, which would be inconsistent with this relation, tho' that of parents seems inconsistent. 'Tis scarce accountable without some natural instinct of aversion to such mixtures, how they have been so <171> universally abhorred. A monstrous practice received by one sect in Persia, is no objection to this supposition, which is confirmed by the sentiments of all the world besides.¹⁴

'Tis argued that brothers and sisters by living together from their infancy would fall too early into such passions, and be less capable of resisting sollicitation, through their great intimacy, were there not a severe prohibition, making such commerce matter of abhorrence. But it often happens that cousin-germans, and remoter relations, are educated together in the same intimacy, and we see no dismal effects from the permission of intermarriages among them. And were these marriages with sisters lawful, one would think the early passions would do no more harm than they must frequently do on other occasions, where young people contract early acquaintance. If there be any natural aversion in this case too, as well as between parents and children, checking the general impulse, it seems not so strong: and we find that such marriages of brothers with sisters have been more received in Heathen nations. There is more of equality in this relation; whereas the long habitual authority exercised by parents, and the reverence and subjection to which children are enured, may possibly without other principles restrain all these amorous inclinations so naturally requiring an equality.

Reasons
alledged.

14. The case of the Persians' supposed practice of incest between parents and children is mentioned in Grotius, *The Rights of War and Peace*, II.5.12 (3), with Barbeyrac's note 13; and in Pufendorf, *Law of Nature*, VI.1.32; the sources quoted being Philo Judaeus, *On Special Laws*, III.3; and Diogenes Laërtius, *Lives of Eminent Philosophers*, Prologue sec. 7. Cf. note 13, above.

Some tradition
of a divine law.

Whatever natural causes there may be for the very general aversions to marriages among the nearer relations by consanguinity and even affinity, 'tis certain <172> there have been such aversions in many nations little civilized, and where we can scarce imagine that either very artful considerations of general interest, or very delicate sentiments of decency have occasioned them. And the abhorrence of such marriages was every where much higher than any reasons of expediency or prudence could have occasioned. Hence some ingenious men conclude that there has been some* early divine prohibition, the memory or tradition of which has been preserved among most nations, in some more distinctly, and in others less, as there was greater or less attention to the purity of manners.

A plain reason
of prudence
for the
prohibition.

There is one manifest and important reason of prudence why a wise legislator should prohibit such marriages, that were they not restrained and abhorred, the early opportunities would make them exceedingly frequent, and by this means the sacred bonds of affection would be too much confined, each family would be a little system by itself, detached from others; at least as to all the stronger bonds of affection. Whereas now, in consequence of the prohibition, and the general abhorrence ensuing upon it, or upon any other causes which may probably concur in this matter, multitudes of families are beautifully interwoven with each other in affection and interest, and friendly ties are much further diffused. There may be other reasons in nature not known to us, or not yet fully observed. A mixture of different families may be necessary to prevent a degeneracy of the human race; as some pretend that such intermixtures, or crossing the strain by cattle of a different breed, is necessary to prevent their degenerating; if we can decently make such comparisons.

The advantages
from it.

We see plainly the above-mentioned advantage in the restriction, and scarce any thing grievous can ensue from it. Nature has provided other sorts of affections among kindred, which are great sources of joy, and sufficient incitements to the duties of those relations. These consider-

* This seems one of the best evidences for the Jewish tradition of the *Praecepta Noachidarum*. [Hutcheson's general reference in the text is to the sources discussed in Carmichael's long note 2 to Pufendorf, *De officio hominis et civis*, II.2.8; Grotius, *War and Peace*, II.5.13 (3–7); Pufendorf, *Law of Nature*, VI.1.34, and, with the latter (p. 593), John Selden's enumeration of the Noachide precepts in *De jure naturali et gentium*, V.1, pp. 498–502.]

ations justify any legislator in prohibiting such marriages: and after the prohibition, and the consequent infamy which will attend them, nothing but a dissolute lust, with an insensibility to all honour, and great inhumanity toward the other party whom one must involve in this infamy with himself, can move one to break through such prudent laws. But that there is not a necessary invariable turpitude or moral impurity in all these marriages ordinarily called incestuous, antecedently to the prohibition of them, must be owned by such as consider that God laid the immediate children of Adam under a necessity of inter-marrying, and for some political reasons ordered such marriages on certain contingencies as were ordinarily prohibited.

Christian states* have in this matter followed the Jewish laws, prohibiting all marriages in the ascending and descending lines; and all in the transverse line between such as stand in a relation like to that of parents and children, such as between uncle and niece, aunt and nephew, or grand-uncle and grand-niece; or any of their descendants; and all marriages among collaterals within the fourth degree. And prohibiting persons to marry any one in such relation of affinity by a former marriage, as they could not marry in the like relation of consanguinity to themselves. Marriages in the fourth and all further degrees are allowed.

The practice of Christians.

The degrees of consanguinity among collaterals were thus computed, as we see by the civil law. All kinsmen come from one stock: now, "as many generations as have been from the stock in both lines, so many are the degrees." Brothers and sisters are in the second; uncle and niece, in the third;

Degrees how computed in the civil and canon laws.¹⁵

* How far the New Testament confirms and adopts the Jewish laws may be seen in the Divines and Canonists. Grotius, Puffendorf, and Barbeyraque have omitted little of consequence in this question. [See the previous references, and, for transverse consanguinity and more distant degrees of relationship, see Grotius, *War and Peace*, II.5.13–14; and Puffendorf, *Law of Nature*, VI.1.34–35.]

15. This is a concise summary of the Catholic Church's rules concerning prohibited degrees laid down at the Fourth Lateran Council in 1215 (canon 50). For the civil law, see Justinian, *Digest*, XXIII.2. Carmichael questioned the basis for the common distinction between transverse consanguinity of the first degree and affinity in ascending/descending line and found Grotius's and Puffendorf's acceptance of the "Hebrew doctors'" distinction between marriage with a father's sister and with the granddaughter of a brother "frivolous"; see Carmichael's note 2, Puffendorf, *De officio hominis et civis*, II.2.8, pp. 317–18.

cousin-germans in the fourth, and their children are to each other in the sixth. Among the other frauds of Popery, their canonists, to draw more money to their courts for dispensations, encreased the prohibition exceedingly. They preserved the words of the old rule, but changed their meaning by a new method of computing the degrees, according to the persons or generations from the common stock upon one side only, taking indeed the longer line of the two. Thus brother and sister are in the first degree: uncle and niece in the second, and cousin-germans too in the second; and the children of cousin-germans are only in the third; and so cannot marry without dispensation; the children of second cousins are in the fourth degree, and these are the nearest who may marry without it.

The just causes
of divorce,
I. Adultery.¹⁶

XI. These are the impediments which make marriages from the first null and void, according to the Christian and civil law. We next consider the causes of divorce, which frees one or both parties from a bond once valid. These are, as in all other contracts, the violation of any of the essential terms, either by the crime of one party, or by any such event as makes the party utterly incapable of the duties of that relation, when the other did not consent to be bound upon such events. 'Tis manifest that adultery in the wife is a just cause of divorce; so is also that of the

16. Cf. *Short Introduction*, III.1.7. In the eyes of Hutcheson's main sources marriage is, as a matter of natural law, purely a contractual relationship. Accordingly, it can be dissolved like any other contract either by mutual agreement of the parties or by breach of the agreement by either party. The natural lawyers then analyze what may count as breach of agreement, namely adultery, desertion, refusal of cohabitation, failure in the "inferior duties" of support, and "Sweetness of Converse," concerning all of which "in the Consideration of natural Law, the Man and the Woman are upon the same Ground" (Pufendorf, *Law of Nature*, VI.1.21–22). The validity of the marriage contract may be changed like any other contract by specific conditions being mutually agreed. Not least, it is changed by positive law, both human and divine. As far as the former is concerned, it is a matter of the circumstances and mores of individual societies, and it is stressed that, e.g., polygamy is not inherently wrong, i.e., wrong in natural law. The divine law is extensively discussed, the central issue being how to account for polygamy and the practice of divorce in the Old Testament and whether what some saw as an original divine preference for monogamy and avoidance of divorce became an actual law of God only through the command of Jesus Christ. See Grotius, *The Rights of War and Peace*, II.5.9 (2–3), with Barbeyrac's extensive annotation; Pufendorf, op. cit., with Barbeyrac's notes, and *Duty of Man*, II.2.6. Contrast Carmichael's rejection of divorce, *Natural Rights*, pp. 131–32.

husband, since he engages to fidelity to the wife, as he naturally ought to do, for reasons above-mentioned.¹⁷ Nor ought the contract to be suspended upon the condition of offspring surviving.

The adultery of women makes offspring uncertain, and thus does the greatest possible injury, beside its perfidy; that of men is manifest perfidy, and naturally alienates the affections of the husband from his wife and lawful children. It generally diverts him from all domestick cares and honest industry for his family, and contributes to the ruin and infamy of other women. By this practice an uncertain offspring may arise to infamy and misery, without proper education; or if the offspring be sufficiently known to the adulterous father, his proper care of provision for it must be injurious to his lawful children; and may provoke their injured mother to a worse revenge, as she sees such <176> perfidy in her husband. Indulgences of this kind with prostitutes where there is no prospect of offspring, must on other accounts be criminal, as they alienate the affections from the wife, and contribute to that infamous course of life, in which the prostitutes make it their business to divert from marriage, and all sober industry, and cares of a family, and inveigle youth into such vicious habits as are inconsistent with any honourable pursuits. As to that adultery which corrupts the wife of another, no crime can be more horrid, for reasons already mentioned. How much more grievous are such injuries, which cheat men's tenderest affections by a spurious brood, alienate the affections of the partner they have chosen for life, and impose on them a false offspring to inherit all their labours, than any injuries in our goods by stealth or robbery? Sure no punishment can be too severe for them,* and death was justly inflicted by the Jewish laws.

17. Scottish law recognized divorce, in contrast to England where marriage could be dissolved only by the ecclesiastical court and, as far as property was concerned, by act of Parliament. In principle, Scottish law also saw adultery by either husband or wife as equally a reason for divorce. See Leneman, *Alienated Affections*, pp. 1–2f.

* See Levit. xx. 10. Deut. xxii. 22. The penalties in the old Roman and Grecian laws for adultery, and debauching free citizens unmarried, even without violence, were very high. We find death might be inflicted in the fact. And we see that castration was an ordinary punishment. The old form of prosecuting is not very clear. The *Lex Julia de Adulteriis* [Justinian, *Digest*, XLVIII.5] allowed the *actio publica* or

2. Obstinate
desertion, and
some settled
enmities.

Another cause of divorce is the obstinate and unreasonable desertion, or refusal of cohabitation, by one party; upon which indeed the other may justly compel to cohabitation by force: but if all hope of satisfaction that way fails, the innocent party is free from the bond. A friendly society for life is an essential article stipulated on both sides, and the violation of it by one party must set the other free. And for the very same reasons, an implacable hatred or enmity, sufficiently declared on one side, without just provocation given by the other, sets the innocent party free. Thus, attempts upon life by poison or assassination, or false accusation in capital actions, or barbarous assaults often repeated, were deemed in the civil law causes sufficient for a divorce: as was also perpetual madness, as thus the essential articles are violated, or made impossible to be performed, as well as by adultery.*

How divorces
should be
made.

Marriage indeed differs from many other contracts in this, that other innocent persons, the common offspring, are deeply concerned in the continuance of the contract. It should not therefore be left to the pleasure of the parties to break off the contract as they please. But when through the fault of either side the essential ends of this relation are defeated, viz. the procreating and educating of offspring, and a friendly society for life; the innocent party may be free, if this is more eligible than compelling the other to the duties of this relation; and has a right, which the society should maintain, of making the guilty party by labour or goods contribute in another manner the proper share of charge toward the maintenance and education of the common offspring. <178>

By courts of
justice or
equity.

Courts of justice should take cognisance of the violations of this contract in civil society, and that in a more severe manner than in other matters of contract, and redress the innocent at the expence of the guilty. Nay, as in most states, an equitable power is lodged in some court for

prosecution by any who inclined in the name of the state, and the penalty to the man was *relegation*, or a sort of banishment, and confiscation of the criminal's estate. Constantine made adultery capital. Cod. l. 9. tit. 9. l. 30. The following Emperors abated this severity. Nov. 134. 10. Justinian confined the adulteress for life in a monastery; and continued the capital punishment on the adulterer.

* To deny obstinate desertion to be a cause of divorce or *repudium*, because the innocent party does not put away, but is left by the guilty, is only cavilling about words. [See Pufendorf, *Law of Nature*, VI.1.22, p. 582.]

redressing oppressive contracts, and rescinding them either in part or in whole; it might be equally convenient to lodge in proper hands a power of dissolving such marriages as prove miserable to both parties, either by the fault of both, or by some singular disagreement of their tempers, when upon a considerable trial 'tis found that there can be no hopes of any ease or peace while they cohabit; and both are willing to submit to any terms for a divorce; taking also sufficient precaution for the common offspring, when there is any, out of the goods or labours of both. Such separations indeed should not be lightly allowed upon any smaller contentions, or transient animosities: nay, such penalties and inconveniences should attend them, as would restrain both parties from seeking them for smaller causes; and restrain both from any ill-natured conduct, with design to tempt the other to concur in suing for a separation. If a large share, suppose two-thirds, or an half of the goods of both, or a like proportion of the profits of their labours, were immediately to be adjudged into the hands of some proper trustees for the benefit of their offspring, when they had any; or, if they had none, some large sum, in proportion to their wealth, imposed as a tax to the state, this might prevent the <179> suing for divorces on trifling causes, or provoking each other designedly by ill usage to concur in such a suit. And new marriages might be prohibited to both for a considerable time, to try if they could return into a mutual affection. If under these inconveniences, they chose to be divorced, to avoid the superior miseries they suffered from this relation,* it would be cruel to deny them this liberty. Where the fault

*The passages of scripture upon which divorces have been universally prohibited in all cases except that of adultery, are Matth. v. 32. Mark x. 5–12. Luke xvi. 18. But some prohibitions equally universal are allowed to be elliptical expressions, or to admit more exceptions. Thus, Matth. v. 34, &c. and James v. xii. are allowed to be elliptick, and would have been thus apprehended by those to whom they were addressed, viz. “Your doctors teach that some forms of swearing are obligatory, and others not obligatory; that such and such are obligatory, and others not. (See Matth. xxiii. 16–22.) But I say unto you, swear not at all [without intending to be bound] neither by Heaven, &c.” And then our Saviour shews that all these forms, even those which their doctors denied to be obligatory, are metonymical forms of swearing by God. See *Grotius D. J. B. et P. l. 2. c. 13*[.11]. In like manner, we may judge the prohibitions of divorce elliptical, without violating the rule *Exceptio confirmat regulam in [casibus] non exceptis* [the exception confirms (that there is a) rule of no exceptions].

lies chiefly on one side, the penalties or hardships upon a divorce should chiefly be inflicted on the guilty party.¹⁸ < 180>

The original of
corrupt laws
among
Christians.

XII. Were the corruptions of such as profess the best institutions chargeable upon the institutions themselves, or their author, nothing could be more opprobrious to Christianity than the laws received in many Christian states, about fornication, adultery, and divorces. The Scriptures indeed recommend all purity of manners, and represent all contrary vices in their odious colours, without any disguise: but in many Christian states, fornication of the worst sort, the debauching free citizens formerly innocent, by all frauds and perjuries, is no civil crime, unless force has also been used; as if the laws allowed all who pleased to practise all manner of lewdness. The ecclesiastick punishment is a jest

The Jewish doctors allowed many trifling causes of divorce, some one or other of which must have been specified in the bills of divorce, as these bills were often credentials to the women, that it was not for the more infamous causes that they were divorced. Among the causes allowed, no doubt, adultery would be one. The full sentence then may be this. "Whosoever puts away his wife for any of the reasons [allowed by your doctors] except that one of adultery, and marries another, commits adultery." This does not exclude other just causes, as appears by 1 Corinth. vii. 15. which declares the Christian party to be free from the marriage-bond upon the obstinate desertion of the infidel. The Jews would not make this a cause: they treated their wives like slaves: it was only husbands who divorced. Upon desertion they would recover their wives as they would their cattle, and might be as little solicitous about their affections as those of their slaves. From the figurative stile of the scriptures one may perhaps also extend the meaning of adultery to other faults; to the alienation of heart by obdurate hatred or ill-nature. Such dispositions defeat one great end expressed by God in the first institution, and expressly stipulated and promised mutually by the parties, that of being *mutual helpers* in this partnership for life. Genes. ii. 18, and 24. many other crimes, and much insolent treatment are as direct violations of the essential articles of this contract as adultery. [The two passages "without intending to be bound" and "allowed by your doctors" were inserted by Hutcheson in square brackets.]

18. This paragraph and especially Hutcheson's long note are particularly closely interwoven with the texts of Grotius, Pufendorf, and Barbeyrac. All three practice Hutcheson's casuistical reading of "elliptick" passages of Scripture to show that divorce may be justified on much wider grounds than adultery; Barbeyrac in particular elaborates the implications of exceptions; most of the scriptural passages are shared. See the references in the previous note, especially Barbeyrac's commentaries in Grotius, *The Rights of War and Peace*, pp. 516–20; and in Pufendorf, *Law of Nature*, pp. 579–80 and 583.

to those who have made tolerable advances in impudence. Nor has adultery any proper civil penalties on either party. In some countries a pecuniary fine is sometimes given as a compensation of damages: no person is incapacitated by such crimes, for any honours or offices civil or military, or worse received in his pretensions to any station. And yet God and the world sees how certain trifling ceremonies and modes are enjoined by ecclesiastick laws, and adopted by the civil, the noncompliance with which, tho' from a principle of conscience, or some opinion that they are offensive to God, shall exclude a man from all hopes of preferment, or any reputable offices in his country.

Again, tho' adultery is allowed a just cause of divorce, such proofs of it are required, as it is impossible generally to obtain. Whereas, since the mutual satisfaction of the parties in this relation, if they are <181> faithful in it, must be of more importance than the cultivating any other friendship; other intimacies should certainly yield to it, as far as they are inconsistent with it, which however they seldom are to people of virtuous intentions. If therefore either party suspects the other of too great intimacy with any third person, and intimates this suspicion before witnesses, all future voluntary conversation of the party thus admonished with the third person suspected, in any retired place without witnesses, should be deemed a proof of adultery. The most friendly conversation with one we honourably love may be obtained sufficiently in publick places, or in such where we are in the view of others.

Again, when the canon law allows a divorce for adultery, which is the only cause it sustains, neither are the guilty punished as they ought, nor justice done to the innocent. Both are alike restrained from marriage, against all common sense. If the guilty are allowed to live in the state, they are perhaps justly hindered from marrying the partner of their guilt; lest people should commit adulteries with this view. But they should not be left more exposed to that vice to which they already appeared too prone. Other punishments should be inflicted: and it would be more proper to compell them to marriages with persons formerly infamous, and of sufficient lust for them, to prevent their corrupting others. Restraining the innocent party from the satisfaction of marriage and offspring is a manifest iniquity, a new and monstrous injury. <182>

Absurdities in
the canon-law.

The causes
of them in
history.

The original of these laws is easily found in history. During the early persecutions, some melancholy notions of sanctity in all sufferings, and of impurity in many of our most innocent enjoyments generally prevailed. Worldly business was thought inconsistent with the heights of piety, tho' piety is never more sincere and lively than when it engages men in all social and kind offices to others, out of a sense of duty to God: and* just philosophy, as well as religion, could teach that true devotion, tranquillity, resignation, and recollection too, may be practised even in a court or camp, as well as in a wilderness. But celibacy was early admired as sacred, and the chastest marriage was reputed at best a state incapable of the highest purity. The ecclesiasticks affecting to be examples of perfection, both generally practised celibacy, and recommended it. When by the establishment of Christianity they got access to wealth and power, they grew as corrupt as the layety; and yet, not to renounce their old known maxims, and to retain their authority and veneration with the layety, they must keep up this shew of sanctity, and of disengagement from the world, tho' contrary to the express doctrine of the apostles. Celibacy was enjoined on the clergy in some early councils, and these injunctions often repeated in corrupt ages, while they were generally framing one canon after another to prevent their infamy by keeping concubines and whores, and with little success. Under such restraints from lawful enjoyments, no doubt, much debauchery was secretly practised by a corrupt generation, supported in ease and luxury: and by their artifices, in the eleventh and twelfth centuries, the ages of ignorance and superstition, the cognisance of matrimonial causes, and of all venereal crimes, was wrested from the secular judges, and assumed by the spiritual. The punishments they appointed were some useless and often trifling penances, and donations to ecclesiasticks. The former laws were too severe for their purposes. Adultery was the most convenient crime for such clergy, with less danger of discovery, and free from the charge of maintenance to the spurious offspring. The proof requisite for conviction must be made difficult, or almost impossible; and all prosecutions must be discouraged. The injured prosecutor must be restrained

* See Marc. Antonin, in a variety of passages. [This is in fact a constant theme throughout the *Meditations*, but for a typical passage, see pp. 113–18.]

from marriage, after divorce obtained upon the fullest proof. It must have been monstrous, and even shocking to a Popish nation, to have relaxed all penalties upon adulteresses and their gallants, without a like lenity to the adulteries of husbands. Thus the punishments were made light to all. And the clergy well knew their own superior advantages, by their reputation for sanctity, and their access to great intimacies by confession, and other religious artifices.

XIII. The general duties of this relation may be abundantly known from the ends of it. As this state should be a constant friendship for life, it must require the greatest previous caution in chusing partners, who by their virtue, good-nature, prudence, and suitable <184> tempers, will make this relation an inward friendship founded on sincere esteem. 'Tis incumbent on all who enter into it, to acquire an habit of good-nature and self-command, as well as knowledge of the affairs of life. In chusing a proper person, the advice of friends should have the greatest weight. The affections of the young are often engaged without deliberation, and, when they are so, they cannot judge calmly and impartially.

The general duties in this relation.

'Tis of great use to be previously well apprized of the infirmities and imperfections of the very best of mankind, and not to let our imaginations swell with airy hopes of every thing calm, and serene, and prudent, in the whole deportment of each other. The tempers of the young often appear such to each other, while the strong mutual passion possesses them, and they are put to no trial by the troubles and disappointments of domestick affairs: and then every little ruffle or opposition is matter of surprize and offence. But if we are well apprized of the weaknesses and sudden passions incident to the best tempers, we shall bear them patiently from one of prevalent goodness, and have far less vexation or disgust from the common occurrences of life: and every good and lovely disposition, every act of self-government and condescension, will be mutually the more esteemed, and the more endearing.

XIV. The refinements of *Plato on this subject cannot be passed in silence. He observes the many in<185>conveniences arising from the narrow bonds of wedlock and parental affection: that men confine their views and affections to a few objects, and grow negligent of more extensive interests,

The scheme of Plato considered.

* De Repub. l. 5.

while they are warm in pursuit of those of their children and kinsmen; that vices are overlooked in them, and the severity of discipline relaxed: innumerable contentions are raised by jealousy, and the clashing interests of families. Wealth is often heaped up for the most worthless members of society, and men are promoted to honour and power from these narrow motives, and not in consequence of virtue and merit. He proposes therefore a scheme for the *supreme order in his state, by which, as all property is excluded, so are all these narrower ties of affection. By his plan, no man was allowed a wife to himself, nor could father or mother know their own offspring, and scarcely know each other. All children were immediately after birth removed to publick nurseries, and thus made children of the state. Whoever reads this plan, will find many of the aspersions cast upon it to be unjust. Never was there in any plan less provision made for sensual gratification.

The just
objections
against it.

The grand fault of it seems to be, that it is not adapted to human nature, and to the affections which God has implanted in it. We shewed† already, the superior evils to be dreaded from community of goods, and this community of offspring would occasion much more. And first: That necessary care and labour in the rearing and education of children, now <186> born by the parents with pleasure, through their fond affection, would be an unsupportable toil to others, and would seldom be faithfully executed. Again, life would be robbed of its sweetest enjoyments in the tender conjugal and parental affections, which could never be compensated either by loving a nation at large, or by particular friendships. And for particular friendships, which no scheme can exclude, even tho' no ties of blood were known, while our hearts continue as God made them, they must produce many of those dreaded evils, unless mankind were generally much wiser in their choice of friends, than in the marriage choice, or in parental cares. Do not we all see that these factions which often tear states asunder are very little influenced by ties of blood, and frequently make men counteract them? they arise from am-

* The φυλακες or guards.

† *Pro conjugibus et liberis, pro aris et focis.* [A combination of two common phrases: for wives and children, for altars and hearths. Concerning community of goods, see above II.6.6.]

bition and the different opinions about the proper administration of affairs, and from admiration and zeal for favourite characters upon whose fidelity and wisdom the several parties depend. Why then exclude the highest satisfactions of life, those of mutual love in such tender relations, which have always been found the chiefest springs of industry, and an incitement to* zeal for our country's defence, and to all honourable services?

Higher knowledge and virtue must be introduced, and our natural affections suppressed, before industry, activity, labour, and dangers can become agreeable from a calm extensive affection alone, without any of <187> these tender bonds; and without the hopes of exercising, according to our own judgment, liberality, generosity, and munificence, and contributing to the happiness of such as are peculiarly dear to us. And yet a lower degree of wisdom and virtue in the legislators of any state might contrive† such laws about education, a censorial power, elections to offices and honours, and successions to the fortunes of parents, as would generally prevent the worst of those evils Plato dreaded; and that at a much less expence than that of banishing all the tenderest joys of life in the natural relations of marriage and families. The end of civil polity, as‡Aristotle observes, among his just censures upon this scheme, is not mere unity and safety, but the general happiness of a people.

* B. II. Ch. vi. § 5.

† For this see *Xenoph. Cyropaedia*, *More's Utopia*, *Telemachus*, and *Harrington's Oceana*. [The references—standard in the neo-republican tradition—are Xenophon, *Cyropaedia* (c. 370 BCE); Thomas More, *Utopia* (1516); François de Fénelon, *Telemachus, Son of Ulysses* (1699); James Harrington, *Oceana* (1656).]

‡ See *Aristot. Polit. l. 2*. [Aristotle, *Politics*, Book II, esp. 1260b25–1266a30.]

The Rights and Duties of Parents and Children.¹

The natural
instances shew
the rights.

The desire of posterity is natural to mankind, tho' in some instances it is restrained and overpowered by other desires. Such is the constitution of nature, that human offspring long continues in a very infirm state, needing the continual assistance and care of others, both on account of its weakness, and its want of all knowledge of the dangers it is surrounded with. A great deal of information and instruction, <188> and many restraints upon their appetites, are necessary for preserving children to maturity, and fitting them for acting their part tolerably in human society. For all this indigence nature has provided a supply by implanting the tenderest affection in the breasts of the parents, exciting to and sweetening this long laborious attention. And as we are a rational species capable of fore-thought, and gathering prudence by time and observation, this affection is made as lasting as our lives; since children during the life of their parents may need their advice and counsel, and be exceedingly profited by them in many other respects. And the parents during life may reap new pleasures, by means of this strong and constant affection, from the prosperity of their children. Thus nature has constituted an amiable society, a permanent relation, by these lasting affections in the parents, and by the strongest motives of gratitude

1. This chapter corresponds to *Short Introduction*, III.2. The background is in the main natural law works: Grotius, *The Rights of War and Peace*, II.5.1–7; Pufendorf, *Law of Nature*, VI.2, and *Duty of Man*, II.3; Locke, *Two Treatises of Government*, II.6; Carmichael, *Natural Rights*, ch. 15.

presented to the minds of the children to confirm the natural affection on their parts.

The intention of God in this matter, is manifest by this whole contrivance. The parental affection suggests the permanent obligation on parents to preserve their children and consult their happiness to the utmost of their power. The weakly and ignorant state in which children long continue, suggests the parents right to an unlimited power of directing their actions for their safety and right education, and yet makes this power easy and safe to the children, by restraining all unnecessary severity. The parental affection itself, when the children come to mature strength and knowledge, must procure the satisfaction of liberty to them, when they are thus capable of enjoying it, and exerting their own wisdom in the business of life; and yet will continue to them all the advantages of the counsel and other kind offices of parents. The children, on the other hand, as soon as they can know any thing of moral obligation, must see their duty of subjection and obedience in their early years, their duty of gratitude, and of making all returns they can to such tender benefactors; particularly, of complying with their inclinations, as far as they can consistently with their own natural satisfactions in life, nay, sacrificing, in their turn, to their parents, much of their own inclinations or pleasures not absolutely necessary to their happiness. They must discern the sacred duty of supporting their aged parents, in their second infirmity or childhood, and bearing with their weakly humours and peevishness; as parents from a fond disinterested affection long bore with such manners of theirs in their childhood; without which they never could have attained to maturity; nor could any human laws or vigilance of civil governors have ensured their preservation, or compelled their parents to that faithful and laborious attendance to it.

The state of children and the parental affection found the power.

II. The manifestly disinterested nature of this affection shews at once the nature and duration of the parental power. The foundation of the

The duration of parental power.²

2. Having stated his position that the rights and duties of the parental relationship derive from natural benevolent sentiments, Hutcheson in this section enters a dense and long-standing discussion of the subject. The starting point for present purposes was Grotius's suggestion that parents derived their rights from the "generation" of their offspring, and much of the discussion arose from the unclarity of

right is the weakness and ignorance of childhood, which makes it absolutely necessary that they should be governed a long <190> time by others: and the natural affection points out the parents as the proper governors, where no prudent civil institution has provided more effectually for their education. The generous nature of this affection shews that the power committed by nature is primarily intended for the good of the children, and, in consequence of their happiness, for the satisfaction also, and joy of the affectionate parent. The right therefore cannot extend* so far as to destroy the children, or keep them in a miserable state

how a moral relationship could originate in a physical process. According to Grotius, a moral faculty was generated that the child could not exercise in its first age, whence the parents had a *iuris* to do so, and as the child acquired command over its moral faculty, the rights of the parents (and the corresponding duties of the child) changed from perfect to imperfect ones; *The Rights of War and Peace*, II.5.1–2. The echoes of this faculty-based idea of right are evident in Hutcheson, which makes it unsurprising that he is critical of Hobbes, Filmer, and Locke (as well as, by implication, Carmichael). Hobbes was commonly understood to maintain that the foundation of parental authority was a matter of power, with the implication that it originally belonged to the mother only. In the assumed state of nature, the child would be taken rationally to consent to the “dominion” of the mother as the one with power over him or her; *De cive*, IX.2–3, *Leviathan*, ch. XX, esp. pp. 139–40. Filmer rejected both Grotius and Hobbes by means of the idea that the child belonged to the father because it was his work and a link in a chain of workmanship and ownership that God had begun with the creation; *Observations concerning the Originall of Government*. Three arguments against Filmer became prominent in the subsequent debate. First, Filmer’s idea of God’s workmanship applied only to humanity as a species, but each individual as a person was God’s work (Locke, *Two Treatises of Government*, I.6.52–54). Secondly, the general idea of “generation” sounded materialistic and deterministic (e.g., William Wollaston, *The Religion of Nature Delineated*, pp. 88–91). Thirdly, the idea of the child as property that the father had worked would entail that paternalism was inherent in the nature of humanity, something that Locke in particular rejected, emphasizing the maternal role in generation and subsequent authority (Locke, *Two Treatises of Government*, II.6). For Pufendorf parental authority was an aspect of the natural-law duty to live sociably according to one’s situation in life; this entailed that the parents had equal authority over the child, but generally social practice meant that the father was the superior. The duty to live sociably also entailed that the child had given a “presumed,” though “tacit consent” to the parental authority; *Duty of Man*, II.3.3, *Law of Nature*, VI.2.4–5. Hutcheson picks up this idea and transforms it into his own philosophical framework, see below sec. 5.

* The doctrine of Hobbs on this subject must move the indignation of any one who has the common feelings of humanity, tho’ some parts of his reasonings are used by others inadvertently in establishing some favourite schemes. Hobbs makes

of slavery. When they attain to mature years, and the use of reason, they must obtain that liberty which is necessary to any rational enjoyment of life. The parental affection naturally secures to them this emancipation, as the reason God has given them intitles them to it.

This foundation of the parental power plainly shews that it equally belongs to both parents; and that the mother is wronged when she is deprived of her equal share, unless where she has voluntarily consented, in dependance on the superior wisdom of her husband, to submit all domestick matters to his last determination. But whenever the father does not interpose, or is absent, or dead, the whole right is in the mother. This whole power, as it is intended for the preservation and good education of children, can only extend to moderate chastisements, such as are not dangerous to life: and its highest punishment must be abdication or expulsion from the family. 'Tis manifest too, that its nature, intention, and duration are quite different from that of civil power, to which large numbers of adult persons must be subjected continually, for a common interest of the whole society; which too must extend to all punishments and violence that may be requisite for the common defence and security; as it is not founded on any particular affections implanted by nature toward a few, but upon the general affection; and contrived by men for the common interest of a large society.

'Tis common
to the parents.

To found this parental power on mere procreation, is a foolish extending of some maxims received about property to the most foreign subject imaginable. The bodies of children were formed in their first state out of some parts of the parents bodies; but not by any wisdom or art of the parent; nay sometimes contrary to their desire and intention. God who gave parents these dispositions subservient to procreation, formed both the bodies of the children and the parents, and so destined this order of procreation, as to shew the rights and duties of both parents and children; and the soul, the principal part, is his own immediate work-

'Tis not
founded on
mere
procreation.

children a piece of goods or chattels, first occupied by the mother, and absolutely in her right, because she could have provoked abortion, or strangled them in the birth. But in marriage, she and all her rights are subject to the husband as the stronger, or in virtue of her consent. And thus the absolute *patria potestas* is constituted for life, so that the father may kill, sell, or enslave his posterity for their whole lives.

manship. So that children cannot be deemed accessions or fruits going along with the property of their parents bodies. They commence rational beings, parts of this great system, with the same <192> natural rights which their parents enjoy, as soon as they have reason to use them. Generation no more makes them a piece of property to their parents, than sucking makes them the property of their nurses, out of whose bodies more of the matter of a child's body is sometimes derived, than was from both parents. On this footing the proprietor of any cattle by whose milk and wool they are fed and cloathed for any number of years would still have a stronger claim. The parent who exposes his child, or neglects his education, has no right of power; and whoever voluntarily undertakes the necessary office of rearing and educating, obtains the parental power without generation. Generation points out the persons on whom this duty is incumbent, by the natural affection accompanying it; and these should not be excluded from discharging it, and enjoying the power requisite for it, except for a superior benefit to the child by some finer contrivance for education. But when the parents are dead, or wickedly decline this charge, whoever undertakes it, has the whole parental power.

The rights
contained
in it.

This grand end of the parental power shews that it includes few of those rights contained in the *patria potestas* of the Romans.³ The child is a rational agent, with rights valid against the parents; tho' they are the natural tutors or curators, and have a right to direct the actions, and manage the goods of the child, for its benefit, during its want of proper knowledge. If goods are conveyed to a child, by donation, legacy, or inheritance, the parents are not the proprietors; <193> nor have they a right to more of the annual profits than compensates all charges and labours usefully employed in the child's maintenance and education. The same may be said of any acquisitions which a child of singular ingenuity and dexterity might make before it came to the full use of reason, which sometimes might far surpass all the prudent charges of its education.

3. Cf. Justinian, *Institutes*, I.9.2: "Our authority over our children is a right which only Roman citizens have. Nobody else has such extreme control over children." Quoted in Grotius, *The Rights of War and Peace*, II.5.7; Pufendorf, *Law of Nature*, VI.2.11; and Stair, *Institutions of the Law of Scotland*, I.5.13 (cf. III.2, n. 6 below).

III. So far concerning the proper parental power, which naturally expires when children come to the full use of their reason. There are two other sorts of power generally succeeding to it, but of a very different nature, and upon different foundations; the one, that of the *head of a family*; the other, that authority or *influence*, rather than power, which a parent should enjoy during life over children when they are adult, and live not in the parents family.⁴ As to the former, while one supports in his family adult children, or any friends, 'tis ever expected that they should conform themselves to the order of the family, or that rule which the master of it ordinarily claims: and while they voluntarily chuse to stay in it, they are justly presumed to have consented to this subjection. If they did not consent, they should not have taken this support or these conveniences. This power is solely founded on the consent of such as are subject to it, declared by their voluntary continuance in the family. This power cannot be of great extent: little severity is requisite for the order of a virtuous family: the last punishment seems to be exclusion from <194> it. If crimes are committed which deserve severer punishment, the master of the family, or others, have the same right of punishing as they would have had tho' the criminal had never lived in this family. No right to inflict the severer punishments arises from this state or relation. If the custom prevail'd in any age that masters of families assumed higher power over their domesticks; and if adult persons who knew this, voluntarily remained in these families, thus consenting to the power assumed; they might, no doubt, thus constitute as high a power over themselves as that ordinarily assumed by civil magistrates, and thus make a family a little monarchy.

The rights of the head of a family.

4. The distinction between the three parental relationships was discussed on the basis of Grotius's idea of the three "seasons" of life (*The Rights of War and Peace*, II.5.2–6) and became the framework for distinguishing between private and civil authority and for disputes about patriarchalism. The most elaborate discussion is in Pufendorf, who emphasizes the difference between the family in the state of nature and in civil society. When the family is unregulated by positive law, paternal authority may assume some similarity with civil power, but—contra Hobbes (according to Pufendorf)—by no means sovereignty; *Law of Nature*, VI.2.6–9 (first period), VI.2.10–11 (second period), VI.2.12 (third period); *Duty of Man*, II.3.4–11; Carmichael, *Natural Rights*, pp. 135–37.

The filial duty
is perpetual.

IV. The other power, or weight and influence rather, is that which parents should always retain over children, even when they are supporting themselves in separate families. This is still more remote from any civil authority or proper right of coercion, or of annulling or invalidating any deeds of the children. It is no more than a claim founded on strong bonds of gratitude, and all the generous sentiments of children, and the deference due to the sacred order of nature; which must incline them to gratify, as far as they can, and comply with the inclinations of such kind benefactors, who with such patience and lasting tenderness supported them in their infancy, and still pursue them with the sincerest affections. It must be highly ungrateful in children, not to consult their satisfaction in their old age, or to add to the usual distresses of that state of life; or to decline sacrificing <195> their smaller or less necessary interests or pleasures to those of such kind benefactors and faithful friends.

Obliging to
grateful
compliance.

In particular, children are sacredly bound to consult the inclinations of parents in such matters as are of high importance to the parents as well as to themselves; such is their marriage, from which those are to issue who must represent their parents, as well as themselves, and are often as dear to the remote as to the immediate parents.⁵ Marriage indeed is of more importance to the happiness of the parties than to that of their parents; and consequently parents can have no right of compelling the parties contrary to their inclinations, to the destroying of all the satisfaction of their lives. And yet, on the other hand, a child's marrying with one unalterably disagreeable to his parents, must prevent almost all agreeable society with the parents. An high deference therefore to the parents in this matter must be due from the child even in mature years and judgment. It would be a cruel return for all the care and constant affection of the parents, by a precipitant marriage to cut off all their satisfaction in those who should be dearest to them. If the child judges the parents aversion to be unreasonable, all proper representations should first be made, and arbitrators called in, that wise friends may conquer the prejudice. Without first trying such methods, it is cruel and ungrateful in a child, to take this

5. Cf. *Short Introduction*, III.2.4. Hutcheson is in agreement with Grotius, *The Rights of War and Peace*, II.5.10; and Pufendorf, *Law of Nature*, VI.2.14, and *Duty of Man*, II.3.8 (sec. 10 in the original).

important step against the parents consent. If these means are tried, and the aversion judged unreasonable by arbitrators, and the child's affections <196> so engaged that a disappointment must make life miserable, the child may use its liberty for its own happiness; and must by all future dutiful conduct study to conquer the parents prejudice.

As the sacred bonds of parental affection are seldom removed or broken altogether by the undutiful conduct of children; so a good man would make the bonds of nature on the other side so strong in his heart, that no provocation should break them. This deference or reverence a good man would pay to the order of nature, that he would retain a stronger goodwill to the very worst parent, one who had ruined the stock of the family, or even exposed himself in his infancy, than toward a stranger of like character. A child come to maturity, as far as the laws of society will allow, may justly stop a parent in those ruinous courses. And yet it is still amiable to shew a dutiful affectionate disposition in such a relation, as far as the safety of our family or our country will admit: to be obliging even toward the evil and the froward, out of respect to the venerable order of nature, where there's no merit in the immediate object. If there be nothing desirable in the conversation of parents, nor hopes of making any amendment of their tempers, yet it is still lovely in a child to give them support, and consult their ease, as far as he can without encouraging them in their vices, or pernicious follies.

Duty toward
the weak or
froward.

V. As the parental power naturally extends to all the means requisite for the rearing and education of children, it must contain several rights over them of an <197> unusual kind, in cases of great exigence. Whatever

How far pa-
rental power
extends.⁶

6. See *Short Introduction*, III.2.2, pp. 227–28. Compare Stair's *Institutions of the Law of Scotland*, I.5.13: "As to the father's power to keep his children within his family, and to apply their work for his use, though controversies in that point have seldom been moved, but the matter transacted by consent, it is not to be doubted but that children may be compelled to remain with their parents, and to employ their service for their use, even after their majority; unless they be forisfamiliat by marriage, or by education in a distinct calling from their parents; or unless their parents deal unnaturally with them, either by atrocity, or unwillingness to provide them with a competent marriage in due time, and with means suitable to their condition; . . . or if the father countenance or allow the children to live by themselves, and to manage their own affairs apart; from whence his tacit consent to their emancipation may be inferred. In which cases the consuetude of Germany is the same with our customs. . . . The English account children to be emancipate so soon as they pass their minority."

a parent in tolerable circumstances expends in the education of his own children, when nothing is declared to the contrary, is indeed justly deemed a donation, without a right to demand any restitution, except he falls into great distress; and only under this condition, that he shall receive support from them, if he needs it in old age. Nay, from the common intention of parents in their acquisitions, the children are a sort of joint proprietors, tho' the parent has the administration of the whole. Where children indeed have fortunes left them by others, there is no iniquity in a parent's charging the prudent expences made on such children, as a debt on their fortunes; when his own reasonable ease, or the condition of his other children requires such conduct. A parent must have a right also to commit the care of the education of his children to persons of better abilities than himself, or of more leisure for it: or of giving them in adoption to others who can make better provision for them. These are ordinary parental rights. But in cases of great straits a parent has a further right of transferring to another his claim of compensation for the past charges he has been at, and of binding the child into any humane state of servitude for such a term of years, that his labours may compensate these charges, and those of his annual support during his service; but ever with a right of redemption by himself or any friend who would defray these charges. This contract is sometimes necessary for the parents support, and <198> sometimes a prudent office for the child, by which he is bound, as any minor is, by a prudent deed of his tutor; and his obligation is one of these called *quasi ex contractu*, of which formerly.⁷ But as no parent can transfer a greater right over his child than he has himself, this can be no foundation for perpetual or hereditary slavery. Such a contract is so far from an useful office, or a *negotium utile gestum*, that it is manifestly iniquitous, and produces no obligation.⁸

Civil Power
is on a quite
different
foundation.

The power of a state over its members is upon a quite different foundation, when numbers are once associated for a common interest, where each one is secured at a publick expence in the possession of all his rights, and enjoys for himself and posterity protection of laws and magistrates,

7. See above II.9.4 and II.14.

8. For the *negotium*, see above II.14.3 and III.5, n. 8 below.

is defended by armies, and obtains the innumerable advantages of a civilized life: for these extensive interests of multitudes, it may be just to compel them to undergo the greatest dangers, nay to run upon certain death. Minors enjoy the same advantages with the aged, and thus are in justice subjected to the state, previously to their own express or tacit consent; as they have shared from their birth of these advantages, and in consideration of them are bound to contribute any reasonable services they are capable of, toward the preserving and continuing such beneficent associations: of this, more hereafter. It is however scarce just or prudent to enlarge the parental powers by civil laws. The powers constituted by nature are sufficient for the purposes of education. The parent is but an improper deputy magistrate, for the execution of justice over his children, for many obvious reasons: and granting him a power to kill, expose, or sell his child into perpetual slavery, without any demerit of the child's, is a monstrous iniquity.

The Duties and Rights of Masters and Servants.¹

The occasion
of this
relation.

I. As soon as mankind were considerably increased in numbers, and the more fertile clear lands occupied, many accidents would occasion that a great many would have no property, nor any opportunity of employing their labours on goods of their own for their support: and many on the other hand who had much property would need the labours of others, be willing to support them on this account, and give them further compensation: this would introduce the relation of master and servant. Whether in the earliest ages men entered into such contracts for life, or only for a certain term of years, is not of much consequence. The rights and duties in this relation, will better appear from the following considerations.

The chief max-
ims of natural
justice about
this relation.

1. The labours of any person of tolerable strength and sagacity are of much more value than his bare maintenance. We see that the generality of healthy people can afford a good share of the profits of their labours for the support of a young family, and even for pleasure and gayety. If a servant obliged himself <200> by contract to perpetual labours for no other compensation than his bare maintenance, the contract is plainly unequal and unjust; and being of the onerous kind, where equality is professed on both sides, he has a perfect right to a further compensa-

1. Cf. the corresponding chapter in *Short Introduction*, III.3. The chapter is anticipated in the discussions of inalienable rights (above II.3.4), of equal natural rights and criticism of Aristotle's notion of natural inequality (above II.5, esp. sections 2–3), and of the rights and duties arising from onerous contracts (above II.13.3–4).

tion, either in some *peculium*, or little stock for him and his family, or in a humane maintenance for his family.²

2. Such a servant, whether for life or a term of years, is to retain all the rights of mankind, valid against his master, as well as all others, excepting only *that* to his labours, which he has transferred to his master: and

2. In ancient Rome *peculium* consisted of means (for farming, trade, crafts) that the pater familias put at the disposal of slaves (or sons), who themselves were not able to own property. In the following discussion Hutcheson follows Carmichael, *Natural Rights*, p. 139, in insisting upon natural rights as defining of personhood and hence as inalienable also for persons in servitude, but he adds the sharp distinction between the person and his or her alienable labor power. The latter is potentially wide ranging and may include life-long servitude; see following note. For other alienable rights at the disposal of the community, see above II.6.5 and II.16.5–6. In the natural-law literature, the debate about slavery was conducted with reference to Grotius's distinction between slavery according to natural law and according to *ius gentium*. The former could happen in two ways. First, the slave could contractually surrender all or some rights to the master. The former was "perfect" and perpetual servitude, though it could never include the right of the master to kill the slave; the latter was "imperfect" servitude and encompassed a wide variety of service relations limited in some way (in duration, kind of work, degree of control, etc.); *The Rights of War and Peace* II.5.26–28. Secondly, slavery could be used as punishment for breaches of natural law; *The Rights of War and Peace*, II.5.32 and II.20. Cf. Locke's idea of the natural right to punish transgressions of natural law in the second of his *Two Treatises of Government*, paras. 7–9. For Hobbes on voluntary slavery, see *De cive*, VIII. 1–3 (cf. *Leviathan*, ch. XX). Carmichael's and Hutcheson's natural rights argument has roots in Locke's reasoning: As God created each person, only He can dispose of a person's life; nobody "can give more Power than he has himself"; *Two Treatises of Government*, II.4.23. Whereas both forms of slavery in natural law were matters of rights, according to Grotius, in *ius gentium* it was a matter of convention and historical practice ("voluntary" or "arbitrary" law), and in the form of conquest in war slavery had de facto mostly been without limits, though Christian and Muslim nations had introduced some restraint; Grotius, *The Rights of War and Peace*, III.7, and cf. III.14. Like Grotius, Hobbes, Locke, Carmichael, Hutcheson, et al., Pufendorf rejects the Aristotelian idea of natural slavery but does not adopt the rights arguments about slavery. Instead he treats servitude historically as forms of social organization at the core of which are different forms of voluntary submission aimed at securing basic self-interest, namely subsistence; *Law of Nature*, VI.2, and *Duty of Man*, II. Central issues in the natural law debate were whether the servant produced more than his own upkeep, enough for a family; who owned any surplus in imperfect service; how one could conceptualize the servant as an independent person under conditions of perfect, perpetual servitude where the alienated labor was controlled by a master; how could alienation of labor be distinguished from alienation of ability, skill, etc. Hutcheson's argument in the *System* should be contrasted with that in the *Short Introduction*, III.3.

in lieu of this he has a right to the maintenance as above mentioned, or to the wages agreed on. If by custom masters assume any reasonable jurisdiction over their domesticks, not inconsistent with their safety and happiness, the servant, by voluntarily entring into the family, is deemed to have subjected himself to this jurisdiction; even as a foreigner who resides in a state, subjects himself to the laws of it as far as they relate to foreigners.

3. Where one has not transferred a right to all his labours, but only engaged for work of a certain kind; he is obliged to that work only; and in other respects is as free as his master. In none of these cases can the master transfer his right, or oblige the servant to serve another, unless this was expressly agreed on in the contract. 'Tis of high consequence to the servant, what sort of master he serves. One who consented to serve a person of humanity, or who had less severe work to employ him in, must not be deemed ^{<201>}consenting to serve any other person of a different temper, or who may require severer labours.

The foundation of slavery.

4. Men may justly be placed in a much worse condition of servitude, in consequence of damages injuriously done, or of debts incurred, which they have by their gross vices made themselves incapable of discharging. The person whom they have thus injured has a perfect right to compensation by their labours during their lives, if they cannot sooner discharge the claim. A criminal too, by way of punishment, may justly be adjudged to perpetual labours of the severest sort. In these cases, a power is founded solely for the behoof of others, to make all the profit by their labours which they can yield. Whatever humanity may be due to such unhappy servants, as they are still our fellow-creatures, yet the master's power and right being constituted only for his behoof, it is naturally alienable without their consent. But, still, in this worst condition of servitude, neither the criminal, after he has endured any publick punishment which the common safety may require, nor much less the debtor, have lost any of the natural rights of mankind beside that one to their own labours. If they labour as far as they can, they have a right to obtain support. Nay, they have a right to defend themselves by violence against any savage useless tortures, any attempts of maiming them or prostituting them to the lusts of their masters, or forcing them in any worship against their con-

sciences. They can acquire rights by contract or by any legal deed of conveyance by others, <202> which may be profitable to them in extinguishing the debt, or compensating part or whole of the value of their labours, where the labours are not enjoined as a part of the exemplary punishment. In particular, they acquire rights by any deed of the masters remitting to them any part of their labours.

As this sort of slavery has a just foundation, some nations favour liberty immoderately by never admitting the perpetual servitude of any citizen. And yet perhaps no law could be more effectual to promote a general industry, and restrain sloth and idleness in the lower conditions, than making perpetual slavery of this sort the ordinary punishment of such idle vagrants as, after proper admonitions and tryals of temporary servitude, cannot be engaged to support themselves and their families by any useful labours. Slavery would also be a proper punishment for such as by intemperance or other vices ruined themselves and families, and made them a publick burden. There might be a trial first made, according to the Jewish custom of servitude for seven years; and then they might be allowed their liberty, in case they had acquired an habit of diligence; but if not, they should be adjudged to slavery for life. It might also be a more useful punishment for many other crimes than those commonly appointed.

Liberty too much favoured in some nations.³

II. As to the notions of slavery which obtained among the Grecians and Romans, and other nations of old, they are horribly unjust. No damage done or crime committed can change a rational creature <203> into a piece of goods void of all right, and incapable of acquiring any, or of receiving any injury from the proprietor; unless one should maintain

The Grecian and Roman customs are quite indefensible.

3. The justification of perpetual servitude as a means of civil damages, punishment of crime, the promotion of the common weal and of public and private morality had been notably argued for in Scotland by Andrew Fletcher in the second of his well-known *Two Discourses concerning the Affairs of Scotland* from 1698 (in *Political Works*, pp. 58–66); similar arguments were used for “temporary slavery” by George Berkeley, *The Querist*, nos. 380–95. By “some nations” Hutcheson probably meant England and the Dutch Republic, so that the criticism is a warning not to confuse servitude and political unfreedom (“servitude of any citizen”). Those were the nations he criticized for *permitting* slavery on other grounds, despite their libertarian rhetoric; see II.14.3 (2).

that doing useless mischief, and creating excessive misery unnecessarily, can tend to the general good; and occasion no diminution of the happiness in the system, which is contradictory in the very terms.

Captivity in war the usual occasion.⁴

Captivity in war was almost the only occasion of introducing this slavery; and we shall inquire how far any right of the conqueror can entitle him to make captives and their descendants perpetual slaves, or to detain them perpetually to labour at the pleasure of others. For as to other miseries of slavery, according to the Grecian and Roman customs and laws, nothing can justify them.

The custom very cruel and imprudent.

Here, first, it is amazing, that wise and civilized nations, abounding with sentiments of humanity and virtue on other occasions, and no strangers to the inconstant fortune of war, should ever have introduced such cruel custom, which upon many accidents may bear as hard upon their own citizens as upon their enemies, upon those who fought for the just cause, as well as upon those on the injurious side, and may as severely affect the publick-spirited and the brave, as the selfish and the cowardly: Nay, these latter generally keep themselves out of such dangers. Must not all the sentiments of compassion and humanity, as well as reflection upon the general interest of mankind, dissuade from such usage of captives, even tho' it could be vindicated by some plea of external right?⁵ < 204 >

'Tis very unjust, where the war was not just.⁶

Again, By violent occupation no man can acquire any right unless he had a just cause. Without a just cause, whatever he takes, he is bound in conscience to restore. An agreement of nations seems indeed to have introduced an external right in favour of neutral states and their subjects, who by any plausible title have obtained any of the spoils or captives in war, from either of the hostile parties, so that the old proprietors can-

4. The discussion in this and the following section corresponds to the *Short Introduction*, III.3.2 (1–6), where Hutcheson refers to his main sources: “On this subject of slavery many just reasonings are to be found in Mr. Locke’s 2d. book on government; and Mr. Carmichael’s notes on Puffendorf, Book II. Ch. IV” (note p. 232); i.e., Locke, *Two Treatises of Government*, II.2.16; and Carmichael, *Natural Rights*, pp. 139–41. Cf. Pufendorf, *Law of Nature*, VI.3.6–7, and *Duty of Man*, II.4.4.

5. For external rights, see above II.3.3.

6. Concerning just war, see below III.10.3; concerning neutrality, III.10.8. See also the discussion of the rights of conquest, below III.8.4.

not claim them from the neutral state, upon any pretence of the justice of their cause. But while the captures remain in possession of the captor or his countrymen, if their cause was unjust, the old proprietors may justly retake them; until by some treaty or consent of theirs, or of their governors, by whose deeds they are bound, they relinquish their claim.

III. But suppose captives are taken by those who have a just cause: nothing can be demanded of them in ordinary cases, but either by way of punishment, and security against like offences for the future, or of compensation of damage. Now perpetual slavery cannot be justly inflicted on the generality of the subjects of a state which engaged in the most injurious wars on either of these accounts.

Not justifiable
even in a just
war.

First. One fifth of the subjects never can be guilty when a state makes an unjust war. In a pure democracy, where all heads of families vote equally, yet the women, the minors, and the servants, have no share in publick counsels; and they are more than four fifths of any people. And how seldom are democrattick assemblies unanimous? in most other forms, <205> not one in an hundred contributes to the injustice by any counsel or deed of theirs, or could prevent it. The subjects pay taxes, which are exacted by law, not knowing to what uses they are applied. To refuse them, would occasion their being extorted by violence, to their own loss, and would not prevent the war. Grant they knew the war to be unjust, their dissent, or their refusal of taxes would not prevent it; and if they falsely imagine it just, their errors about political matters are often invincible; they follow such specious reasons as their governors represent: and the bare approving an unjust action upon false information can be no fault in him who has no opportunity of better information. No political union can subject a people to punishment for that guilt of their rulers which they did not advise them to, nor occasioned by any action or omission contrary to their duty.

Again. The main end of punishment, viz. the deterring unjust men from like injuries for the future, is not naturally obtained by punishing innocent subjects. This has very little effect upon wicked princes or governors. The effectual and natural punishments would be such as were inflicted on the unjust governors themselves, who are the causes of the

Not fit for the
ends of
punishing.

injuries complained of. No punishment is just without some antecedent guilt in the sufferer: other evils justly inflicted sometimes on the innocent, come under another notion.

Or of future
security.

As to security against like offences for the future; <206> those alone are bound to give it in all ordinary cases, who have been criminal, or contributed to the injury by acting or omitting contrary to their duty. And all the security obtained by enslaving the captives and their posterity, can be generally obtained in a much more humane method. They and their goods taken may be detained with the captors, till a just peace is obtained, they may be obliged by their moderate labours for some time to increase the wealth of the injured state, and if they can be convinced of the justice of our cause, they may be settled with us as subjects, enjoying all the natural rights of mankind; nay, be naturalized, by which the same diminution is made of the enemy, and as great accession made to that of our nation, as by their slavery.

Captives seldom bound to
compensate
damages.⁷

2. As to the second plea, the compensation of damages; none are naturally bound to this, who did not contribute to them, by acting or omitting contrary to their duty, nor received profit by them. Now, this is the case of subjects for the most part, when their rulers are making the most injurious attempts upon their neighbours.

As to that plea, that “he who by any contrivance, or any goods acquired for his own benefit, or by any office constituted for that end, does some detriment to others,* should either compensate the damages, or, on the other hand, give up the contrivance or goods, and surrender the

7. Hutcheson follows Carmichael, *Natural Rights*, pp. 141–42, in making the issue of the liberty rather than the property of captives central; for Locke it was the other way round, he thought it justified to enslave captives in war but not to confiscate their property (the means of preservation of self and family); *Two Treatises of Government*, II.16.178–84.

* This is the natural foundation of the *actiones noxales et de pauperie* in the civil law ff. 9. t. 1 *Si quadrupes pauperiem* &c. [Hutcheson used the now obsolete “ff” to refer to Justinian, *Digest*, IX.1: “In cases where a four-footed animal is alleged to have committed *pauperies*, a right of action is derived from the *Twelve Tables* <VIII.6>, which statute provides that that which has caused the offense . . . should be handed over or that pecuniary damages should be offered for the amount of the harm done.” Cf. *Digest* IX.4, “Noxal actions.” See below III.8.5, where there is a reverse cross-reference to the present place.]

person who by <207> abuse of his office did the damage.” This may hold against the original citizens who chose the unjust governors, or constituted such a plan as naturally excites to injuries, or against any citizens who can either restrain or turn out their magistrates. But even in those cases, it should be left to the option of the citizens now taken captive or conquered, whether they will quit supporting their unjust governors, and deliver them up if they can, and enjoy their old liberty; or compensate all damages, and give proper security, such as wise arbitrators shall appoint, against future injuries, and retain their governors.*

IV. If conquerors had any regard to justice, we should oftener see them insisting on such delivery of the unjust governors, and their counsellors, and ministers, to those they had wronged, and the innocent people left to chuse either a new form of polity, or better administrators of the old one. But this plea of compensation must be a vain pretence when ’tis used after full compensation is taken by force, or offered by the party distressed; as it would generally be offered by any state, rather than the innocent subjects should universally lose their personal liberty, or the state become a province to the conqueror. Without any of this cruelty full compensation of damages, and sufficient security against like injuries, such as prudent arbitrators would appoint, might always be obtained by the victorious. These considerations abundantly shew how injurious and cruel it must be to enslave the common <208> subjects of any state, with their posterity, on account of any unjust war their governors had been engaged in.

Whom conquerors should punish.⁸

As to those who bore arms, whether as common soldiers or inferior officers, but had no share in the publick counsels; they are generally invincibly ignorant of the injustice of their cause. In some states they are compelled by force to inlist; and when they do so voluntarily, ’tis upon a general presumption of being employed only in just causes; and after inlisting it becomes a capital crime to disobey their superiors. When this is the case, it is barbarous to talk of punishing such captives. We

What equitable pleas for such as bore arms in an unjust war.

* See c. 6. of this book. [The correct reference is in fact ch. 8.4, where the reverse cross-reference to the present section is correct.]

8. Concerning the limitation of responsibility for warfare, see Locke, *Two Treatises of Government*, II.16.179.

have a right to defend ourselves, or prosecute any right of ours which they are obstructing, by any fatal violence against them while they oppose us. But when they are captives, and can hurt us no more, we should remember that they were generally innocent, and that even such as knew the injustice on their own side, and were criminal in bearing arms against us, yet did so, under the strongest temptations, since it was capital not to have obeyed the commands of their superiors. We should consider the common variable fate of war, and that our example in any severity may presently provoke our enemies to give the bravest of our subjects the like treatment; and that such precedents will be followed by unjust conquerors, as well as the just. We may indeed detain such captives, and oblige them to humane temporary labours, to increase our own strength, and weaken the enemy's, 'till just terms of peace be obtained. Or we may settle them as subjects in our own country: but any more severe treatment seems contrary to humanity, and the regard we should have to the general good.

Some extraordinary cases.

V. These seem the general rules or laws of nature as to captives. There may possibly happen some singular cases or pleas of necessity, to justify some extraordinary steps, beyond these above-mentioned. Thus, if there be no other way to prevent or deter a barbarous enemy from the most cruel treatment of our fellow citizens who have fallen into their hands, than by making reprisals on such captives as we have taken: if we can avoid great effusion of the blood of our fellow-citizens, and bring an unjust enemy to reason, or deter him from persisting in his injurious designs, by exercising some extraordinary severities towards some captives, whose safety the enemy may have much at heart, and continuing these severities, till the enemy be brought to reasonable terms of peace. If we are so weakened by the war we have been engaged in, by the injuries of the enemy, that we cannot be preserved in our independent state, without a considerable accession made to our strength, at the expence of the injurious state, such as the labours of many captives, or their transplantation into our country, even without their consent, may make to us: in these cases, such severe conduct may be justified, when gentler measures would be ineffectual.

But without such manifest necessity, the detaining of captives, especially women and children, in perpetual slavery, must be most unjust and inhuman. For, <210> as we shewed formerly,* the children of such as were justly enslaved should be looked upon as free-born, only perhaps as persons indebted to the value of their necessary maintenance. “Had the conqueror, say some authors, used the utmost rights of war, by killing the parents, the children had not come to life: they owe therefore their lives and all to the conqueror.” But this proves nothing. Conquerors have no right to murder captives in cold blood. And tho’ they might with impunity have done so, their abstaining from such wickedness gives no right to theirs or their childrens service. At this rate, one would be obliged to become a slave to any powerful pyrate or robber who had spared his life; or to any generous man who rescued him from such dangers. Princes may thus owe their lives to midwives, surgeons, or physicians, who might have murdered them with impunity. Are they therefore, with their posterity, subjected to slavery? Grant that the parents might have been put to death justly, yet their children come into life innocent, they are rational beings of our species, the workmanship of the same God in their bodies and their souls, of the same materials with ourselves and our children, and endued with like faculties. They incur an early debt for their maintenance; but, as soon as that can be discharged by their labours, or by the generous interposal of any friend, they are as free as any of human race.

Hereditary slavery always unjust.⁹

VI. He who detains another by force in slavery, is <211> always bound to prove his title. The slave sold or carried into a distant country must not be obliged to prove a negative, that “he never forfeited his liberty.” The violent possessor must in all cases shew his title, especially where the old proprietor is well known. In this case, each man is the original

On whom the proof is incumbent as to the right.

9. In the Latin *Compendiaria*, III.3.3 (7), Hutcheson refers to Carmichael’s comments on Pufendorf (see Carmichael, *Natural Rights*, p. 141) and to the second of Locke’s *Two Treatises of Government*. In the English equivalent he adds Richard Hooker, *Of the Laws of Ecclesiastical Polity*; and Algernon Sidney, *Discourses concerning Government*.

* See above, book ii c. 13, art. 3. [The correct reference is in fact ch. 14, i.e., II.14.3.]

proprietor of his own liberty. The proof of his losing it must be incumbent on those who deprive him of it by force. The Jewish laws had great regard to justice about the servitude of Hebrews, founding it only on consent, or some crime or damage, allowing them always a proper redress upon any cruel treatment; and fixing a limited time for it, unless upon trial the servant inclined to prolong it.¹⁰ The laws about foreign slaves had also many merciful provisions against immoderate severity of the masters. But under Christianity, whatever lenity was due from an Hebrew toward his countrymen, must be due toward all, since the distinctions of nations are removed as to the point of humanity and mercy, as well as natural right.¹¹ Nay, some of these rights granted over foreign slaves may justly be deemed only such indulgences as those of polygamy and divorces, granting only external impunity in such practices, and not sufficient vindication of them in conscience.

The duties of this relation in its several kinds may easily appear from the nature and causes of it. The servant is bound to fidelity, and willing service, as in the sight of God, by whose providence this lot is appointed to him; and the master to mercy and lenity, <212> as toward a fellow-creature in less fortunate circumstances, who yet has the like affections, and is capable of the like virtues, and happiness or misery with himself; and to pay faithfully his wages, and perform any other promises he has made to him.

10. GUL Ms., p. 376: "and fixing . . . prolong it" is an interlinear addition.

11. See the discussion of Mosaic law on slavery in Grotius, *The Rights of War and Peace*, III.14.2 (2) and (6); Pufendorf, *Law of Nature*, VI.3.8 (with Barbeyrac's n. 4, p. 615, and reference to Selden, *De jure*, VI.8).

The Motives to constitute Civil Government.¹

I. If all mankind were perfectly wise and good, discerning all the proper means of promoting the general happiness of their race, and inclined to concur in them, nothing further would be wanting; no other obligations or bonds than those of their own virtue and wisdom. The necessity of civil power therefore must arise either from the imperfection or depravity of men or both.

Civil power from the imperfection and depravity of men.

When many of the ancients speak of man as a species* naturally fit for civil society, they do not mean that men as immediately desire a political union, or a state of civil subjection to laws, as they desire the free

How men are naturally sociable and political.

1. Cf. the corresponding chapter in *Short Introduction*, III.4, which both thematically and linguistically is very close to the present chapter. In the Ms. (GUL), there is a drastic change of handwriting after chapter 3. As suggested in the introduction, from chapter 4 until the end of the manuscript the writing is that of a copyist. This part of the manuscript begins a new pagination running from 1 to 173. In several pages the numbers are missing or have been rendered illegible, and when referring to such pages we insert the number in square brackets, the present one being p. [1]. We note only a few representative cases of plain copying errors that have been corrected.

* Thus Aristotle and Plato often call man ζῷον πολιτικόν, but Aristotle owns that he is συνδυαστικὸν μᾶλλον ἢ πολιτικόν. *Nicom.* I. viii. c. 12. [By the first Greek phrase Hutcheson gestures toward Aristotle, *Politics*, 1253a3, which he quotes without reference in the *Compendiaria* and which the *Short Introduction*, III.4.1, renders as “creatures fitted by nature for civil polity.” The second Greek passage is from Aristotle, *Nicomachean Ethics*, VIII.12, 1162a1, meaning, “(man is by nature) a pairing creature even more than he is a political creature.”]

society of others in natural liberty, or as they desire marriage and offspring, from immediate instincts. 'Tis never for itself agreeable to any one to have his actions subject to the direction of others, or that they should have any power over his goods or his life. Men must have first observed some dangers or miseries attending a state of anarchy to be much greater, than any inconveniences to be feared from submitting their affairs along with others to the direction of certain governors or councils concerned in the safety of all: and then they would begin to desire a political constitution for their own safety and advantage, as well as for the general good. As men are naturally endued with reason, caution, and sagacity; and civil government, or some sort of political union must appear, in the present state of our nature, the necessary means of safety and prosperity to themselves and others, they must naturally desire it in this view; and nature has endued them with active powers and understanding for performing all political offices.

'Tis also natural to men to esteem and admire any singular abilities discerned in others; such as courage, wisdom, humanity, justice, publick spirit. They naturally confide in persons possessed of such dispositions and love them. They are willing to commit their important interests to their direction, and have a zeal to promote them to honourable offices and powers of managing the common concerns of society.

The evils in
anarchy partly
from weak-
ness, partly
from vice.

II. The evils to be feared in anarchy result plainly from the weakness of men, even of those who have no unjust intentions, and partly from the unjust and corrupt dispositions which may arise in many. 'Tis wrong to assert that there is no occasion for civil polity except from human wickedness. The imperfections of those who in the main are just and good may require it. <214>

Contentions
from different
opinions of
right.

1. Among good men there may be different opinions about the point of right. Those who intend no injustice, nay, who resolve to act the just part on all occasions, yet may be mistaken and too positive under the secret influence of self-interest, and may be suspicious of the artifices of others to influence any arbitrators they could choose, and confident of their own strength may decline arbitration and venture upon the hazards of violence.

Again the more ingenious may invent many useful contrivances for a common interest, and yet cannot satisfy the more stupid or such as are prejudiced, about the expediency of their designs; by reason of their weakness, or suspicions of the hurtful artifices of the contrivers. 'Tis well known how hard it is to make the vulgar quit their own customs for such as are far better in agriculture or mechanick arts. And how much more difficult must it be to obtain their concurrence in any great and noble designs of distant advantage to whole nations, when they cost much present labour and expence. As there are in our species men of superior genius and penetration, and of more extensive views, nature points them out as fit to direct the actions of the multitude for the general good, upon proper security given by them for their using faithfully the powers committed to them.

Wise rulers
can better pro-
mote the good
of all.²

2. But the corruption of mankind makes civil polity appear more necessary. As many are covetous, or ambitious, and unjust and oppressive when they have power; and are more moved by present prospects of <215> gain, than deterred by any moral principles or any distant prospects of future evils to redound to them from their injuries; a remedy must be provided against the evil dispositions of such men; a remedy that is present and sensible, and no other can occur so effectual as a civil power with force sufficient to maintain justice and inflict present punishment on such as are injurious. Tho' a majority or even each individual in a great multitude were corrupt and unjust, yet such men united will seldom enact unjust laws. There's a sense of right and wrong in all, with a natural indignation against injustice. I may, for my own pleasure or gain or at the instigation of some passion, counteract my sense of justice; but I shall be abhorred for this injustice by others who gain nothing by it. Another may for his gain in like manner counteract the rules of justice, but I and all the rest shall abhor him for it. The like shall be the dispositions of all, and thus they never will concur to enact unjust laws, tho' not one of them had such a stable principle of justice as would make him adhere to it in opposition to any high interest or passion of

Dangers from
the vices of
men require
civil power.

2. Cf. above II.5.3, last paragraph.

his own. Each one too may dread mischief to himself from the injustice of others; and may fear their high resentment on account of the injuries he may attempt against his neighbours. A counsel therefore of many will never agree to allow the injustice of any of its members against others of them. As none approve injustice but they who gain by it, no avowed injustice toward any of the members will be allowed by publick authority, except <216> where the whole power is committed to one, who may possibly allow himself in injustice toward his subjects, or where it is committed to a few, who may form themselves into a separate cabal from the people, and oppress the people avowedly, while they maintain justice among themselves. Against these two dangers precaution must be taken by the plan of power that is to be settled.

No such security in anarchy.

'Tis true that in a state of anarchy there is the same natural indignation against injustice; and that even in bad men, when they do not gain by it; and they sometimes as well as good men, are prone to assist the injured. But in all dangerous efforts, whether in prosecution of right, or in repelling injuries, through human imperfection, there can seldom be good success without government and an union of wills. Some honest men from cowardice may decline their part in such dangerous services: others of sufficient courage may differ about the measures which are most prudent; and through opiniatry, pride, or mistake, may stand obstinate against measures proposed by others. Wise men by considering or experiencing these dangers, and representing them fully to others, have probably engaged great numbers to concur in the only remedy against them, viz. the constituting some men of approved wisdom and justice the arbitrators of all their differences, and the directors in all measures necessary for the safety and prosperity of the whole; arming these rulers also with sufficient power to enforce their decisions and orders upon such as are refractory, by <217> engaging to employ each one his own force according to their direction.

Bad plans of power are also dangerous.

III. Great mischiefs no doubt may often arise from plans of polity rashly and incautiously constituted when power is intrusted in bad hands. And yet an imperfect form of polity, and much more a very wise one,³

3. GUL Ms., p. [6]: "and much more a very wise one" is a later interpolation.

has innumerable advantages above anarchy. The general happiness must be more effectually promoted, and justice better administered, by the arbitration and council of wise unbiassed men, who can enforce their desires upon the refractory, and make them concur in any good design; than if all men, good or bad, wise or foolish, followed their own separate councils. And in all forms of polity this is ever professed as the intention of the institutors that the power should be lodged with the wise and just; tho' the precaution taken for it is often very improper and insufficient. Where this intention is obtained, nothing can be wanting for the greatest happiness in this world which human means can procure; as a people shall be wisely defended from external dangers; injuries among themselves shall be restrained; justice prudently administered; and all arts cultivated for the improvement of life; and all orders, the weak and imprudent as well as the wise, the selfish as well as the generous, engaged or compelled to contribute toward the general interest: and wise laws will civilize the manners and even improve the tempers of a people to virtue. How imperfectly these ends can be obtained in the most tolerable state of anarchy⁴ we can suppose, must at the first view be manifest.

But we must not hence conclude, as some have rashly done,⁵ that the very worst sort of polity is better than the best condition of anarchy. 'Tis true that in the very worst polities there are some good laws, and justice is often well administered in cases where the interests of the governors or their favourites are not concerned, and the whole body is often protected from external invasions by united force and council: which are advantages not to be hoped for indeed in the worst condition of anarchy. But in a state of anarchy, where the manners of a neighbourhood are not yet corrupted by ease, wealth, and luxury, there might be much happiness, and simplicity, and innocence of manners, much zeal for mutual defence, and for preserving justice toward each other, and even some considerable improvements in arts. And in bad plans of

Bad polity may be as pernicious as anarchy, this no reproach to civil polity.

4. GUL Ms., p. [6]: seems originally to have had "best anarchy" instead of "most tolerable state of anarchy."

5. See notes to sections 5 and 6 below.

polity, by the tyranny, ambition, and lusts of the governors, the great powers committed for the publick good may be employed in a general oppression of the people in rapine and violence, and the bearing down every thing free and generous in their sentiments. 'Tis enough on this subject that all the advantages desirable, or that could be hoped for in a state of anarchy, shall be much more effectually obtained and secured by a good plan of polity. That corrupt forms of polity may do great mischief, is no objection against a civil state in general, but rather recommends it; as the corruptions of the best things may be most pernicious. <219>

'Tis the business of rational agents therefore to exercise their sagacity in contriving the best plans of civil power, and such amendments of those already constituted as are requisite for obtaining the ends of it; and not to reject the most effectual means of promoting the general good, because they may be perverted by the folly of men into engines of mischief. A state of anarchy has not of late been experienced for any considerable time. Those who tried it of old, found it perhaps tolerable while simplicity of manners continued, but when corruptions encreased they found it necessary to contrive civil polity. And in the worst plans of it, many evils are prevented, and justice often maintained, and the people protected from injuries. Instances of this kind, where the civil power is useful, are far more numerous than those in which it is abused; which would make one hesitate in allowing that the imperfect and foolish plans of power which have appeared in the world have in the whole done more mischief than good, occasioned more evils than would have ensued from as long a continuance of anarchy.

The causes of
mistakes in
this point.

The natural worth of civil power is often overlooked; we are not much struck with the good it does in a general protection and administration of justice. This is only what we ordinarily expect from it. But every perversion of it, in any flagrant acts of tyranny and oppression, deeply affects our minds, and is long remembred with indignation. Even as in the administration of nature, and in the general condition of human life, <220> many imagine a superiority of evil from their being much moved with the several calamities of men thro' their natural compassion; while they overlook the constant and ordinarily expected train of enjoyments

and blessings conferred on mankind. This however should not hinder men, when opportunities offer, and there is any hope of success, to attempt, even by such violence as may occasion some temporary anarchy, to obtain such amendments of any foolish concerted plans of polity as may be necessary to prevent the perversion of it, and may procure greater good than what overballances these temporary inconveniencies in the violent change.

IV. As the grand inducements to constitute civil power were “the obtaining defence against the injuries to be feared from men, and the promoting the general happiness by the concurring force of multitudes.” These ends cannot be obtained unless great numbers are either brought to agree or unite in their inward sentiments and inclinations, or, if that be impossible, are brought to act as if they thus agreed: for otherways the force of the whole body cannot be employed for these purposes. Now the latter sort of agreement or union may be obtained if a “multitude engages to submit their actions and force to be directed by one person or council, for the general interest, and particularly for compelling any who may thereafter prove disobedient, to return to his obedience to this person or council.” When thus a large body of men are united under one government <221> they make one body politick where the will of the ruling person or council is, as to external effect, decerned to be the will of the whole.

What sort of union necessary in a state.⁶

The natural end and sole purpose of all civil power, as it is acknowledged on all sides, where men retain any remembrance of their dignity as rational creatures, is the general good of the whole body, in which the governors themselves are included as a part, and that a more or less important part according to their abilities, and inclination to promote the general good. All *civil* government in this differs essentially from the *despotism* of a master over slaves, that this latter is understood to be a power for the advantage of the governor. Despotick, and civil or political, are contrary terms.

The sole end of civil power; 'tis naturally opposite to that of despotick.

6. Especially Locke's extensive treatment in *Two Treatises of Government*, II.7, hovers over Hutcheson's discussion here and at the beginning of the next chapter of the differences between the political or civil society and the prepolitical forms of society.

No civil power
is just which
tends not to
the good of the
state.

That civil power alone can be justly assumed or claimed by any governor which is necessary or conducive to the prosperity of the whole body united; what is not so is unjust upon whatever pretence it is assumed: as 'tis plain, from the general principles of morality, that the pleasures or interests of one, or of a few, must always be subordinated to the more extensive interests of great numbers. Any contract or consent conveying useless or pernicious powers is invalid, as being founded on an error about the nature of the thing conveyed, and its tendency to the end professed and acknowledged on both sides. The subject professes to convey powers only as they are conceived useful to the whole body; and the governor professes <222> to demand no other. As to other claims of power they shall be considered hereafter.

There are
always just
motives to a
civil union
rather than a
state of
anarchy.

V. Whatever love men have to full liberty, whatever contingent inconveniencies they may foresee from subjection to civil power, they may still have sufficient motives to submit to any tolerably contrived plan of polity. Some authors have given an unnatural account of the burdens imposed by a political state; representing only the casual dangers men are exposed to sometimes in civil polity, as if these were some constant misfortunes in that state, and peculiar to it, without considering that people are less exposed to them in polity than in anarchy.* But then, to engage men to submit to these hardships, they aggravate as much as possible the mischiefs of anarchy even far beyond the truth. In polity, governors have a power of life and death, say they, over such as they judge to be guilty of crimes. But this is no more power than any of our fellows will assume over us in natural liberty; and our prospect of a fair tryal and justice is much greater under a civil judge. The magistrate claims another power over life, in compelling men into the most dangerous services for the common defence. But such dangers we must have as frequently been exposed to alone, with voluntary assistants such as we could

* There is too much of this in Puffendorf as well as in Hobbs. [The corresponding passages in the *Compendiaria* and the *Short Introduction*, III.4.4, p. 239n*, make it clear that both of Pufendorf's works are meant: *Law of Nature*, II.2. esp. 2–6, and *Duty of Man*, II.1.9–10; both with discussions of Hobbes, *De cive*, I.7; IX.3, X.1, XIII.7; *Leviathan*, ch. XIII. But see especially the references in note 7 to this section.]

find, in defending ourselves in a state of anarchy. The magistrate claims a power over our goods, and exacts some part of them in tributes, for some general interests of the whole body. But then a good magistrate <223> employs these tributes for increasing and defending the acquisitions of the whole body; and in anarchy each one must have been at greater expences for the like purposes, and not with such prospects of success. If each one in polity is obliged to a great many peculiar expensive or laborious duties for the benefit of the whole body or of particular fellow-citizens, each one shares in the advantages of like services performed by others. And thus any tolerable state of civil polity must appear inviting and eligible to all, even from self-interest, as well as from our more generous dispositions; as 'tis plain that an eminently wise and good man, or a council of a few of like character, directing the conduct of a large body of men, will much more effectually promote the interest of all, than the same number could do while each one followed his own measures. These considerations fully represented may have engaged multitudes to unite voluntarily into one body, and to be directed by one council.

VI. Nor is there any opposition to this doctrine in what some ingenious men alledge that "the first political unions have been formed with the most unjust designs; that bad men have first thus united and founded cities, with a view to plunder and oppress their neighbours."⁷ Grant that this were true, tho' 'tis not certain even about the first states, and much

'Tis little
matter what
views first
made men
unite.

7. Hutcheson's argument is the same as Carmichael's, who in this particular connection identifies the "ingenious men" as Titius and Barbeyrac; Carmichael, *Natural Rights*, pp. 146–47; cf. Hutcheson's footnote to sec. 5 above. The central text is Pufendorf, *Law of Nature*, VII.1.7, with Barbeyrac's extensive note 2, pp. 625–27. Pufendorf is faulted by Barbeyrac, Carmichael, Titius, and Hutcheson for accepting a Hobbesian view of fear as the basic motivation for civil society. In addition, Titius and, following him, Barbeyrac, questioned the historical realism of the original contracts as set out by Pufendorf (first a contract between the heads of families to establish a civil society, then a decree concerning the form of government to be instituted, followed by a contract between this government and the governed; *Law of Nature*, VII.2.7–8, and *Duty of Man*, II.6.7–9). Against this they maintained that civil society was a slow growth from small beginnings, entered into from a variety of motives (Titius, observations 547 and 550, esp. pp. 530–32 and 534, in his edition of

less so about the original of all states in succeeding ages; it only proves that bad men at first fell upon this contrivance, or first discovered that a political union was of great consequence to the defence and security <224> of a large body, and to the increase of all their advantages. The apprehension such men might have been under of the just resentments of their fellow-creatures, incurred by their injuries, may have first roused their invention. Whereas good men, who had no just causes of fear, might not think so soon of exercising their inventions in the arts of defence. But as soon as any political bodies were formed; all the separate families in the adjacent country must soon see the necessity of like associations, and that from the motives already mentioned.

Men not at
first compelled
to unite with-
out rational
motives.

To alledge that men were first compelled by force to submit to civil power, must be very incredible; as no one man could be supposed to have strength or force sufficient to compel considerable numbers into such submission: and if he had the assistance of others in this compulsion, these others must have been previously subjected to his civil power: and thus a political union must have been subsisting before any considerable force could have been used to compel men into subjection. 'Tis true we find that in earlier ages some heads of families had very numerous trains of domesticks of one sort or other. But we are not to regard names in this matter, but the real powers. Such heads of families have had the powers of civil governors. And men have been invited into their families, or little states, by such motives as are already alledged. But, what may supersede many of these debates as to our present design; we are inquiring into the just and wise motives to enter into civil polity, and the ways <225> it can be justly constituted; and not into points of history about facts.⁸

Pufendorf, *De officio hominis et civis*; Barbeyrac, n. 2 to Pufendorf, *Law of Nature*, VII.1.7, pp. 625–27).

8. The relationship between arguments from history and tradition and from contract was evidently important in British political debate long after the Glorious Revolution. Hence it may have concerned sympathetic Scottish spectators that English Whigs often failed to distinguish between an ancient, free constitution and an original contract, using them more or less interchangeably. In consequence, the logic of the contractual argument seemed to be not fully appreciated and English defenses of the Revolution did not always find much use for Locke's

If in fact the originals of many governments have been very infamous and unjust; this may abate the pride of those poor mortals, who having got into possession of power first founded by the villanous acts of their ancestors preying upon the weakness, the credulity, the mutual

abstract idea of the original contract. In Scotland a keener interest in natural law carried with it a preoccupation with the contractual ideas of Locke, Pufendorf, and others.

Carmichael in particular attempted to make the contract compatible with history. He rejected the argument of Titius and Barbeyrac (see III.4, n. 7 above), arguing that Pufendorf's theory does not require that men actually entered civil society by means of a contract but only that once in civil society, the basis for their membership is contractual, irrespective of how they got there. The presupposition of a contract in this sense is necessary, albeit not inevitably in the form specified by Pufendorf. Titius's and Barbeyrac's "historical" examples of adoption into society by violence presuppose an already existing combination of individuals (in view of the basic equality of power between individuals, a well-known Hobbesian problem). Much more important is the moral necessity—namely, that God in the law of nature commands that contracts be entered into in order to realize the ends of natural law. Any overlordship not based on contract is not over men as moral beings, beings under natural law. In short, if civil society is based upon contract, it is perpetual and unbreakable because it exists by divine authority.

The alternative seems to be that civil society is dependent upon the continuity of government, especially an unbroken succession of monarchs; if this continuity is broken, as it was in Britain in 1649 and 1688, it is not readily understandable on what basis a society could cohere and provide for its future government. This, says Carmichael, clearly referring to 1688, was the true function of Pufendorf's first and basic contract, and here Carmichael is reformulating one of the most radical of Locke's theses, that "when the Government is dissolved, the People are at liberty to provide for themselves, by erecting a new Legislative. . . . For the Society can never, by the fault of another, lose the Native and Original Right it has to preserve it self" (*Two Treatises of Government*, Second Treatise, sec. 220).

For Carmichael and Hutcheson this argument is undoubtedly also a translation into contractual terms of the well-known (for Hutcheson, primarily Harringtonian) idea that while God has ordained government he has not specified any particular form of government (see, e.g., Harrington, *The Art of Lawgiving*, book II, esp. conclusion; and Sidney, *Discourses concerning Government*, I.6); in other words, it is an application of the distinction between God's general and particular providence, which the Scots also knew well as the standard Anglican theory of church-government formulated by Richard Hooker and in its more recent use by such Whig Anglicans as Stillingfleet, Burnet, and Hoadly. At the same time, the contractual translation of this ensured that the people, as a body of

contentions,⁹ or the superstitions of their fellows, have their imaginations swelled with notions of some sacred dignity or divinity in their station, and rights of government, and would impose the same notions upon others, who are far superior to them in every worthy quality.

individual moral agents under natural law, was the continuing repository of authority from which any form of government had to be drawn.

Carmichael's argument was effective. In the fourth French edition of Pufendorf's *Law of Nature*, which was the basis for the English edition used here, Barbeyrac offered to "freely retract" the implications of his criticism of Pufendorf in view of Carmichael's points. Clearly he did so because of the possibility of retaining a contractual basis for society while yet engaging in a historically realistic investigation of its origins (Barbeyrac, n. 2, p. 637, and n. 2, p. 627, in Pufendorf, *Law of Nature*, VII.2.8 and VII.1.7; see also Carmichael's notes to Pufendorf, *De officio hominis et civis*, II.5.7 and II.6.9 and 14; Carmichael, *Natural Rights*, pp. 146–53, 155–56). The tendency of this argument was to make the question of origins irrelevant to justification, and this is reflected in the prominent use by both Carmichael and Hutcheson of the notion of quasi-contract.

9. GUL Ms., p. [14] originally had "Constitutions." This unlikely formulation indicates that the parts of the manuscript in the unidentified hand must be a clerical copy.

The natural Method of constituting Civil Government, and the essential parts of it.¹

I. The extent and ends of civil power shew it to be quite different from the parental, tho' the affections of good magistrates should resemble those of parents, in pursuing constantly the good of the subjects; and hence such governors obtain the most honourable name of *fathers of their people*. But parental power is founded on a peculiar natural affection, and the want of reason in their children; it gradually diminishes as their reason advances, and ceases when it is come to maturity. The civil power is over the adult, and is destined to perpetuity, nor is any prince the natural parent of his people. Mere violence, or <226> superior strength, can give no right. When therefore God has not by supernatural revelation named governors, and specially appointed the quantity of power to be committed to them, (which never was the case in any nation)² the extent of their rights, and of the obligations of subjects, must be determined by the ends of the political union, or by some original contract.³ The only natural method of constituting or continuing of civil power must be some deed or convention of men. And as no rational beings, who have any fore-thought or attention to their own interests, or those of persons dear to them, can be happy while their important rights are not tolerably secured to them, but depend on the variable, or capricious,

Civil power
founded on
some consent
or convention.

1. Cf. the corresponding chapter in *Short Introduction*, III.5, and III.8 below.

2. GUL Ms., p. [14]: The bracketed passage was moved from the end of the period.

3. GUL Ms., p. 15: "must be determined by the ends of the political union" is a later interpolation.

or insolent wills of others; and as the general happiness is the supreme end of all political union; and some tendency to it necessary to the justice of any institution; no government or power claimed can be just which is not either settled upon the consent of the people, or so calculated, that upon a little experience of it, they shall heartily consent to it, as sufficiently securing to them all their valuable interests. If through stupidity, levity of genius, or an abject spirit and long custom many acquiesce in other sorts of politicks, where there is no such security; this will not prove the justice of the powers assumed; since they seem already to have had the very worst effects upon the publick, by debasing the spirits of a people, and excluding every thing wise and manly, and all the most rational satisfactions of life. <227>

Three regular
deeds in form-
ing a state.⁴

II. Civil power is most naturally founded by these three different acts of a whole people. 1. An agreement or contract of each one with all the rest, that they will unite into one society or body, to be governed in all their common interests by one council. 2. A decree or designation, made by the whole people, of the form or plan of power, and of the persons to be intrusted with it. 3. A mutual agreement or contract between the governors thus constituted and the people, the former obliging themselves to a faithful administration of the powers vested in them for the common interest, and the later obliging themselves to obedience.

Where power
is just there is
something
equivalent to
these deeds.

Tho' 'tis not probable that in the constitution of the several states men have generally taken these three regular steps; yet 'tis plain that in every just constitution of power there is some such transaction as implicitly contains the whole force of all the three. If a people dreading injuries from each other, or from some foreign force, agree by one deed to constitute some wise, just, and brave man for their monarch; they certainly also agree with each other to unite into one body to be governed by him. And

4. By "regular" is presumably meant in contrast to the procedures without contract outlined in section 4 below. The term "regular" for the three steps was introduced by the translator in the *Short Introduction*, III.5.2, p. 241; in that section Hutcheson refers to Carmichael, *De officio*, II.6.9 (*Natural Rights*, pp. 147–48) for support. As we saw in III.4, n. 7 above, the three steps of a contract of social union, a decree establishing a particular form of government, and a contract of political submission was set out in Pufendorf, *Law of Nature*, VII.2.7–8; *Duty of Man*, II.6.7–9; see also Grotius, *The Rights of War and Peace*, II.5.17–22; Locke, *Two Treatises of Government*, II.8.95–99.

he by accepting this office, which all know is designed for the good of the whole body, and is conferred only for this purpose, implicitly engages for a faithful execution of it for this purpose: and the people expressly engage for obedience. The same is the case in constituting a senate. And even in the founding a democracy there is always some deed equivalent to all these three. The <228> first contract is expressed, and so is the intermediate decree; as all agree to be governed by what is determined in the popular assembly or by the majority. And the third step is obviously implied; as they all profess to unite for the common safety and interest. Each one therefore binds himself to consult the general safety and interest in the suffrages he gives in the popular assembly, and thus promises on his part to govern well; and each one is understood to bind himself to obedience to the decrees of this assembly. The same deeds are either evidently expressed or implied when any persons voluntarily join themselves to a state already constituted, and are received as citizens. They agree to unite into the body, they implicitly consent to the decree about the form, and receiving protection and all political advantages, they promise obedience.

III. These transactions shew abundantly how this political relation and the ensuing obligations may naturally arise.⁶ But the manner in which they bind posterity is not so obvious. And yet all states look upon

How posterity
are bound by
these deeds.⁵

5. The four points in this section may be read in part as an implicit debate with Locke. On the first two points, Locke had maintained the precise opposite of Hutcheson; see *Two Treatises of Government*, II.8, sec. 118 and sec. 116, respectively. But on points 3 and 4 Hutcheson is in accord with Locke, *Two Treatises of Government*, II.8, paras. 120–22 and 115, respectively. For Locke, civil obligation arises when one accepts the government's protection of one's property, whereas for Hutcheson civil obligation rests on the safeguarding of moral character, which generally is dependent upon the security of the family (which is taken to include any property). Contrast also Locke's and Hutcheson's ideas of tacit consent to civil government. For Locke consent is tacitly given by the "Possession, or Enjoyment, of any part of the Dominions of any Government," even "barely travelling freely on the Highway," the behaviour of the adult independent person (sec. 119). For Hutcheson, such benefits are "a further bond" added to the benefits of moral community that have to arise without any form of consent; cf. also III.2.5 above. The question of the continuing obligation of the original contract had been the subject of a significant dispute between Barbeyrac, who with Titius had rejected Pufendorf's theory, and Carmichael who had supported Pufendorf and eventually persuaded Barbeyrac, as explained in III.4, nn. 7 and 8 above; see editorial references in Carmichael, *Natural Rights*, pp. 146, 152.

6. GUL Ms., p. 17: the phrase "and the ensuing obligations" was first written after "arise" and subsequently moved.

the descendants of subjects to be in the same political relation, and under the same obligations with their parents; tho' minors are not decerned capable of consenting, and therefore no tacit consent to be presumed: nor would one be free from these obligations, tho' his first act, when he came to maturity, were declaring his dissent, or entering into a conspiracy with a foreign power against the state in which he was born.⁷ To explain this point let us observe. <229>

1. First, that as to any hostile attempts unjustly made by any persons, immediately upon their attaining to maturity, the state has undoubted right both of defending itself against them, and punishing the authors of them, be they its subjects or not. Indeed all states treat minors on such occasions as their subjects, and that justly; for

2. The parent in uniting with others in this political body stipulates protection, and the advantages of a civilized life, not only for himself but for his family, and this in any tolerably constituted states is a *negotium utile gestum*, or a transaction most beneficial for them.⁸ And as during minority they have enjoyed these valuable and necessary advantages, they are naturally bound to all those terms, which could reasonably have been demanded in consideration of their sharing such advantages. Now no terms are more reasonable than these, that they should continue to strengthen and preserve this association to which they are so much indebted, and not desert it in time of danger, or at any time without reasonable compensation for the advantages they enjoyed. Nor could any such associations be safe if it were left entirely free to all as they came to maturity, upon any caprice, to disunite themselves from them, without any compensation.

3. And further. All such as derive any inheritances, especially lands, from their ancestors, may be under a further bond; as the ancestor may have justly subjected these lands to any wisely constituted civil <230> power, so that no person should have a right to hold them unless he also

7. This formulation in particular seems to be a negative reflection of Locke's in *Two Treatises of Government*, II.8.118.

8. In the *Short Introduction*, III.5.2 (1), the translator added this note: "This is an obligation *quasi ex contractu*. See Book II.xiv.2." See II.9.4, n. 6; II.14.1, nn. 1 and 2; III.2.5, n. 8.

subjected himself to this power, and became a member of this political body. 'Tis abundantly obvious, that no society could be safe unless its whole territory were under this burden; so that no person disunited from the state could hold lands within it, into which he might introduce foreign force, or which he might make a refuge to all criminals and conspirators. Such therefore as claim these lands from their ancestors must take them under that bond of civil subjection constituted by their ancestors; unless the civil polity be so contrary to nature, and the interest of mankind, that the iniquity of the contract, made by the ancestor, would have afforded to him a just exception to its obligation, as well as to his descendants.

4. But when a state is in no present danger, it seems contrary to humanity and justice to make it a trap to its subjects, so as not to allow them, upon any rational prospect of advantage to themselves, to leave it, and unite themselves to any other body politick, provided that they sell their lands to some remaining subject, and make compensation for any advantages they derived from the state at its expence. As to this compensation, it is indeed generally made by all subjects who have not enjoyed some special favours, by their contributing annually during their residence in it toward the publick expence; as all men do, even minors, who either pay taxes on lands or other goods; or consume goods upon which customs or duties are <231> paid. Compulsory methods of detaining subjects, where there is no publick danger, are seldom just, and never thought necessary, except in some wretched and iniquitous political constitutions. But such as continue after they are adult, and share the protection, and other advantages of subjects, are indeed* justly deemed to have consented, and to be under the same obligations with the old citizens who first formed the polity. But they have also the same just exceptions against any thing fraudulent in the original contract, and the exception arising from error in the essential purpose of it. Of which more hereafter.⁹

* This is rather an obligation *quasi ex contractu* than a tacit, tho' both may often be pleaded against them.

9. See III.8.6 below.

States may be
justly formed
without previ-
ous consent.¹⁰

IV. From the supreme notion of justice or right it must appear that however consent is the natural method of forming bodies politick or of conveying civil power; yet if any prudent legislator, armed with sufficient power, can settle a plan of polity, truly effectual for the general good, among a stupid prejudiced people, at present unwilling to receive it; when yet there is all rational ground of concluding, that upon a short tryal they will heartily consent to it; he acts with perfect justice, tho' in an extraordinary manner; since this conduct must in the whole tend to greater good than leaving a people to be made miserable by their own stupid and pernicious prejudices. But common sense at once shews that absolute hereditary monarchy cannot be settled upon this pretence. As it can never tend to good to have all the interests of <232> thousands or millions subjected to the will or humour of one of their fellows, as subject to vice and folly as any of them, nay more exposed to it by the unbounded power committed to him, and the pride, and flattery which always attends that elevation.

Consent not
always
obligatory.

And on the other hand; if the majority of a rash multitude have consented to a pernicious plan; and afterwards find its destructive tendency; as they now see that they erred in the essential subject of the contract; taking that plan to tend to their good, which they find has the most opposite tendency; they certainly have a just exception against the contract, and are free from its obligation. They may insist upon a new model of polity: nor can their former governors have any plea for compensation of damages; as the error was as faulty in them as it was in the people. They are not indeed generally damaged by the change. They may insist to be placed in as good circumstances of fortune as their families were before they were raised to this civil power; and a people may be bound¹¹ to comply with this demand, when it is consistent with their safety; but if it is not, they are not bound to suffer any immoderate or dangerous power, which may be employed for enslaving them, to remain in any one's hands; much less in those who had, by an abuse of power in op-

10. The argument of this section, that in some situations the common good may overrule the need for consent and in others suspend the validity of consent given, has no equivalent in the *Short Introduction*.

11. GUL Ms., p. 21: "bound" is a later correction of "found."

pressing them, forfeited their right. Where a people is in no such danger, it may be the humane part to restore to their deposed rulers their whole antient fortunes, or even to enlarge them, that they may subsist in a station some way near to that dignity to <233> which the rash deed of the people had raised them, and enured their minds.

V. When numbers of men are thus united into societies under one government for a common interest, these societies are naturally conceived as one person, having their several rights and obligations, distinct from those of the individual members of them. Thus a society may have property in goods, and other rights, about which no individual member has any right to transact, without commission from the whole, or those whom the whole have entrusted with the management of them. The society may incur debts, and other obligations, to be discharged out of the publick stock or goods, and not out of the private fortunes of the members. The society as one person may be bound by contracts, and by almost all these causes of obligation which bind individuals, such as these *quasi ex contractu* and from damage or injury done. And in general, the common laws of nature, which bind individuals, bind also societies, as to abstaining from injuries, either to individuals not in the society, or to other societies, as to faith in contracts, as to the rights of violent defence and prosecution, and as to cases of extraordinary necessity. For as the persons who unite in the several societies were antecedently in natural liberty and equality; the several societies formed by such persons are with respect to each other in the same state of natural liberty; and almost all the same general rules shewing what conduct is humane and conducive to the general good from individuals toward <234> individuals, hold also as to the conduct of one society toward another. So that the law of nations, as far as this term denotes a system of obligatory rules, is very much the same with the laws of nature in respect of individuals. As to smaller societies formed within a greater, by men

A people becomes as one moral person with rights and obligations.¹²

The law of nations much the same with the law of nature.

12. On the state as a person, a rights subject, and an agent under law, see *Short Introduction*, III.5.3; Pufendorf, *Law of Nature*, VII.2.13, and *Duty of Man*, II.6.10; Carmichael, *Natural Rights*, p. 153. In *Law of Nature*, Pufendorf quotes in support Hobbes's definition of the state as an artificial man in *Leviathan*, introduction, whereas Barbeyrac in his note to Pufendorf refers to *De cive*, V.9.

previously subject to the greater, they are also deemed as moral persons, but not in natural liberty; having all their actions cognisable by the common power which presides in the greater society, and limited by its laws. There are indeed some rules distinct from the law of nature, or the necessary and universally obligatory laws of nations, founded on frequent custom and tacit convention, of which we shall treat hereafter.¹³

The necessary
civil
powers.¹⁴

V.¹⁵ The several powers which must be conveyed to governors in civil polity are commonly divided into the **greater civil powers*, which are also called the *essential parts* of supreme power; and the† lesser powers, such as are not essential to civil polity.

The essential parts are sometimes subdivided into the ‡*internal*, or such as are to be exercised among the subjects¹⁶ within the society itself; and the *transient* or *external*, such as are exercised toward foreign nations, or different and independent states. As the design of civil power is both to promote peace and happiness, with an undisturbed enjoyment of all their rights, to the subjects, by a good order at home, and to defend the

13. In the corresponding section in *Short Introduction*, III.5.3, the translator has inserted a reference to chapters 9 and 10 of that work, which correspond to the *System*, III.10 on the laws of war, neutrality, embassies, etc.

14. Cf. *Short Introduction*, III.5.4. Pufendorf organized the “parts” of sovereignty into seven categories, while both Barbeyrac and Carmichael suggested that these could be reduced to Locke’s three powers; see Barbeyrac’s n. 3, p. 657, in Pufendorf, *Law of Nature*, and Carmichael, *Natural Rights*, pp. 157–59; and cf. references in Hutcheson’s note.

15. The repetitive numbering (see previous section) is also in the Ms. (GUL), p. 23.

* *Jura majestatis majora*. [“Greater rights” of sovereign power, cf. *Short Introduction*, III.5.4.]

† *Jura majestatis minora*. [“Lesser rights” of sovereign power, cf. *Short Introduction*, III.5.4.]

‡ *Jura imperii immanentia, vel transeuntia*. [The two previous Latin phrases are used also by Carmichael in his edition of Pufendorf, *De officio*, II.7.8, n. 8; and by Titius in his edition of the same work, II.7.1, observation 569 (3), and the latter adds the labels of immanent and transient. Hutcheson uses this terminology in the Latin *Compendiaria*, III.5.4.]

16. Both the *System* and the translator of the *Short Introduction* render the Latin text’s *civis* indiscriminately as either “subject” or “citizen,” but in the general principles of government that are set out in the final sections of this chapter and in the corresponding section III.5.4 in the *Short Introduction* only “subject” is used.

whole body and all its members from <235> any foreign injuries; and to procure them any advantages that may be obtained by a prudent conduct toward foreigners.

The powers to be exercised within the society are these, 1. That of directing the actions of the subjects for the common good by laws requiring and rewarding whatever is requisite for this end, and prohibiting the contrary by penalties; determining and limiting more precisely the several rights of men, appointing proper methods for transferring or conveying them, as the general interest may require, and even limiting their use of them for the same general purpose.

The legislative.

2. Another power of the same class is that of appointing in what manner and what proportion each one shall contribute toward the publick expences out of his private fortune by paying taxes, tribute, or customs, as the state of the people will admit. These two branches of power are commonly called the legislative.

The levying of taxes.

3. The power of jurisdiction civil and criminal in deciding all controversies among subjects about their rights by applying the general laws to them, and executing the penalties of the laws upon such as are guilty of crimes which disturb the peace of the state. And for this purpose appointing proper courts of justice, and judges civil and criminal, and inferior magistrates and officers to take care of the proper execution both of the ordinary laws and of the special <236> orders of state given by the supreme governors: this is ordinarily called the executive power.

The executive and creating of magistrates.

4. The powers to be exercised toward foreigners are these two; the first, that of making war for defence of the state, and for this purpose arming and training the subjects to military service, and appointing proper officers to conduct them. And the second, that of making treaties, whether such as fix the terms of peace after a war, or such as may procure allies and confederates to assist in it, or such as without any view to war may procure or confirm to a state and its subjects any other advantages, by commerce, hospitality, or improvement in arts: and for this purpose the power and right of sending ambassadors or deputies to concert such treaties with those of other nations. All these powers some authors include under one general name, though scarce expressive

The right of making war and treaties for peace or commerce.

enough of them, the **federative*, including the power of war as well as peace.

Some extraordinary powers, are necessary.

VI. These powers must necessarily be committed to governors in every civil state, and they hold them in that extent which the original constitution or the fundamental laws have appointed. But, as we shewed that some extraordinary cases of necessity give sometimes to private persons in natural liberty a right to recede from these laws which bind them in all ordinary cases: 'tis the same way with the governors of states, that in extraordinary cases they must have some <237> extraordinary powers, beyond the common limits of the law, when these powers are necessary for the general safety, or for some very important advantage to the publick.[†] Such powers are in every state, even in those where the laws most rigidly secure to each subject his liberty and property, and extend over the labours and goods of the subjects in great exigences, especially in those of war. Thus the lands of any subject may justly be taken by the state when they are necessary for fortifying some important harbour, or city, or narrow pass. The ships of subjects may be taken for transporting of forces, so may their provisions too or military stores whether they agree to part with them or not. And, as we shewed in the cases of necessity, which may justify some singular steps taken by private persons, that one who uses this plea for his own behoof is always obliged to compensate damages done to others; much more is a state obliged to compensate, out of the publick stock, to any of its subjects whatever loss he sustains, beyond the share he should have borne along with the rest of his fellow-subjects, by any such extraordinary steps necessary for the publick good. Such extraordinary rights extend over life as well as property.¹⁷

* As Mr. Locke explains these three terms, the legislative, executive, and federative, all the powers mentioned by Aristotle, Grotius, Puffendorf, and others, may be included under them. These divisions are of no great importance. [Locke, *Second Treatise*, ch. XII; Aristotle, *Politics*, IV, 1297a15–1301a15; Grotius, *War and Peace*, I.3.6–7, 17, and passim; Pufendorf, *Law of Nature*, VII.4.1–8, and *Duty of Man*, II.7.]

† These powers some call *dominium eminens*; others more properly the *jus imperii eminens*, as they are not confined to the matters of property only. [See the explanation and references above, II.17.5.]

17. Hutcheson is referring to the extensive discussion of rights of necessity in the state of nature, II.17 above, here especially section 5, where he explains that eminent

VII. The smaller civil powers commonly vested in the supreme governors are not of such necessity to civil polity; some of them may be wanting altogether in a state, or may remain in the whole body, and not <238> be committed to any magistrate or council, without any great detriment. Such as those of claiming all fines and forfeitures for the support of persons in supreme power; the right to all wrecks or valuable goods found when the proprietor is unknown, and to certain sorts of mines. The rights or powers of conferring dignity or honours, of coining money, of legitimating children, of pardoning persons condemned, or changing the punishment; of giving protections to debtors, and such like. These are generally vested in the prince in all monarchick governments, and in the senate, or in some president of it, in the aristocratical; and by them deputed to others.

The smaller civil powers.¹⁸

VIII. Political bodies, whether great or small, if they are constituted by a people formerly independent and under no civil subjection, or by those who justly claim independency from any civil power they were formerly subject to, have the civil supremacy in themselves; and are in a state of equal right and liberty with respect to all other states whether great or small. No regard is to be had in this matter to names; whether the politick body be called a kingdom, an empire, a principality, a dukedom, a country, a republick, or free town. If it can exercise justly all the essential parts of civil power within itself, independently of any other person or body politick; and neither of them has any right to rescind or make void its actions; it has the civil supremacy how small soever its territory be, or the number of its people; and has all the rights of an independent state. <239>

All independent states are in natural liberty in respect of others.

This independency of states, and their being distinct politick bodies from each other, is not obstructed by any alliances or confederacies whatsoever about exercising jointly any parts of the supreme power, such as

Independency not destroyed by confederacies.¹⁹

rights of individuals as well as governments cannot be purely political creations but derive from natural rights, i.e., from the overall common good. The cross-reference and the argument are similar in the *Short Introduction*, III.5.4 and II.16.3, in both places cross-references added by the translator.

18. Hutcheson's list of these powers here and in the *Short Introduction*, III.5.4, is close to that of Carmichael, *Natural Rights*, p. 159.

19. The background to the discussion in the rest of this section is Pufendorf's distinction between "Systems occasioned by a common Prince [*rex*]" and "Systems composed by League and Confederacy [*foedus*]," *Law of Nature*, VII.5.17–18; cf. *Duty of*

those of peace and war, in leagues offensive and defensive. Two states, notwithstanding such treaties, are separate bodies and independent.

Systems of
states.

They are then alone deemed politically united, when some one person or council is constituted with a right to exercise some essential parts of the supreme power for both, and to hinder either from exercising them separately. If any person or council is empowered to exercise all these essential powers for both; they are then one state, and an entire coalition is made, tho' the several parts of this state may retain their antient laws and customs as to all private rights; since these are all authorised for the several parts by the power which is supreme over the whole. But when only a small share of the supreme civil power is vested in one person or council for both, such as that of peace and war, or of deciding controversies between two subjects of different states, while each of the two states within itself exercises independently all the other parts: in this case they are called a system of states. And in these systems greater numbers of small states are sometimes united. Such systems arise when the king of one kingdom succeeds also to another, having in both some parts of the supreme power which he can exercise alone: or when there is a mutual agreement of several states to constitute a common council, such as <240> was among the Achaian states; whence these systems are called by some authors Achaick confederacies.²⁰

Man, II.8.14–15. Hutcheson is presumably reflecting upon the situation after James VI of Scotland succeeded to also the crown of England in 1603 but failed to formalize a constitutional union by being accepted as king of Great Britain. Pufendorf had made this point in *Dissertatio de systematibus civitatum*, sec. 9, pp. 230–31, referring to Hobbes's argument in *Leviathan*, ch. XIX, p. 138. Both Barbeyrac and Carmichael referred to Pufendorf's dissertation but without mentioning the failure of James's constitutional move. And as Barbeyrac added, "at the Time our Author [i.e., Pufendorf] wrote . . . he could not foresee the Union which soon after happen'd between England and Scotland"; i.e., the Parliamentary Union of 1707. Barbeyrac's examples of the latter form of systems are "the United Provinces of the Netherlands, the Swiss Cantons, &c." Barbeyrac, n. 2, p. 681, and n. 4, p. 682, in Pufendorf, *Law of Nature*; Carmichael, *Natural Rights*, p. 161. In Pufendorf this discussion of systems of states follows on from the discussion of the various forms of government that may exercise supremacy, whereas Hutcheson goes from his consideration of supremacy to the systems of states and takes up the several forms of "polity," *res publica*, only in the subsequent chapter.

20. For example by Pufendorf, *Law of Nature*, VII.5.18.

The several Forms of Polity, with their principal Advantages or Disadvantages.

I. According as these essential parts of civil power are committed either to one person, or to some council or assembly, there are different forms of polity: of which some are wisely adapted to the interest of society, and are thence to be called regular; others are ill contrived for this purpose, and are irregular.

Three simple forms.¹

When all the parts of the supreme power are committed to one person, 'tis called Monarchy; when they are committed to a council, if the council consist of a few persons of eminence, 'tis called an Aristocracy; if to an assembly of the people, or of some deputies chosen by them, it is called a Democracy, and these are the three general classes of simple forms.

1. Cf. *Short Introduction*, III.6.1; Carmichael, *Natural Rights*, pp. 159–61, commenting on Pufendorf, *Duty of Man*, II.8.1–15. Where the *System* uses “polity” the translator of the *Short Introduction* often uses “government.” In Hutcheson’s Latin text the terms are *res publica* and *civitas*. The natural law discussion of the three Aristotelian forms of government was decisively influenced by dissertations by Pufendorf and by the summary in *Law of Nature*, VII.5. Pufendorf divided states into *simple* and *composite*; for the latter, see III.5, n. 19 above. Simple states were either *regular* or *irregular*; regular were the three classical forms, while irregular states only had this in common that they did *not* adhere to the theoretical models of the regular forms. Accordingly, Pufendorf rejected the idea of irregular forms as *mixed* because it suggested theoretical foundations where in fact only historical circumstance had determined the constitutional form. Hutcheson operates within this general typology of states but adheres to the English notion of mixed constitutions, except for a passing mention of the irregular.

How matters
are determined
by a council or
assembly.²

In those forms where power is committed to a council, 'tis always understood, where there is no special limitation in the constitution, that the majority of the council have the right of determining all matters proposed. And that that is the will or deed of the council which has the plurality of votes. 'Tis however exceedingly convenient that a certain number or *quorum* be determined who must be present to make this council the proper representative of the <241> whole body; otherwise different small cabals at different times may make the most contrary decrees. There is another limitation highly prudent, that in affairs of great importance more than a bare majority should be requisite; such as two-thirds, or three-fifths: particularly in altering any of the antient laws, or in condemning any person impeached. Precaution should also be taken against an obvious fallacy in all questions or states of votes with three members; in which there may be more votes for one side of the question, than for either of the other two, and yet those for the other two sides may together be almost double the number of that majority. Thus in a council of an hundred, there may be thirty-four for one side and thirty-three for each of the other two, and yet without some precaution in the constitution, thirty-four may determine a point against the inclination of sixty-six. Such questions may generally be reduced first into a simple question of two parts, and when one of these is determined it may be sub-divided again into another question of two parts if necessary. In like manner in elections to offices, where there are three candidates, there should always be a vote previous to the decisive one; to try first what two of the three candidates have the greatest number of votes; and he who has the fewest should be left out in the decisive vote to be put between the other two candidates.

Each class of
simple forms has
many species.³
Monarchy.

II. Each of the three general classes of forms have many inferior species with most important differences. Monarchy is either *absolute*, when the whole admini<242>stration is committed to the prudence and integrity of the prince, without any other restrictions than those always to

2. This discussion of decision procedures summarizes a detailed analysis of the logic of voting in Grotius, *The Rights of War and Peace*, II.5.17–19, which is elaborated in Pufendorf, *Law of Nature*, VII.2.15–19, and *Duty of Man*, II.6.12, as well as in Barbeyrac's notes to all three texts, all of which also give ample references to both ancient and later literature on the subject.

3. Cf. *Short Introduction*, III.6.2.

be understood in civil power from the very end of it: or limited, where by some original laws in the very constitution or conveyance of the power the quantity of it is determined, and limits set to it, with reservations of certain publick rights of the people not intrusted to him; and yet no court or council constituted which does not derive its power from him. Again, Monarchy may be either *hereditary* or *elective*; *during life*, or for a *certain term*.

Aristocracy, or the power of a senate, admits like variety: it is either *absolute* or *limited*; or *temporary*, where the senators sit only for a certain term in the senate, and then return to a private condition, or *perpetual* during life. It may be either *hereditary*, where the representatives of certain families are senators; or *elective*, where either at certain periods the whole senate is chosen, or vacancies supplied, as they happen, by election; and this is done either by **creation* or a popular election, or by *co-optation* of the senators; and these in many different ways. Sometimes a certain fortune, or the possessing certain lands entitles to a seat in the supreme council; † and this Aristotle calls an Oligarchy.

The species of
Aristocracy.

Democracies too are of very different kinds. Sometimes all the free men of the state with equal right of <243> suffrage make the supreme assembly. Sometimes a few deputies are chosen annually, or at certain periods, either by a whole people at once; or each of the several small districts into which a people is divided have a right of returning a certain number of deputies to the assembly. Sometimes a certain fortune or estate is requisite to entitle to a vote in the assembly, or to a vote in choosing deputies or representatives. Sometimes a part chosen by lot constitutes the supreme assembly: sometimes where all have votes yet their

Democracies
of different
kinds.

* These are the terms used by the Romans, *creation* for popular election, and *co-optations* for election to an office by the colleagues in that office. [Hutcheson is indicating the conflict in Rome that he refers to again in the following section. See references in III.6, n. 6, but also, e.g., Livy, *Ab urbe condita*, III.64–65 and V.10.]

† This Aristotle and Plato call a Timocracy, or Oligarchy. [Plato, *Republic*, Book VIII at 545c–550b on timocracy, 550c–553a on oligarchy. Aristotle, *Politics*, Book III at 1279b17–1280a7, and Book IV passim, on oligarchy; *Nicomachean Ethics* Book VIII at 1160a31–1160b20 on timocracy.]

votes are not of equal effect, but* being divided into certain classes, and these sub-divided into centuries, or smaller classes, not according to their numbers, but rather their wealth, matters are determined not by plurality of single votes, but by the plurality of concurring centuries; tho' in one century there be far greater numbers than in others. These are the principal models of the simple forms.

Complex
forms
innumerable.

The complex forms are innumerable according as Monarchy of any of the above-mentioned kinds is combined with some of the several sorts of Aristocracies, or Democracies, or with both. And further diversities may arise according as the several essential parts of supreme power are entrusted differently with the prince, the senate, or the popular assembly. And thus the variety is endless, as one may see in Aristotle's politicks and Harrington.⁴

The most
important gen-
eral maxims.⁵

III. To enable one to compare the several forms, and judge of the most convenient, we shall premise <244> some general maxims of great importance, and then make some special remarks upon the conveniencies and inconveniencies of the several simpler forms which must be parts in every complex one.

Four grand ad-
vantages to be
secured.

I. 'Tis obvious that when by any plan of polity these four advantages can be obtained, *wisdom* in discerning the fittest measures for the general interest; *fidelity*, with *expedition* and *secrecy* in the determination and ex-

* The *Comitia Centuriata* of *Servius Tullius*. [Servius Tullius, according to tradition the sixth king of Rome, from 578 to 535 BCE, supposedly founded the main political assembly based upon the *centuriae*, which were the smallest divisions of the legions of Rome.]

4. See especially Aristotle, *Politics*, IV, chs. 8–11. Hutcheson's use of Harrington becomes more specific in the following, but for the forms of government and their mixtures, see Harrington, *Oceana*, "The Preliminaries, shewing the Principles of Government"; and Machiavelli, *Discourses*, I.2.

5. Cf. *Short Introduction*, III.6.3. In a long and highly opinionated letter to Hutcheson in 1732, one of his former students, Patrick Lang, declared: "In reading Livy I take a great Deal of pleasure in calling to Mind such Political Reflections as I have had from You, Harrington, Matchiavel, Sidney & Moil." These reflections he had apparently heard in Hutcheson's lectures the previous academic year, and they very well suggest the modern republican tradition that set the tone for Hutcheson's use of Livy's account of Rome's political history. See Hutcheson, *Correspondence and Occasional Writings*, letter no. 8. By "Moil" is meant Walter Moyle, *Democracy Vindicated*.

ecution of them, and *concord* or *unity*; a nation must have all that happiness which any plan of polity can give it; as sufficient *wisdom* in the governors will discover the most effectual means, and *fidelity* will chuse them, by *expedition* and *secrecy* they will be most effectually executed, and unity will prevent one of the greatest evils, civil wars and seditions. The great necessity of taking sufficient precaution against these mischiefs of factions and civil war leads most writers in politicks into another obvious maxim, viz.

2. That the several parts of supreme power if they are lodged by any complex plan in different subjects, some granted to a prince, others to a senate, and others to a popular assembly, there must in such case be some *nexus imperii*, or some political bond upon them, that they may not be able or incline to act separately and in opposition to each other. Without this, two supreme powers may be constituted in the same state, which may give frequent occasions to civil wars. This would be the case if at once both the senate and popular assembly claimed the legislative <245> power; as it happened in Rome after the tribunes held assemblies of the plebeians without authority of the senate, and obtained that the decree of the plebeians should have the force of laws, while the senate insisted upon the like force to their decrees.⁶ The like was the case in many nations of Europe, while the ecclesiastick state pretended to make obligatory laws, and exercise certain jurisdictions, independently of the civil. If therefore the several essential parts of supreme power are distributed among different persons or courts, they must have some strong bond of union. If a prince has the executive, and the power of peace and war, while another body has the legislative, the power of raising tributes must be at least necessarily shared with the legislative council, that

The parts of
supreme power
should be
united.

6. Hutcheson is continuing to refer to the power struggle between the patrician Senate and plebeian tribunes in Rome, here the events in the 440s BCE recounted by Livy, *Ab urbe condita*, IV.1–6. The central issues were whether the office of consul could be opened up for plebeians and thus be subject to election by them and whether intermarriage between patricians and plebeians was permissible. This had been preceded by other conflicts such as cases of co-optation of some tribunes instead of election of them (cf. Hutcheson's note *, p. 517 above). Patrick Lang's letter (see previous note) indicates that Hutcheson used Johann Friedrich Gronovius's (1611–1671) annotated edition of Livy's history of Rome, which appeared in several editions.

it may never be the prince's interest to make war without their concurrence: and the prince must have a share in the legislative. Without such bonds laws might be enacted which the prince would not execute, or wars entered into which the nation would not support.

No necessity
that they
should be all
in one person
or in one
council.

But there is no such necessity that all the parts of the supreme power should be committed either to one person or one council. Unity may be preserved otherways. And other interests of the state may require that they should be divided.

Property the
sole bottom
for civil power.⁷

1. In
Monarchy.

3. Another maxim is equally certain from reason and the experience of all nations, "That property, and that chiefly in lands, is the natural foundation upon which power must rest; tho' it gives not any just right to power." Where there is property there <246> numbers of men can be supported, and their assistance obtained as they can be rewarded for it: and where they cannot be supported and rewarded, their assistance is not to be expected. When power wants this foundation, the state must always be restless, fluctuating, and full of sedition, until either the power draws property to itself, or property obtains power. Men who have property, and can therefore obtain force, will not be excluded from some share of power. And men in power will exert it one way or other in obtaining property to support themselves; which must occasion convulsions in a state. Pure Monarchy will never continue long without crown-lands, or hereditary provinces, where the lands are either the property of the prince, or he has a power over them equivalent to property. 'Tis true, that to support Monarchy, or the power of a few, it is not necessary that the monarch or the cabal should have near one half of the property. A much smaller share will be sufficient where the counsels are united as they are under a prince or a cabal of a few; and may be an over-match for double or treble the property dispersed among such multitudes as seldom can unite in their designs, or in the measures subservient to them. But still the maxim holds, that without a large share of property such power cannot be stable.

7. This is the leading theme of Harrington, and it is played through with many variations, but a particularly pithy summary of the nexus between landed property, civil power, and the problems of "balance" between the one, the few, and the many is *Oceana*, pp. 163–64. Cf. Moyle, *Democracy Vindicated*, pp. 230–41.

An hereditary Aristocracy in like manner shall be exposed to constant seditions and fluctuation, unless a very large share of the lands are the property of the senators. As the senators themselves are often of different sentiments and designs, there is not such unity of council as in Monarchy; and therefore a larger share of property in their hands is necessary for the stability of that form, than is necessary to be in the monarch for the stability of the Monarchy. If they have not near an half of the property, there may be an interest and a force sufficient to controul them, and change the form of polity.

2. Aristocracy.

A Democracy cannot remain stable unless the property be so diffused among the people that no such cabal of a few as could probably unite in any design, shall have a fund of wealth sufficient to support a force superior to that of the rest. And in the several complex forms of polity there must some suitable division of property be observed, otherways they shall always be instable and full of sedition; when power has its natural foundation of property it will be lasting, but may, in some forms, be very pernicious and oppressive to the whole body of the people; and it must be the more pernicious that it will be very permanent, there being no sufficient force to overturn or controul it. And this shews the great care requisite in settling a just plan, and a suitable division of property, and in taking precautions against any such change in property as may destroy a good plan: this should be the view of Agrarian laws.⁸

3. In Democracy.

4. As 'tis manifest that in Democracies, and in all Democrattick assemblies truly chosen by the people, and united in interest with them, there must ever be a faithful intention of the general interest, which is the interest of the whole assembly; no constitution can be good where some of the most important parts of the civil power are not committed in whole or in part to such an assembly, which ever must be faithful to that interest for which all civil polity is destined. And consequently when the situation of the people, their manners and customs, their trade or arts, do not sufficiently of themselves cause such a diffusion of property

A Democrattick part requisite in every plan.

8. "An equal agrarian is a perpetual law establishing and preserving the balance of dominion, by such a distribution that no one man or number of men within the compass of the few or aristocracy can come to overpower the whole people by their possessions in lands"; Harrington, *Oceana*, p. 181.

among many as is requisite for the continuance of the Democrattick part in the constitution; there should be such Agrarian laws as will prevent any immoderate increase of wealth in the hands of a few, which could support a force superior to the whole body. 'Tis in vain to talk of invading the liberty of the rich, or the injury of stopping their progress in just acquisitions. No publick interest hinders their acquiring as much as is requisite for any innocent enjoyments and pleasures of life. And yet if it did, the liberty and safety of thousands or millions is never to be put in the ballance with even the innocent pleasures of a few families; much less with their vain ambition, or their unjust pleasures, from their usurped powers or external pomp and grandeur.⁹

No oppressive
privileges
should be al-
lowed to any
orders of men.

For the same reason, all those groundless partition-walls among citizens, confining places of power and profit to certain families or certain orders, ought to be prevented or broke down; as they are both the occasions of immoderate and dangerous wealth in these orders; and give the justest causes of indignation, resentment, and setting up of a separate interest, to all <249> those who are thus unjustly excluded. Thus we see that Rome was never at rest till the brave and popular among the plebeians obtained access to the highest offices in the state, contrary to their old unreasonable laws. The general good of all is the end of associating, and not the grandeur of a few. If certain orders must reap all advantages, they should make a state by themselves, without other orders united with them.

The numbers
fittest for a
state.

5. Tho' 'tis not possible to fix upon any one number of persons or families as the very best for a political union, yet we may see plain reasons why certain numbers are too small, and others too great. For it is plain on one hand, first, that the greater the numbers united are, the greater must be the danger that the vigilance of magistrates shall not extend to them all for protection and improvement of their condition; and that many arising disorders shall not be remedied. And then the tumults and convulsions of such great bodies shall be more terrible and calamitous, as greater multitudes are involved in them.

9. Cf. above II.7.3.

Again, 2. The greater the multitudes are which thus unite into one state, the number of states into which mankind are cantoned must be so much the fewer, and consequently a smaller number of mankind can arise to eminence, or have opportunities of exerting their abilities and political virtues, or of improving them for the benefit of mankind. In some vast states consisting of many millions, there is but a small number who are admitted to the supreme councils, or have any considerable share in the administration. The rest are either wholly excluded, or have no other share than blindly obeying the orders of their superiors. If the same multitude had been divided into many smaller states, there had been room for many men of finer genius and capacity, to exert their abilities, and improve them by exercise in the service of mankind; whether by forming men to virtue, cultivating in them all social dispositions, and training them in publick offices civil or military; or in improving the ingenious arts. Accordingly we find that all virtues and ingenious arts flourished more in the little states of Greece than in any of the great empires.

Some too
great.

But on the other hand, 1. The numbers must be so great as to be easily superior in force to any such bands of the manifestly and avowedly unjust as may probably unite together. In state-factions, upon some specious tho' false views of right, vast numbers may unite, especially in the greater states: this should be prevented by a proper plan of polity. But seldom do thousands of robbers or pirates unite for avowedly unjust depredations, and yet a thousand families would scarce be sufficient to resist such bands of robbers as might be apprehended.

Others too
small.

Again, 2. There are many grand and useful designs of great and lasting advantages in life, which require both great wealth and a great number of hands. Such as clearing forests, draining marshes, maintaining foreign commerce, making harbours, fortifying cities, cultivating manufactures and ingenious arts, and encouraging the artizans. <251>

But 3. Whatever numbers might have sufficed for the full improvement of human life, before any great states had arisen in their neighbourhood, and been therefore large enough for forming little states; yet after a great empire is formed, much larger numbers are requisite in the

states around it, and it immediately becomes advisable for many small states to unite in a large one; or to form some strongly united system, that they may be able to resist the over-grown empire. This is seldom done successfully by common leagues or alliances; little jars and suspicions may make their alliance of little effect. And seldom do they all exert themselves as vigorously as they would do after an entire coalition, or after some system formed so strongly as to come near to a compleat coalition.

Extraordinary
rights for
future safety.

6. As some extraordinary dangers in natural liberty may justify some extraordinary measures; and as in civil society it may be perfectly just to set limits even to such acquisitions as are not to be made injuriously, but may hereafter prove dangerous to the community; since a more extensive interest of mankind is always to limit and controul the less extensive: it may in like manner be perfectly just in neighbouring states to put an early check to any dangerous power arising. If they see any state artfully modelled for conquest or for oppressing their neighbours, and keeping a-foot such military discipline and force as they cannot be secured against, consistently with the allowing their people to follow their honest and innocent occupations, or without vast expences; they <252> have *just right to free themselves from these dangers at once before they grow too great, by breaking the power of that ambitious neighbour, or by obtaining such security as shall be sufficient for their safety, such as the surrendry of fortified places, or the demolishing them: or any other security the least oppressive that shall prove effectual for their safety.

The polity
should prevent
abuses of
power by bad
hands.

7. We lastly observe once for all, that in contriving of civil polity no account is to be made of what good men in power would do in any plan: good and wise men invested with power in any plan would promote effectually the general happiness. The grand point is “to prevent mischief to the state, or its members, even when power comes into bad hands,” as no human wisdom can see into an hypocritical or changeable heart; and in all plans bad men may come into power. But there may be such contrivances in the polity as may restrain their evil intentions, as may

* Thus the Civil Law allows the *actio damni infecti* before damages are sustained. [The Roman law’s “action concerning anticipated injury” (Justinian, *Digest*, XXXIX.2.7) was taken over by the law of nations in its account of just causes of war; see Grotius, *War and Peace*, II.I.2(1).]

remove temptations to abuse their power; or at least may take away all hopes of success, and of finding their interest in abusing it.

IV. We proceed to the more special remarks upon the peculiar advantages and disadvantages of the several simpler forms. And first, Monarchy almost of every kind has these advantages that it naturally promotes *unity*, and can execute its designs with *expedition* and *secrecy*. Rebellions may arise against any sorts of governors; but, as the whole power in Monarchy is committed to one, there is no door opened in the very plan to sedition. And one person always present to exert his power may do it with more expedition, as well as secrecy, than any council of many. In elective Monarchies, if the plan of election be tolerable, there is pretty good security for *wisdom* in the governor. But by this plan there is no security for *fidelity*; and very little for unity. As the crown does not descend to the posterity of the elective monarch, he will ever be attempting to alter the constitution; or if he despairs of success in this design, his next will be to *enrich and aggrandize his own family, by all manner of exactions from his subjects. And tho' concord may be preserved during his life, on every new election there must be great danger of a civil war.

The peculiar advantages and dangers of the simpler plans.¹⁰

I. Elective Monarchy.

In hereditary Monarchies there may be less dangers of civil war, and more security for fidelity; as the grandeur of the prince's family depends on the prosperity of his country. But this is often over-looked by imprudent princes, who may take the most opposite measures, by giving themselves up to luxury and pleasure, or amassing wealth; breaking the spirits and ruining the fortunes of their subjects, and oppressing all eminent virtue and love of freedom as dangerous to themselves and their families. Thus the security for fidelity is but small, and there is none at all for wisdom or political abilities in men educated from their infancy in that elevation of fortune, where a constant deference is paid them inconsistent with all <254> candid advising or reproving, all expressing of dislike at what is wrong in them; no wonder that uncontrouled passions arise, that such ungoverned minds lose all equitable dispositions

Hereditary Monarchy.¹¹

10. Cf. *Short Introduction*, III.6.4.

* This has been the constant conduct of that Monarchy absurdly called spiritual, the Popedom.

11. GUL Ms., p. 43: The expected number "2" is missing also in the Ms.

toward their fellow-creatures, for whose interest they are intrusted with these powers; and grow incapable of self-government, or of any vigorous application either to the publick interests or their own. Such persons must generally be made a prey or a property to fawning and artful sycophants.

Limited Monarchies better than absolute.

Could wisdom and fidelity be insured, no form would be preferable to absolute hereditary Monarchy. But there can be no such security in any hereditary office. In Monarchies only limited by laws without any council sharing with the prince in any parts of the supreme power, there are pretty much the same dangers, both of imprudence and separate interest of the monarch. But the right of resistance will be more manifest to the whole people; and there will readily be a more general concurrence of the people to preserve their rights by just violence, whenever the prince invades any of these that are expressly reserved by fundamental laws, than where there are no such limitations. In this form indeed there is a door open to perpetual struggles; as the prince will always be attempting to enlarge his powers, and the people watching against it.

Wisdom often founded in Aristocracies, but not unity, or expedition, or fidelity.

V. In Aristocracies where the whole power is lodged in a council of men of eminent stations or fortunes, one may sometimes expect sufficient wisdom <255> and political abilities to discern and accomplish whatever the interest of the state may require. But there is no security against seditions and civil wars. Nor can this form secure fidelity to the publick interest, or admit of secrecy and expedition. The views of a corrupt senate will be aggrandizing themselves and their families by all oppression of the people. In hereditary senates these evils are most to be feared, and the majority of such bodies may sometimes want even political wisdom. Among men born in high stations of wealth and power; ambition, vanity, insolence, and an unsociable contempt of the lower orders, as if they were not of the same species, or were not fellow-citizens with them, too frequently prevail. And these high stations afford many occasions of corruption, by sloth, luxury, and debauchery. An unmixed hereditary Aristocracy must be among the very worst forms, since it neither secures wisdom, fidelity, unity, nor secrecy.

The elective are the best sorts.

In a council of senators elected for life by the people or by any popular interest, there is better security both for wisdom and fidelity. The

people, tho' not the best judges of abilities, yet follow at least the character for wisdom, which wise men generally obtain. And such senators must be excited to fidelity, both by gratitude to their electors, and by their desire of popularity, and influence in any future elections, that they may carry them for their friends. But there is no security against discord and sedition in such a council. And ambitious views of enlarging their <256> wealth may make the senators unfaithful to the popular interests.

When new members are admitted by co-optation, the senate may turn into a dangerous cabal, without any of the advantages desirable in civil polity, and attempt to make their office hereditary.¹² But when senators are elected by the people, and continue in office only for a short term, after which they return to the same condition in point of right with the populace, such a senate is more properly called a popular assembly, and the polity is a Democracy. In this form fidelity and wisdom are abundantly secured: but it lies open to seditions, and cannot be speedy or secret in the execution of its designs. This model can only be called Aristocratick when the people are confined to elect the senators out of certain eminent families; and even so it is not one of the simple forms, since the creation of magistrates, one of the essential parts of supreme power, is lodged with the people.

This limitation however of a people in their elections to certain orders, or to some eminent families, will always raise two grand factions with separate interests. The wise, and brave, and ambitious among the plebeians will ever be making strong efforts to break down this partition and obtain access to the senate, and seditions can scarcely be prevented.* <257>

12. Cf. III.6, n. 6 above.

* Most of these remarks upon Aristocracies one sees confirmed by the whole first Decad of Livy, which Machiavel justly chose as the fund of his political observations [*The Discourses*]. When senators are entitled to be elected by a certain degree of wealth, Aristotle calls the form Oligarchy, and gives a long detail of its dangers, [*Politics*] I. iii. c. 5. and I. iv. c. 2. When they are chosen upon some fame for virtue, he calls it the proper Aristocracy, as do others of the antients. [Cf. Hutcheson's note † above, p. 517.]

All Democracies are faithful, but deficient in other respects.

VI. In all forms of Democracy one may be sure of fidelity. The popular assemblies always desire the good of the whole as it is their own. But where the whole power is lodged in such assemblies, without any check or controll by a prince or senate, there is no security for wisdom, unity, or secrecy. This is obvious where all the free men meet in the assembly, there is no hope of wisdom, no avoiding seditions, no stability of counsils. Suspicion and envy can be raised, by artful selfish demagogues, against all virtue and eminence, even where there is the greatest need for them. Their resolutions are sometimes extravagantly bold; and again, when a pannick is raised, abjectly timerous.

A council of Democritick deputies the best sort.

When the power is committed to a numerous assembly of popular deputies or representatives for a short term; equal fidelity may be expected, if they are fairly elected by a popular interest, and much more wisdom and stability; and yet there is no security here against faction and sedition; and, as the humours of a people change at the different elections, there may be too much instability.

The best form of elections.

Electing by the lot as it excludes all briguing and bribery, so it excludes all prudence in the choice, and all regard to merit: unless there be first a leet, or small number of candidates for each office, chosen by suffrage, and then one of this number determined by lot; constituting the supreme assembly so that matters are determined by plurality of centuries and not of single suffrages, may cast the power much into the <258> hands of men of superior* stations and knowledge, but gives no security against seditions.

No simple forms safe.¹³

VII. From these reasonings it appears that none of these simple forms can be safe for a society. If these deserve to be called the regular forms which are wisely adapted to the true end of civil polity, all the simple forms are to be called rather rude and imperfect. Complex forms made up of all the three will be found the best and most regular according to the general doctrine both of †antients and moderns. 'Tis little to the

* This form Aristotle calls a Timocracy.

13. Cf. *Short Introduction*, III.6.5.

† This is plain in Aristotle tho' he prefers a certain sort of pure absolute Monarchy, which only exists in the speeches of flatterers, where the king is someway

honour of any form, and of little consequence to shewing it to be a just or prudent, or sacred and venerable one, that it was the antientest, or prevailed in the earliest ages. There is no human contrivance that we could less expect to be brought to perfection at first, or in a short time and upon little experience, than that of civil polity; as the settling it well must require the greatest wisdom and experience. The argument of antiquity would recommend to us to return again to dens, and caves, and beasts skins, and accorns, or wild fruits of the earth, instead of our present houses, food and cloathing. A rude artless plan might succeed well in earlier days while more of the earlier simplicity and innocence of manners was preserved. But, when luxury and corruption of manners <259> crept in, men would soon find the necessity of more artful polities.

Of the complex or mixed forms there is an endless variety, according as the several parts of supreme power may be differently lodged in the Monarchick, Aristocratick, or Democratick bodies of the several species above-mentioned. Many of these varieties are considered in the fourth, fifth, and sixth books of Aristotle, and in Harrington, with the natural causes and occasions of changes and of ruin.¹⁴ We shall only

Complex
forms
innumerable.

divine and superior to all others in personal virtues. Zeno was of the same opinion. See *Laert. in Zenone*. So *Polybius, Hist. p.* 628 and 638. *Dionys. Halicar. Antiq. l. ii. Cicero apud Non. Marcel. de verb. prop. 4. 292. Tacit. Ann. 4. 33.* [Diogenes Laërtius, *Lives of Eminent Philosophers*, VII.131; Polybius, *The Histories* VI.2.3; Dionysius of Halicarnassus, *Roman Antiquities*, book II; Nonius Marcellus, *De proprietate sermonum*, ch. 4, sect. 292, in Denis Godefroy, *Auctores latinae linguae in unum redacti corpus*, col. 678; Tacitus, *Annals*, IV.33. The passage in Nonius is the source for Cicero, *De re publica*, II.41 (23): "(I consider) the best constitution for a State to be that which is a balanced combination of the three forms mentioned, kingship, aristocracy, and democracy, and does not irritate by punishment a rude and savage heart."]

14. The references are to Aristotle's *Politics* and Harrington's *Oceana*, as noted above. In *Oceana*, Harrington explains the principles of a true republic ("ancient prudence") in the first part of "The Preliminaries," while post-classical, especially "Gothic," corruption of proper government ("modern prudence") is explained in the second part. This sets the stage for "Oceana," Harrington's republican projection of England as the revived and purified ancient prudence that will rescue Europe from feudalism.

suggest some general remarks upon the properest manner of combining these several simpler forms into a complex one.

The wisest
sorts of them
with an agrar-
ian law.

VIII. To preserve the Democratick part, we observed above the use of some agrarian law, or some contrivance that would prevent any dangerous degree of wealth coming into the hands of a few. No precise sum can be fixed as the highest. Different states may admit of different degrees of wealth without danger. If the agrarian law limits men to too small fortunes; it discourages the industry of the more able hands in trade or manufactures. If it allows too much wealth, some cabal of potent families may enslave the rest. Without any such laws some mixed states are safe, provided the lords can sell their estates,¹⁵ and trade and manufactures flourish among the plebeians; and they have access to the places of greatest profit and power. By these means, without any law, wealth may be sufficiently diffused.

A good
yeomanry.

2. 'Tis of great advantage in every form that the <260> common farmers or husband-men have good tenures; not such as shall maintain them in sloth or afford servants to do all labour for them; but yet such as will yield a plentiful support to the laborious and industrious; that they may live happy, and have strength of body and mind for defence of themselves and their country against domestick tyrants or foreign invaders.

A popular
assembly of
deputies.

3. The safest popular assembly in a mixed form is that of deputies or representatives proportionally and fairly elected for a certain term. In such assemblies the number of deputies from the several districts should be proportioned to the number of people and their wealth in the several districts. A constant door to corruption must be open if small or poor districts and cities have representatives quite beyond the proportion of their wealth to the rest, and of the share they bear in the publick burdens; besides it is a manifest iniquity to the greater districts. And the manner of election should be such as excludes bribery and corruption, otherways they are not true representatives of their districts. In such an assembly there must be undoubted fidelity, and therefore the largest share of the legislative power should be committed to them. If such

15. Hutcheson seems to be gesturing toward the limitations on the sale of estates, such as entails, that were still current in Britain.

assemblies are less fit for deliberating, debating, concerting, and proposing laws, they should have the chief power of enacting; as they will never incline to enact what they do not judge useful to the whole body, since whatever is oppressive or hurtful to the people must be so to themselves. <261>

4. To prevent seditions in the popular assembly and the instability of its councils and measures, 'tis generally convenient that there be a senate of a few; which, being elected by the people or by a popular interest, upon character for eminent abilities, should have the whole right of deliberating, concerting, and proposing laws or decrees to the popular assembly: and should continue only for a limited term, changing by rotation, and not all at once: a senate thus constituted might safely be entrusted also with the highest jurisdiction, or judging of all causes in the last resort, and with the creation and election of magistrates and officers civil and military, at least they should have a large share in such creations. There would be little cause to apprehend their having any views opposite to the popular interest; since after a few years they and their families shall be in the same condition with the populace in point of right: and all their hopes of re-election after the limited periods, must depend on their good character with the people. Such a senate would be the best judges of the abilities of men for important offices.

A senate necessary with the power of proposing and deliberating, of jurisdiction and creation of magistrates.

5. In all senates, councils, or assemblies to be elected for a certain term, a rotation is of great use, by which a third or fourth part only goes out at one time and their places then are supplied. Suppose this happens annually, or every second year, a majority still remains of old members, such as are well acquainted with the reasons of all measures formerly concerted, and are enured to publick business; and yet dangerous <262> cabals may be prevented or broken; and new able characters are brought to light, and find opportunities of exerting their abilities in the publick

A rotation and *leges annales* necessary as to offices.¹⁶

16. One of the republican works that Hutcheson echoes defines "*leges annales*" as part of the laws that secured the Roman republic: "the institution of the *leges annales*, or the laws of determining the age requisite for enjoying all the great magistracies of the commonwealth. This law cut off the early ambition of young men, and was one way to prevent the same persons from being often in the same dignities." Moyle, *Democracy Vindicated*, p. 239.

service: and the state gets more hands whom it can trust in any important affairs civil or military; nor is it distressed by the death or treachery of those formerly employed; nor is there such envy and disgust raised by this method in the body of the people, or in the greater families, as when a small cabal of men engross for a long time all the offices of profit and power. Not to mention the dangers to be apprehended to any free state from the long continued power of a few, which begets in them insolence, and such ambitious views as they never would have entertained had the term of their power been limited by law.

Magistrates
should have
fixed periods.

6. The like reasons shew the advantages of making all magistracies annual, or, if that term be too short for some great designs, of limiting them at least to a certain small number of years. This regulation may sometimes deprive the state of the services of some men of singularly great abilities, and yet not generally. Those who go out of office by a fixed law are not affronted; their successors may often obtain their council and assistance. And where such laws have obtained for any considerable time, there will be considerable numbers of men of distinguished abilities and experience for the several offices civil or military. The hopes of the state need not depend on one alone; there would be no distress by the death of one. And each magistrate would be more zealous to do publick services in his turn, that he may obtain honour and popularity, and thus secure his re-election as soon as the laws permit. Longer military command may be more successful in the ambitious views of conquering. But such designs seldom increase the happiness of the victorious state; and they create a great deal of unmerited misery to others; all such views are wicked and unjust.

A regal or dictatorial power.

7. To prevent seditions in either of these assemblies, and their contentions with each other, and all attempts to alter the constitution by the one's invading the right of the other, there should be a monarchick or dictatorial power constituted as an umpire between them; by which too the execution of all designs may be made more expeditious and secret where it is requisite. This power may be committed either hereditarily to some family, yet without other foundation of wealth than what depends on the law, or the grants of the popular assembly, or to a small number or council of a few elected for a certain term by the senate, and

sitting continually, so as to be always ready to exert the force of the state for its defence against sudden dangers; changing by rotation, and each one of them accountable, after his power expires, to the senate or popular assembly for any steps taken during their administration. Such a prince, or dictatorial council, may safely enjoy the executive power, and a share also with the senate in the promoting to offices. <264>

8. The ballot*, well contrived, prevents all competition or undue influence on the suffrages, whether in elections, or in the determinations about affairs proposed in the senate or popular assembly, or in judicature. By the ballot men can vote as they please, without incurring the resentments of the powerful, or a popular odium, or the anger of their party. The corrupter may lose his bribe, and yet gain no vote by it. At the same time 'tis plain the ballot takes away all shame, and gives free scope to private pique and malice, and envy. But these passions can seldom influence any great numbers of a large assembly against any one person, unless he has given just occasion for them. These inconveniencies therefore are far from equalling those which may attend other ways of voting in a free nation. The worst effect of the ballot is the forcing sometimes some great and good men to leave their country for a few years when the people are suspicious of their power.

The use of the ballot.

9. The members of the popular assembly should have† full previous information of matters to come before them, with the reasons on both sides, and not be first informed by tedious altercation when they are assembled. There may be opportunities for all who incline to inform those concerned of the reasons ur<265>ged on both sides, while men

Previous opportunities of informing the popular deputies.

* The most prudent method in elections by the people is that by both *ballot* and *scrutiny*, as explained by Harrington, and practised in Venice and some other states. The *Leges Tabellanae* in Rome are well known. [Harrington explains the ballot in detail, *Oceana*, pp. 218–20; and scrutiny, *Oceana*, pp. 249–50. As for Rome, the common term for the laws about ballots was *leges tabellariae*. They were discussed *pro et contra* in Cicero, *De legibus*, III.15–18, the four laws being listed in sec. 16.]

† A law concerted by the senate was intimated to all by the *promulgatio per trinundinum*, and men could promote or oppose the law by speeches from the *Rostra*. [The law was the *Lex Caecilia Didia*, which had been passed by the consuls Q. Caecilius Metellus Nepos and Titus Didius in 98 BCE. It forbade combining disparate provisions in one law and required a waiting period of three *nundinae* (market days) between the introduction of a bill and voting on it.]

are cooler than they can be expected to be in the midst of keen debates in the very assembly.

A censorial
court.

10. In every state a censorial power is of great consequence: that by it the manners of a people may be regulated, and that luxury, voluptuous debauchery, and other private vices prevented or made infamous, which otherways would destroy all publick virtues, and all faithful regard to the general good, and lead men to ruin the best contrived polity. Of this more hereafter. 'Tis in vain that princes or senates complain of corrupt manners. Their complaints must raise just indignation against themselves, while the highest dignities, the greatest offices civil and military are promiscuously conferred by them on persons of the most profligate characters as readily as upon the most virtuous. In vain they expect an inward reverence to their persons or authority, while the persons nearest to them, and promoted by them, employ the power and wealth conferred on them chiefly upon indulging themselves in all debauchery and infamous vices with impunity, or in a selfish aggrandizing themselves and their families.

The censors should be created by the senate with full power of degrading from all honours and offices men of infamous lives and of dissolute conduct. They should have power also of inflicting some more severe punishments. This trust is perhaps more safe in the hands of a censorial council for a set term changed by rotation, than in those of any one person. <266>

From a due consideration of these points the more convenient models of civil polity may be found, amidst that great variety of complex ones which may occur to us. The most suitable constitutional laws to each are at large considered by Aristotle and Harrington.

The Rights of Governours, how far they extend.¹

I. The rights of the supreme governors are such as are vested in them by the constitution, as far as the rights of subjects are naturally alienable, and in fact alienated, by any just deed of theirs, against which there lyes no just exception. And first, such as are invested with the supreme power, 'tis plain, are not accountable to any person or court upon earth as a civil superior; to suppose it would be a contradiction.

Civil supremacy what it consists in.

But we must not thence conclude that the same quantity of power, even absolute and unlimited, is in every plan of polity committed either to some political person, or council, or both jointly, as there can be in any other plan. The whole body of a people in any country, did they re-assemble again, and resolve to enlarge the powers of the rulers to the utmost, may convey as much power to them as any rulers elsewhere can justly enjoy. But in some states unlimited power is already conveyed to a prince, or to a senate, or <267> to an assembly, or to all these together; whereas in other states certain rights in the very constitution are reserved to the people, which neither any prince, nor any political council, nor both jointly, have any right to invade. Such are the fundamental laws in many states, settling the very legislative power in some councils along with the prince, and both jointly cannot alter them. No deed of such a

Not the same in every state.

1. This chapter corresponds to *Short Introduction*, III.7.1–5. The background to Hutcheson's discussion of sovereignty is Grotius, *The Rights of War and Peace*, I.3.6–7; Pufendorf, *Law of Nature*, VII.6, and *Duty of Man*, II.9; and Carmichael's extensive commentary on the latter, *Natural Rights*, ch. 19.

council can empower the king to make laws by himself or to levy tributes. Any such transaction of a council or popular assembly with the prince would of itself be void, as exceeded all the powers vested in them. In some called absolute and hereditary monarchies, the prince never claims the right of altering the order of succession, or of alienating any part of his territory, without consent of the whole body, or of transferring the kingdom to another.

This manifest
in the coalition
of independent
states.

The same thing is more manifest in the coalition of two independent states into one; where each has reserved certain rights, and exempted them from the cognisance of any person or political council constituted in this coalition, for the governing of the whole. No doubt in cases of great necessity the governors of any state may justly take some extraordinary steps beyond these limits set to them; and they may sometimes without necessity act treacherously against the conditions upon which their power was settled; and in these cases there may be no formal appointment of any method of redress. But the difficulty of obtaining redress does not prove that they had any right ^{<268>} to take such unnecessary steps. And governors, where there are no such limitations, may alter all old laws or articles of agreement for any superior expediency even without any plea of necessity, as that power is committed to them; whereas, where there are fundamental laws reserving certain rights as unalterable, nothing but a manifest necessity can justify any steps beyond the limits of these laws; otherways all faith in such treaties of coalition is gone.

The case is the same as in contracts of private partnership with some express reservations. An extreme necessity may justify the breaking these reservations; and yet no man says a partner has as much power without consent of the rest, when he is bound by express reservations, as he would have had if he had been intrusted with managing the stock without any such reservations. The violation of such reserved rights by governors without necessity always gives a right of resistance, and of violent defence or prosecution, to the persons injured and all such as incline to assist them.

How gover-
nors are
sacred.

II. Governors wisely exercising the powers committed to them, are justly sacred in this sense, "That they are persons of high importance

to the publick good, and all injuries or violence offered to them is more criminal, as it is more detrimental to the publick, than the like offered to persons of less importance." But every good and useful man is sacred in the same sense, whether in the same degree or not. The rights of governors, magistrates, or clergy, are <269> no otherwise sacred than those of other men, though sometimes much more important. God has not by any revelation determined the forms of government, the quantity of power to be committed, or the manner of succession, nor has he named the governors of any nations now in the world. His law requires that government should be settled; as it requires all other means of publick good. But the form of polity, and the degrees of power to be committed, are left to human prudence. His law the same way requires property and confirms the natural and acquired rights of all men. But 'tis left to human prudence to transact about them. The same laws of nature and revelation confirm to subjects their private rights, which confirm the publick rights of governors: and the former seem the more sacred and important, as the latter are plainly destined for their preservation. In different respects every adventitious right, private as well as publick, may be justly called both the *ordinance of God*, and the *ordinance of man*.

While governors seem to have honest intentions, and their administration tolerably promotes the publick interest, tho' they are not eminent in virtue, or free from all faults in their publick conduct, we should have much indulgence to their weaknesses, considering the difficulties and the great temptations in that high state. They are still persons of great importance to the publick interest. Nay as to very worthless governors; tho' nothing may be due to them on their own account, yet much may be due on account of <270> the publick. Violent changes are attended with many dangers and some considerable evils. They must not be attempted, except when necessary to avoid or prevent some greater evils felt or justly to be apprehended from the present plan or the administration of it. While these mischiefs do not surpass the evils to be dreaded from a violent change, and while there is not a prospect of such superior good from the change as outweighs these evils, it is the sacred duty of subjects toward their country to continue in obedience, and to avoid the evils of civil war. But where it is otherwise, and no gentler methods

Duties toward
weak
governors.

can relieve or secure a state from misery, 'tis a duty incumbent on all toward our country to make all efforts to change the plan, or divest such perfidious governors of their powers: all imaginable sacredness of characters is then gone; they cease to be blessings, and are become plagues to mankind.

Rights of resisting are in all plans.²

III. The right of resisting a limited monarch or senate, usurping powers not vested in him by the constitution, or invading the rights vested in some political council or assembly, which has some share in the parts of the supreme power, is very manifest. But we must not imagine that resistance is only lawful in limited governments, where some fundamental laws, or contract, or oath taken at the admission of the governors to their office, expressly reserve certain rights to the people, and exempt them from their power. In these cases the right of resistance may be less disputable, and all mankind as well as the subjects, will <271> more readily agree about the justice of it, and the proper times to use it. But in all governments, even the most absolute, the natural end of the trust is acknowledged on all sides to be the prosperity and safety of the whole body. When therefore the power is perverted from this end to the ruin of a people, either by a monstrous tyrannical intention, or any such folly or wickedness of the rulers as must have the same effect, the subjects must have a right of resistance, as the trust is broken; beside the manifest plea of necessity. Not to mention again, that all conveyance of absolute power, whether to a prince or senate, with a preclusion of all rights of resistance, must be a deed originally invalid, as founded in an error about what is most essential in such transactions, the tendency of such power to the general good.

Resistance imports no civil superiority of the people.

This supposes no court or assembly superior to the king in monarchies, or to the senate in aristocracies, or to the popular assemblies in democracies. It only supposes that the supreme civil magistrates or rulers are subject to the laws of God and Nature, and are bound by some³

2. Cf. Grotius, *The Rights of War and Peace*, I.3.8–9, and I.4; Pufendorf, *Law of Nature*, VII.8, and *Duty of Man*, II.9.4; Carmichael, *Natural Rights*, pp. 164–74; Locke, *Two Treatises of Government*, II.18.203–10.

3. GUL Ms., p. 62: “any” was later changed to “some.”

contract, express or tacit, which they entered into upon their admission to the power; and that they have no more power than the constitution gave them: and that, since all civil power is granted and received avowedly only for the publick good, he who employs it for a contrary purpose, by this perfidy on his part, frees the other party from all obligation, and consequently the subjects have the natural right of defending themselves against wrongs. A right <272> of resistance against injuries imports no civil superiority, nay it is consistent with the lowest subjection. The perfidy of a superior may set his subject free from all obligation to him: and even a slave may have a right of violently resisting a savage and barbarous master, tho' he had been subjected to slavery for the justest reasons.

IV. As in all constitutions civil power is acknowledged to be a trust for the publick good, questions may arise whether it be abused or not by such perfidy as forfeits it. We do not here speak of such imprudences or mistakes of rulers as subjects must have expected in any fallible mortals. To bear these patiently, while their great interests are safe, they have tacitly consented, and they are sacredly bound to do so, both out of duty to a ruler in the main good, and to their country. But if the question be, whether the abuses of power are such as are inconsistent with a faithful intention, or so great that they must be ruinous to a people if they are persisted in? one might think that neither of the contending parties will be the most impartial judges in their one cause; but the ruler can have the worse pretensions to judge, as the point questioned is whether he has forfeited his power or not? and to be sure he never will give judgement against himself. To be sure the arbitration of some men of wisdom of some remote nation, which could gain nothing by either side, would not be useless on such occasions. But the people, or such a council of wise deputies as they can trust, and elected by themselves, <273> have the best pretensions to a right of deciding this question, as 'tis for their interest and that of their constituents,⁴ that all civil power is constituted, and not for that of their rulers; and who can so justly claim to judge of

Who is the judge whether the power is perfidiously abused.

4. GUL Ms., p. 64: "and that of their constituents" is an interlinear addition.

any trustee, or any person impowered to manage business for others, as these persons themselves who have entrusted him, and supported him for that purpose.

People have a
right in many
cases to revoke
powers they
granted.

Nay, if upon trial the people find that the plan of power they constituted avowedly for their own good is really dangerous to them, they have a right to alter it. It must be strange effrontery in any governor, from any views of his own interest, or that of his family, to hinder them to change it; or to hold them to a contract which he knows they entered into upon this expectation and express design that it should tend to the general good, for which also he expressly undertook, when it is found to have a contrary tendency. The governor acts as a *Mandatarius*, who, after he had been once employed by others to manage some important business of theirs by a general commission, should refuse afterwards to receive any special instructions or limitations from those who employed him, or to quit his first commission. If he cannot by reasoning, and explaining the views of his conduct, satisfy the people; he may justly resign the troublesome office, and may insist on compensation of any damage he sustained, and that his family be settled in as good a condition as they were before he was raised to this power; and the people are bound to do so when it is <274> consistent with their safety. But to force a people or a great majority of them to continue a form they are dissatisfied with, or to be his subjects whether they will or not, must be strangely absurd; as if millions of men, among whom are thousands of equal knowledge, virtues, abilities, and capacities of happiness or misery, with the ruler, were destined as a property to be managed for his advantage, or pleasure, or vanity, contrary to the avowed end of all civil polity.

There may be
great crimes
on both sides.

If a prejudiced people become suspicious of their rulers, or of the plan of power, without sufficient cause; and withdraw their obedience contrary to the laws of a good constitution, they no doubt commit a great crime, often attended with horrid consequences. As does also the ruler who will retain a power that is truly dangerous to a people, however it has been conveyed. But when the cause of the suspicion is just, they do a necessary duty to themselves and posterity by making all the violent efforts which are necessary to accomplish a change. And of the justice of this cause there is no common judge upon earth.

But suppose a prince or senate persuaded that there is no just cause of distrusting either the plan of power or their administration; and yet neither any explications or remonstrances of theirs, nor any arbitration can satisfy a people, or a great majority of them, and remove their fears: as a people in continual suspicion and fear cannot be happy, and the publick happiness is the sole end of all civil power, the rulers cannot have a right to retain their power unless they find some means <275> to remove these fears. No doubt men in power may justly and prudently take some steps contrary to the present general inclination or approbation of their people, when they cannot safely communicate the reasons of their conduct to all. They may justly establish a plan which a stupid people shall not at first approve; provided they have all moral assurance that upon the discovery of the reasons of these steps, and upon a full trial of the plan and its advantages, there shall be a general satisfaction with both. A friend may, in some singular cases, take this power of counter-acting the special instructions he has received from a friend who commissioned him in his business; nay, may venture justly upon some useful services without any commission at all, or contrary to what he knows his prejudiced friend would allow, not seeing the necessity of what is done, or the eminent advantages to ensue upon it. But all these must be some transitory matters: nothing can justify what will occasion a general permanent suspicion and distrust: as this must destroy all publick happiness in any people, who are not already ruined in their minds by their slavery, and have not lost all rational forethought or regard to the future interests of their country. Such suspicion and constant distrust must always remain at least in some degree under absolute hereditary Monarchies and Aristocracies, as there is no appearance of security for the valuable interests of a people under them.

Rulers can scarce have a right of compelling the whole body of a people to be subject to them.

IV.⁵ These forms of polity alone are just which have a natural tendency to promote the general good. <276> If a form is constituted which is equally applicable to evil and good purposes, without any rational security about its application to good, such as are all the simple absolute Monarchies, and Aristocracies, or rather Oligarchies: the persons entrusted

Plans seldom give a solid right when they are not well contrived.

5. GUL Ms., p. 67: The repetitive numbering of the section is also in the Ms.

with the power have a right to use it for the publick good while no other plan of power occurs to the society. But they can no longer retain this plan when the majority will consent to a change, and any part of the people is dissatisfied with the old plan, and insists upon some better security for the general safety. Nay as common sense must easily shew that in such plans no proper precautions are taken against the greatest mischiefs; as soon as any one sees this, he is bound to consent to any necessary limitations and precautions. That a people have rashly contracted upon an error in what is most essential in the nature of the contract, gives no manner of right. It is the most direct perfidy, and a breach of the general sacred trust of all civil power, in any ruler to oppose such limitations and precautions as are necessary to prevent the most extensive mischief. No absolute hereditary rulers can bind their subjects by any oaths against all resistance of them and their successors; or prevent their right of constituting, when they can, some proper methods of controll, in case of the succession of any monstrous tyrants. They should always remember the sole end of their power, and that it is the business and interests of the subjects, that they are intrusted to manage. <277>

Obligations
sometimes to
submit to bad
plans.

'Tis true, when an imprudent plan is settled and there is no hope of success in any efforts to alter it, but they must probably strengthen the chains; or when the evils apprehended from the continuance of it, and the advantages hoped from the change, are not great enough to overballance some terrible mischiefs to be feared in a civil war, the subjects may be sacredly bound, in duty to their country, to defer their designs to some more convenient opportunity; and in the mean time to continue in obedience. Even as a good man, in duty to himself and his family, is bound to yield his purse to a robber rather than hazard his life in defending it. The ruler's tittle to the subjection of the people, in those oppressive and absurd plans, is no better than that of a robber's to any money he had by force compelled one to promise him. Error is as just an exception against a contract as force. And in these absurd plans there is always this exception, not to mention the strong plea of necessity. Where the form indeed is in the main good and the people safe under it, tho' there be some smaller grievances arising from some of its parts of which the rulers are tenacious, we may judge that they have such external

rights to retain these parts as a selfish man has to hold another to an unequal bargain. The people may be obliged to acquiesce for a distant utility, or out of duty to the publick; and to prevent greater evils which might ensue upon any violent efforts for a redress. But the ruler has no proper right on his side which he can use with a good conscience. <278>

V. When any rulers justly constituted, and exercising their powers well, incur the odium of a great part of a dissolute people, and rebellions are raised against them, 'tis no doubt the duty of the other subjects to support them with all fidelity. They are in like manner bound to assist and defend them against any unjust competitor, or any foreign invader without a just cause. This is due not only to the very best of civil governors, but even to all who have in the main good intentions and fidelity, tho' attended with many weaknesses, such however as are not evasive of the great interests of society for preserving of which men united. The subjects are the more sacredly bound to such fidelity as the unjust competitor or invader gives the very worst presumptions of his intentions, and of his future administration, by his attempts to obtain it.

Obligations on subjects to defend their rulers against rebellions or invasions.

But if after all, such a one is successful, dethrones the former governor, assumes the supreme power to himself, and is so established in it, that there is little hope of restoring the former possessor without the greatest bloodshed and mischief: if the conqueror settles such a plan of power as secures the important interests of the state as well as they were before, so that a restoration could do no publick good; it becomes the duty of the former prince to relinquish his title, as it was solely granted to him for the good of a people, which is now become inconsistent with it. And the people, conscious of their present safe and easy state, and that they cannot accomplish a restoration without the greatest mischiefs, may justly, nay <279> are obliged to acquiesce in the present change, and continue the publick happiness by ratifying it.⁶ In all these mutual obligations, 'tis absurd to speak of one side as continuing bound, when 'tis made impossible for the other to perform the duties in consideration

When they may submit to a conqueror.

6. In the *Short Introduction*, III.7.3, there is an important brief discussion of interregna at this point. This is in accord with Pufendorf, *Law of Nature*, VII.7.7, and *Duty of Man*, II.10.4, which is taken up by Carmichael, *Natural Rights*, p. 184.

of which the obligation was constituted. Such events are exceptions understood in all contracts.

These tenets
do not tend to
rebellion.

VI. There is a popular outcry often raised against these tenets of the rights of resistance, as if they must cause continual seditions and rebellions: the contrary is abundantly known. Such mischiefs are more frequently occasioned by the opposite doctrines giving unbounded licence to vicious rulers, and making them expect and trust to the conscientious submission of a people, contrary to nature and common sense; when they are giving loose reins to all tyranny and oppression. 'Tis well known that men too often break through the justest persuasions of duty, under strong temptations; and much more readily will they break through such superstitious tenets, not founded in just reason. There is no hope of making a peaceful world or country, by means of such tenets as the unlimited powers of governors, and the unlawfulness of all resistance. And where the just rights of mankind are asserted and generally believed, yet there is such a general love of ease, such proneness to esteem any tolerable governors, such a fondness for antient customs and laws, and abhorrence of what is contrary to them; such fear of dangers from any convulsions of state, and such advantages⁷ enjoyed or hoped for under the present administration, that it is seldom practicable to accomplish any changes, or to get sufficient numbers to concur in any violent efforts for that purpose, against a government established by long custom and law, even where there is just ground given for them. We see that they scarce ever are successful except upon the very grossest abuses of power, and an entire perversion of it to the ruin of a people. Mankind have generally been a great deal too tame and tractable; and hence so many wretched forms of power have always enslaved nine-tenths of the nations of the world, where they have the fullest right to make all efforts for a change.

In ages of darkness, and too often also in those of greater knowledge, by the perfidious arts of designing princes, and by the base servil-

7. GUL Ms., p. 71: "states and such advantages" seems originally to have read: "states and from the force of those in power. Such advantages [nine or ten words illegible]."

ity of too many ecclesiasticks, who managed the superstition of a populace, by the violent restraints put upon divulging any juster sentiments about the rights of mankind, the natural notions of polity were erased out of the minds of men, and they were filled with some confused imaginations of something adorable in monarchs, some representation of the Divinity, and that even in the worst of them; and of some certain divine claims in certain families, abstracted from any publick interests of the nations to be ruled by them; and upon these groundless attachments, the best blood of these nations hath been sacrificed by the contending factions. No great wonder this, that millions thus look upon themselves as a piece of property to one of their fellows as silly and worthless as the meanest of them; when the like arts of superstition have made millions, nay the very artificers themselves, fall down before the block or stone they had set up, or adore monkeys, cats, and crocodiles, as the sovereign disposers of their fortunes. Hence many men of learning too are not ashamed to speak of patrimonial and despotick kingdoms, where millions of men, and all their posterity too for all succeeding ages, are supposed to be in conscience bound to a perpetual subjection to one of their fellows, to be a piece of property subservient to his advantage or capricious humours, and to those of his successors.

VII. Civil liberty and natural have this in common, that as the latter is “the right each one has to act according to his own inclination within the limits of the law of nature:” So civil liberty is “the right of acting as one inclines within the bounds of the civil laws, as well as those of nature.” Laws are so far from excluding liberty, that they are its natural and surest defence. Were there no law of nature restraining others from in-croaching or usurping upon the rights of their fellows, there could be no right or enjoyment of natural liberty. And were there no civil laws protecting against injuries, and unjust force of the stronger, there would be no security of any right in society; as all must depend upon the will of those who had superior force. And as one may be said to act freely when he follows willingly the direction of another, having a firm dependance on his superior wisdom <282> and kind intentions; it may be justly said, that in the strictest polity, where there are very exact regulations of manners, and a constant discipline over all the people, there

Liberty civil
and political.

still remains to them abundant liberty, if they are fully assured of the wisdom and good intention of the laws, and heartily acquiesce in them, tho' they can never counteract them without incurring punishment, and are in a great part of their conduct confined by them to that certain manner which the law prescribes. If indeed civil liberty meant an exemption from the authority of the laws, the best regulated states would allow least liberty.

The Grecian
and Roman
meaning of a
free people.

In our modern plans of laws, where little regard is had to the education and discipline of the subjects, their natural liberty is little confined in any sense; and a people is denominated free, when their important interests are well secured against any rapacious or capricious wills of those in power. The Greeks and Romans seem to have had another precise meaning to the *populus liber*, denoting by that term only *Democracies*, or such forms where the supreme power, or the chief parts of it at least, were in some popular assembly, so that the people in a body had the command, or had their turns in commanding and obeying. <283>

The Ways in which Supreme Power is acquired; how far just.¹

I. We have already shown that the only natural method in which supreme power can be acquired is the consent or voluntary deed of the people, and 'tis plain that there is no branch of supreme power which cannot thus be constituted, whatever *majesty*, *supremacy*, or *dignity*, we can have any just conception of (for we do not account for the roving of an enthusiastick imagination) is nothing else than a great many rights conveyed by each one of a great multitude to a prince or a council, or an assembly.* No one individual was previously supreme, or had this majesty, as no unite is a thousand.² But each one of a multitude conveying some of his rights to the same person or council, may constitute this supremacy or majesty, as many unites can make a thousand among them.

The deed of a people constitutes supremacy or majesty.

1. This chapter corresponds to *Short Introduction*, III.7.6–12. Cf. Pufendorf, *Law of Nature*, VII.7, and *Duty of Man*, II.10.

* 'Tis well known that the old Romans conceived the *majestas* in the people, hence *laesa majestas populi Romani* was the term for treason. Flatterers applied it to Emperors, as *sustinentes personam populi vel civitatis*. [For a description of the “offended majesty of the Roman people,” see, e.g., Cicero, *De partitione oratoria*, 30, and his *De inventione*, II.17. For the legal use of “treason” in this sense, see Justinian, *Digest*, XLVIII.4: Lex Julia on Treason. For early applications of “majesty” to the emperors as “the carriers of the person of the people or citizens,” see Tacitus, *Annals*, I.72–74.]

2. This passage and the following sentence are difficult to make grammatical sense of, but they have been correctly printed from the Ms.(GUL), p. 74.

All civil power
can arise from
such deeds.

More particularly, the legislative power arises by each one's transferring to one person or council some part of the natural right of liberty he had about his own actions and goods. The executive partly arises from the same conveyance, and partly from each one's <284> transferring to the prince or council what right he had in natural liberty against those who injured him or his neighbours, to repel the injury, and obtain compensation of all damages done, and security for himself and others against like attempts for the future.

Even that of
life and death,
which is of
two sorts.

The power of life and death is no way so divine that it could not arise from a deed of the people.³ No magistrate is so far lord of human life, that he can of his own right take it away when he pleases without a cause. He has only these two rights about it, one *direct*, and of design; when 'tis necessary for the publick safety to take away the lives of criminals. This right* men had among them in natural liberty. The magistrate in place of the person injured, or in the name of the society, takes this necessary precaution against future injuries. The other right is *indirect*, by which the magistrate may compell subjects to undertake the most dangerous services for defence of the state, and even such as may cost them their lives. Now in natural liberty every one had a right to hazard his life for any very important purpose to mankind, such as defending his family, and neighbours, and their important rights; and that in the way that shall probably be most effectual. Common sense shews that, where many are concerned in such violent efforts, 'tis highly necessary that they act united and by one council. They all therefore had a right to commit the direction of such violent efforts to one person or council; and they could convey to this person or council <285> a right of compelling them, in case they should be refractory, to what they had a right, and even were obliged by the law of nature to do. 'Tis still more obvious how other parts of the supreme power could arise from the same source.

3. Hutcheson's target is Robert Filmer's idea of punishment as an inherent part of patriarchal power and conveyed by God; *Patriarcha*, I.4, p. 7, and II.3, p. 16.

* See above book ii. chap. 15. § 5.

'Tis true, the constituting of civil power is the most important transaction in worldly affairs, and hence the obligations to fidelity in it are very high and sacred. But this consideration shews rather more the high obligation on rulers to a faithful administration, than that on subjects to obedience; and makes the rights of rulers rather less divine than those of the people, as the former are destined for the preservation of the latter: tho' the rights of rulers may be of more importance than those of any one particular subject.

The rights of a people as sacred as those of the sovereign.

II. 'Tis almost superfluous to examine the reasons alledged for some divinity of one form of polity above all others. That one is truly most divine which is most adapted to the publick good. The holy Scriptures do not prescribe one form for all nations: and they seem least of all to favour the admired plan of absolute hereditary monarchy. The law of nature requires the doing whatever most tends to the good of mankind, as far as human prudence can discern: and no doubt obliges too to constitute the best sorts of polity. But it enjoins this no more specially, than it enjoins the use of the most salutary food, rayment, exercise, and the chusing the most useful employments, and most convenient forms of architecture: and has <286> left these things to be found out by human sagacity, no man thence dreams that all men are confined to one sort of food, dress, exercise, or architecture; and that they are criminal who vary from it, tho' they do not apprehend its superior conveniency. Just so as to the models of government: the original plan of power should be the best that men can contrive: and they who constitute it have the power by some deed or original law to appoint the manner of its continuance, or the order of election or succession to it.

How any form of polity is divine.⁴

III. A divine right of succession to civil offices is ridiculous. In private fortunes, the law of nature does not appoint undivided inheritances falling to one. Some civil laws of this kind are monstrous. Nature makes frequently many co-heirs in private fortunes,* to wit, all who are equally

Divine rights of succession are ridiculous.⁵

4. For the use of the distinction between general and particular providence in this section, see III.4, n. 8 above.

5. In the previous section, Hutcheson stated the general Lockean case against divine right, as promoted by Filmer; in this section he makes a précis of Locke's extensive polemic against Filmer's ideas of succession in ch. XI of the second of his *Two Treatises of Government*.

* So did the old Roman law, see *Instit. l. iii. tit. 1*—6.

near to the deceased in consanguinity: and would sometimes admit collaterals and ascendants together. The lineal succession,* where one always represents the deceased, is a mere human contrivance, for political views of having one enabled to support the civil or military offices, and do the publick services formerly incumbent on the deceased. Primogeniture gives no right to this, except by positive laws; and they are monstrously unjust when they give the whole inheritance to one of many equally near and equally deserving. The very plea of supporting a publick office or political dignity should only entitle to a larger share, a double portion perhaps. <287> But no reasoning can be drawn from private fortunes constituted for the good of one family, to the power over states and nations, not destined for the private interest of one family, but for the good of nations.

The lineal succession not founded in nature.

The only colour of right in successions to any civil powers constituted by the deed of the people, must be derived from the deed of the people. And we have already seen how many just pleas a people may have to revoke such deeds. The lineal succession settled by civil laws may be clear, and prevent all disputes about the person who is next representative according to those laws:† but the laws themselves have no natural foundation of justice. If primogeniture or seniority be allowed as one natural reason of preference; tho' 'tis not easy to shew why it should be so in the succession of brethren to a brother, as well as of children to a parent; or why it should take place of manifestly superior merit: yet this cause of preference must give place to that of sex in the first step; an infant son taking before the wisest woman; and yet in the second step or when more distant persons must succeed, no regard is had to the distinction of sex in these persons, but they take according to the sex of the deceased parent by whom they succeed, or according to the parent's seniority. Thus a grand-daughter by an eldest son deceased, takes place of a grandson by a second son, nay of the second son himself. The niece or grand-niece by an elder brother takes place before the nephew

* See Novel. 118. [Justinian, *The Novels*, No. 118: "Concerning heirs who succeed *ab intestato*, and the abolition of the right of agnates" (ch. 1).]

† See Locke on Government, book i. ch. 11.

by a younger, nay before the younger brother himself. And thus in innumerable other cases.

If there be any thing divine or natural in these matters, one would think the general hereditary succession should be deemed such rather than the lineal. In the former persons succeed according to proximity of blood; a second son before a grandson by an elder son deceased, a younger brother before an elder brother's son; and so on among remoter relations where there is such uncertainty of the persons to succeed who can pretend either a natural or a divine law? where is the lineal succession, even as to private fortunes, settled in scripture? for about hereditary kingdoms there are no laws. The lineal succession is scarce to be found among these laws which settled *circumcision*, the *marrying of brothers widows*, and *unalienable lands*: and if it were found there, it binds no other nations. Does the law of nature admit of the succession of females to civil offices, or of persons related by females? a Briton affirms, and a Frenchman denies it. Shall cousins or nephews by the mother be admitted, or only those by the father? What says any law of God and nature to these cases? We all know our own civil laws; and are so inured to them, by long custom, that we almost deem them natural.

Hereditary succession often is different from the lineal.

Had any one form of polity been of divine appointment for all, can we imagine that a good God would have given to mankind unintelligible laws like Draco.⁶ He would have named the first rulers, expressed all the publick fundamental laws, specified the several powers granted, and clearly determined the order of succession. Nature shews that civil governments cannot generally admit of division with safety. The succession must be undivided: but what determines the line? all this is* human contrivance; either some old deed of a people conveying civil power to a prince and his heirs, according to the usages received in other successions, except where the nature of a state requires some differences, or some old deed of a prince, once vested with power to

If any form had been peculiarly divine, the order of succession had been fixed.

6. The Athenian lawgiver whose code (621 BCE) was notorious for its severe penalties.

* See Mr. Locke on Government, book i. ch. xi.

appoint an order of succession; or who by violence compelled a people to establish the order he had appointed.

No right of conquest.⁷

IV. Of all that ever obtained the name of right nothing has less foundation than that claim called the *right of conquest*. If there was nothing else as a foundation of right but superior force, it is the right of a pirate or robber to his prey: it is an abuse of language to call it a right.

No right acquired without a just cause.

We must here recollect what was said above* about violent defence and prosecution of our rights; and about the injustice of making captives of all sorts slaves: from the principles there maintained it appears, 1. That in an unjust cause a conqueror acquires no right he can use with a good conscience, not even by any treaty he extorts by violence. And where the conquered have not resigned their claim, they have still a right to retake whatever they have lost, and every neighbour state has a right to assist them. <290>

An entire conquest never necessary to obtain compensation.

2. In the justest cause there is no further right, than after repelling injuries to demand full compensation of damages, and securities against like injuries for the future, by inflicting such punishment on the guilty, not on the innocent, as may deter all from like injuries for the future. What is necessary for these purposes may be just, but all violence or oppression, not thus necessary, is injurious. Now, first, injuries are still repelled long before a conquest, and indeed full reparation of damages is also generally either obtained or voluntarily offered by the unfortunate side, before they are entirely subdued. If, after this is offered according to arbitration of any impartial judges, the conqueror demands more, or persists in violence in order to obtain more on this head, he ceases to have a just cause. Almost every vanquished state can compensate any damages they have done by the moveables of the state or of the subjects, or at least by an annual tribute for a certain term; and they are always willing to make compensation in this manner, rather than by losing their independency and becoming a province to another prince

7. In the corresponding place in the *Short Introduction*—III.7.8 (note)—the translator refers to the second of Locke's *Two Treatises of Government*, by which is meant ch. XVI, and to Carmichael's notes to Pufendorf, *De officio hominis et civis*, II.10 (see *Natural Rights*, ch. 20).

* See above Book II. ch. xv. § 5. And the 3. ch. art. 3. of this book.

or country, or by dividing their territories. And the person bound to make compensation, if he is willing to make it fully, has a right to chuse out of which of his goods he will make it.

And as to security against like offences for the future, the world sees it is always obtained and always offered before an entire conquest. What is allowed to be sufficient security against a state not yet conquered, and retaining yet much of its strength, is surely sufficient against one entirely defeated and broken. Now delivering up some frontier forts, or demolishing them, giving up ships of war, allowing garrisons of the conqueror maintained at the charge of the vanquished in some frontier towns or harbours, are thought in all arbitrations sufficient security against a state yet in almost all its vigour; and how much more so are they against one almost ruined by victorious arms.

Not to security
against future
injuries.

As to punishment; it can with no shew of justice be inflicted upon the persons or goods of the whole body of a people, as we shewed* above that they are generally innocent, in every respect. Grant even all or most of the heads of families had been guilty, their lands and other goods are truly the property of wives and children along with them, tho' the heads of families are the natural administrators for them. The joint proprietors are universally innocent, and seldom is there any guilt even in one of a thousand of the heads of families. And yet the ruin or the enslaving of a state is a severe punishment on all its members. Punishment is naturally destined for a general security to all around. Now the victors assuming by force all civil power over the vanquished, is so far from giving such security, that it rather threatens all around with greater evils than they had to apprehend from those who were conquered; and 'tis the interest of all around to prevent such conquests. <292>

Punishment
should be in-
flicted on the
guilty only.

If any principles of justice led conquerors to punish they should inflict punishments only on the guilty, and chiefly on the principal causes of any injuries they had sustained; and these are the princes, or chief governors of the injurious states, and their counsellors. They are the murderers of all who perish in the wars they unjustly raised. Were they to suffer themselves, we should have a more peaceable world; they would

The principal
causes should
be punished.

* Chap. iii. of this book, art. 3.

be more cautious about the justice of their designs. Bad princes are not restrained by the apprehension that their subjects may be punished.

If indeed any state has frequently been injurious to its neighbours, and shews either such rapacious dispositions prevalent among them for a long time, or have obtained such an opportune situation for oppressing all around them, by possessing places singularly strong, or such strait seas that they can always be masters of the trade of many neighbouring states: so that others cannot be secured against them but at an intolerable expence of fleets and armies. The neighbouring states have certainly a right to dislodge them out of these fastnesses, to dispossess them of all forts or harbours near these straits; or perhaps sometimes to force this band of robbers, rather than citizens, to dissociate, and to incorporate them with themselves, allowing to all of them whom they cannot convict of crimes to enjoy all the equitable rights of their own subjects. But it would be the greatest folly in the neighbouring states to allow any one prince or state upon conquest to obtain the same power over <293> all around which the injurious state had formerly by virtue of its situation.

How subjects
are lyable to
compensate.

V. The subjects of an injurious state, tho' they be free from all guilt in these publick injuries, may on certain events be liable to compensation of damages. This should indeed first be made by the authors of the injuries out of their private goods; if these fail, it should be made out of any publick stock the state may have, or the treasury. And this can seldom fail, as it may be supplied by new taxes imposed for this purpose. And in this manner, did the customs of the world authorise it, should conquerors demand compensations. But when compensation is not consented to by the injurious, the injured must take it by force, the goods of the rulers are the last they can reach or seize for this purpose, and they must redress themselves the easiest way they can.

The subjects, as they have constituted this plan of power, and raised those governors to execute it, are naturally* lyable either to compensate the damages occasioned by these means, or else they are bound to deliver up

* See this claim explained above, chap. 3. art. 8. and ff. 9. tit. 1. and 4. [The printer has mistaken 3 for 8; the correct reference is III.3.3., where the *Digest*, IX, tit. 1 and 4 are referred to.]

those governors; and to alter any thing in the plan of power that may lead the state to be injurious. They should have their option of either of these two, and upon agreeing to either, should enjoy all their rights and liberties.

But as the people are generally averse for reasons often very trifling and superstitious, to give up their governors to justice, they are bound to compensate <294> damages. And this justifies the seizures made in war of the goods belonging to subjects of the hostile state, when we cannot obtain compensation either from the goods of their rulers, or from the publick stock of the state. Upon these our first demands should be for any damage sustained, either by publick council of the state, or by any injurious action of its subjects whom it could have restrained or obliged to compensate damages and refused it. When we cannot thus obtain it, we have a right to take it from the subjects as we can. And let them have recourse to their rulers for compensation of these losses they sustained on a publick account, as they have a just right to obtain it from them out of the publick stock. As the wealth and power of a state depends on that of its subjects, the seizing their goods is often the only way we can have of distressing an injurious state and bringing it to just terms of peace.

The right of seizures in war and reprisals.

When the state agrees to just terms, the innocent subjects, whose goods were seized, should have compensation either by restitution, or by obtaining the value. If the goods are retained by the captor according to the treaty, they are so much received on account of the damage sustained by his country, and lessen the claim upon the state. In that case the subject whose goods were seized has a claim upon his own state for compensation. If the goods are to be restored, or the value be given by the captor, his country has the greater compensation to claim from the other state on account of those injuries which occasioned the violent <295> seizures. The former method is more generally received as to any goods taken in publick wars, tho' compensation is seldom obtained for private losses by seizures.⁸

8. At this place in the *Short Introduction*, III.7.8, note at the end of the section, the English translator suggests: "The reasonings in this and the following articles are designed against the pleas of Grotius and Puffendorf for the rights of conquest, and patrimonial kingdoms, or principalities, founded on it." For Grotius, see *The Rights of War and Peace*, III.8; for Puffendorf, *Law of Nature*, VII.7.3.

No tacit convention in wars about future subjection.

VI. 'Tis argued in favour of the right of conquest, "that he who enters into an unjust war tacitly contracts or consents to whatever condition the fortune of war shall place him in, and consequently when conquered he is bound to civil subjection to the victor, or to slavery, when this is the customary treatment of the vanquished."⁹ But this is plainly absurd. The nature of war, and all the professions and declarations made about it on both sides, exclude all conception of any such contract, unless it has been expressly made; as sometimes indeed it has been as to a coalition into one state or civil subjection upon humane terms. Having recourse to arms is a declaration that we will assert our rights, and give none of them up either absolutely or upon any contingency, as long as we can defend them. Nay after the most entire defeat, none imagines it a piece of perfidy that the vanquished rally again; or that people transport themselves to any other part of the world, or get new allies to renew the war. All these steps would be deemed treacherous if there were any such tacit convention apprehended.

Such contract cannot be alleged mutual.

Again there is no presuming that the unjust side have made such a covenant unless the other side also consents to the like terms. Now did ever any man repute the military operations of a state in the just <296> defence or prosecution of its rights as importing a covenant to renounce its independency, sovereignty, or the personal liberty of its people upon the event of a defeat? and neither does any side in any publick war ever own or profess its own cause to be unjust. They do not therefore enter into any such contract, nor can they be deemed to have done it, as they always declare the very contrary. Nay pirates and robbers, whatever rights of mankind they forfeit or abdicate by their avowedly unjust vio-

9. Here Hutcheson picks up a controversy between Carmichael and Barbeyrac. The former had rejected Grotius's and Pufendorf's supposed contention that conquest alone could justify subjection; Grotius, *The Rights of War and Peace*, III.8.1; Pufendorf, *Law of Nature*, VII.7.3–4, and *Duty of Man*, II.10.2. Carmichael argued that only consent would suffice; see his extensive note to Pufendorf's *Duty of Man*, *ibid.*, the passage translated in *Natural Rights*, pp. 178–79. In reply, Barbeyrac defended Grotius and Pufendorf by suggesting that if conquest is a means of maintaining peace, this may overrule any concern with the injustice of enforced consent to subjection; see note 1 to Grotius, *ibid.*; and note 5 to Pufendorf, *Law of Nature*, *ibid.*

lence, are never supposed to contract about their future condition in case they are conquered. Nor are their attempts to escape, or any other violence of theirs deemed perfidy, where they have not given express promises.

The pretences of the contract of a whole people are ridiculous in this case, except as to pure Democracies; and in these too, for the above reasons, they are groundless. In other states, not one in an hundred have any hand in any wars undertaken or publick injuries their state may have done; and many may not know whether their country is in war or peace, which is generally the case of minors and women, and even of many lower heads of families. And yet this wondrous right of conquest, supported by a tacit convention, must subject them all to a grievous punishment, a despotick, or patrimonial government over them and their posterity to all ages, nay to perpetual slavery.

Or made by a whole people.

Suppose the custom of subjecting the conquered to the absolute civil power of the victor, or of making them slaves, to be universally received, tho' contrary to all justice; suppose too that the governors made such express contracts: they could bind no civil society by them nor any person but themselves. By such a contract they manifestly exceed their powers, and all the rights which can be presumed as granted to them in any civil polity. The power vested in them is only what may probably be useful for the general interest of their countries. They have no right to destroy, alienate, or enslave, a people, either by absolute sales or by bargains upon a contingency. Every such contract must be fraudulent on both sides, contrary to the well known trust of all civil power, and the known rights of other innocent persons; and therefore can produce no obligation except upon the persons of the contractors. A prince or senate in the most absolute form has only the right of a *mandatarius* empowered to transact for the benefit of others without special instructions. The employers suspecting his perfidy are bound only to this alternative, either to ratify the contract, or if not, to indemnify the other party of any loss sustained by means of the person thus commissioned to transact for them. Nay in lieu of this it is enough in many cases if they deliver up this fraudulent transactor to those who are injured by him.

No despotick
or patrimonial
kingdoms.¹⁰

VII. These reasons shew that mere conquest, even in a just cause, can scarcely give any right of civil power over the conquered nation. Now conquest is almost the sole foundation alleged for despotick and patrimonial kingdoms, where the prince can sell, transfer, or divide the kingdom, or subject it to any form of power, or to any person he pleases: and therefore they may generally be deemed grossly impious usurpations upon the rights of mankind.

Grotius and other great men suggest some possible but highly improbable cases in which a patrimonial power may seem to have another foundation, in consequence of some* consent of a people in the utmost danger of a massacre from some barbarous invader, to avoid which, and to induce some potent neighbouring state to defend them, and sustain a perilous war against the invader; they may subject themselves as far as their rights are alienable to this potent neighbour, and give him a right to rule them in any manner he pleases, consistent with humanity, for his own advantage. A crime or great damage done by concurring multitudes may also justly subject them to slavery, and forfeit all these their alienable rights which may be requisite for compensation of damage. But this last cause can only found a temporary power over the criminals, or the authors of this damage themselves; their innocent posterity have all the natural rights of mankind, and that of liberty among the rest, as soon as they have compensated the necessary expences made on their education. And the power over the criminals, or the authors of unjust damage, should not be called a civil power even while it subsists.

As to contracts made in the utmost distress, there can be no more just right acquired by them to a prince or neighbour-state, than what it would be equitable and just to demand in consideration of the important service done. If much more has been rashly promised, there is a right of redress by arbitration, as in all other oppressive onerous con-

10. As might be expected, Hutcheson agrees with Carmichael in rejecting Grotius's and Pufendorf's ("other great men") defense of some forms of patrimonial sovereignty. See Carmichael's comments (*Natural Rights*, pp. 180–83) on Pufendorf, *Duty of Man*, II.9.7; cf. *Law of Nature*, VII.6.16 (and VIII.5); and Grotius, *The Rights of War and Peace*, I.3.11–12 (cf. II.6.3–13).

* See the cases mentioned in *Grotius de J. B. et P. lib. i.* [Grotius, *War and Peace*, I.3.12.]

tracts, where there has been a mistake on either side as to the values. These general submissions must naturally be understood with many tacit reservations and stipulations; that the protection of this potent state shall be continued, that the civil power shall be exercised with humanity, and for its natural purposes. Consenting to subjection to one potent state, which exercises its power mercifully, does not import a consent to be transferred to any other weak or impotent one, or to any foolish or inhuman tyrant. No right of alienation, or dismembering, and dividing can be presumed, upon any submission of one state to another. Nay the pleas of necessity may also take place, against the most express contracts, when any thing is attempted which must create a great unnecessary misery, contrary to what must be understood as stipulated in all submission to any human power. All innocent persons have always a right to insist on better securities for their safety than are given them in any hereditary patrimonial kingdoms; and even criminal parents cannot forfeit this right of their innocent children, or any other natural or acquired right they hold underived from their parents.

VIII. If a conqueror, even in a just cause, compels the conquered people to contract with him and submit to his civil power; as this contract is extorted <300> by unjust violence he obtains no right which he can use with a good conscience, more than a pirate or robber. His cause is now unjust, however it was just before. And tho' it be a valuable matter to the conquered, that he should now desist from violence when he has obtained all he could justly claim by war, (as he always does or may without this civil subjection); yet it is what the conquered have a right to. And his not persisting in any further violence, which could have been unjust, gives him no claim upon them, more than my not killing a man, whom I meet unarmed and defenceless in a desert, gives me a right to his services. But if a conqueror gives protection, as he is bound to do, and a vanquished people desist from arms for some time, and in matters relating to common peace and order apply to the victor, or to his courts for justice; this seems indeed to import a convention of submitting for some time and has the full force of a truce, nay may perhaps oblige them not to renew hostilities without previous indiction or declaration, and yet the present power of the conqueror, making all efforts against him dangerous, takes away all cause of presuming any tacit consent to perpetual

How far a conqueror may obtain a right by a subsequent contract.

subjection. Nothing but an express contract voluntarily entred into, without unjust force extorting it, can give a right to the conqueror to demand a perpetual civil subjection from a people and their descendants.

When there is
an hearty
uncompelled
consent.

When however a conqueror in any cause by force retains his power, and yet settles such a plan of government as sufficiently ensures the happiness of a people, so that without compulsion they are heartily satisfied with it: when the restoration of any former prince becomes impracticable, or at least is so, without new terrible dangerous convulsions, the event of which may be very uncertain; as all the right of the former prince was vested in him, solely for the good of the state, which now plainly requires the abolition of his right; he is highly insolent, and injurious, if he demands that the peace and safety of a whole people be hazarded, or perhaps sacrificed for his grandure: and the people have a right to take the only probable method for their safety by submitting to the conqueror. The conqueror indeed is guilty of a great crime in retaining the power and may be obliged in conscience to divest himself of it: but, in duty to themselves, and to the general safety, the people are obliged by the contract they make with him. In a tract of time the successors of the old prince either quit their claim or become incapable of the office. Their right extinguishes; and that of the successors to the conqueror may become every way compleat, by the continued hearty consent of the people.

How the fundamental laws
of succession
are to be
understood.¹¹

IX. In Monarchies or Aristocracies made hereditary by the old deed of the people, or by the fundamental laws, the right of succession to the offices generally resembles that of fiefs, where the successor holds not in consequence of any deed of his predecessor, since he had no

II. Grotius discussed succession to “acquisition derived from a man’s own deed” (*The Rights of War and Peace*, II.6), and to “acquisition by virtue of some law” (II.7), and on both subjects he deployed the parallel between succession to property and to authority that Hutcheson relies on here. Pufendorf makes a similar distinction, but in his case succession according to law is interpreted in terms of his three-step theory of contract, so that “the Order of Succession doth . . . originally depend on the People’s Will” (*Law of Nature*, VII.7.12). In the detail Hutcheson’s account of succession has much similarity with Pufendorf, *ibid.*, VII.7.11–15, and *Duty of Man*, II.10.5–12. These conceptual schemes were clearly relevant to the recurring succession issues in English and Scottish political history, especially in the aftermath of the Revolution settlements from 1689 onward.

power of excluding him; but he holds, by virtue of the fundamental laws, all the powers and the <302> annual emoluments of the office, and that disincumbered of any debts the predecessor contracted; and as there is no natural reason, or equitable foundation in nature, previous to a constitution made by the people, that offices, destined for the service of the publick, should descend hereditarily; all the rights of persons in remainder must solely depend on the fundamental law or original contract.

Where there is nothing specially determined in old laws about the manner of succession to a crown, but in general it is made hereditary. It is presumable that the law intends * the same order of succession that is received in private fortunes, by old custom, except when the nature of the office plainly requires a variation. Thus the kingdom must descend undivided, tho' other inheritances are divided. And it is confined to the descendants of the first prince, unless the contrary be expressly declared.

As in the old laws of such Monarchies, seldom is any thing expressly determined upon the event of a forfeiture incurred by mal-administration of one in possession: and yet common sense, and the known intention of the office, must shew that a grosly perfidious administration, contrary to express engagements, and the very end of the trust, must forfeit the right: <303> if the custom be universally received in a nation, that in all inheritances whosoever incurs a forfeiture, or voluntarily abdicates, precludes not only himself but all his descendants, nay collaterals too; so that the inheritance reverts entirely to the superior, or to the person, or politick body which granted it; it is presumable, in all fair interpretation, that this too was the intention of any old fundamental laws or original contracts as to the descent of crowns, where nothing is more specially determined upon the event of forfeiture or abdication. In the

How to be understood upon the event of forfeiture.

* Thus if inheritances are simply hereditary, that is descending to the next in blood, so it is presumed they intended the crown should descend; that is, for instance, to a second son in preference to a grandson by a deceased eldest son; to a younger brother in preference of a nephew by an elder brother deceased: to a grandson by a youngest son or daughter, in preference of all grand-daughters. If the lineal descent is received by custom, so it is presumed they intended the crown should descend.

forfeitures of private inheritances or fortunes indeed, such regulations are contrary to humanity, as these fortunes are truly destined for the behoof of a family. Wives and children are joint proprietors, tho' the head of the family has the sole administration. But the heirs in remainder to crowns have no such equitable plea. The regal office is not in its nature destined for the behoof of any family, but is a trust for the service of a nation, nor is there any equitable foundation to claim that such offices should be hereditary or descend according to proximity of blood, or by a line of representatives. Those in remainder have no other claim than from the old deed or law. And it is presumable that the true intent of it is to exclude all descendants at least, and sometimes the whole family, of such as forfeited; since nothing else called hereditary descends to the posterity, or to any kinsman of one who had forfeited.* <304>

The intention of such old laws is very manifest in countries where all inheritances were antiently held as fiefs, conveyed upon condition of the fidelity of every one who succeeded, so that upon any one possessor's incurring a forfeiture or abdicating, the fief reverted to the granter as in his former estate, without any regard to innocent descendants or collaterals. This custom or law, how inhumane soever as to private fortunes, shews what we are to presume was the meaning of the old constitution of an hereditary crown. And indeed the reasons of humanity do not hold against like forfeitures of political offices destined not for the good of a family, but for the publick interest. There may however be many reasons of prudence, and sometimes of humanity, to induce a nation, upon such a forfeiture, to grant the crown anew to any worthy person of the antient family, rather than to a new one, but this is plainly left to the prudence of the nation. A forfeiture is a legal bar to the claims of all descendants, since they have no other than from the law.¹²

* An incapacity only justifies the exclusion of the person incapable. But maladministration may exclude the whole line, as they hold only by the old law.

12. Here and in the following two sections Hutcheson is settling accounts with James II, seeing the Catholic king as having forfeited the crown and asserting Parliament's authority to determine the succession in light of its own view of the rele-

X. 'Tis surprising how one should conceive any thing divine or natural in the right of lineal succession; when it is plainly preferable to the simple hereditary one only for this, that it is free from uncertainty or debates about the next successors. Whereas it is at the same time exposed to some vast inconveniencies, and causes most absurd successions, which the simple hereditary order would have prevented. For instance, by lineal succession the crown of a king^{<305>}dom in the greatest confusions, and requiring the direction of the wisest prince, must descend to the infant grand-niece by an elder brother's daughter, in preference of the most worthy younger brother of mature age and wisdom. Each one inured to the customs of his own country confusedly imagines them natural, without reflecting or considering the great diversities of customs which have been received in different nations, when yet the crown was hereditary in one form or other, each of which customs long use makes something natural.

Nothing divine or founded in nature in the lineal succession.

XI. As the people have a right of resistance, and of dethroning a prince who is grossly perfidious to his trust after he comes to possess it, whensoever it is necessary for the preservation of the state; we may certainly also conclude, that when an heir apparent shews before he comes into possession either such stupidity, or such cruel, and tyrannical dispositions, or such pernicious superstitions and perfidy, as are inconsistent with a faithful discharge of the trust intended for him by the laws, and with the safety of the people in their most important interests civil or religious: they have a right to prevent his coming into possession, and thus to prevent all the bloodshed and other mischiefs which must attend a civil war to dethrone him: since such a person can give no real security against his abuse of power, to the very worst purposes when he shall obtain it.

How forfeitures are incurred and heirs precluded.

In particular, tho' errors in religion, as such, do not make void any civil rights of men; though no ^{<306>} man would forfeit his right by Polytheism, Deism, or Heathen idolatry, while he held no superstitious tenets which would make him unfaithful to his contracts, cruel and op-

What trusts preclude an heir apparent.

vant lines of heredity and judgment of the common good. Cf. *Short Introduction*, III.7.II. In his similar discussion, Carmichael apparently saw James as having abdicated; cf. *Natural Rights*, pp. 185–87.

pressive to his people, or unjust in his jurisdiction, or unfit to support the liberty and independency of the state: yet if he obstinately adheres to such tenets as these, “That he shall have a divine right to act as he pleases in state affairs, even to sell or alienate the state, that he shall have a right, and be obliged in conscience to extirpate by fire and sword such as differ from him in religion, and that this duty must take place of all promises or engagements made by him or his ancestors to the people: that he is obliged in conscience to allow a foreign prince, under a pretended religious character, to exercise a great deal of civil jurisdiction within the state, and over many of its members, and to grant investitures to many lucrative offices of great secular power, tho’ with mock spiritual names; and to prohibit all commerce with any subjects of the state who are interdicted by him”: a person holding such tenets, may be more justly excluded from succeeding to the crown of a free independent nation governed by laws, than a madman or an idiot as he must be much more pernicious to the publick.

The rights of a
state over
colonies.¹³

XII. The same doctrine about the rights of conquest which holds as to Monarchs, holds also as to all bodies politick under any form: and as great invasions have been made on the rights of neighbouring states by Aristocracies and Democracies, as by princes. We may finish this subject by considering the rights of the mother-countries over colonies. These are sent with very different views and rights.* Sometimes a nation overstocked, and not desiring to enlarge its territories, sends out a part of the subjects well provided, to find new habitations for themselves, and to found a new independent state, upon which no other claim is retained but that of a friendly alliance. Sometimes colonies of free citizens are sent to make new conquests, with a view that the colony should remain a part of the old body politick, and that it should enjoy the

13. The pluralistic idea of colonies set out in this section was shared in both natural law and republican literature; see Pufendorf, *Law of Nature*, VIII.12.5 (and cf. *ibid.*, VIII.11.6); Moyle, *Democracy Vindicated*, pp. 251–53. Just as his moral philosophy in general, so Hutcheson’s criticism of empire was well received in the American colonies.

* Such was the settlement of Lacedemonians at Tarentum under Phalantus, and those of other Grecian states in Italy. [For the Spartan Phalanthus’s founding of Tarento c. 705 BCE, see Strabo, *Geography*, VI.179–82.]

same rights with the other parts of the body. These two ways of settling colonies are humane and equitable with respect to the colony. Sometimes upon a conquest or acquisition made of distant lands, a colony is sent to possess, defend and cultivate them, that they may be a province to the old state, to be managed for its advantage; so that the members of the colony, while they reside there, shall not share in the power or privileges of the antient subjects. If any number of citizens voluntarily consent to these terms, and are allowed, when they incline, to return to their mother-country with their fortunes, and enjoy all the rights of other subjects, there can be no injury alleged as done to them. But it would be a great hardship, not justifiable but by some great necessity, to force any number of subjects into a worse condition in point of right or liberty upon their boldly adventuring abroad and settling their fortunes in a distant land, by direction and countenance of the state to increase its dominions or enlarge its trade, or to make laws after they are settled in such distant places, that shall deprive them of any valuable right or enjoyment, which is not destructive to the old state, or beneficial to its enemies or rivals.

Nay as the end of all political unions is the general good of those thus united, and this good must be subordinated to the more extensive interests of mankind. If the plan of the mother-country is changed by force, or degenerates by degrees from a safe, mild, and gentle limited power, to a severe and absolute one; or if under the same plan of polity, oppressive laws are made with respect to the colonies or provinces; and any colony is so increased in numbers and strength that they are sufficient by themselves for all the good ends of a political union; they are not bound to continue in their subjection, when it is grown so much more burdensome than was expected. Their consent to be subject to a safe and gentle plan of power or laws, imports no subjection to the dangerous and oppressive ones. Not to mention that all the principles of humanity require that where the retaining any right or claim is of far less importance to the happiness or safety of one body than it is dangerous and oppressive to another, the former should quit the claim, or agree to all such restrictions and limitations of it as are necessary for the liberty and happiness of the other, provided the other makes compensation of

When it is
that colonies
may turn
independent.

any damage thus occasioned. Large numbers of men cannot be bound to sacrifice their own and their posterity's liberty and happiness, to the ambitious views of their mother-country, while it can enjoy all rational happiness without subjection to it; and they can only be obliged to compensate the expences of making the settlement and defending it while it needed such defence, and to continue, as good allies, ready to supply as friends any loss of strength their old country sustained by their quitting their subjection to it. There is something so unnatural in supposing a large society, sufficient for all the good purposes of an independent political union, remaining subject to the direction and government of a distant body of men who know not sufficiently the circumstances and exigencies of this society; or in supposing this society obliged to be governed solely for the benefit of a distant country; that it is not easy to imagine there can be any foundation for it in justice or equity. The insisting on old claims and tacit conventions, to extend civil power over distant nations, and form grand unwieldy empires, without regard to the obvious maxims of humanity, has been one great source of human misery. <310>

Of the Nature of Civil Laws and their Execution.¹

I. The legislative and executive are powers exerted within the state: Of these in the first place.

As the end of all laws should be the general good and happiness of a people, which chiefly depends on their virtue: it must be the business of legislators to promote, by all just and effectual methods, true principles

How far the civil power can regulate religion.²

1. The corresponding chapter in *Short Introduction* is III.8. Although there are deep differences in philosophy, the specific topics addressed in this chapter overlap considerably with Pufendorf. For sections 1–7 of the present chapter, see *Law of Nature*, VII.9, and *Duty of Man*, II.11; for the rest of the chapter, the sequence of topics differs, but most are to be found in *Law of Nature*, VIII.1–5, and *Duty of Man*, II.12–15. In both of his works Hutcheson's discussion of the role of the civil authority in matters of religion is clearly in the tradition of Locke's *Letter concerning Toleration* (1689), but there is one difference between the textbook and the *System*. In the former (III.8.1) he distinguishes between civil societies in which the constitution provides that "the sovereign or chief magistrate is only entrusted with such power as is requisite for the preservation of the secular rights of men ["external goods," in the Latin]," and societies in which "they are entrusted with certain revenues, to be employed for the publick utility at their discretion; and where they are not expressly restricted to the care of the secular rights of men." In the former, which are what Locke was talking about, the authorities "cannot exert any sort of coercive power about the means of forming mens minds to religious or inward virtue," but in the latter "the civil governors must think it belonging to their office, to instill into the minds of their subjects the true sentiments of religion and virtue by the best instruction and discipline from their infancy, that they may be furnished for all the honourable offices of life." This distinction is not made in the *System*, where only the latter type of situation is discussed. Cf. Locke, *A Letter concerning Toleration*, pp. 179–91.

2. Concerning the relationship between state and church, cf. the discussion of Bayle above, I.10.5.

of virtue, such as shall lead men to piety to God, and all just, peaceable, and kind dispositions towards their fellows; that they may be inclined to every good office, and faithful in every trust committed to them in their several stations. It is poor policy merely to punish crimes when they are committed. The noble art is to contrive such* previous education, instruction, and discipline, as shall prevent vice, restrain these passions, and correct these confused notions of great happiness in vicious courses, which enslave men to them. As pious dispositions toward God, a firm persuasion of his goodness, and of his providence governing the world, and administering justice in a future state by rewarding justice, temperance, and all social dispositions, and punishing <311> the contrary, are the sources of the most sublime happiness, so they are the strongest incitements to all social, friendly and heroick offices. The civil power should take care that the people be well instructed in these points, and have all arguments presented to their understandings, and all rational inducements proposed which can raise these persuasions, and confirm these dispositions. Truth with equal advantages will always prevail against error, where errors have not been rooted by such early prejudices as prevent a fair examination. The magistrate should therefore provide proper instruction for all, especially for young minds, about the existence, goodness, and providence of God, and all the social duties of life, and the motives to them.

No coercive
power over the
opinions of
men.

Every rational creature has a right to judge for it self in these matters: and as men must assent according to the evidence that appears to them, and cannot command their own assent in opposition to it, this right is plainly unalienable: it cannot be matter of contract; nor can there be any right of compulsions as to opinions, conveyed to or vested in any magistrate. He can have no right to extort mens sentiments, or to inflict

* This was the aim of the institutions of Lycurgus, Solon, Plato, Numa, and of the old Persians, according to Xenophon, and of the Chinese. [See Xenophon's *Constitution of the Lacedaemonians* (Lycurgus); *Oeconomicus*, 14 (Solon); *Cyropaedia* (the Persians). Hutcheson would have known the common positive image of Confucius as representative of Chinese moral thought at least from Barbeyrac's "Historical and Critical Account," pp. 3–4 and 15–16.]

penalties upon their not agreeing to the opinions he thinks just; as such penalties are no evidences to convince the judgment, and can only produce hypocrisy; and are monstrous usurpations on the most sacred rights of all rational beings.

But as it is certain from the indolence, and the necessary avocations of multitudes, that scarce one in <312> an hundred will ever exercise this right of private judgment vigorously; the far greater number, by admiration of some favourite characters, will always follow such as make high pretensions to superior wisdom. It is therefore the interest of the magistrate and his duty to the state in general to take care that wise and good men be provided and supported to take the leading of such as will be led by some person or other. And by this means, if the magistrates scheme of religion be tolerable, he may always have a vast majority to follow these leaders he has appointed, and thus prevent the influence of dangerous enthusiasts or rogues. It must indeed be a vile unnatural perversion of his office if he attempts a leading about useless and disputable trifles, which are of no moment to form in his subjects dispositions of piety, love and resignation to God, of temperance toward themselves and just and beneficent dispositions toward their fellows. But it must naturally belong to such as are vested with power, and entrusted with managing any funds for the general interest of a people according to their prudence, to take care that such principles as lead to these most useful virtues be fully explained and inculcated upon their people.

The civil power should appoint proper instructors for the people.

All this may be done without any restraint or penalties inflicted upon men for different sentiments; nay as men of different sentiments may think themselves obliged to publish them, and convince others; the magistrate can have no right to punish any for publishing their sentiments, how false soever he may <313> think them, if they are not hurtful to society. Whatever whimsical men may introduce into their schemes of religion, while they do not oppose the goodness of the Presiding Mind, and his moral providence exercised over the world, or any of the principles of the moral and social virtues, they do not oppose the end of the magistrate's office or the points about which his leading should be employed. It is therefore unjust, as no publick interest requires it, that men should

But without any persecution.

be punished for following their consciences in publishing even these weak conceits which do no hurt to the state, and seem to them of importance. It has always been found, where there have been no restraints upon men about such tenets, in free states, and where there has been a general toleration of them with good nature; free conversation and argument have gradually abated the bigotry and hot zeal of weak men about such points, and made more just sentiments of religion generally prevail.

The publishing of Atheism or principles directly immoral is punishable.³

II. As to direct Atheism, or denial of a moral providence, or of the obligations of the moral or social virtues, these indeed directly tend to hurt the state in its most important interests: and the persons who directly publish such tenets cannot well pretend any obligation in conscience to do so. The magistrate may therefore justly restrain them by force, as he might any deluded fool or enthusiasts who pretended conscience in invading the rights or properties of others. The magistrate has a right to defend the state and its members against whatever hurts them, let the pretences of the authors be what they will; and thus has a right to restrain such as would by any sophistry corrupt the weak into sentiments inconsistent with their duty to their fellows, or such as are destructive of the publick happiness, by taking away the most powerful incitements to all good offices and restraints from injury. But as there is little danger that such tenets will ever prevail in a civilized nation where knowledge and arts are encouraged, and as punishments inflicted by publick authority, beside moving the compassion of men, sometimes give an air of importance to the silly ravings of an empty fool, and raise in the weak some suspicions of such strong reasons on that side as no reason on the other can answer; some have looked upon it as a piece of prudence in magistrates, where there is no manifest danger of the spreading of such opinions, to let them alone to the common sense of mankind to be confuted and despised: giving no trust to such men as renounce all bonds of conscience, but only punishing when the principles are discovered by wicked actions.

3. Cf. Locke, *Letter concerning Toleration*, pp. 200–201.

But as to various forms of external worship and the different schemes of religion, which yet retain the grand moral principles of duty toward God and our fellows, as there is no hope that ever mankind, with their strangely different degrees of sagacity, and different opportunities, and prejudices of education, will agree about them; persecution on these accounts must be the greatest folly and cruelty. It must go to fire, and sword, and gibbets; otherways different sentiments will appear. Such persecution is the most horrid iniquity and cruelty, and may often dispeople a country of its most useful hands, upon which its wealth and strength depended. It is plainly the true interest of a country on the contrary, to be a refuge to all industrious peaceable men from neighbouring nations, and to engage all such as we have already to remain with us. Half persecution does not conquer the diversities of opinions, it only irritates mens minds and kindles seditions, or provokes them to fly to nations where they can find ease.⁵

But not different modes of religion.⁴

4. Cf. the account of religious diversity, above I.5.7. Hutcheson's ideas of the toleration of such diversity may be read in the context of his personal experience at various points in his life, here most obviously a pamphlet feud at about the time when, most likely, he abandoned writing the *System*. In 1738 a former student anonymously attacked him for heresy in teachings that were in conflict with the *Westminster Confession of Faith* and the *Larger and Shorter Catechisms*. A group of Hutcheson's allies among his students and friends defended him by arguing for the moral value of his teaching, and it seems clear that Hutcheson himself was connected in some way with this reply. See the two pamphlets, *Shaftsbury's Ghost conjur'd: or, a letter to Mr. Francis Hutcheson* (1738), and *A Vindication of Mr. Hutcheson from the Calumnious Aspersions of a Late Pamphlet* (1738), in Hutcheson's *Correspondence and Occasional Writings*. Hutcheson referred to the controversy as "some whimsical Buffoonry about my Heresy" in a letter to Thomas Drennan on 5 March 1738/9; letter 27 in *Correspondence and Occasional Writings* (a short excerpt of which is reprinted as item 5 in the appendix). See Hutcheson's lengthy note * below, III.9.2, p. 573, and his *Inquiry*, II.7.7 (pp. 186–87).

5. In the Ms. (GUL), p. 107 we find a substantial revision at this place. A paragraph has been crossed out; it reads as follows:

As to the publishing of tenets Eversive of the social virtues, or such as destroy the strongest motives to them, This one must allow a magistrate may justly restrain. And yet there have been such gross abuses of this power, that its no wonder some good men are fond of denying even this Right to the magistrate, and would confine him solely to the punishing with the outmost severity any

Immoral
tenets how
cognisable.

As to the publishing of tenets eversive of the social virtues, or such as destroy the strongest motives to them, or the holding such tenets as make men scruple in their consciences to perform such civil or military duties as the magistrate has a right to enjoin; one must allow that these matters fall under the magistrate's power. That he may restrain men from publishing such tenets by penalties: and that he may either compell men to perform the necessary duty to the state, or to make up the loss by supporting such as are willing to perform it in their places: as to this latter method there can be no question. But there have been such gross abuses of this power of restraining men from publishing the tenets which magistrates have reputed dangerous, that it is no wonder many good men are unwilling to allow it: and would grant no more to belong to the magistrate than a right to exclude men from all civil power whose tenets are opposite to any social duties, or eversive of the motives to them, and to demand security of their good behaviour; but to punish only the practices hurtful to society in consequence of these tenets; and that with as great severity as the bad tendency of them may require.

The great dan-
ger of the
abuse of this
power.

The possible abuse of alleged right or power does not indeed prove that there is none. And yet the force of party prejudices, and the fury of religious contraversies is amazing. Scarce any thing more odious than the tenets which the several sects of Christians charge upon their adversaries, while yet any candid mind must see the charge to be groundless against most of them; and that these tenets which have caused the highest contentions and mutual persecutions, lead to nothing eversive of true piety or the social virtues. If in any case the frequent danger of abuse would make void a right, it would be in this of punishing for the publishing of opinions eversive of piety and social virtue; since the warm

practises, consequent upon corrupt tenets which hurt the society, and to demanding security for the good behaviour of such as profess them.

This is followed by the following instruction on a separate line: "(Instead of what is Struck out put the following)." This instruction is in the same handwriting as the rest of this part of the text. That is to say, it is neither Hutcheson's nor Leechman's instruction, leading to the speculation that this could be one of the "entirely just" "amendments" to Hutcheson's text discussed in the letter that Leechman presumably addressed to William Bruce; see item 9 in the appendix and the Note on the Text, p. xxii above.

zealots of all sides* have represented all schemes of religion opposite to their own, opposite also to all goodness. <317>

III. Where good instruction is provided, the next most effectual means for promoting all virtues publick and private is the example of those in supreme power, and the preferring of virtuous men to all stations and offices of dignity, while the vicious are made contemptible. Elections either popular, or partly such, to temporary dignities and offices, promote a general humanity and justice in the deportment of such as hope to rise in the state. The controll of a prince and senate upon the imprudence of a populace in elections, would seem to answer all purposes of policy; the popular assemblies of the several districts returning several candidates for any office, out of which the prince and senate might chuse one. Virtue ever was and will be popular, where men can vote freely. Where all dignities and places of power and profit are in the gift of a prince, a bad one may pervert this power to all mischief: making them the constant rewards of betraying the country, or ministering to his ambition, or meaner vices. In the hands of a good and wise prince any power is safe.

The promoting of men of virtue.

IV. The virtues most necessary to a state next to piety, which excites to and confirms all the rest, are *sobriety, industry, justice, and fortitude*. By sobriety we do not mean an abstinency from all external pleasures or

Virtues necessary in a state. Sobriety.

* All Calvinists, say the zealot Arminians, are blasphemers, charging all injustice and wickedness upon God, and taking away the morality of human actions. The Calvinists in their turn make Arminians blasphemers and deniers of God's prescience and providence, making men independent in their actions. All Materialists are Atheists, say some warm Metaphysicians, tho' some primitive fathers were of that opinion. Arians and Socinians, are idolaters and deniers of God, say the orthodox. They retort upon the orthodox that they are Tritheists; and so do other sects; and thus they spirit up magistrates to persecute. While yet it is plain that in all these sects there are the same motives to all social virtues from a belief of a moral providence, the same acknowledgments that the goodness of God is the source of all the good we enjoy or hope for, and the same gratitude and resignation to him recommended. Nor do any of their schemes excite men to vices, except that horrid tenet too common to most of them, the right of persecuting. [Hutcheson accurately reflects some of the major theological conflicts that had dominated Christian culture after the Reformation and which due to their prominence in Scotland and his native Ireland deeply affected Hutcheson's own life, as reflected in the papers collected in Hutcheson's *Correspondence and Occasional Writings*. See III.9, n. 4 to the present section.]

splendour; but such moderate dispositions toward them, as the nobler desires of virtue and of doing good can always controul, when it is necessary for any more important purpose. Where sensual pleasures and a splendid manner of living are keenly desired, reputed very honourable, and are the grand pursuits of men in power; while a different manner of living by corrupt custom is made matter of contempt; all will be sacrificed for wealth as the means of these enjoyments. Men become needy and venal in all stations, and the whole administration grows corrupt. The interests of the country shall be sacrificed to an ambitious prince at home, to foreign nations, or to any invader, by those very persons who are entrusted to support them.

Industry. Industry is the natural mine of wealth, the fund of all stores for exportation, by the surplus of which, beyond the value of what a nation imports, it must increase in wealth and power. Diligent agriculture must furnish the necessaries of life, and the materials for all manufactures: and all mechanick arts should be encouraged to prepare them for use and exportation. Goods prepared for export should generally be free from all burdens and taxes, and so should the goods be which are necessarily consumed by the artificers, as much as possible; that no other country be able to undersell like goods at a foreign market. Where one country alone has certain materials, they may safely impose duties upon them when exported; but such moderate ones as shall not prevent the consumption of them abroad.

How industry
is best
promoted.

If a people have not acquired an habit of industry, the cheapness of all the necessaries of life rather encourages sloth. The best remedy is to raise the demand for all necessaries; not merely by premiums upon exporting them, which is often useful too; but by increasing the number of people who consume them: and when they are dear, more labour and application will be requisite in all trades and arts to procure them. Industrious foreigners should therefore be invited to us, and all men of industry should live with us unmolested and easy. Encouragement should be given to marriage, and to those who rear a numerous offspring to industry. The unmarried should pay higher taxes as they are not at the charge of rearing new subjects to the state. Any foolish notions of meanness in mechanick arts, as if they were unworthy of men of better fami-

lies, should be borne down, and men of better condition as to birth or fortune engaged to be concerned in such occupations. Sloth should be punished by temporary servitude at least. Foreign materials should be imported and even premiums given, when necessary, that all our own hands may be employed; and that, by exporting them again manufactured, we may obtain from abroad the price of our labours. Foreign manufactures and products ready for consumption, should be made dear to the consumer by high duties, if we cannot altogether prohibit the consumption; that they may never be used by the lower and more numerous orders of the people, whose consumption would be far greater than those of the few who are wealthy. Navigation, or the carriage of goods foreign or domestick, should be encouraged, as a gainful branch of business, surpassing often all the <320> profit made by the merchant. This too is a nursery of fit hands for defence at sea.

'Tis vain to alledge that luxury and intemperance are necessary to the wealth of a state as they encourage all labour and manufactures by making a great consumption. It is plain there is no necessary vice in the consuming of the finest products, or the wearing of the dearest manufactures by persons whose fortunes can allow it consistently with all the duties of life. And what if men grew generally more frugal and abstemious in such things? more of these finer goods could be sent abroad: or if they could not, industry and wealth might be equally promoted by the greater consumption of goods less chargeable: as he who saves by abating of his own expensive splendour could by generous offices to his friends, and by some wise methods of charity to the poor, enable others to live so much better, and make greater consumption than was made formerly by the luxury of one. Five families supported in sober plenty may make vastly greater consumption for every good purpose, than one living in luxury. Younger children settled well with proper shares of a patrimony in sober plentiful families, may consume more than if an heir lived in all luxury, and the rest in indigence. And as to sobriety, it is gen-

Neither luxury
nor intemper-
ance necessary
to publick
prosperity.⁶

6. This paragraph may be read in light of Hutcheson's early criticism of Mandeville in his letters to the *Dublin Weekly Journal* in 1726, here especially the letter of 12 February; No. 5 in Hutcheson's *Correspondence and Occasional Writings*, pp. 225–32.

erally true that it makes the greatest consumption. It makes men healthy and long livers. It enables men to marry soon and support numerous families. And consider even one alone: a sober plentiful consumption for sixty or seventy years is greater than a riotous one of ten or twelve, and of fifty more in beggary. Unless therefore a nation can be found where all men are already provided with all the necessities and conveniences of life abundantly, men may, without any luxury, make the very greatest consumption, by plentiful provision for their children, by generosity and liberality to kinsmen and indigent men of worth, and by compassion to the distresses of the poor.

Justice of the
greatest use.

V. High principles of justice universally prevailing in a nation are of great importance to the general happiness; not to mention the inward satisfactions attending the disposition, it creates universal ease and security, as it ensures to each one all his valuable rights and enjoyments, and gives the greatest encouragement to industry, by ensuring to each one the fruits of his labours. Whereas a prevalent injustice in the dispositions of a people has all the contrary miserable effects of animosities, wrath, fear, suspicion, and ruin, or grievous distresses to families; and as traders must charge on their goods higher prices on account of all the ordinary losses of trade, by bad debts, by delays of payment, and the expensive suits they are forced to for obtaining it, the goods of such a nation must come higher on these accounts to all markets, and be sold dearer at home, and thus the innocent suffer for the guilty: and foreigners who have greater regards to justice, are enabled to undersell and engross the trade.

Courts of
justice of easy
access.

Every state must have courts of justice and laws to <322> prevent such mischiefs. Happy that people whose laws are plain and intelligible to every honest man without the aid of those whose fortunes depend on the intricacy of laws. It is impossible to make such a system of laws as shall take in every possible case in all its circumstances, and the imprudent attempting it has occasioned that perplexity, and those endless labyrinths of law, affording so many artful and dishonest evasions, which most nations, who have continued long without an entire change of polity, complain of as an unsufferable burden upon the property and transactions of their people.

It is plain that right and property are better preserved by a very few simple laws leaving much to the judges, provided there be a good plan for obtaining wise and disinterested judges. The Romans in their best ages had a large roll of* intelligent men in the law named by the praetor as judges for that year, when he entered on his office; and out of these a small number were taken by lot for the decision of each cause: the party whose cause appeared just was freed from all charges, and the whole expence was cast on the other side, unless the judges determined that he had such plausible pleas as might have deceived an honest man. Where it was not so, further penalties and these very high were inflicted for his unjust litigiousness. The great men of eloquence in Rome pleaded gratis, as the lawyers also gave their opini<323>ons and directions; and this was one of the natural ways of obtaining popularity, and of succeeding in elections. But what should hinder in any plan of polity, that out of such a roll the plaintiff and defendent might also each for himself chuse a patron or advocate, who should plead without fee from the client; and that he who pleaded the just cause should be payed by the state for his good service to a citizen. Protection against injury, and the obtaining of every just claim without charge, seems naturally due from the governors of a community to its members; since they have resigned their natural rights into their hands. Judges and juries, to whom we trust our lives, could always determine whether the party who lost the cause had any such plea as might have deceived an honest man. Where he had not; the penalty for theft is not too high for a litigious prosecution or defence,

Few laws will do best with a prudent plan of judicature.⁷

7. In the *Short Introduction*, III.8.4, note, Hutcheson refers to Justinian, *Institutes*, IV.16, "Penalties for over-eager litigants," with Vinnius's commentary *In quatuor libros Institutionum imperialium commentarius*.

* These were the *judices selecti* who for some time were to be all patricians, afterwards to be of the equestrian order, and then of both orders. [Hutcheson is referring to the often re-regulated procedure of selecting lay judges in ancient Rome. He may have had any number of sources for this, and he may be echoing Harrington's quotation to the point from Cicero's *Against Verres*, II.2.14; see Harrington, *Oceana*, p. 328. A few decades later, William Blackstone suggested that "these *selecti judices* bore in many respects a remarkable resemblance to our juries," *Commentaries on the Laws of England*, III, ch. 23, p. 241. Cf. also Vinnius, *In quatuor libros Institutionum imperialium commentarius*, commenting on Justinian's *Institutes*, IV.17, "Powers and Duties of Judges."]]

severity on such crimes is mercy to all honest men, who often suffer more by them than by thefts and robberies, and that with more vexation.

Military skill
and fortitude.⁸

VI. Fortitude and military discipline should also be as universal as possible. It is infamous to a country if men of the highest stations are not generally fitted for the most honourable services, the defence of their country in times of danger. As war is a thing accidental, and designs of conquest are almost always injurious, military service should not be a constant profession to any; but the whole people should be trained to it to be ready whenever just occasions may require it; and during peace be kept in mind of their <324> discipline. All this is practicable where the chief governors allow it. In a war of twenty years, a nation which never maintained above forty thousand soldiers at once, might sufficiently train four times that number, and make them all good veterans who had served five or more campaigns, by making such a rotation that they never would have above one fifth of new levies incorporated into old regiments. By this too a sweet relief would be given to those who had served the publick for a certain number of years, that they might return to industry and the sweets of peace.

The great
advantages of
rotations in
the services of
war.

By a rotation in the higher offices of command a nation would be well provided in old officers and generals, and not be in the miserable necessity of depending on one or two to command in chief, without any fit to supply their places in case of death, or to oppose them if they turned their arms against their country. There would be a stock of veterans at home to oppose unexpected invasions, or to supply an army at once upon any calamitous defeat. The youth of all orders, where there are more sons than one in a family, should be obliged to take their turns in such services, and after their term return to their domestick affairs. Such reputable virtuous citizens, many of them having valuable stakes in their country, would have both greater courage and fidelity than mercenaries for life, domestick or foreign, chosen or offering themselves out of the refuse of a people, even such as were unfit for any other occupations.

8. Hutcheson's ideas of the benefits of a citizen militia stand in the general tradition of Whig and Commonwealth arguments in the debate that followed William III's policy of maintaining a standing army also in peacetime.

To set such a scheme a-foot, at first must give a <325> considerable avocation from industry to a people which formerly had employed mercenaries. But when it was once settled would give less obstruction to it than the other method. A sober virtuous people employed in arms for a few years, would in all little intervals of military service be exercising some industrious arts, and would return to them with delight when their term expired. A thousand kept idle for forty years, or for all their lives, is as great a loss to manufactures or agriculture as five thousand idle for eight years. Nor would military service for eight years create any such notions or habits as would prevent their returning joyfully to peaceful industry, in men who knew their fixed term all along, and could have no views of support for life that way, and were chosen from the best of the people: especially if they were habituated well to labour in all intervals of military service, while they were supported by the publick; and that for some publick benefit, such as in draining marshes, cutting down woods, making roads and harbours, fortifying cities, or making rivers navigable. Such labours, moderately imposed, would strengthen both their bodies and minds. History would convince all men that these schemes are practicable. But other views than those of defending a country have recommended the use of mercenaries.

This practicable without great Loss.

VII. Nothing can be more ruinous to a state than to depend, in the exercise of any part of supreme power, upon any foreign princes or courts, which may have views opposite to its interest. We must not in this matter <326> be deluded by names of offices. That person or court which levies taxes, decides contraversies about property, or the conveyances of it, either during life or upon the event of death, imposes fines, or corporal punishments, prohibits or commands the taking up of arms, determines or confirms civil rights to lands or revenues, decides the rights of princes, and judges of the obligations of subjects to obedience, and assumes to exempt them from it, that advances to places of profit and power, is certainly assuming and exercising the highest secular powers. The object of them are secular and civil. And if the person or court act in their own name and not by delegated power from civil sovereigns, they act as civil sovereigns; be they popes, colleges of cardinals, high priests and elders, convocations or assemblies of any kind: and let them

Independency from foreign power of any kind.

inforce their sentences by what artifices they please: if they derive not their power from the state, they assume a civil sovereignty. A prince or state which submits to them, gives up to them so much of the supreme power, and becomes subject to an internal or external civil jurisdiction.

If by any religious impostures or base artifices of superstition princes or states have consented to such subjection; upon detecting the fraud they must see that they are no longer bound; as contracts obtained by fraud produce no obligation. And if any state has shaken off such a superstitious yoke, and asserted its independency; its governors cannot subject it again by any deed of theirs, more than they can alienate <327> the state, or any part of the supreme power, by sale to a foreign prince with no such mock spiritual titles. The changing of names is the common state-trick of all impostors.

The matter of
civil laws.

VIII. Things in all respects indifferent are not the proper matter of civil laws. It is capricious and unjust to limit men by any laws about such matters. The business of civil laws is, 1. To confirm the laws of nature by secular penalties, and proper ways of prosecution upon any violation of them.⁹ 2. To appoint the best forms and circumstances of all contracts, dispositions, and commerce, so that full proof may be had of the true deed and intention of the parties, and frauds be prevented. 3. They should direct a people in the best way of using their rights, both for the publick and private good: limiting them to the most prudent methods of agriculture, manufactures, and commerce. 4. Where some good end is in view, and attainable by very different means, civil law should limit the best means, where such limitations will not occasion some other superior inconvenience. And where several sorts of means are equally fit, and yet it is advantageous that a whole society agree in some one set of them, the civil law should fix on this set of them, tho' it be no better than some others. And it must in like manner determine more precisely what the law of nature orders with greater latitude.

Thus it is just and proper that civil laws fix the precise times for the meetings of courts or assemblies for purposes civil or religious; insti-

9. Cf. Pufendorf, *Law of Nature*, VIII.1.1–2, where Hobbes, *De cive*, XIV.10, is criticized; Pufendorf, *Duty of Man*, II.12.2–3.

tute exercises, ap<328>point prizes and premiums; fix the proportions, time, and manner in which subjects should contribute by their goods or services to the publick interest; determine a precise time when men should be admitted to manage their affairs as being come to maturity. In these and such like matters several different laws might have answered all good purposes equally; but they cannot be left undetermined.

IX. From the very best system of civil laws many external rights may arise, and many advantages may be allowed and confirmed which no man can insist on with a good conscience: and* many vicious practices go unpunished. Courts of justice must allow time to both parties to produce their evidence, nor do they know before the trial which side has the just cause. Thus one who is conscious he has no just plea or defence must be allowed time; and may cause great expences and delays to the other party. Laws must require certain formalities and witnesses as necessary to the validity of deeds that frauds may be prevented. Men may take advantage of such laws, and make void such dispositions or testaments as they well know to be the real voluntary, and just deed of the granter or testator, upon defect of some legal formality. If indeed there was any thing in such dispositions or testaments naturally unjust or inhuman, or unreasonably partial to some favourite, while others <329> who had equal or better claims are neglected, a man may with a good conscience take the advantage the law gives him against such deeds, provided he does of himself whatever is equitable toward others. But when the deed was just and humane and equitable, and according to the power of the granter or testator, a good man would take no advantage of any informality, as he always must carry in his own breast a more generous rule, a more candid measure of conduct than the civil law of his country.

External rights and unjust advantages must often be allowed.

* This is plain in cases of ingratitude; want of piety, inhumanity toward the distressed, covetousness, and such like. See B. ii [II.3.3]. See also Barbeyrac's two orations *de beneficiis et permissione legum*. [Barbeyrac's two orations were appended to his French editions of Pufendorf's *De officio hominis et civis* from the fourth edition (1718) onward. For English translations, see "Discourse on what is permitted by the laws. In which it is shown that what is permitted by the laws is not always just and moral" (1715), and "Discourse on the benefits conferred by the laws. In which it is shown that a good man should not always take advantage of the benefits conferred on him by the laws" (1716), both in Pufendorf, *Whole Duty of Man*, pp. 307–30 and 331–60.]

Sanctions of
rewards.¹⁰

X. The sanctions of laws are the rewards and punishments. Rewards have place in all civil laws as well as punishments. There is one general reward understood, the continuance of the protection of the state and the enjoyments of the advantages of a civilized life. And in many laws there are other special rewards: such as premiums, and advancements to honour, and to profitable offices, which also give opportunities of honourable actions, which are to good men a sweet reward.

Honours of
different sorts.¹¹

Esteem or honour is either of the *simpler kind*, viz. the mere reputation of integrity and such dispositions as fit a man for a social life; or that of distinguished *eminence*, such as is due only to great abilities and singular services and virtues, or such at least as are above the common rate. To the former, every one who has not forfeited it by some crime of a more atrocious nature than is readily incident to men in the main good, has a natural perfect right; so it can be no matter of civil reward. The taking it away or excluding one from the rights attending it, may indeed be a severe punishment. The magistrate has no more power over it than over the lives and properties of the people. He justly may take any of them away for a crime deserving it, but not without a crime. Nor will the opinions of wise men follow an unjust sentence.

The magistrate
can determine
external
honours not
internal.

Our inward estimation of the eminent kind will not follow the decree of the state or of the prince, but the opinions we have of the merits of the person. The magistrate indeed is the proper judge of any outward deference, precedence, or other marks of honour; and his decree gives men an external right to claim them. While the magistrate in this matter generally follows the real merit of persons, honours may be very useful in a state. But when honours are conferred without merit, or continued hereditarily to those who are universally known to have degenerated from the virtues which procured them to the family, they become despicable of themselves, tho' the power attending them may be courted by the

10. Pufendorf treats first of the power of the sovereign over the lives of subjects in war and in criminal law—i.e., punishment and especially capital punishment—and then of “reputation” (*Law of Nature*, VIII.2–4, *Duty of Man*, II.12.4–9 and II.13). Hutcheson reverses this order.

11. The Latin term for esteem is *existimatio* (see Hutcheson's *Compendiaria*, III.8.8), and Hutcheson draws upon Pufendorf's highly original and extensive analyses of this concept in *Law of Nature*, VIII.4, and *Duty of Man*, II.14. For an explanation, see Seidler, “Economising natural law,” and Haakonssen, “The civil order.”

ambitious. Such conduct in any prince or state, in conferring or continuing honours without merit, has a most pernicious effect. Such a reverence and deference attends high titles in weak minds that those who enjoy them are often screened from the just resentments of a nation: the moral sentiments of a people are weakened, when they see the most scandalous vices adorned and attended by what should naturally be always the retinue of eminent virtue. <331>

Hereditary honours have been conferred upon presumption that the posterity of the eminently virtuous, would either by nature, imitation, or good education, prove eminent the same way: and with a design to make the rewards of eminent services more agreeable, as they conferred a dignity upon the descendants of the virtuous. The expectation of such dignity may raise young minds to nobler views suited to their station. If a censorial power, of degrading such as act unbecomingly to their dignity, be vigorously exercised; hereditary honours cannot be intirely condemned as useless. The natural causes of honour or merit may be abundantly seen by what was said above upon the degrees of virtue. But as they are made political rewards, they must not be employed in exact proportion to the degrees of moral goodness, but as they shall most encourage the virtues most necessary to the state.

Causes of
hereditary
honours.

X.¹³ The other sort of sanctions are punishments; the peculiar end of which is the deterring all from like vicious practices, and giving public security against others, as well as the offender. When this right of

The proper
end of
punishment.¹²

12. Cf. *Short Introduction*, III.8.9. Hutcheson's discussion of punishment stands in a long tradition in early modern natural law. A common starting point was Grotius, *The Rights of War and Peace*, II.20.1, and the main dividing line was between those who saw continuity between a natural and a civil right to punish, notably Locke and Barbeyrac, and those who insisted that punishment in the proper sense was a purely civil institution, especially Hobbes and Pufendorf. Hutcheson clearly aligns himself with the former standpoint which is premised on the idea of a natural moral community, and this is spelled out with particular clarity by Carmichael in terms of his theory of natural rights, on the basis of which he rejects Pufendorf's idea of punishment as the preserve of the state. In his critical annotation to Pufendorf he operates with the distinctions that Hutcheson alludes to in note *, p. 584 below. See Hobbes, *Leviathan*, ch. XXVIII; Pufendorf, *Law of Nature*, VIII.3.4, with Barbeyrac's n. 8, pp. 762–63, and *Duty of Man*, II.13.4–5, with Carmichael's notes (translated in *Natural Rights*, pp. 191–93); Locke, *Two Treatises of Government*, II.2.8–13, and cf. II.1.11–12.

13. This clearly should be XI. The error is also in the Ms. (GUL).

punishing which belonged to all in natural liberty, is conveyed in a civil state to the magistrate, he obtains the sole right in all ordinary cases, and has the direct power of life and death over criminals.

Chastisements
how different
from
punishments.

There is just ground of distinguishing *chastisements* from punishments as they are solely intended for reforming the offender, and are not peculiar to magistrates. They may be inflicted privately; whereas *punishments* should be publick, and the crime intimated to all, that they may be deterred from it. Both these are distinct from the *compensation* of damage, “which respects the repairing any loss sustained by another.” And men are often obliged to it who had done nothing viciously or unjustly.* The violence used in war has also a different end, at least such as is used before conquest, to wit the defending or prosecuting our rights. What is done after a victory with a view to deter all, would have the nature of punishment.

The true principle of heart which should excite a man in inflicting any evils on his fellow-creatures should always be some kind affection; generally those of a more extensive nature should influence the magistrate in punishments; and those of a less extensive should move men in chastisement, and compelling to compensation. Nothing can make a good man’s own heart approve him in these steps but a consciousness that he acted from some kind principle, and that such steps were necessary to some superior good. Nay in justifying the divine punishments we have always recourse to like considerations, which shew that they flow from goodness; such as the supporting the authority and enforcing the influence of his laws calculated for the highest happiness of his rational creatures, which must be desirable to perfect goodness it self; as must also the demonstrating his love to virtue, and his steady purpose of restraining vice by the most powerful motives: and for these reasons we repute the divine punishments to be just and good.

The true
measure of
human
punishments.

Since the end of punishment is the general safety; the precise measure of human punishment is the necessity of preventing certain crimes for the publick safety, and not always the moral turpitude of the actions; tho’

* Thus authors distinguish all these four, *Poena*, *Castigatio*, *Compensatio*, and the *Mala bellica* from their different ends. [The direct source for this terminology is Carmichael’s n. 1, p. 453, and n. 3, p. 454, in his edition of Pufendorf, *De officio hominis et civis*, II.13.4. See n. 12 p. 583 above.]

this often is proportioned to the detriment arising from crimes. But as it is not always so, some of the worst vices must go unpunished, as we said above; and some actions very dangerous to the community, and yet flowing from no great depravity of heart, must be restrained by great severity: such as insurrections against a just prince upon some specious pretence of the preferable title of another. As the evils of civil wars are very great, men must be strongly deterred from entering rashly into them. When crimes arguing none of the greatest depravity are very inviting by hopes of secrecy and impunity, the severity of the punishment upon those who are convicted must by its terror over-balance these allurements: thus theft must be more severely punished, even when men are induced to it by some straits of their families, than some greater crimes flowing from worse dispositions.

Punishments for the publick crimes in the abuse of power, or usurpation of it contrary to law, should be more severe than for crimes of a more private nature, as the effects of the former are far more pernicious. The ruin of some great states has been owing <334> to too much lenity in punishing such crimes of magistrates.*

Punishments due for publick crimes.

Severe punishments are necessary too for small guilt whensoever there is danger of such frequent transgressions as might be destructive to a state in certain exigencies. Thus the desertion of soldiers in a time of war, either from cowardice, or impatience for a peaceful life with their families, must be severely punished. In times of peace this is less necessary; and it is cruel without necessity to detain them long in a service grown disagreeable to them.

Nay some actions flowing from the best dispositions must be strictly restrained when the publick interest requires it. Thus an inferior officer of too keen valour may be punished sometimes justly for a brave attempt contrary to the express orders of his general: as the greatest confusion would arise if inferiors disobeyed express orders of their superiors upon any appearances of advantage to be obtained over the enemy. As greater evils must ensue from relaxing military discipline, than can readily upon obedience to the imprudent commands of superiors, which are not

Actions flowing from some lovely dispositions, must be punished.

* See Cicero *Off. l. ii. c. 8.* and Moyle's essay on the Roman Government [pp. 255–58].

plainly treacherous, and ruinous to an army; a good man may see it to be his duty to obey such orders as he certainly knows to be imprudent, and to abstain from wise measures which his superiors prohibit; unless he can prevail upon them by reasoning to alter their orders. One who acts otherways must be punished, as laws must regard the distant effects of actions upon the whole body.

Internal
designs not
punishable.¹⁴

XII. Internal designs not discovered by action, tho' they could be proved, are seldom punished in milder governments. Men may project and talk of designs, who are not wicked enough to execute them. When by expressing such intentions and defending them, they may have corrupted others, they may justly be punished; and the magistrate may always justly demand a security for the good behaviour of such as have entertained them. When the design is come to action, and to such efforts as might have been successful, had they not been defeated by superior force or accident, the criminal deserves the same punishment, whether he succeeds in his attempt or not, as the same depravity is discovered, and the same danger to society from his future attempts. Thus one who gave poison, or who discharged a gun at his neighbour with a design on his life is to be punished as a murderer be the event what it will.

A power of
dispensing
with the
sanctions
necessary.¹⁵

It is proper that in every state there should be a power of dispensing with the sanctions as to ordinary crimes, when singular reasons occur for it, and sufficient security against like crimes can be otherways obtained. But for crimes of magistrates against the publick rights of a people, or for gross abuses of power, or attempts against the plan of polity to encrease their own power or influence there should be no impunity.

The publick interest may sometimes require the giving impunity, nay rewards, to some who have been guilty of the worst of private crimes, to employ them in some necessary services. Thus to break all faith in bands of robbers or pyrates, and destroy all mutual confidence among them, pardons, and even rewards are justly given to such as betray the band, or deliver up any partners: as by such conduct such confedera-

14. Pufendorf, *Law of Nature*, VIII.3.14, and *Duty of Man*, II.13.11.

15. Pufendorf, *Law of Nature*, VIII.3.15, and *Duty of Man*, II.13.15.

cies against mankind are broken without effusion of innocent blood; tho' the worst of the party may most readily take the advantage of betraying their partners, from these hopes.

XIII. That *respect of persons*, which is unjust in judgment, consists in regarding such circumstances of them as neither affect the guilt of the action, nor its importance toward any publick detriment, nor the quantity of the suffering. As when men are differently punished on account of kindred to the judge, of being zealous for his party or faction civil or religious, or of prior benefits conferred, or services promised or expected; while yet the guilt and detriment to society is equal. But circumstances shewing greater or less guilt, or rather greater or less tendency to the detriment of society, or such as encrease or diminish the sense of the punishment, should be considered as far as human courts can do it, to make the sentences well proportioned and just. In *pecuniary fines* the sums exacted from different persons for the same crimes or equal ones, should be in proportion to the wealth of the criminals.

The undue respect of persons in judgment.¹⁶

The sum which is severe upon the poor may be a <337> trifle to the wealthy. In *corporal* punishments, the weakness of the criminals should alleviate the punishments: and infamous punishments should be lessened as the sufferers are in greater dignities. For thus alone the sense of suffering shall be equal for equal crimes.

It may justly be questioned however, whether in increasing of punishments on account of horrid crimes, there be not a certain pitch of suffering beyond which nothing severer should be inflicted. If death is the penalty of any deliberate murder or robbery, one's indignation would move him to inflict something worse upon the more horribly cruel murderers, and to torture such as had tortured others; or to use tortures where the gentler kinds of death inflicted seem scarce sufficient to deter men from the crime. But on the other hand, horrid spectacles of torture, especially if they are frequently presented, may have a very bad effect upon the minds of spectators. They may harden their hearts, and abate the natural sense of compassion by overstraining it, and make it lose its force;

How far a state should proceed in the increasing of punishments.

Tortures are pernicious.¹⁷

16. Pufendorf, *Law of Nature*, VIII.3.25, and *Duty of Man*, II.13.18.

17. Pufendorf, *Law of Nature*, VIII.3.24, and *Duty of Man*, II.13.17.

as we see in the overstrained fibres of the body. Beside the terrible efforts they may tempt wicked men to in their robberies, to secure themselves against conviction, or to avenge themselves for the sufferings of their fellows. We may find perhaps that nations where they are used have seldom so tender feelings of humanity as those where they are not. And that an easy death, with any subsequent infamy upon the carcase that may affect spectators, without causing <338> any real misery to the criminal, may sufficiently answer the purposes of human justice. If tortures are ever allowed, they must be very rare.

Who are liable
to compensate
damages.¹⁸

XIV. No man should be punished for the crime of another; nor is any one liable to compensation of damage who did not contribute to it by some action or omission contrary to his duty, nor shared in any gain by it, nor occasioned it by any contrivance or action destined for his own advantage. As children are truly joint proprietors with their parents in the stock of the family; and have a most sacred claim not only for maintenance, but a comfortable subsistence, upon that stock as far as it will afford it, and the parent bound to furnish it out of this stock: it seems plainly unjust that the whole should be forfeited by the crime of a parent; not to mention also the just and strong claim of the wife, even that of a fair purchaser by the fortune she brought, or by her own industry in improving the common stock. It is true the parent may be the natural administrator, or manager for the company, and thus his debts contracted prudently or imprudently always affect it, nay his prodigality may squander it all. But in many civilized nations, this natural joint right of the whole family is recognised by the civil laws; by allowing an inhibition or interdict upon an extravagant or imprudent parent* at the suit of the children or any proper person in their name. And this is plainly according to jus<339>tice and natural equity. It is scarce therefore defensible with any shadow of justice, that civil laws should appoint a

18. Pufendorf, *Law of Nature*, VIII.3.33, and *Duty of Man*, II.13.19.

* Thus the estate was *res familiaris* among the Romans; hence also the *jus suittatis* in the children. [See Justinian, *Institutes*, IV.15, and *Digest*, XLIII.3. In matters of inheritance Scottish law, like Roman law, recognized interdicts imposed by a court (as distinct from voluntarily undertaken interdicts); see Stair, *Institutions of the Law of Scotland*, I.6.38 and 41–43, IV.20.30 and 33.]

punishment on the guilty which equally or more severely affects the innocent.

XV. As to the punishment of corporations, the following maxims seem just. 1. If all the guilty, or as many of them as are sufficient for compensation of damage and a publick example, are found, nothing can be further demanded from the corporation.

The punishments of corporations.¹⁹

2. When this cannot be obtained, no innocent man should be punished in his person or any private fortune of his he holds independently of the corporation, for any crime of its magistrates or other citizens.

3. As merit and demerit are personal and not properly residing in corporations; if all the criminals are dead or banished out of it, no punishments can be justly inflicted on it or its members. Punishments of fines exacted out of the publick stock have not the proper effect intended. Bad men feel and are deterred only by what shall affect themselves. They are not moved by the sufferings of communities.

4. As to compensation of damages; when it cannot be obtained from the criminals, it next falls upon any in power who by grosly culpable negligence shared in the guilt, and it should be levied out of their private fortunes. If these fail, the common stock of the corporation is liable, and where this fails it may be exacted out of the private fortunes of its members; for the same reasons alleged above* in the case of conquest in a just war.

5. As corporations have generally sufficient power to restrain their members from injuries, the governors should be obliged to give sufficient security against future injuries, and should be vested with further powers if the former were not sufficient. Nay they may be divested of any such privileges as are apt to be abused, when no other sufficient security can be obtained against their being abused to the detriment of the publick. But without some great necessity, or when other securities can be obtained, it is very unjust to deprive a large innocent body of men of

19. Pufendorf, *Law of Nature*, VIII.3.28, and *Duty of Man*, II.13.20. Hutcheson follows Carmichael's lengthy note to the latter place very closely; *Natural Rights*, pp. 193–94.

* See above ch. viii. art. 5. of this book.

any privilege of importance to them upon the crime of a few, or even of their magistrates.

6. As to any rights which smaller corporations enjoy as parts of a great body politick and with relation to it, such as a right of representation in the supreme council; no mal-administration of even the magistrates or councils of such corporation should forfeit a right of importance not only to all the innocent members, but to the whole state.

7. Bodies incorporated merely for trade and for the benefit of a few partners, may* justly be deprived of their privileges upon their non-compliance with the terms or conditions upon which they were granted. And the corporation may be dissolved.

What taxes or
tributes most
eligible.²⁰

XVI. As to taxes for defraying the publick expences, <341> these are most convenient which are laid on matters of luxury and splendour, rather than the necessities of life; on foreign products and manufactures, rather than domestick; and such as can be easily raised without many expensive offices for collecting them. But above all, a just proportion to the wealth of people should be observed in whatever is raised from them, otherways than by duties upon foreign products and manufactures, for such duties are often necessary to encourage industry at home, tho' there were no publick expences.

The great use
of a census.²¹

This proportion can never be observed without a *census* or an estimation made of all the wealth of private families at frequently recurring periods, once in five, six, or seven years. How practicable this is, may be seen by the Roman laws. It would detect perhaps a few broken merchants and men of business, and both turn them out of trade and pre-

* This is a *poena conventionalis*, distinct from the proper *poena universitatis*. [This is taken directly from Carmichael; see Hutcheson's note *, p. 584 above.

20. This section is close to Pufendorf's discussion of sumptuary laws and associated methods of levying taxes, *Law of Nature*, VIII.5.3–6, and *Duty of Man*, II.15.1–3, with Carmichael's notes, *De officio hominis et civis*, II, pp. 474–75. Concerning taxation, see also *Law of Nature*, VII.9.10, and *Duty of Man*, II.11.10.

21. Pufendorf mentions the Roman census at *Law of Nature*, VIII.5.6, with reference to Dionysius of Halicarnassus, *Roman Antiquities*, IV (9), which gives an account of the institution (see also the *Lex Julia Municipalis*, in Justinian, *Digest*, L.1). But Hutcheson is likely to have had in mind also a more contemporary source or sources for the widespread British discussion of sumptuary laws.

vent their opportunities of defrauding more creditors; and this is all the harm it would occasion. For men of prudence and good conduct, whose stocks were lost by accidents, they would still be trusted by their friends: and yet incautious rash projectors, without any fund for their business, would lose opportunities of fraudulent bankruptcies, and of many injuries now too common.

By a *census* all would be burdened proportionally to their wealth; and thus the publick expences be oppressive to none beyond his neighbours. In land-taxes, gentlemen in debt are immoderately oppressed, beyond those of clear estates; and moneyed men contribute nothing. Duties and excises, however the merchant or other wealthy trader first advances them, yet are at last paid by the consumer. The hospitable generous men, or such as have numerous families supported genteely, bear the chief burden here, and the solitary sordid miser bears little or no share of it.

XVII. To these rights of governors correspond the obligations on subjects to obedience active or passive, as we shall shew more particularly in a few observations.

Obedience
active or
passive.²²

I. When the command of a governor is truly just and wise, and within the power committed to him by the constitution; a subject is always bound to obey notwithstanding of any private inconveniencies or danger to himself; and that even in conscience, tho' he could artfully evade the penalties of the law. This holds particularly in paying of taxes and in military service.

2. When the matter commanded is within the power committed to the governor, but he is using his power imprudently in commanding it; if modest representations will not move him to change his orders, and they are only burdensome and dangerous to us in particular and not contrary to any perfect right of the innocent, or injurious to others, it is our duty to obey, tho' the governors sinned in commanding. In war the commander may often be very guilty in imprudent orders given, and inferiors may see that they are not only dangerous to themselves who execute them, but even prejudicial in a small degree to the publick cause. But

Obligations
to obey
imprudent
commands.

22. Pufendorf, *Law of Nature*, VIII.1.6, and *Duty of Man*, II.12.8–9.

as dissolving all military discipline must <343> be a much greater evil to a nation than the loss that can be readily sustained by executing the imprudent orders; and all discipline must be lost where the inferior assumes to himself to disobey orders he judges imprudent; it is often the duty of inferiors to execute them while they judge them imprudent.

When they
may be
disobeyed.

If the orders are judged treacherous, or so pernicious that the execution of them would be more destructive than breaking through in this case the rules of discipline, a good man would disobey, and take his hazard. It is in like manner our duty to pay taxes or tributes, tho' we judge that they are unequally imposed, and to be applied to imprudent purposes, when they are imposed by that person or council to whom that power is committed. There are many commands, civil and military, about the prudence or justice of which inferiors are not proper judges, wanting access to the reasons of them. Upon presumption of the wisdom and justice of their governors, they may act innocently and virtuously, when their superiors are very criminal; and they often owe such obedience to the general interest of their country, when they know that the orders are imprudent.

3. But if a subject is persuaded of the injustice of a war, or of a sentence he is commanded to execute in consequence of an iniquitous law, he should refuse active obedience, and bear patiently for a good conscience the sufferings he may be exposed to.

When the
ruler exceeds
his legal
power, no obe-
dience is due.

XVIII. But when a governor exceeds the powers vested in him by the constitution, assuming such as <344> are not granted to him; unless it be in cases of singular necessity, it is always just and honourable to oppose such usurpation of power on its first appearance, whatever specious pretences are made for it of good designs and intentions; as the precedent is dangerous, and will readily be followed in worse cases, to the subversion of the constitution, and all rights established by it.

2. Suppose the governor does not exceed the legal powers vested in him, but is abusing some immoderate powers granted him in an imprudent plan of polity to purposes eversive of the publick safety and liberty; subjects may justly refuse obedience, and by a joint resistance oblige him to consent to such limitations and restrictions as are necessary for the

common safety, a private man, when he has no hopes of a sufficient concurrence of others, must fly from oppression or resist it as he can. It would be wrong, without hopes of success, to involve himself and a few friends to no purpose in greater mischiefs, or to obey commands injurious to others.

3. Suppose the plan of polity good, and a prince also in the main faithful to his high trust, but possessed with some groundless prejudice or violent anger against any private subject, and aiming at his destruction without any just cause: no man can innocently obey his unjust orders in destroying an innocent man, and one should suffer rather than execute them. The innocent person thus intended for destruction would have a right to all violent methods of defence, even <345> against the prince in person, were he only to regard the right of the prince against him; but for the sake of his country, not to deprive it of a prince in the main good, or expose it to any great evils which might ensue upon his death; it may be the duty of the subject to fly rather than use violence, or to be a martyr for his country's interest, when he cannot escape by flight.

Private injuries
from a good
prince should
be borne
patiently.

But to say that in no case men have a right of resistance, or that in no case they can assume to themselves to judge of the commands of their superiors, is monstrous. All ends of government, all safety, all important rights of a people would be precarious, and be lost without redress, as soon as supreme power came into wicked hands. They who cannot judge of the justice of commands given, can surely as little judge of titles to supreme power. This doctrine therefore must for ever establish every usurper who once gets into possession. A wicked prince or usurper, a senate, or a few Democrattick deputies once in possession are for ever secure: upon their orders, which none must assume to question or judge about, their soldiers might rob, pillage or massacre any whom they suspected; nor could there be any redress.

Resistance
often lawful.

4. As to persons condemned to punishment according to just laws, they seem obliged to bear it, and owe to the publick that reparation of the mischief done by their example. Their declining it by artful contrivances to make an escape is scarce justifiable, tho' it is generally excused on account of the great<346>ness of the temptation. As the society

The duty of
persons justly
condemned.

has a right to punish, they can have none to resist by violence. Nor is it lawful to tempt any officers of justice by bribes to be unfaithful in their trust, or to use violence against them.

Of those
unjustly
condemned,

5. One condemned upon an unjust law or false accusation seems to have a right to make his escape by any methods which are not injurious to the innocent. Nay as one may have a right of self-defence, or of defending an innocent man by violence against any aggressor, tho' the aggressor was in an invincible error, and so innocent too: in some cases the like may be just in an innocent man, or in his friends against some inferior officers of justice, when all the detriment arising from such efforts shall be a far less evil than the execution of the unjust sentence upon the innocent, and eminently worthy.

The case is much more obviously favourable where the laws are notoriously unjust and oppressive toward great numbers; or plain usurpations upon the natural and unalienable rights of all rational beings. Such are all those which invade the rights of conscience by persecution for innocent religious opinions. Had one sufficient force by the concurrence of others, he would have a right to compel the legislator by force to rescind such unjust decrees. Much more must he have a right to defend himself against their tyranny in this point by any violence against the execution of such laws when he has probability of success.

Thus the general duties of magistrates and subjects are discoverable from the nature of the trust committed to them, and the end of all civil power. Political prudence to exercise the rights vested in magistrates wisely according to the several exigencies of publick affairs, is a most important part of human knowledge, and must be acquired by much observation, and experience in political affairs, by knowledge of the interests and constitutions of neighbouring states, by civil history, and political writings.

The Laws of Peace and War¹

I. War is the state of those who by violence defend or prosecute their rights: and as sovereign princes and states are in respect of each other in natural liberty, the whole doctrine* above delivered, about the violent defence and prosecution of rights, belongs also to the wars of states, and the just terms of peace among them.

Laws of war among states the same as among individuals.

Wars are either *private* or *publick*, the former are those of private men in their own names; *publick* are “those wars undertaken by the authority of a state or its supreme governor on one side at least.” When “a war is undertaken by the authority of sovereign states on both sides,” it is called a solemn war, and a sort of[†] external justice is attributed to it on

Wars publick or private, solemn or not solemn.²

1. The corresponding chapter in *Short Introduction* is III.9. The main source for this topic is Grotius’s *The Rights of War and Peace*; in Pufendorf the relevant chapters are *Law of Nature*, VIII.6, and *Duty of Man*, II.16.

* B. ii. c. 15. § 5.

2. The comparison between private and public war is extensively explained in Grotius, *The Rights of War and Peace*, I.3, with that between solemn and non-solemn being set out there at I.3.4; cf. Pufendorf, *Law of Nature*, VIII.6.9, and *Duty of Man*, II.16.7. Grotius, Pufendorf, Carmichael, and Hutcheson all stress the similarity between individual conflict in the state of nature and war between states; see notes to *Duty of Man*, II.16.1, in *Natural Rights*, pp. 199–200.

† See Grot. I. i. c. 3. § 4. thus *justum et purum duellum* is ascribed to both sides, tho’ other wars are as lawful. So *justae nuptiae* are not the same lawful marriages. [Grotius saw *duellum*—both duel and war—as “solemn” or “just” (*justum*) when both sides conducted it purely in defence of rights (*iura*) claimed as a matter of *ius gentium*. It was then “lawful” in the same sense as lawful marriages (*justae nuptiae*) had a validity under civil law that cohabitation did not. The latter might have status on other grounds, and similarly wars might be fought legitimately without being solemn. Hutcheson alludes to this parallel between lawful war and marriage, but we believe

both <348> sides by the customs of nations;³ not that there can be true justice upon both sides; or, as if all other wars were morally unjust. To this *bellum solemne* Grotius and his followers require also a previous indication or *declaration*, after just reparation of wrongs or the fulfilling our just claims has been demanded and refused, according to the old *foecial law* of the Romans. But whatever may be said of the previous demanding our right, which indeed seems necessary on the offensive side, if their affairs can allow it, there is no such necessity after a just demand has been made and refused, that there should be a *previous declaration of war. It is never expected on the defensive side, nor is it always safe to the other, as it may give time to the enemy, and prevent the best opportunity a nation may have of doing itself justice. Nor has any such universal custom obtained even among the more civilized.⁴

Civil wars may
be as just as any.

Publick wars but not solemn, are those when magistrates quell seditions and tumults; when two great factions in a state upon some debated

that he meant to write that “*justae nuptiae* are not the *only* safe lawful marriages.” He is echoing his broad (“liberal”) concept of the ways of marriage, namely that something less than the full formality of the civil law may well suffice to regulate and legitimate marriage; see III.1 and III.1, n. 12 above.]

3. Cf. the concept of external rights discussed at II.3.3 above.

* See Bynkershoek *Quest. Juris Publ.* i. 2. [Cornelius van Bynkershoek, *Quaestionum juris publici libri duo*, Book I, ch. 2.]

4. A major topic of debate about just war was the role of a declaration of war: Grotius, Pufendorf, and most other natural lawyers before Hutcheson maintained that a declaration was not required by the law of nature, only by the conventional or “voluntary” law of nations. Nevertheless, Grotius thought a declaration important in order to make clear that it was a public war, i.e., one conducted at least on one side by the sovereign power. Bynkershoek in surveying this debate disagreed with Grotius on the latter point, suggesting that the actual conduct of war would sufficiently “declare” its nature. He further spelled out a point of obvious importance to Hutcheson; if a declaration of the claims by one or both of the sides to the conflict was not a matter of strict natural justice, it was a matter of humanity. The Dutch thinker praised Christian Thomasius for stressing this point. The Roman *ius feciale* (“foecial law”) derived from the practice of requesting the college of priests (*feciales*) to sanction a war. In the natural law literature, the concept was broadened to mean all public declarations and their conveyance, embassies. See Grotius, *The Rights of War and Peace* III.3.6–7; Pufendorf, *Law of Nature*, VIII.6.9 (with Barbeyrac’s partly dissenting n. 3, p. 843), and *Duty of Man*, II.16.7 (with Carmichael’s n. 1, which provides the most perspicuous general discussion of the issues, see *Natural Rights*, pp. 200–204); Bynkershoek, *Quaestionum juris publici libri duo*, pp. 5–7. A commonly cited source for the *ius feciale* was Cicero, *De officiis*, I.11.36.

point of publick right have recourse to arms. Sometimes one side having the supreme governor's authority, as in Monarchies; and sometimes neither; as when one half of a senate or popular assembly makes war with the other. These are called also civil wars; and in many cases there is as much reason pleading for favour, and all humane treatment in these civil wars, from each <349> other and from all other nations, as there can be for both sides in any solemn wars; as both sides may have as specious reasons or pleas of justice, as can be found on both sides in the wars between sovereign states: which must appear from the many cases in which resistance to governors may be lawful; of this hereafter.

II. The laws of war relate either to the rights or obligations on the contending parties toward each other, or toward neutral states who are at peace with both the parties; of these in order.

Laws of war relating to the parties.

There is one duty incumbent on both with respect to each other, and to all mankind around, that when they cannot give previous declarations, they should however give subsequent ones, explaining their claims and the grounds of them. The defensive side is obliged as much as the other to make known their defences and exceptions against the demands of the aggressor. Such declarations are the natural means of letting each other and all the world know, that neither of them are using violence, with the spirits of pyrates or robbers, without regard to right and justice; and they preclude all presumption of their renouncing the law of nature, or forfeiting the common rights of mankind, if indeed their declarations contain any specious pleas or allegations founded in fact; where it is so, the body of the people on both sides may be innocent in deeming their causes to be just; nor should those who bear arms on either side be reputed infamous, or enemies to mankind: as they ac<350>ted under the authority of civil governors, and by their orders, upon fair presumptions of justice.

III. In the wars of states, as in those of individuals, we may consider the causes, the time of commencement, and the term to which they may be continued, and the lawful methods of carrying them on.

The just causes of war are proper injuries;⁵

5. Grotius's eclectic compilation of a range of scholastic authors' distinction between just and unjust causes of war, *The Rights of War and Peace*, II.22–23, was the common starting point for early modern natural lawyers' discussion of the topic, notably Pufendorf, *Law of Nature*, VIII.6.3–5, and *Duty of Man*, II.16.2–4, with Carmichael's comments, *Natural Rights*, p. 200.

or apparent
danger of
them.

1. The ordinary just causes are some violations of perfect rights. Our neighbour's innocent increase of wealth or power does not justify our invading him, tho' it should rouse our caution and diligence to encrease our own wealth and power, and to form alliances. If any neighbour indeed appears to be preparing himself for hostilities and conquest, tho' he has not yet committed any injuries; if he is possessed of any singular advantages by situation, or other causes, that states around him cannot be secured but by such continual expences of armies or garrisons as they cannot bear; they may have a right to insist upon something more than verbal securities against injuries, and compel the aspiring state to give it, by surrendering frontier-forts, or demolishing them, or by quitting some other part of their strength.

2. As among the members of a free state there may be potent reasons for preventing such immoderate acquisitions of a few, tho' made by innocent means, as may be dangerous to the whole body, there are the like reasons why neighbouring states should insist on proper securities for their safety from any one which is exceedingly increasing in power, or they may put a stop to its increase by force.⁶ But this is like the <351> extraordinary rights of necessity, which states cannot have recourse to, if by industry, good discipline, or any other inoffensive methods, they can preserve a proper ballance of power against their aspiring neighbour. An absolute necessity too in some cases may justify the use of force in demanding what cannot ordinarily be claimed as matter of perfect right*.

Defence of
others against
injury.

3. As men in natural liberty have a perfect right to assist any neighbour against injury, so have foreign states to assist any one that is un-

6. In the *Short Introduction*, III.9.2, the parallel with agrarian laws is made explicitly.

* It is thus that Grotius defends the wars made by the Israelites upon some nations which refused them a passage through their country upon the fairest offers of peace, and of abstaining from all injury. And yet no nation, without absolute necessity, has a perfect right to claim this allowance. An army in the heart of a country may be master of it, unless a superior army be raised in its defence; the other hostile party will insist on the like right, and thus the neutral state may be made the seat of the war. [See Grotius, *War and Peace*, II.3.13 (1–2), discussing Numbers xx–xxi. Hutcheson's objection is essentially that made by Pufendorf, *Law of Nature*, III.3.5, and repeated by Barbeyrac in his notes to both passages.]

justly attacked, or that has not force enough to compell an injurious neighbour to fulfil its just claims. Nay it is the duty and interest of all around to give this assistance; as the like injuries may be done to others, if the injurious state is allowed to enjoy its prey. This is more especially their interest when ambitious designs of conquest appear, tho' they are not yet turned toward ourselves.

IV. The time when hostilities may justly commence is as soon as an injurious state has shewed the hostile or injurious design, by violating any perfect right of ours, and refusing reparation when demanded, or denying to perform what we justly claim from it. It is just, as well as prudent, to prevent an enemy, and make his country the seat of the war; nor are we bound to stay till we are invaded. <352>

The just commencement and end of hostilities.

The term to which violence may be justly continued, is till the danger be repelled, all injuries and expences of war compensated, and every thing paid and performed which we had a perfect right to claim, and security obtained against like offences or injuries for the future. To continue violence, after all these are obtained or offered, is manifestly unjust, as it is cruel toward the conquered; and is so far from being useful to mankind, that it is highly pernicious, as was shown above about conquests.

V. The most undisputable method of making war is by open force and violence against such as oppose us by violence; and this is naturally just, as far as it is requisite to obtain our right, or to distress the enemy so as he shall consent to just terms. Such violence or cruelty as is not naturally subservient to this purpose, or without which we could obtain our right effectually, and at no greater expence to ourselves, is truly unjust and detestable. Such is the murdering of hostages or captives in cold blood, and all barbarities toward women and children. Nay, granting that by such barbarities an enemy might sooner be moved to agree to just terms, yet they are naturally unjust toward innocents; and are horrid precedents, which may be turned against ourselves, or those in the justest cause.

Force the undisputed method of warring.

Many civilized nations, by a long custom, which seem to import a tacit convention, have agreed to abstain from some dark methods of destruction, such as poisoning fountains which supply an hostile camp, <353> using poisoned arms to make all wounds mortal, and some few

By tacit convention certain sorts precluded.

others.⁷ As the customs are humane, it is vicious and dishonourable to depart from them while the enemy is willing to observe them; as departing from them may increase mischiefs further than is necessary for the purposes of war, by destroying women, or children, or persons wounded, who however could have been of no service against us; and our enemy may gain as much by such artifices as we can. As to assassinating of hostile princes or generals, there is no custom of nations excluding it, providing it be not done by the corrupting of subjects, or such as are under bonds of fidelity, against their masters. It has often been practised by civilized nations against any hostile prince or general, and not condemned. But the bribing a subject to assassinate his own prince, or a soldier his own officer, is generally condemned.

Some horrid
practices too
much indulged
by custom.

It is to be exceedingly regretted that while some practices not so very pernicious seem to be generally condemned and counted infamous methods of war, yet a general custom has given impunity to some of the most horrid barbarities committed against enemies. No person is punished, or counted infamous in his own country, for murders of cold blood, rapes, butchering of women and children, or any cruelties committed against an enemy during a war. Nay should he fall into the enemies hands, he is not prosecuted for these crimes, as the enemy is restrained by fear of reprisals. There is all reason indeed to excuse great cruelties done in the heat of action, which a cool spectator may see to be unnecessary. This indulgence may be given to human weakness amidst fear and dangers. But for barbarities unnecessarily committed against enemies, when there was no present danger, and in cold blood, it would be honourable, and but a piece of justice in every nation, to inflict the severest punishments on their own subjects for such crimes, and to hear in their courts of justice the complaints of their enemies against them.

How far fraud
or stratagems
are lawful.⁸

VI. There is some debate how far frauds are lawful in war, and here it is plain that deceiving our enemies, when we have a just cause of war, by any such signs as import no profession of communicating our senti-

7. Concerning poisoning, see Grotius, *The Rights of War and Peace*, III.4.15–16.

8. For this discussion, see Grotius, *The Rights of War and Peace*, III.1.6–18; Pufendorf, *Law of Nature*, VIII.6.6 and 7.2, and *Duty of Man*, II.16.5.

ments to them are stratagems universally justified. Nay, the custom is much received of deceiving enemies even by other signs, such as import this profession when used to a friend. False narrations are generally practised whenever there is any hope of being believed; and men are not blamed as false or perfidious on this account by those who manage the publick affairs of nations. One may allege, that this custom, universally received, is a tacit remission of the right which otherways enemies would have to each others veracity in narrations. But it must ever be a disagreeable method to a candid mind, especially if joined to any professions of friendship.

And as to all forms of contracts, truces, or treaties, the custom never was, nor ever can be received of deceiving an enemy by them; and such frauds ever will be deemed, as they truly are, highly criminal and <355> perfidious. Treaties are the only humane way by which wars can be brought to an end and peace restored, without the entire slaughter or destruction of one side; and breach of faith in them must take away all their use for the most salutary purposes to nations. There is a like obligation on enemies to observe all promises of safe conduct or passports given, that good men may be secured of the humanity due to them by all, and which is perfectly consistent with the most vigorous prosecution of the war.

No deception by treaties can be justified.⁹

VII. How the private fortunes of subjects are liable to the claims of compensation of damage done by their state, and the foundations of the right of reprisals, were explained upon the subject of conquests. We only observe here, 1. That every state is bound to restrain its own subjects from injuring any neighbouring state, or any of its subjects. 2. When such injuries are done openly, and no redress made by the governors of such injurious subjects, upon complaints made, this is always deemed a just cause of war; unless the governor shew that such

The justice of reprisals.¹⁰

9. The main reference for these subjects was Grotius, *The Rights of War and Peace*, III.21, "Of faith during war, of truces, of safe-conduct, and the redemption of prisoners."

10. See above, III.8.5; and *Short Introduction*, III.9.4. The major discussion of reprisals is Grotius, *The Rights of War and Peace*, III.2. Cf. Pufendorf, *Law of Nature*, VIII.6.12–13, and *Duty of Man*, II.16.10.

subjects have shook off their allegiance, and are no longer amenable to their laws, and that they give them no protection; for no state is accountable for the depredations made by bands of pyrates who once were their subjects. 3. As subjects are bound to compensate damages done by their governors; when the injured cannot otherways obtain compensation, it is just that the injured state take the compensation due to it or its subjects in the easiest way it can, and if that is by seizing the goods of the <356> subjects of the injurious state, let them have recourse to their governors, for compensation of what they suffer through their injustice on a publick account.

When the
capture is
complete.

The custom is generally received, that moveable goods taken in war, and removed into the enemies forts, or carried to their fleets, and adjudged as legal prizes, are deemed the property, partly of the captors, partly of the state to which the captors are subject, according as their civil laws determine. And this change of property is acknowledged even in the state from which they were taken; so that if they are retaken, the old proprietor is deemed to have no claim;¹¹ they belong partly to the captor, partly to the state, as civil laws appoint. This is a matter of arbitrary or positive appointment, with a view to encourage subjects on both sides to greater activity in depredations on the enemy.

Laws of Na-
tions respect-
ing the neutral
state.¹²

VIII. We come next to consider the laws of war which respect neutral powers; and as there are a great variety of customs received in this matter, we shall only briefly mention the general principles and maxims by which the chief questions may be solved. This head makes one great part of what is called the *publick Law of Nations; some parts of

11. Such a right—*postliminium*—existed in Rome for citizens returning from capture, and, as Pufendorf, *Law of Nature*, VIII.6.25, rightly says, “How the Roman Laws provided . . . with regard to the Postliminium is with much Exactness explained by Grotius [*The Rights of War and Peace*], Lib. iii. Chap. ix.”

12. Concerning neutrality, see Grotius, *The Rights of War and Peace*, III.17, and cf. III.1.5 and III.4.8; Barbeyrac, note 1, p. 842, in Pufendorf, *Law of Nature*; cf. *Short Introduction*, III.9.5 (1–7). For the following points about property taken in war, see Grotius, *The Rights of War and Peace*, III.6; Pufendorf, *Law of Nature*, VIII.6.20, and *Duty of Man*, II.16.13, with Carmichael’s commentary, *Natural Rights*, pp. 205–7.

* It is needless to run into logomachies, whether there be any *Law of Nations* distinct from the *Law of Nature*. One may perhaps divide the Law of Nature into two parts, the *private* and *publick*, the former about the rights and duties of individuals, the latter about those of states. The publick, or the *Law of Nations*, may be

which are obligatory as parts of the Law of Nature, and others <357> as matter of agreement or tacit convention, and very changeable.

The laws of war, with respect to neutral states, depend chiefly on these few maxims.

1. No neutral state should be obliged, without it inclines to it, to declare for either of the contending parties, or to favour either in the war, and thus expose itself to the hostilities of the other. There may be a strong obligation of duty, or gratitude, or finer justice; but, where there has been no express engagement by contract or treaty, a neutral state must be at liberty to act as it pleases and may continue its neutrality. The same holds as to the two contending parties in a civil war; a state formerly in friendship with this divided country is not obliged to declare for, or recognise, the justice of the cause of either. Nor is it to be deemed any breach of friendship by the side which proves victorious, that the foreign state gave no aid to it while the victory was doubtful, provided that it acted the same part toward the other.

They should not be forced to declare on either side.

subdivided into the *absolute* or *primary*, containing the rules founded on natural reason, and obligatory previous to agreements; and the *secondary* or *hypothetical*, founded on custom and tacit convention. [Grotius had distinguished between natural law, *ius naturae*, defined in terms of *iura*, rights, and the “voluntary” law of nations, *ius gentium*, defined in terms of practices, conventions, agreements, etc. Henceforth but especially after the Peace of Westphalia (1648), the relationship between the two forms of law became a central source of controversy in jurisprudence. Hobbes, Pufendorf, and many others maintained that the law of nations was nothing but the law of nature applied to the artificial person of the state, while conventions had no status as law in the proper sense. This was rejected by several lawyers, but especially after Samuel Rachel’s *De iure naturae et gentium dissertationes* (1676), the attempt to establish the foundations for a distinct “positivist” law of nations was part of the literature. Hutcheson seems to be echoing Carmichael’s clear exposition in his lengthy n. 1 to Pufendorf, *Whole Duty of Man*, II.16.7: “. . . several interpreters both of *natural* and of *civil* law explain the distinction between *natural* law and the law of *nations* especially so called, according to the two definitions of the *law of nations* which the Emperor [Justinian] gives at *Institutes*, I.2.1 and 2. The first is the law of nations as defined at section 1 as *what natural reason has established among all men*, which is said by the interpreters to be the *primary* law of nations and is actually *natural* law itself. The second is defined in section 2, i.e., *what human nations have established for themselves under the pressure of custom and human needs*, which is actually the *law of nations* itself in its particular sense, and is called by Grotius the *voluntary* law of nations.” *Natural Rights*, pp. 202–2.]

The external
right to spoils
taken in war, is
a full property.

In consequence of this a certain external right is ever allowed to be acquired by the captors to all moveables taken in war; and the title is deemed indefeasible if these goods are purchased by a neutral state or its subjects, so that they can never be reclaimed out of their hands by the old proprietors; nor is it deemed a departure from the neutrality that they buy such goods taken on either side as once were adjudged as prizes. The purchaser may not know how the goods were acquired. If they were to be reclaimed <358> by the old proprietors, and delivered to them; the neutral state would thus declare that the seizure was unjust and must lose the price payed, or declare war upon the captors. If they refused the demand of the old proprietor, while he was allowed to insist on his old right, this would be declaring against him and his country. Nay if spoils are sold to other subjects of the same state from which they were taken, either by the neutral purchaser, or by the enemy, (as trade is sometimes allowed by treaty during hostilities;) out of favour to the fair purchaser, as well as to the external right of the captor, the old proprietor cannot claim them. Were it otherways, all trade would be precarious either with the enemy or neutral states.

No such right
as to lands
violently
possessed.

But as to lands, cities, or provinces taken, as no purchaser can be presumed ignorant how the seller acquired them, there is no shadow of reason for allowing such a right in the captor. A neutral state by purchasing them would preclude the old proprietors, or the state, from recovering by force their old territory; or would force them to declare war against the purchaser. Such purchases therefore are always deemed contrary to the neutrality.

Certain effects
of violent
possession
of lands,
cities, &c.

There is indeed one external right justly understood as attending the violent possession of lands, cattles,¹³ or cities; that all services, rents, or other annual payments, due formerly by any person or corporation to the old proprietors or governors of them, are now validly payed to and discharged by the violent possessor; so that the old proprietor or governor, <359> if he recovers them again, cannot redemand the same services or payments; nor look upon such services or payments, during the violent possession, as any infidelity or hostility; unless they have been of-

13. No doubt "castles" was the intention, but the Ms. (GUL), p. 150, has it thus.

ferred officiously, when they were not exacted by the assumed authority of the violent possessor.

But no deed of the violent possessor can release from any future rents, services, or payments, or discharge any such obligations, beyond the annual termly payments during his possession; so as to preclude the claim of the old proprietor or governor when he recovers his former possessions. If he has by force or by threatnings compelled a debtor, whether a private person or a corporation, to pay fully a debt due to the corporation now violently possessed, or to its governor in his publick capacity; and that without any collusion, or fraudulent agreement with the debtor, the debt is* validly discharged.

2. "Neutrality can be preserved only by giving help to neither side in the war, or equally to both." Hence if one side is allowed to enlist volunteers in the neutral state, both must be allowed. If troops are hired out they must be hired out to both, if both desire them. And privileges of trade continued to both as they were before the war broke out. Military stores must be furnished to neither without consent of the other, who may perhaps demand the like supplies; <360> ordinarily they are to be sent to neither. Nor can the neutral state send even common provisions to any city besieged, or to any island or coast guarded by an hostile fleet of the other side. Counterband goods, or such as are thus prohibited, may justly be seized on the coast, when it appears they were designed for the enemy.

No aid should be given to either side, or equally to both.

If a neutral state has been in an alliance offensive and defensive with both parties, and bound to send quota's of troops to their assistance, if the neutrality remains it can send troops to neither. If its interest allows it to quit the neutrality, it may justly send troops to that side which has the just cause. All contracts about giving aids in war have always this tacit condition that "the cause be just." No treaty can bind to assist in unjust violence.

How prior alliances bind to send supplies.

* See a famous case of this kind in Quintilian, *Inst. Orat.* v. 10. where Alexander, after the conquest of Thebes, released a debt due by the Thessalians to the Thebans, with the decision of the Amphyctiones. [Quintilian, *Institutes of Oratory*. V.10.111–118, relates the debate of the council of the Amphictrionic League. The quoted case is analyzed in detail by Pufendorf, *Law of Nature*, VIII.6.23.]

Neutral states
should enjoy
all commerce
with both in
common
merchandise.

3. A third obvious maxim is that “a neutral state should be precluded from no advantage it enjoyed by either side, on account of the war; except such as it made by commerce in military stores:” all other advantages of trade and navigation it should enjoy with both. Thus the goods of any neutral traders found aboard the ships taken and judged prizes, should not be forfeited. The neutral state had a right to freight ships from either side; and, as it had a like right to hire out its ships to both, tho’ the enemies goods aboard neutral ships are justly taken, yet the neutral ships cannot be made a prize. Each side may have a right to examine the neutral ships, and find if any of the enemies goods be aboard: but they have <361> no right to seize either the ships, or any parts of the cargo which did not belong to the enemy.

There is one right, like those upon a plea of necessity practised and allowed; that either party in any sudden exigency may take any neutral ships in their ports, upon paying a reasonable freight for them, to transport troops or stores upon any expedition.

In like manner no neutral state should lose any right of mortgage upon the lands or territories taken by either side from the other.

No hostilities
are allowed in
the neutral
state.

4. Another maxim as to neutral states is “that they have a right to hinder either side from committing any hostilities against the other, within the neutral territory or its harbours; and to give protection to any refugees from either side.” As the neutral state is master of its own territory, its bays, and harbours, it has a right to prevent hostilities of either side within them; and it is plainly its interest to do so, as they may be dangerous to itself or its subjects. The taking of ships in its harbours may interrupt or discourage the trade, which the neutral state has a right to retain, with both parties. And the discharging of artillery may be more pernicious to others than those that are aimed at. It is the part of a common friend to prevent all sorts of violence of the contending parties, as far as he can; and every state within its own bounds has a right to prevent them. This right is allowed to extend as far as it has a power of commanding by the guns of its forts.¹⁴ Exercising force against enemies is

14. Hutcheson is referring to the rule suggested by Bynkershoek for how to distinguish a country’s territorial waters from the open sea, namely “that the control of

always looked upon among the *jura majestatis*, or parts of supreme power which no state has a right to within the bounds of another which is at peace with it.

IX. As to refugees from either side, a neutral state has a right to protect them for the like reasons. No foreign prince has a right to exercise any jurisdiction, civil or criminal, within the bounds of another state. If he or his ambassadors are allowed to reside in a neighbouring state for some time, they retain all their powers and rights in their own country, but have none where they reside, except what is allowed them by this state; and by the custom of nations there seems to be allowed to them a civil jurisdiction over their own retainers, to decide any points of property debated among their own subjects. Nay this right is allowed to consuls, who represent not a prince or state, but are agents for merchants at a foreign court, and appointed as judges in civil causes by their prince over their countrymen. But as they have no jurisdiction, even in civil causes, where foreigners are concerned; and for criminal jurisdiction, it is not allowed either to a prince or his ambassador over their own subjects or countrymen residing with them in another state, as criminal jurisdiction requires often the use of force.

The protection of deserters or refugees.¹⁵

The right and custom of nations is pretty general in this matter. Foreign states are truly obliged by the Law of Nature to give no protection to any infamous criminal, or notoriously fraudulent bankrupt, who flees

Customs received as to criminals and bankrupts.

the land [over the sea] extends as far as cannon will carry; for that is as far as we seem to have both command and possession. I am speaking, however, of our own times, in which we use those engines of war; otherwise I should have to say in general terms that the control from the land ends where the power of men's weapons ends; for it is this, as we have said, that guarantees possession." This became known as the three-mile limit. Bynkershoek, *De dominio maris*, p. 44.

15. *Short Introduction*, III.9.5 (8); Grotius, *The Rights of War and Peace*, II.21.5–7. Pufendorf is very brief on refugees: *Law of Nature*, VIII.6.12, and *Duty of Man*, II.16.9.

* Christina, Queen of Sweden, put to death, while she resided in France, one of her secretaries for betraying her counsels. The French justly resented it as an exercising force in their country. [Cf. Bynkershoek, *De foro legatorum*, p. 15: "That a prince cannot exercise the rights of sovereignty so far as the imperial status of him in whose dominions he is staying is concerned is clear; and since jurisdiction is among the rights of sovereignty, there was every justification for the resentment felt in France because Christina, queen of Sweden, in the year 1657, ordered the execution of one of her subjects in France on the ground that he had revealed her secrets."]

to them; they should deliver them up. And yet the state from which they fled has not a right to pursue them by force in the bounds of another country. If a state is zealous to bring them to justice, a commission should be demanded from the foreign state, and it is unjust to deny it upon proper security against doing any damage to its subjects; and then the force is exercised by the authority of the governors of that state. But as to smaller criminals, or common bankrupts, the custom received is on the merciful side toward them; they are generally protected, and seldom demanded to justice.

State criminals
always
protected.

As to state-criminals; as frequently good men are on both sides in civil wars and state factions, as well as in solemn wars, the general custom is very humane, that they should universally find protection in foreign states; and the refusal of delivering them up, or of allowing them to be pursued and taken, is never deemed a just cause of war, if, while they reside abroad, they are forming no new conspiracies or hostile attempts against the present governors of their country, who should be satisfied with their banishment, and loss of their fortunes, and of the hopes they had in their native land.

The nature of
treaties of
peace.¹⁶

X. The natural and humane way of ending wars is by treaties of peace; the nature of which, the just terms of them, the obligations, and just exceptions, may be sufficiently understood from what was said <364> upon contracts in the former book, and upon the rights arising from

16. The remaining sections of this chapter correspond to *Short Introduction*, III.10.1–2. For contracts in general, see II.9 above. Grotius had separated *fides*, faith, between enemies during the time of war (*The Rights of War and Peace*, III, chs. 19 and 21–24), from faith that ends war (III.20). Pufendorf adopted this distinction but treated the former (which he called *induciae*, truce) and the latter (*pacta*, pacts) sequentially and then, as a separate topic, treatises, *foedera*, that may apply in either peace or war; *Law of Nature*, VIII, chs. 7–9, *Duty of Man*, II.16.15–17 and II.17. In the first paragraph of section X Hutcheson is hinting at a criticism levelled against Pufendorf by Barbeyrac and Carmichael. Pufendorf suggested that all agreements between the contending parties *during* wartime were themselves to be seen as factors assisting in the contest, thus relativizing the obligation to observe such agreements. This was exactly what the two commentators objected to, maintaining that such obligations were binding like those of actual peace treaties. See Barbeyrac's note 1 to *Law of Nature*, VIII.7.2, p. 853; and Carmichael's to *Duty of Man*, II.16.15, p. 209 in *Natural Rights*.

the injuries of others; as all sovereign princes and states are with respect to each other in a state of natural liberty.

The exception indeed of unjust force extorting a contract is less to be admitted here than among private persons, whether the wars are solemn or civil to which the treaty puts an end. Were this exception universally allowed, all treaties would be vain; no state would regard any promises or engagements of another; nor would contending factions have any faith in each other; since either side, whenever they inclined, could still have this pretence to evade their obligation, that the contract or promise was extorted by unjust violence; and thus all old controversies would revive, notwithstanding any agreements or renunciations. No terms offered would stop hostilities. War must end only by the destruction or entire conquest of one side.

The exception of unjust force precluded generally.

On the other hand; some wars undertaken by princes and states are so manifestly unjust, without any shadow of right, which yet prove successful, that it would be hard to preclude a state, which had been compelled by such unjust violence to consent to the most oppressive and iniquitous terms, from all redress either for themselves or their posterity for ever, tho' they had the most favourable occasion of shaking off the unjust and cruel yoke. To do so would give the greatest encouragement to unjust violence, and make oppression everlasting without remedy.

But not in all cases.

We may perhaps justly distinguish, between violence really unjust, and yet founded upon such specious pleas and colours of right, as might have imposed upon men who truly intended to act justly according to the Law of Nature; and that violence which had no such colours of right: allowing a valid obligation to those treaties which were obtained by the former kind of violence; especially when it was conducted honourably, according to the humane customs of civilized nations, and when the treaties contain no terms manifestly inconsistent with the plain laws of humanity, and with the safety, and these natural rights of a people which are necessary to secure all valuable enjoyments of life. But for treaties extorted by violence manifestly and avowedly unjust, and containing terms quite inconsistent with equity, and all security of safety of the people defeated as to the natural enjoyments of rational creatures, they can produce no obligation.

No precise
determination
of many
questions.

No doubt after all the decisions men can give, contraversies may still remain: What are these specious colours of right which plead for the validity of contracts extorted by unjust force? What sort of terms are thus inhumanely oppressive? where there is no common judge there is no refuge but to mens own consciences, and sense of humanity, and justice, and to wise arbitrators, or neutral mediators, under no attachments of interest to either side.

Divisions of
treaties.¹⁷

XI. There are many divisions of treaties; some are *personal*, entered into out of affection to the person of the prince, and subsisting only during his life. Others are called *real*, when they are made with a prince or ruler, as he represents and acts in the name of the body polittick, which never dies. The obligation of these is perpetual, where no limited term of years is expressed. Some are *equal*, binding to equal performances, or such as are proportional to the wealth of the states; and others unequal. Of the unequal again, some, tho' burdensome to one side more than the other, yet make no diminution of its sovereignty or independency. Such for example, as bind one side to refund the expences of the war, to deliver up ships, or frontier towns, or to quit certain branches of trade, or even to pay certain sums annually. Notwithstanding of such burdens, the state may exercise within itself, and with other nations, all parts of the supreme power; other unequal treaties diminish the sovereignty: thus if one consents that appeals shall lie in certain causes from its own courts to those of the other state, or that it shall not make war without consent of the other. The terms of these treaties suggest the obligations on both sides.

Hostages
why in disuse.¹⁸

In confirmation of treaties in former ages hostages were frequently given. But as they can give no security unless a nation were disposed to commit a great piece of barbarity, in punishing the innocent hostages for any perfidy of their country, to which they had no way contributed; the custom of demanding or giving hostages is laid aside.

17. These divisions follow Pufendorf, *Law of Nature*, VIII.9.1–8, and *Duty of Man*, II.17.1–7, which again pick up from Grotius, *The Rights of War and Peace*, II.15.

18. On hostages, see Grotius, *The Rights of War and Peace*, III.20.52–58, with Barbeyrac's notes.

XII. Treaties and confederacies of all sorts are managed by ambassadors, envoys, and plenipotentiaries, <367> persons employed to transact such matters in the name of a state. The rights of all these persons, according to the Law of Nature, are the same whatever names or external dignities they may obtain, if they are sent to any state in the name of another, great or small, which is not dependent on the state to which they are sent.

The rights of ambassadors, &c.¹⁹

This right, in the first place, belongs to all who are sent with any public messages in peace or war, that their persons should not be violated; but they should either be allowed to reside in safety while they offer no violence, or, if this is refused, to return unmolested. The greatest enemy, even upon the justest provocation, is obliged to listen to proposals from the other side, as his right is not infinite; and there are certain proposals which when made he is obliged to accept of, and desist from hostilities. No proposals could be made if the persons, who carried them, were not allowed protection.

Their persons inviolable.

A state indeed is not obliged by the Law of Nature to allow the ambassadors, envoys, or residents of other states to continue in its territory; such persons always act the part of spies if they are diligent in their trusts: and they may be refused access to it without hostile intention. But as the advantage is equal to both sides against each other, where they are mutually allowed; and as by their means many differences are speedily composed which otherways had broke out into wars; it is now the cus-

No natural obligation to admit the residence of ambassadors, but it is the custom of all nations.

19. In the *Short Introduction* ambassadors are discussed at III.10.2. Grotius saw “the Rights of Embassy” as the “chief Head” of the voluntary law of nations, as distinct from the natural law; *The Rights of War and Peace*, II.18.1. Since Pufendorf did not see the former as a law at all, he made short shrift with it in *Law of Nature*, II.3.23 (and no shrift at all in *Duty of Man*). Drawing on Grotius’s chapter—in itself a compilation—Abraham Wicquefort, Bynkershoek, and others made the topic central in the discussion of the foundation of the law of nations. Barbeyrac, complaining about Pufendorf’s neglect (n. 5, p. 867, of *Law of Nature*), set out the terms of the discussion in his notes to Grotius’s chapter and in his annotated French translation of Bynkershoek’s *De foro legatorum*, the work Hutcheson refers to in his note *, p. 612 below. The translation, *Traité du juge compétent des ambassadeurs, tant pour le civil que pour le criminel*, appeared in 1723, but it appears that Hutcheson used the Latin text, which appeared first in 1721. In general his discussion in sections 12 and 13 is consonant with Bynkershoek’s much more extensive treatment.

tom of all civilized nations to allow them mutually, and to give <368> them full protection while they commit no hostilities, or form no conspiracies against the states where they reside.

What privileges or immunities they have by the Law of Nature.

The Law of Nature ensures to them no other protection, previous to some custom importing a tacit convention, than that which every civilized state gives to its own subjects or to any private foreigner who resides with them for pleasure or commerce. An action would lie against them in the courts of the state where they reside for any debt or crime, as against any private foreigner. And if they were, and continue natural subjects of the state they are sent to, they are justly treated as its subjects still; tho' employed as factors for others. Their employment as it is of great dignity and importance, would indeed entitle them to greater deference and external marks of honour, than they could have claimed in their private capacity: but it gives them no further perfect right without some convention express or tacit.

What by the custom of nations.

But a pretty general consent of civilized nations has given a great number of other privileges and immunities to them, their families and retinues; the settling of which makes a considerable part of the *publick Law of Nations, as it is called, which is founded on tacit conventions, declared by general practice, and by the resentment expressed at any nation which violates it. And yet as to most of these laws any nation by a timely premonition of its neighbours that <369> it neither insisted on such privileges to its own ambassadors, nor would give them to those of other nations, might free itself from all obligation; some of them indeed are founded on reasons of humanity; but many others merely on capricious customs, and the vanity of princes.

Ambassadors to a state not subject to its courts.

XIII. There are humane reasons for one custom, almost universally received of late, that "ambassadors, envoys and all who act for nations independent of the state to which they are sent,[†] are not subject on ac-

* The curious may find them in Wiquefort's *Ambassador*, and Bynkershoek *de foro Legati*, and other authors. [Abraham de Wicquefort, *L'Ambassadeur et ses fonctions* (1680–81); Hutcheson's spelling indicates that he may have used John Digby's English translation. Bynkershoek, *De foro legatorum*.]

[†] *Legatus non mutat forum*. ["The envoy does not exchange court." This seems to be Hutcheson's formulation of Bynkershoek's point.]

count of their residing in any state, to the courts of that state, in any action civil or criminal.”²⁰ Nothing more is allowed than barely the necessary defence against any outrage of theirs, or any conspiracy. All right of judging and punishing is referred to the prince or court to which they were formerly subject. There is an equitable reason for extending this privilege beyond the ambassador’s person even to all his proper family; such as his wife, children, secretaries and necessary domesticks; since by the want of them, or by any vexatious processes against them, he might be distressed or hindered in his business. If their conduct is offensive they may be ordered to withdraw, and justice be demanded against them from the state which sent them, the refusal of which would be a just cause of war. The reason for the privilege is this, the most vigilant ambassadors do generally most oppose the interests of the courts where they reside, and are the least popular in that country; and therefore would have the worst prospect of a fair trial, or of a just sentence upon any civil action or criminal process against them.

At the same time, if an ambassador trades where he resides, or incurs debts by contracts of merchandise, or by bonds; there is little natural reason why he should not be sued and compelled to do justice to the subjects of the state where he resides. If he is suspicious of the partiality of the courts, let him abstain from voluntary contracts. There is still less natural reason for the immunities of all gentlemen of his retinue in such cases. It would be highly proper that he gave a list of his domesticks upon his admission, or upon adopting any more into his family; that the state where he resides might judge how far it was proper to extend its protection to such numerous retinues.

In like manner, there is no natural reason for making his house a sanctuary to any but the necessary domesticks allowed him: much less that it should skreen any subjects of the state where he resides from the execution of justice, and thus limit the power of the state over its own

His house no
sanctuary by
the law of
nature.

20. Cf. Bynkershoek, *De foro legatorum*: “. . . the status of ambassadors is such that it has come to be a firmly established convention that an ambassador is not the subject of him to whom he has been sent but remains the subject of him who has sent him. On this account he is not regarded as subject to the jurisdiction of him in whose country he is serving as ambassador, whether it is a case of a debt or a crime.”

subjects. But such claims have often been made by means of an unnecessary notion that the ambassador represents the person of the prince who sent him, and should be treated as such; or represents a free and independent state, and must have a like independency, immunity from the power of the state he is sent to, for all who attend him of every character. <371>

The precedence of ambassadors.²¹

XIV. From this also arise the claims of superior dignity, and the precedence of the ambassadors of different nations. These are all arbitrary matters, depending on custom or convention. It would be as natural that ambassadors should take precedence according to their several personal dignities, if we could well compare the several personal dignities of men of quality, in different nations, with each other. And this indeed is as easy as settling the dignities of different princes. Names are of no avail in this matter. A duke of Russia or Venice and a duke in Britain, a marquis in Britain and one in France are of very different dignities. The kings of Britain were once of higher dignity than emperors of Constantinople, or some Western Emperors in Rome. All rights of precedence among independent princes and states, or their ambassadors, must depend on some agreement or old custom. Were we to follow natural reason, these ambassadors should have the highest dignity who represent the wisest and best constituted states or polities; as these are the most honourable bodies politick. Superior force, striking terror in all around, often engages nations to give up these matters of ceremony to the most potent. Absolute hereditary Monarchies, and Oligarchies, have the weakest pretences to dignity. <372>

21. Hutcheson may have gleaned the issues with which he shows his impatience in this section from the work he mentions in his note *, p. 612 above, Wicquefort, *The Ambassador*, Book I, chs. 20 and 22.

The Duration of the Politick Union; and the Conclusion.

I. The duration of a political union, and of a citizen's obligation to his country may be determined by these considerations. 1.¹ As this union is designed for the good of all, it is oppressive in any state, where it is in no danger of decay, to detain any small number of citizens, who have a rational prospect of a better condition elsewhere, while the state suffers no considerable loss by their departure. It must be a wretched plan of polity, or very unfaithfully administred, which can tempt any great numbers to desert it, contrary to so many strong natural ties; and in either case, if proper remonstrances cannot obtain a redress of severe grievances, the citizens have a right to leave it, as the natural conditions, either expressed or implied, upon which they associated are broken. To desert a good association, wisely administred, when it falls into any distress by foreign force, is highly criminal; and the state may restrain its subjects by violence, as they are sacredly bound to support it at all hazards.

The duration
of the political
union.

When subjects
are free from
the bond.

Men banished for ever, on account of crimes, are no longer subjects. But a temporary banishment or relegation into any remote province subject to the state's jurisdiction, does not take away all right of the state over such corrupt members. <373>

II. While a state can protect all its members, it is under the most sacred obligations to do it. It may indeed under the utmost necessity, when the whole cannot otherways be safe, bind itself by contract

How far a state
is bound to
protect all its
parts.

1. Original text does not have other numbered points after this one.

not to protect any further a subject, or a certain district, demanded by a victorious enemy. But this deed cannot preclude the subject, or the district, from taking any other refuge: their bond is dissolved. An hero perhaps to preserve a country would deliver up himself a sacrifice.

Certain
changes of
polity free
such as
dissent.

When the majority of a state consent to change the polity in some essential parts, upon which the safety and prosperity of the subjects depended, in compliance with an invader or usurper, or out of any superstition or folly; such as dissent have a right to withdraw with their effects into any other country; or to associate by themselves: nor can they be retained upon any pretence of the old contract, since the essential articles are changed without their consent. A man acts unjustly who dissents from any wise and useful change of the polity; and yet it would be hard to oblige him by force, without some great necessity, to remain a citizen.

But all real treaties formerly entered into with other nations retain their full force after the change, so do all publick debts and claims on both sides.

After a conquest the subjects are free.

III. If a state is by force subdued to another, the majority of the conquered have no right to retain any of the old citizens who incline to remove. Any parts of the vanquished state may assert their liberty and independency, or unite with any other state they incline. The former bond is dissolved by the failing of an essential condition. It is indeed very unjust in any part to desert the body, while there is any hope of supporting it.

If a people once intirely conquered should upon any unexpected emergence speedily recover its independence, it is the duty of all its citizens who have entered into no new political bonds to return to their former union, if the terms of it were equitable. But if they were not, or if any parts have entered into new polities, by contracts against which they have no just exception; as the former bond was dissolved by the conquest; all their new transactions are obligatory, in which they acted justly according to the probabilities then appearing to them.

If a people conquered for some centuries, and reduced into the form of a province, should afterwards find an opportunity of asserting themselves into independency again, and that with all justice; it would be* ridiculous in them to claim any right in districts or provinces long associated to other states, or subsisting by themselves; upon any pretence that these states or districts were formerly associated with their ancestors or subject to them, when they were a free and flourishing state. The conquest dissolved all these bonds, and left these districts or provinces free to consult their own safety. Such claims are still more ridiculous on this account that after a few centuries and the changes which happen upon conquests long continued, the people can have little other pretence of calling themselves the *same* with their predecessors in that land, than this that they live upon the same spot of ground where the antient state was. But it is owned by all that as the people or state may remain the same in a new climate far from their old lands; nay without any lands, when they are aboard their ships or marching through desarts; so the new possessors of the same lands may be a state or people quite different from the old.

A province long conquered, and recovering its independency, does not acquire all the old rights over other lands.

When a state is once entirely conquered without a probable prospect of recovering its independency, all the old conventions of the people about a political union are in the case of contracts entered into about what afterward becomes impossible to be executed on one side, and therefore do not bind the other. The same is the case of the contracts by which certain districts became provinces upon condition of protection from that state which now cannot protect itself.

III.² While the political union subsists, the duties of citizens, which arise either from the general relation to their country and fellow-citizens, or from particular stations and offices, are known by considering the true

* See a long examination of the vain pretences of Charlemain and his successors to all the dignity and rights of the Roman emperors in virtue of an election by the citizens of Rome in *Grotius De J. B. et P. l. 2. c. 8.* and in Gronovius and Barbeyrac's Observations. [The reference should be *War and Peace*, II.9.11–13. Barbeyrac's edition of the Latin text was based on an earlier edition by Johannes Fredericus Gronovius, whose notes Barbeyrac included; Grotius, *De iure belli ac pacis*, notes 58–59, pp. 335–38.]

2. The numbering of sections may have been a late addition to the manuscript and resulted in the erroneous repetition of III.

ends of the union, the rights of their governors, and the laws of their country, or the nature of any special offices they bear in it. It is superfluous to <376> heap up common-place maxims, well known, but of difficult application to particular cases; a good man's heart will always be zealous for the interest of any innocent association for a publick interest, in which, by the Divine Providence, he is engaged; and will look upon this situation of his fortunes as the voice of God directing him to that part of his fellows who should be more peculiarly the objects of his affectionate concern. And he will always remember,* that in any tolerable constitution, he and his fellow-subjects owe innumerable advantages to the civil polity, to the laws, and to the whole body; even all their civilized education, their safety, their continual protection from innumerable injuries, and almost all accommodations and pleasures of life. They ought therefore to study the preservation and improvement of this constitution, and the general interest of this body, of which Divine Providence has made them a part, and recommended it to their zeal by all the generous principles in their soul. No worldly interest of ours, not life itself, should be reputed too dear to be sacrificed for its preservation; since in it is included the safety and all external happiness of great multitudes, both in the present age, and in those which shall succeed.

The Conclusion.

The admirable
contrivance of
our nature.

IV. From these general principles of the publick law of nations, as from those of the private law respecting individuals, we must discern the wonderful footsteps of Divine Wisdom in the constitution of our <377> species. Since it is by following the very principles of our nature, the affections and feelings of our hearts, in that regular subordination of the more limited to the more extensive, which our inward moral sentiments recommend, and by the delightful exercise of the powers of reason which we are naturally prone to, that we obtain and secure to ourselves and others both the noblest internal enjoyments, and the greatest external advantages and pleasures, which the instable condition of terrestrial affairs will admit.

* See *Plato's Crito*.

But that we may not deceive ourselves with false hopes, imagining a more stable external happiness to be attainable by individuals or states than nature will allow, and thus displace our souls from the only solid foundation of rest, tranquillity, and joy, in the stable persuasion of a good Providence, governing all well, and securing true happiness to every worthy soul; in resignation and trust in it, and in the consciousness of our own conformity of dispositions to this supreme Excellence; it must be of consequence to attend well to the transitory, changeable, and perishing nature, of every thing external.

The instability of every thing in this world.

States themselves have within them the seeds of death and destruction; what in the temerity, imprudence, or superstition of the first contrivers; what in the selfish, ambitious, or other meaner passions of the governors, and their subjects, jarring with each other and among themselves; what in the oppositions of those seeming interests which such passions pursue; what in the weakness and inconstancy of human virtues; and <378> in the proneness of men to luxury and present pleasures, without attention to the consequences. These seeds, along with external force, and jarring national interests, have always occasioned the dissolution and death of every body politick, and will occasion it as certainly as the internal weakness of the animal body and external causes will at last bring it to its fatal period. Good men indeed study, by all the art they are masters of, to ward off and delay these catastrophes, as long as they can, from their friends or their country; such kind offices are the most honourable and delightful employments they can have while they live. But he must little think of the order of nature who sees not that all our efforts will be defeated at last, whether for the preservation of individuals, or of the body politick.

All states have in them the natural causes of dissolution.

Nineveh, Babylon, Ctesiphon, Persepolis, the Egyptian Thebes, Carthage, once the seats of grand unwieldy empires, are now but obscure antiquated names: Athens, Sparta, Crete, Syracuse; the seats of ingenious arts and policy, are now the almost desolate seats of Barbarians. Here we have no continuing cities. Compare the short periods of their subsistence with the immense tide of duration which passed before they were known, or with that other boundless infinitude to ensue after they are

Their duration in the universe inconsiderable.

gone and forgotten; and the most potent durable empires will appear transitory and but for a day.

External enjoy-
ments and
advantages,
no securities
of stable
happiness.

Consider all external things and enjoyments. We are spirits carrying about with us frail decaying putrifying carcases; that as yesterday were embryos, and shall in a few days be earth and bones. Our sensual <379> pleasures are mean, passing in a moment, and often shameful. Our grandeur and wealth are imposture, played upon ourselves and others; an ostentation of happiness and security, while we have no other avenues to pleasure than the vulgar, and remain exposed along with them to all the same great calamities of life: to the sicknesses and death of such as are dearest to us, and their worse corruptions by ignorance, ingratitude and other mean dispositions of soul; to all the same pain and weakness both of body and mind; and, sooner or later, to that uncertain period which may surprize us every moment, when we must quit all our earthly possessions, return into that silence we were in before we existed, and our places shall know us no more. If we are remembred for a few years, it is but in a little corner of the world; to the rest of it we are as nothing: and, in a few more, both we and those who remembred us shall be forgotten for ever. Grant we were always remembred; what is that to us who know it not?

Grandeur and
fame are but
vain.

Nimrod, Ninus, Cyrus, Alexander, Caesar, Charlemain, Gengiscan, what sense of suffering have they now, when many repute them odious monsters, the scourges, the plagues of mankind? What joy have they in being called by others heroes and demi-gods? These most obvious and certain reflections, frequently recalled, must abate those keen passions about worldly interests which spur on the ambitious to all oppressions, and raise these wretched contentions which disturb and at last destroy the best human polities.

The hopes of a
future state.

They must have an effect yet better on an attentive mind. An omnipotent and good God governs the <380> world. By the whole structure of our nature we feel his approbation of virtue, his engagement on its side. He has at the same time formed our species capable of those obvious reflections and extensive views into infinitude, which shew the meanness, the vanity, the emptiness of all worldly enjoyments; he has implanted in our hearts natural desires, nay ardent affections, toward a

more noble and lasting happiness both for ourselves and our fellows, and that in the most extensive system; and recommended these affections to us, and all beneficent actions flowing from them, as our greatest dignity and perfection, while yet this world cannot gratify these desires. Our advancing in this perfection which³ he recommends makes a future everlasting state after death appear as a part⁴ in his administration necessary to make our hearts approve it; and necessary too to all generous solid joy of a rational creature, who has natural affections⁵ toward its kind. His providence has so ordered, that this hope, this desire is not peculiar to the wise, the learned, the civilized; but has ever been diffused among all mankind. Need we then distrust that omnipotent and bountiful hand, which satisfies the desires of every thing that liveth? No. Let us trust in him, and be doing good after his example: and, as we see that all states and cities upon earth are unstable, tottering, and presently to fall into ruins, LET US LOOK FOR ONE THAT HATH A SOLID FOUNDATION, ETERNAL, IN THE HEAVENS; WHOSE BUILDER AND MAKER IS GOD.

THE END

3. GUL Ms., p. [171]: "which" is not in the Ms.

4. GUL Ms., p. [172] has "a necessary part."

5. GUL Ms., p. [172] has "with its natural affections."

APPENDIX

Documenting the System

We print all the known documentation for the complex history of Hutcheson's *System*: letters providing hints regarding Hutcheson's intentions with it, his abandonment of it, documents concerning the compilation of the work by his followers, as well as advertisements regarding the final publication. We have numbered the items for the ease of cross-referencing. Items 1–6 are excerpts from Hutcheson's private correspondence as edited in his *Correspondence and Occasional Writings*.

I

Hutcheson to Thomas Drennan on 21 September 1737¹

I hope before it be very long to let you see in print what has employed my leisure hours, for several Summers past; but I am at a loss how to get a right printer to employ being a stranger in London. I don't incline to put my name to what I print or give any proofs of the Author to any wasps in this Country, tis a System of Morality in English, larger than both my former books. you need not talk of this.

2

William Bruce to Hutcheson, 12 January 1737/38²

I had the pleasure of yours of the 19th of last Month & would have acknowledged it sooner but have been every day expecting the Arival

1. Francis Hutcheson, *Correspondence and Occasional Writings* (Carmel, IN: Liberty Fund, 2022), letter 17, p. 46. Hutcheson's correspondent, Thomas Drennan, had been his fellow student in Glasgow and later was his assistant at his Academy in Dublin.

2. In *Correspondence*, letter 19, p. 49. Bruce was writing from Dublin. "Irwin" refers to the harbour town Irvine in Ayrshire.

of the manuscript from Irwin which I have been often uneasy about, since the time I first heard of your having sent it thither; I dare hardly ask you whether you have kept a Duplicate, but if you have not, and the Papers be still at Irwin, I heartily wish you to send for them, for all the Advantage that can possibly arise from the perusal of them on this side the Water is not worth purchasing at the hazard of their being lost.

3

Hutcheson to Drennan, 27 February 1738³

You would readily hear that in November Last I sent some Papers at Will Bruces desire to be perused by Dr Rundle; a *traik*, as they call it here, attends them. they came to Will only on the 8th of Feb. by contrary Winds, and tho' my design was to get Will's & Abernethys Opinion, he without looking into them gave them immediatly to the Bishop, where perhaps they may lye a good time to litle purpose; and it may be resented unless Synge sees them too. But I am in no haste about them.

4

From William Bruce, 16 December 1738⁴

It was a great Disapointment to me when the Seven Pacquets which arrived together from Scotland on Wednesday last brought me no Letter from you; but my Solicitude to hear from you ever since has been greatly encreased by a Pamphlet which has been transmitted to Jammy Arebuckle by Mr Boyd; I freely acknowledge to you that as soon as I saw it I was struck with an aprehension which I have not since been able to get quitt of, that notwithstanding its Impertinence, falshood & Villany, It will be able in a great measure to destroy both your Satisfaction & Usefulness in your present Situation; while these fears are prevailing so strongly with me, you will not wonder that I am greatly Anxious to know your own Sentiments and Resolutions about it; I do not mean

3. In *Correspondence*, letter 21, p. 56. Thomas Rundle was an Anglican theologian and bishop in Derry. John Abernethy was a Glasgow-educated Irish Presbyterian minister and a close friend of Hutcheson's. For Edward Synge, see note 7 to the Preface.

4. In *Correspondence*, letter 25, pp. 62–63. James Arbuckle was a Dublin poet and essayist educated in Glasgow. Mr. Boyd is unidentified.

by this to express any Suspicion, for I have not the least, that your Mind is not so far Superior to any Attempts of this sort as to continue, not greatly moved whatever should be the Consequences of them, but to a Mind whose principal affection is to be useful to the World, It cannot be a Matter of Indifference to meet with so untoward an Interruption in a Road which was evidently conducting you to that excellent End.

5

Hutcheson to Drennan, 5 March 1738/9⁵

There has been some whimsical Buffoonry about my Heresy of which I will send you a copy.

6

Hutcheson to Drennan, 15 June 1741⁶

I shall not leave Glasgow except about 3 weeks in July for this whole Vacation, but have more Avocations by too numerous an Acquaintance than you can imagine. In short Thom, I find old Age not in gray hairs & other trifles but in an incapacity of Mind for such close thinking or composition as I once had. And have pretty much dropped the thoughts of some great Designs I had once sketched out. In running over my Papers I am quite dissatisfied with Method Style Matter & some Reasonings, tho' I dont repent my Labour, as by it, and the thoughts suggested by Friends, a multitude of which I had from W Bruce & Syng & still more in number from some excellent hands here, that I am fitter for my business, but as to composing in order I am quite bewildered, and am adding confusedly to a confused Book all valuable Remarks in a farrago to refresh my Memory in my class lectures on the several Subjects. You'll find the like, Pray lay up a good stock of Sermons. you would see a noble one by one of my Scotch Intimates who sees all I do, Mr Leechman.

5. In *Correspondence*, letter 27, p. 68. See the editorial introduction above, p. xx.

6. In *Correspondence*, letter 38, p. 90. The book in question in this letter can only be the *System*.

7

John Roebuck to Philip Doddridge, 1740⁷

Mr. Hutchinson has here a very great character; he has been lately writing a "System of Morals," which he intends for the press. I suppose it will be an abstract of his public Lectures: his friends expect that it will be something curious.

8

Robert Foulis to "Mr. Harvock," early 1754⁸

The Press is just now employed in printing Mr. Hutcheson's Large System of Moral Philosophy, for which my Lord Northumberland is already a Subscriber. I look upon this as a capital work for promoting the cause of virtue, accompanied with just notions of government and Liberty.

. . .

9

Leechman to [William Bruce], c. June 1749⁹

Dear Sir,

I received your Letter with the Pacquet some few weeks ago, but was so closely taken up about the End of our Session with the Secular affairs of our College that I had not time to compare your Remarks with the papers, with that leisure and attention I could wish and which it will now be in my power to do in the time of the Vacation. I have however read them over & so far as I can yet see all your corrections and amendments with regard to the Language are extremely just & will be admitted I believe by every one. There is one remark with regard to the Sentiment which Will be questioned by many, & will be looked upon

7. Humphreys (ed.), *The Correspondence and Diary of Philip Doddridge D.D.*, vol. III, pp. 430–31. Roebuck (later famous as an ironmaster) was writing from Edinburgh, where he studied medicine, to his former teacher at the nonconformist academy in Northampton.

8. Transcribed in Richard Duncan, *Notices and Documents Illustrative of the Literary History of Glasgow*, pp. 20–22, here at p. 21. "Mr. Harvock" was the secretary to the Earl of Northumberland. Foulis was giving an overview of the Foulis brothers' publication plans. He and his brother Andrew had studied with Hutcheson.

9. D2673/1/11, Bruce Papers, PRONI.

as a strong objection ags.¹⁰ the whole Scheme it should¹¹ be found just. You say, "It is a pity the Author did not begin the chap: on Happ:¹² with observing that all those perceptions which constitute it, seem at least in our constitution to arise in consequence of the Voluntary appointment of God, for tho' there may be in fact an invariable connexion between certain Powers & Operations of our Mind & those perceptions, yet this connexion does not appear to be necessary, or to result from the Nature of these Operations & Perceptions in themselves *in anyone Instance*." Now, it will be said that there is one Instance at least & a very Important one, in which we can discern an ins[e]perable connection between the original feeling & happiness, & the contrary feeling & Misery and that is in the Instance of the direct affections of Love, benignity, friendship, gratitude;¹³ and their contraries, hatred, rancour, vanity ingratitude;¹⁴ that it does not appear to our Minds that it is even in the Power of Deity to make the feelings of Love, tenderness & Friendship painful things in themselves, or to make their contraries Hatred Malice Revenge (?) be pleasant in themselves.¹⁵ For to make the kind affections painful & uneasy would be to change the Nature (the Essence of them so to speak) or to make the unfriendly & feirce ones, original joy & delight, seems to be equally impossible & contradictory: It would be like changing white into black while it still continues white. It does not perhaps appear equally hard to conceive that the reflex Sentiment of approbation or disapprobation might have been annexed in the contrary way to what we find it is in fact. But this would have been a very untoward constitution, that one Sett of direct affections in their immediate operation & feeling should have been essentially delightful & joyful, & yet upon reviewing them in our minds, or observing them in the minds of others, they should have been the objects of disapprobation; &

10. The abbreviation is superscripted.

11. The writer either meant "should it" not "it should," or he forgot "if" in front of "it."

12. See *System*, I.6.

13. "gratitude" may have been crossed out.

14. "ingratitude" may have been crossed out.

15. On this and the following ideas, cf. Hutcheson's discussion of similar points in *System* I.9.5, as well as in *Illustrations* I, pp. 151–55, where it is connected to a discussion of John Balguy and Samuel Clarke.

that another sett should in their immediate & direct exercise¹⁶ been uneasy & painful & yet upon reflection have been objects of approbation. Tho' I say it perhaps does not appear quite impossible that a Creature could be formed in this manner, yet sure we may be that such an unnatural and contradictory constitution could not be the Work of a Good Being¹⁷—There is indeed, a Sense in which perhaps according to our Present View it may be said that our Constitution depends upon the Voluntary Appointment of God & that is that it does not seem to be beyond the Power of Diety to have endowed us with high intellectual Powers without any kind affections at all, or even with the opposite sort of ill natured ones—. But if once it be admitted that the kind & friendly affections are implanted in a constitution, it does not appear possible that they should be painful in their immediate exercise & operation. It seems to lay the surer & more solid foundation in Morals the fewer things we can show to be quite arbitrary.

I cannot see that there is any occasion for scrupling to take the Liberty not only to correct the Language where it is faulty, but even to amend the Run of a Sentence or Paragraph, where it can be done without any Prejudice to the Sense: Alterations indeed with regard to the Sentiment is a more delicate affair; but I am of opinion that even those may be made, if the Authors Scheme & general Strain of thinking be kept to. And as to the Instance which you mention, of the Perception love & Admiration of Moral Excellence as Modifications of the Mind distinct from Benevolence & equally the object of Approbation, if the Author has plainly admitted it in some passages & supposed it many others, there cannot be occasion of offence to any if it should be added in many other places where it has been overlooked or heedlessly omitted: I indeed think that it is a Principle of such high Importance in Morals that it ought frequently to be introduced, & would add strength, beauty & Perfection to the Work. I know no body in this side of the Water¹⁸ could know of any little Alterations which are thought proper to be made, or could quarrel them; except a Young Nobleman of this Country who was a great

16. Probably "exercise" was meant, but the reading is hypothetical.

17. Cf. Hutcheson's reflections on malice in *System* I.4.11 and I.9.5.

18. I.e., in Scotland.

admirer of Mr Hutcheson & his Philosophy & had obtained a Copy of this Work from Mr Hutcheson himself. I mean my Lord Selkirk,¹⁹ he is abroad at present, if he were at home, as he is a knowing and Worthy Young man, he could easily be satisfied, of the reasonableness of the Alterations proposed.—I agree with you in Opinion, that the Illustrations on the Moral Sense, may be omitted without any Loss to the Work, or at least if any thing were to be inserted by way of Appendix that it was first carefully compared with what has been already published in the End of the Treatise on the Passions²⁰ & only such things as are New or Sett in a New Light were republished—. The Publication of the Work has been rather delayed too long already, there are frequent enquiries here when it is to come abroad—. Perhaps the desires & expectations of the publick may be tired out if the Publication be put off considerably longer—. The Work may be begun to be printed, tho' you have not finished the Remarks, as you may always be before hand with the Preface.²¹

IO

*Notes by William Leechman*²²

To

Mr Robert Fowlis

I find upon a more accurate inspection of the Copy that the Pages of Mr Hutcheson own hand Writing are marked along the ~~Side of the~~

19. Dunbar Hamilton, 4th Earl Selkirk. His copy of the manuscript remains untraced.

20. I.e., *An Essay on the Nature and Conduct of the Passions and Affections*. Concerning the contemplated but never realized appendix, see p. 84, note *, above.

21. Using an older meaning of “to be beforehand with,” the final sentence makes the point that Bruce might have finished his comments on Hutcheson’s text by the time Leechman’s preface was ready for the press. The preface is dated 24 December 1754.

22. The two notes transcribed here are found in the manuscript of the *System* (GUL). Both are in Leechman’s hand. The first is at the front of the manuscript. The second is interleaved at Ms. p. 156 and consists of three separate lines, reminding Leechman of three distinct matters. The first line refers to his instructions to Foulis on 3 July 1753. The second line (“This”) refers to the part of the manuscript he is currently occupied with (the note is inserted at II.2.5). The third line indicates that on 2 November (undoubtedly of 1753) he has gotten so far as to “compare” pp. 145–69 of the manuscript “for the Press.” Since these pages would have been printed by then, this can only mean that he was checking the printed text against the manuscript, also this in stages as the printing progressed.

Margin of the Copy, & according to ~~that~~ the pages that are in the Original the page 236 is the middle of the Work. (His own Writing may indeed be sometimes closer sometimes more Sparse). So that you may either begin the 2d vol at chap. IX Concerning Contracts, or chap X Obligations as to the Use of Speech—The Inclosed is the Manuscript from p. 217 to p. 252. At which ever of the chapters you begin lay by carefully what goes before. Auchencairn July 3d 1753

Will: Leechman

...

July 3d sent to Mr Foulis from p. 217 to p. 252 Inclusive.

This belongs to the 1st Vol: of the Work.

November 2d compared from p. 145 to p. 169. for the Press.

II

The Public Advertiser for 6 February 1753²³

PROPOSALS for Printing by SUBSCRIPTION: A System of MORAL PHILOSOPHY. In Three Books. Written by the late FRANCIS HUTCHESON, L.L.D. *Professor of Philosophy in the University of Glasgow, and published from the Original Manuscript by his Son.* To which will be prefix'd Some Memoirs of the authors's life, by one of his Friends in the same University. The Work will be printed in Two Volumes Quarto. The Price to Subscribers is One Guinea; one half to be paid at the Time of subscribing, and the other at the Delivery of the Book in Sheets. The Work is to be put in the Press immediately, and will be ready to be delivered by the Beginning of November next. Subscriptions are taken in by A. Millar, and J. Nourse, and D. Wilson, in the Strand; and J. and J. Rivington, in St. Paul's Churchyard; at Oxford, by J. Fletcher; at Cambridge by W. Thurlbourn; at York, by J. Hilyard; at Edinburgh,

23. The announcement was repeated on the 8th. It was presumably this type of announcement that Foulis referred to in a letter to John Leslie, 6 February 1753: "The Proposals for Mr. Hutcheson's System of Moral Philosophy, are published." In David Murray, *Some Letters of Robert Foulis*, p. 30.

by A. Kincaird and R. Donaldson, and G. Hamilton and J. Balfour, and Messrs Fowlis in Glasgow.

12

The Public Advertiser for 22 April 1755²⁴

In a few Days will be printed, in Two Volumes, Quarto, A SYSTEM of MORAL PHILOSOPHY. In three books. Written by the late FRANCIS HUTCHESON, L.L.D. Professor of Philosophy in the University of Glasgow. Published from the Original Manuscript by his Son *Francis Hutcheson*, M.D. To which is prefixed, Some Account of the Life, Writings, and Character of the Author. By the Rev. WILLIAM LUCHMAN [*sic*], D.D. Professor of Divinity in the same University. Printed for A. Millar, in the Strand; and T. and T. Longman in Pater-noster Row.

24. With the opening line changed to “This Day was published” and only very minor differences, similar ads were published in the same paper for 22 April, 26 April, 29 April, and 3 May; in the *Whitehall Evening Post, or London Intelligencer* for 24 April, 26 April, 1–3 May, and 18 November; and in the *London Evening Post* for 18 November, 25 November, and 27 November 1755. But Philip Gaskell refers to ads in the *Glasgow Courant* and the *Glasgow Journal* that indicate that the work was “published by 12 May 1755” (Gaskell, *Bibliography of the Foulis Press*, p. 199). In the autumn ads, the following advice was added: “Those Noblemen and Gentlemen, who were Subscribers to this Work, and have not taken up their Subscription Books, will be pleased to send their Receipts and second Payment to A. Millar, in the Strand; by whom the Subscription Books are deliver’d.”

BIBLIOGRAPHY

Modern Sources

- Addison, Joseph. "Essay on the Pleasures of the Imagination." *Spectator* nos. 411–421 (21 June–3 July 1712).
- Barbeyrac, Jean. "An historical and critical account of the science of morality, and the progress it has made in the world, from the earliest times down to the publication of this work" (1706). Translated by George Carew, in Pufendorf, *The Law of Nature and Nations* (see below), pp. 1–75.
- . "The judgement of an anonymous writer on the original of this abridgment. With reflections of the translator, intended to clarify certain of the author's principles" (1718). Translated by David Saunders, in Pufendorf, *Whole Duty of Man* (see below), pp. 267–305.
- . *Traité du jeu*. 2 vols. Amsterdam, 1709.
- Baxter, Andrew. *An Enquiry into the Nature of the Human Soul; wherein the Immateriality of the Soul is Evinc'd from the Principles of Reason and Philosophy* (1733). 2 vols. Edinburgh, 1745.
- Bayle, Pierre. *Dictionnaire historique et critique* (1696). 3rd ed. 4 vols. Amsterdam, 1730.
- . *Pensées diverses sur la comète* (1683; first as *Lettre sur la comète*, 1682). Edited by A. Prat. 2 vols. Paris: Librairie Nizet, 1984.
- . *Political Writings*. Edited by Sally L. Jenkinson. Cambridge: Cambridge University Press, 2000.
- . *Réponse aux questions d'un provincial*. 5 vols. Rotterdam, 1704–7.
- . *Various Thoughts on the Occasion of the Comet*. Translated by Robert C. Bartlett. Albany: State University of New York Press, 2000.
- Berkeley, George. *Alciphron, or, The Minute Philosopher* (1732), in *The Works*, vol. 3.
- . *Passive Obedience* (1712, 3rd ed. 1713), in *The Works*, vol. 6, pp. 15–46.

- . *The Querist, Containing Several Queries Proposed to the Consideration of the Public* (1735–37), in *The Works*, vol. 6, pp. 101–81.
- . *The Works of George Berkeley Bishop of Cloyne*. Edited by A. A. Luce and T. E. Jessop. 9 vols. London: Thomas Nelson and Sons, 1948–57.
- Blackstone, William. *Commentaries on the Laws of England* (1765–69). 4 vols. Edited by Wilfrid Prest. Vol. 3, edited by Thomas P. Gallanis. Oxford: Oxford University Press, 2016.
- [Blair, Hugh?]. Review of *A System of Moral Philosophy*, by Francis Hutcheson. *Edinburgh Review* 1 (1755): 9–23.
- Brady, Robert. *Complete History of England*. London, 1685.
- . *Introduction to the Old English History*. London, 1684.
- Bruce Papers, T.3041/1/D4 (Alexander Haliday to William Bruce, 27 March 1754). PRONI. See full reference below.
- Bruce Papers, D2673/1/11 (Leechman to [William Bruce], c. June 1749). PRONI. See full reference below.
- Burnet, Gilbert. *Letters between the Late Mr. Gilbert Burnet and Mr. Hutchinson [sic] concerning the True Foundation of Virtue or Moral Goodness. Formerly published in the London Journal*. Edited by Gilbert Burnet (London, 1735). The letters are published in Hutcheson, *The Correspondence and Occasional Writings* (see below), pp. 135–93.
- Butler, Joseph. *The Analogy of Religion Natural and Revealed, to the Constitution and Course of Nature. To which are added two Brief Dissertations: I. Of Personal Identity; II. Of the Nature of Virtue*. London, 1736.
- . *A Dissertation on the Nature of Virtue*. In *Fifteen Sermons and Other Writings on Ethics*, edited by David McNaughton. Oxford: Oxford University Press, 2017.
- . *Fifteen Sermons* (1726; 2nd ed. 1729). In *Fifteen Sermons and Other Writings on Ethics*, edited by David McNaughton. Oxford: Oxford University Press, 2017.
- Bynkershoek, Cornelius van. *De dominio maris dissertatio* (1702; 2nd ed. 1744). Translated by Ralph van Deman Magoffin. New York: Oxford University Press, 1923.
- . *De foro legatorum liber singularis: A Monograph on the Jurisdiction over Ambassadors in both Civil and Criminal Cases* (1721, 2nd ed. 1744). Translated by G. J. Laing, introduction by Jan de Louter. Oxford: Clarendon Press, London: Geoffrey Cumberlege, 1946.
- . *Quaestionum juris publici libri duo*. Leiden, 1737.

- . *Traité du juge compétent des ambassadeurs, tant pour le civil que pour le criminel*. Translated by Jean Barbeyrac. The Hague, 1723.
- Campbell, Archibald. *An Enquiry into the Original of Moral Virtue*. London, 1733.
- . *The Necessity of Revelation: or an Enquiry into the Extent of Human Power with Respect to Matters of Religion*. London, 1739.
- Carmichael, Gershom. In *Natural Rights on the Threshold of the Scottish Enlightenment. The Writings of Gershom Carmichael*, edited by James Moore and Michael Silverthorne. Indianapolis: Liberty Fund, 2002. English translations of Carmichael's Supplements and Observations in his edition of Pufendorf, *De officio*.
- . *Philosophical Theses* (1707). In *Natural Rights on the Threshold of the Scottish Enlightenment. The Writings of Gershom Carmichael*, edited by James Moore and Michael Silverthorne. Indianapolis: Liberty Fund, 2002.
- Carmichael, Gershom, ed. *S. Pufendorfii De officio hominis et civis, juxta legem naturalem, libri duo. Supplementis et observationibus in academicae juventutis auxit et illustravit*. 2nd ed. Edinburgh, 1724.
- Clarke, John [of Hull]. *The Foundation of Morality in Theory and Practice Considered*. York, 1726.
- Clarke, Samuel. *A Demonstration of the Being and Attributes of God* (1705). Edited by Ezio Vailati. Cambridge: Cambridge University Press, 1998.
- . *A Discourse concerning the Unchangeable Obligations of Natural Religion, and the Truth and Certainty of the Christian Revelation*. London, 1706.
- . *A Letter to Mr. Dodwell; Wherein All the Arguments in His Epistolary Discourse against the Immortality of the Soul are Particularly Answered . . .* (1706). 6th ed. London, 1731.
- Coke, Edward. *Quinta pars relationum / The Fifth Part of the Reports*. London, 1607.
- Cumberland, Richard. *De legibus naturae disquisitio philosophica*. London, 1672.
- . *A Treatise of the Laws of Nature* (1727). Translated by John Maxwell, edited by Jon Parkin. Indianapolis: Liberty Fund, 2005.
- Derham, William. *Physico-Theology; or, A Demonstration of the Being and Attributes of God from His Works of Creation*. London, 1713.
- Doddridge, Philip. *The Correspondence and Diary of Philip Doddridge D.D.* Edited by John Doddridge Humphreys. 5 vols. London, 1829–31.

- Duncan, Richard. *Notices and Documents Illustrative of the Literary History of Glasgow, during the Greater Part of the Last Century*. Glasgow, 1831.
- Dunlop, William. *A Collection of Confessions of Faith, Catechisms, Directories, Books of Discipline, &c. of Publick Authority in the Church of Scotland*. 2 vols. Edinburgh, 1719–22.
- Fénelon, François de Salignac de la Mothe-. *Telemachus, Son of Ulysses* (1699). Edited and translated by Patrick Riley. Cambridge: Cambridge University Press, 1994.
- Filmer, Robert. *Observations concerning the Originall of Government, upon Mr Hobs 'Leviathan,' Mr Milton against Salmasius, H. Grotius 'De Jure Belli'* (1652), pp. 184–234. In *Patriarcha and Other Writings*, edited by Johann P. Sommerville. Cambridge: Cambridge University Press, 1991.
- . *Patriarcha. The Naturall Power of Kings Defended against the Un-natural Liberty of the People* (1680), pp. 1–68. In *Patriarcha and Other Writings*, edited by Johann P. Sommerville. Cambridge: Cambridge University Press, 1991.
- Fletcher, Andrew. *Two Discourses concerning the Affairs of Scotland* (1698). In *Political Works*, edited by John Robertson. Cambridge: Cambridge University Press, 1997, pp. 58–66.
- Gay, John. “A Dissertation concerning the Fundamental Principle and Immediate Criterion of Virtue or Morality.” In William King, *An Essay on the Origin of Evil*, translated by William Law (from *De origine mali* 1702). London, 1731, pp. xi–xxxiii.
- Grotius, Hugo. *De iure belli ac pacis, libri tres*. Edited by Jean Barbeyrac, with the notes of Johannes Fredericus Gronovius. Amsterdam, 1720.
- . *The Rights of War and Peace*. Originally edited by Jean Barbeyrac, translated by John Morrice et al. (1738). Edited by Richard Tuck. 3 vols. Indianapolis: Liberty Fund, 2005.
- Grove, Henry. *A System of Moral Philosophy*. 2 vols. London, 1749.
- GUL Ms.; see under Hutcheson, Francis.
- Harrington, James. *The Art of Lawgiving* (1659), pp. 599–704. In *The Political Works of James Harrington*, edited by J. G. A. Pocock. Cambridge: Cambridge University Press, 1977.
- . *The Commonwealth of Oceana* (1656), pp. 155–359. In *The Political Works of James Harrington*, edited by J. G. A. Pocock. Cambridge: Cambridge University Press, 1977.

- . *The Prerogative of Popular Government* (1658), pp. 389–566. In *The Political Works of James Harrington*, edited by J. G. A. Pocock. Cambridge: Cambridge University Press, 1977.
- Heineccius, Johann Gottlieb. *Antiquitatum romanarum iurisprudentiam illustrantium syntagma secundum ordinem Institutionem Iustiniani digestum* (1719). 2nd ed. Strassbourg, 1724.
- Hoadly, Benjamin. *Original and Institution of Civil Government* (1710). 2nd ed. London, 1710.
- Hobbes, Thomas. *Leviathan* (1651). Edited by Richard Tuck. Cambridge: Cambridge University Press, 1991.
- . *On the Citizen* [De cive]. Edited by Richard Tuck, translated by M. Silverthorne. Cambridge: Cambridge University Press, 1998.
- Hooker, Richard. *Of the Laws of Ecclesiastical Polity*. London, 1593–1661.
- Huber, Ulrich. *De jure civitatis libri tres. Novam juris publici universalis disciplinam continens* (1672). Franeker, 1692.
- Hume, David. *Dialogues concerning Natural Religion* (1779), pp. 25–133. In *Dialogues and Natural History of Religion*, edited by J. C. A. Gaskin. Oxford: Oxford University Press, 1993.
- . *An Enquiry concerning the Principles of Morals* (1751). Edited by Tom L. Beauchamp. Oxford: Clarendon Press, 1998.
- . *The Letters of David Hume*. Edited by J. Y. T. Greig. 2 vols. Oxford: Clarendon Press, 1932.
- . *Natural History of Religion* (1757), pp. 134–96. In *Dialogues and Natural History of Religion*, edited by J. C. A. Gaskin. Oxford: Oxford University Press, 1993.
- . *A Treatise of Human Nature* (1739–40). Edited by David Fate Norton and Mary J. Norton. Oxford: Oxford University Press, 2000.
- Hutcheson, Francis. *Collected Works*. Facsimile editions prepared by Bernhard Fabian. 7 vols. Hildesheim: Georg Olms Verlagsbuchhandlung, 1969–71.
- . *Compendiaria*. See *Philosophiae Moralis Institutio Compendiaria*.
- . *A Compend of Logic. To which is prefixed a Dissertation on the Origin of Philosophy and its Principal Founders and Exponents* (1756), pp. 1–56. In *Logic, Metaphysics, and the Natural Sociability of Man*, edited by James Moore and Michael Silverthorne. Indianapolis: Liberty Fund, 2006.
- . *The Correspondence and Occasional Writings of Francis Hutcheson*. Edited by James Moore and M. A. Stewart. Indianapolis: Liberty Fund, 2022.

- . *An Essay on the Nature and Conduct of the Passions and Affections, with Illustrations on the Moral Sense* (1728). Edited by Aaron Garrett. Indianapolis: Liberty Fund, 2002.
- . GUL Ms. Glasgow University Library copy of the manuscript of Hutcheson *System*. Glasgow University Library, GB 247 MS Gen. 110.
- . *An Inquiry into the Original of Our Ideas of Beauty and Virtue in Two Treatises* (1725, 4th ed. 1738). Edited by Wolfgang Leidhold. 2nd ed. Indianapolis: Liberty Fund, 2008.
- . *Logic, Metaphysics, and the Natural Sociability of Man*. Edited by James Moore and Michael Silverthorne. Indianapolis: Liberty Fund, 2006.
- . *On the Natural Sociability of Mankind* (1730), pp. 189–216. In *Logic, Metaphysics, and the Natural Sociability of Man*, edited by James Moore and Michael Silverthorne. Indianapolis: Liberty Fund, 2006.
- . *Philosophiae Moralis institutio compendiaria* (1742; 2nd ed. 1745) with *A Short Introduction to Moral Philosophy* (1747). Edited by Luigi Turco. Indianapolis: Liberty Fund, 2007.
- . *La philosophie naturelle, civile et morale*. Translated by M. E*** [Marc-Antoine Eidous]. 2 vols. Lyon, 1770.
- . *Short Introduction*. See *Philosophiae Moralis Institutio Compendiaria*.
- . *Sittenlehre der Vernunft*. Translated by Gotthold Ephraim Lessing. 2 vols. Leipzig, 1756. Facsimile edition with an introduction by Heiner Klemme. Bristol Thoemmes Press, 2000.
- . *Synopsis metaphysicae* (1744). In *Logic, Metaphysics, and the Natural Sociability of Man*, edited by James Moore and Michael Silverthorne. Indianapolis: Liberty Fund, 2006, pp. 57–187.
- . *Système de philosophie morale*. Edited and translated by Jeanne Szpirglas. Paris: Vrin, 2016.
- . *A System of Moral Philosophy in Three Books*. 2 vols. (1755), with an introduction by Daniel Carey. London: Continuum, 2005.
- Hutcheson, Francis, and James Moor (translators). *The Meditations of the Emperor Marcus Aurelius Antoninus* (1742). Edited by James Moore and Michael Silverthorne. Indianapolis: Liberty Fund, 2007.
- King, William. *De origine mali*, London, 1702.
- . *An Essay on the Origin of Evil*. Translated by William Law. London, 1731.

- La Rochefoucauld, François, Duc de. *Réflexions ou sentences maximes morales* (1665, definitive ed. 1678). In *Collected Maxims and Other Reflections*, translated and edited by E. H. and A. M. Blackmore and Francine Giguère. Oxford: Oxford University Press, 2007.
- Leechman, William. *A Sermon on the Nature, Reasonableness, and Advantages of Prayer*. Glasgow, 1743.
- Leibniz, Gottfried Wilhelm. *Nova methodus discendae docendaeque jurisprudentiae* (1667). In *Frühe Schriften zum Naturrecht*, edited and translated by Hubertus Busche and Hans Zimmermann. Hamburg: Felix Meiner Verlag, 2003, pp. 25–87.
- . “Opinion of the principles of Pufendorf” (1706). In *The Political Writings of Leibniz*, translated and edited by Patrick Riley. Cambridge University Press 1972, pp. 65–75.
- . *Theodicy: Essays on the Goodness of God, the Freedom of Man, and the Origin of Evil* (1710). Translated by E. M. Huggard. LaSalle, Ill.: Open Court, 1985.
- Locke, John. *An Essay concerning Human Understanding* (1689). Edited by Peter Nidditch. Oxford: Clarendon Press, 1975.
- . *A Letter concerning Toleration* (1689). In *A Letter concerning Toleration and other Writings*, edited by Mark Goldie. Indianapolis: Liberty Fund, 2010.
- . *Two Treatises of Government* (1689). Edited by Peter Laslett. Cambridge: Cambridge University Press, 1960.
- Long, Thomas. *A Resolution of Certain Queries concerning Submission to the Present Government* (1689). In *State Tracts, Publish’d on Occasion of the Late Revolution in 1688 and during the Reign of King William III*. 3 vols. London, 1705–7, I: 439–65.
- Machiavelli, Niccolò. *The Discourses on the First Decad of Titus Livy* (1517). Translated by Leslie J. Walker. 2 vols. London: Routledge & Kegan Paul, 1950.
- Malebranche, Nicholas. *The Search after Truth* (1674). Translated and edited by Thomas M. Lennon and Paul J. Olscamp. Cambridge: Cambridge University Press, 1997.
- Mandeville, Bernard. *An Enquiry into the Origin of Honour, and the Usefulness of Christianity in War* (1732). Edited by M. M. Goldsmith. London: Frank Cass, 1971.
- . “An Enquiry into the Origin of Moral Virtue.” In *The Fable of the Bees: or, Private Vices, Publick Benefits* (1714 [Part I] and 1729 [Part II]).

- Vol. 1, pp. 41–57. Edited by F. B. Kaye. Oxford: Clarendon Press, 1966. Facsimile edition. Indianapolis: Liberty Fund, 1988.
- . “Remarks.” In *The Fable of the Bees: or, Private Vices, Publick Benefits* (1714 [Part I] and 1729 [Part II]). Vol. 1, pp. 58–251. Edited by F. B. Kaye. Oxford: Clarendon Press, 1966. Facsimile edition. Indianapolis: Liberty Fund, Inc., 1988.
- . “A Search into the Nature of Society.” In *The Fable of the Bees: or, Private Vices, Publick Benefits* (1714 [Part I] and 1729 [Part II]). Vol. 1, pp. 323–69. Edited by F. B. Kaye. Oxford: Clarendon Press, 1966. Facsimile edition. Indianapolis: Liberty Fund, 1988.
- Milton, John. *Paradise Lost* (1667). Edited by Stephen Orgel, Jonathan Goldberg. Oxford: Oxford University Press, 2008.
- More, Henry. *An Account of Virtue: or, Dr. Henry More’s Abridgment of Morals* [*Enchiridion ethicum, praecipua moralis philosophiae rudimenta*, 1668]. Translated by Edward Southwell. London, 1690.
- . *Divine Dialogues. Containing Disquisitions concerning the Attributes and Providence of God*, with a preface by Francis Hutcheson. Glasgow, 1743.
- More, Thomas. *Utopia* (1516). Edited by George M. Logan, Robert M. Adams. Cambridge: Cambridge University Press, 1989.
- Moyle, Walter. *Democracy Vindicated. Essay upon the Constitution of the Roman Government* (c. 1699). In *Two English Republican Tracts*, edited by Caroline Robbins. Cambridge: Cambridge University Press, 1969, pp. 201–57.
- Pufendorf, Samuel. *De jure naturae et gentium libri octo* (1672, 2nd ed. 1684). Edited by Frank Böhling. 2 vols. Berlin: Akademie Verlag, 1998.
- . *De officio hominis et civis juxta legem naturalem libri duo*. Edited by Gottlieb Gerhard Titius. Leipzig, 1715.
- . *De officio hominis et civis juxta legem naturalem libri duo*, edited by Gershom Carmichael (1718). 2nd ed. Edinburgh, 1724.
- . *Dissertatio de systematibus civitatum*. Heidelberg, 1667. In *Dissertationes academicae selectiores and related Works*. Edited by Michael Seidler. Berlin: De Gruyter, 2025, pp. 163–86.
- . *Elementa jurisprudentiae universalis*. The Hague, 1660.
- . *The Law of Nature and Nations*. Edited by Jean Barbeyrac, translated by Basil Kennet. With “Historical and critical account of the science of morality” by Jean Barbeyrac. 5th ed. London, 1749.
- . *Les Devoirs de l’homme et du citoyen, tels qu’ils lui son prescrits par la loi naturelle*. Translated by Jean Barbeyrac (1707). 4th ed. Amsterdam, 1718.

- . *On the Duty of Man and Citizen* (1673). Translated by Michael Silverthorne, edited by James Tully. Cambridge: Cambridge University Press, 1991.
- . *Two Books of the Elements of Universal Jurisprudence*. Translated by William Abbott Oldfather, revised and edited by Thomas Behme. Indianapolis: Liberty Fund, 2009.
- . *Whole Duty of Man, According to the Law of Nature*. Translated by Andrew Tooke (1691, 5th ed. 1735), edited by Ian Hunter, David Saunders. With *Two Discourses* and *A Commentary* by Jean Barbeyrac, translated by David Saunders. Indianapolis: Liberty Fund, 2003.
- Rachel, Samuel. *De iure naturae et gentium dissertationes*. Kiel, 1676.
- Reid, Thomas. *Thomas Reid on Practical Ethics: Lectures and Papers on Natural Religion, Self-Government, Natural Jurisprudence and the Law of Nations*. Edited by Knud Haakonssen. Edinburgh: Edinburgh University Press, 2007.
- Rose, William. Review of *A System of Moral Philosophy*, by Francis Hutcheson. *Monthly Review, or Literary Journal* 13 (1755): 61–77, 100–112, 161–79.
- Selden, John. *De jure naturali et gentium juxta disciplinam Ebraeorum libri septem* (1640). In *Opera omnia*, edited by D. Wilkins. 3 vols. London, 1726, vol. 1.
- Shaftesbury, third Earl of [Cooper, Anthony Ashley]. *Characteristicks of Men, Manners, Opinions, Times* (1711). Edited by Douglas Den Uyl. 3 vols. Indianapolis: Liberty Fund, 2001.
- . *An Inquiry concerning Virtue or Merit* (1699). In *Characteristicks of Men, Manners, Opinions, Times* (1711), vol. 2, pp. 1–100. Edited by Douglas Den Uyl. 3 vols. Indianapolis: Liberty Fund, 2001.
- . *Miscellaneous Reflections on the Said Treatises, and Other Critical Subjects* (1711). In *Characteristicks of Men, Manners, Opinions, Times* (1711), vol. 3, pp. 1–209. Edited by Douglas Den Uyl. 3 vols. Indianapolis: Liberty Fund, 2001.
- . *Sensus Communis; an Essay on the Freedom of Wit and Humour* (1709). In *Characteristicks of Men, Manners, Opinions, Times* (1711), vol. 1, pp. 37–93, edited by Douglas Den Uyl. 3 vols. Indianapolis: Liberty Fund, 2001.
- Sharrock, Robert. *ΥΠΟΘΕΣΙΣ ΗΘΙΚΗ de finibus et officiis secundum naturae ius*. 2nd ed. London, 1667.
- Sidney, Algernon. *Discourses concerning Government* (1698). Edited by Thomas G. West. Indianapolis: Liberty Fund, 1990.

- Smith, Adam. *The Theory of Moral Sentiments* (1759). Edited by D. D. Raphael and A. L. Macfie. Oxford, 1976. Reprint, Indianapolis: Liberty Fund, 1982.
- Stair, James Dalrymple, 1st Viscount. *The Institutions of the Law of Scotland* (1693). Edited by David. M. Walker. Edinburgh: Edinburgh University Press, 1981.
- Stuart, James. *Historical Memoirs of the City of Armagh*. Newry, 1819.
- Suárez, Francisco. *Selections from Three Works: A Treatise on Laws and God the Lawgiver* (1612); *A Defence of the Catholic and Apostolic Faith* (1613); *A Work on the Three Theological Virtues: Faith, Hope, and Charity* (1621). Edited by Thomas Pink. Indianapolis: Liberty Fund, 2015.
- Vinnius, Arnoldus. *In quattuor libros Institutionum imperialum commentarius academicus et forensicus*. Amsterdam, 1692.
- Wicquefort, Abraham de. *L'Ambassadeur et ses fonctions*. 2 vols. The Hague, 1680–81.
- . *The Ambassador and his Function*. Translated by John Digby. London, 1716.
- [Wollaston, William]. *The Religion of Nature Delineated*. London, 1722.

Ancient Sources

Unless otherwise specified, references are to the most recent editions in the Loeb Classical Library, general editor Jeffrey Henderson, Cambridge: Harvard University Press.

- Ancient Roman Statutes: A Translation with Introduction, Commentary, Glossary and Index*. Edited and translated by Allan Chester Johnson, Paul Robinson Coleman-Norton, and Frank Card Bourne. Clark, N.J.: Law Book Exchange, 2003.
- Antoninus, Marcus Aurelius. *The Meditations of the Emperor Marcus Aurelius Antoninus*. Translated by Francis Hutcheson and James Moor (1742). Edited by James Moore and Michael Silverthorne. Indianapolis: Liberty Fund, 2007.
- Aristotle. *De Anima / On the Soul*.
- . *Magna moralia*.
- . *Nicomachean Ethics*.
- . *Poetics*.

- . *Politics*.
- Cicero. *Cato maior de senectute / Cato the Elder on Old Age*.
- . *De amicitia / On Friendship*.
- . *De finibus bonorum et malorum / On Ends*.
- . *De inventione / On Invention*.
- . *De legibus / Laws*.
- . *De officiis / On Duties*.
- . *De partitione oratoria / Classification of Oratory*.
- . *De re publica / The Republic*.
- . *Orationes in Verrem / Against Verres*.
- . *Tusculanae disputationes / Tusculan Disputations*.
- Diodorus Siculus. *The Library of History*.
- Diogenes Laërtius. *Lives of Eminent Philosophers*.
- Dionysius of Halicarnassus. *Roman Antiquities*.
- Epictetus. *Discourses as Reported by Arrian*.
- Homer. *Iliad*.
- Horace. *Odes*.
- . *Satires*.
- Justinian. *Corpus juris civilis*. 2 vols. Amsterdam, 1700.
- . *Digesta, sive Pandectae*. In *Corpus juris civilis*. 2 vols., Amsterdam, 1700. Vol. 1, pp. 69–1037. Translation, *The Digest of Justinian*. Edited and translated by Alan Watson, 2 vols. Philadelphia: University of Pennsylvania Press, 1985.
- . *Institutiones, sive Elementa iuris*. In *Corpus juris civilis*. 2 vols. Amsterdam, 1700. Vol. 1, pp. 1–68. Translation, *Justinian's Institutes*. Translated by Peter Birks and Grant McLeod. London: Duckworth, 1994.
- . *Novellae*. In *Corpus juris civilis*. 2 vols. Amsterdam, 1700. Vol. 2, pp. 493–700. Translation, *The Novels of Justinian: A Complete Annotated English Translation*. Edited and translated by David J. D. Miller and Peter Saaris. 2 vols. Cambridge: Cambridge University Press, 2018.
- Juvenal. *Satires*.
- Livy. *Ab urbe condita / From the Founding of the City*.
- Lucretius Carus, Titus. *De rerum natura*.
- Nonius Marcellus. *De proprietate sermonum*. In Denis Godefroy, *Auctores latinae linguae in unum redacti corpus*. Genua, 1622, cols. 481–800.
- Philo Judaeus, *On Special Laws*.
- Plato. *Alcibiades*.

- . *Apology*.
 ———. *The Republic*.
 Plutarch. *Lives*.
 Polybius. *The Histories*.
 Quintilian. *Institutes of Oratory*.
 Seneca. *Epistles*.
 Strabo. *Geography*.
 Tacitus. *Annals*.
 Virgil. *Aeneid*.
 ———. *Georgics*.
 Xenophon. *Constitution of the Lacedaemonians*.
 ———. *Cyropaedia*.
 ———. *Oeconomicus*.

Secondary Literature

- Addison, W. Innes. *The Matriculation Albums of the University of Glasgow. From 1728 to 1858*. Glasgow: James Maclehose and Sons, 1913.
- Brown, Michael. *Francis Hutcheson in Dublin, 1719–1730*. Dublin: Four Courts Press, 2002.
- Cairns, John W. “Enforced sojourners: Enslaved apprentices in eighteenth-century Scotland.” In *Ad Fontes: Liber Amirocum Prof. Beatrix van Erp-Jacobs*, edited by E. J. M. F. C. Broers and R. M. H. Kubben. Nijmegen: Wolf Legal Publishers, 2014, pp. 67–81.
- Carey, Daniel. *Locke, Shaftesbury, and Hutcheson. Contesting Diversity in the Enlightenment and Beyond*. Cambridge: Cambridge University Press, 2009.
- Catterall, Helen Tunnicliff, ed. *Judicial Cases concerning American Slavery and the Negro*. Vol. 1: *Cases from the Courts of England, Virginia, West Virginia, and Kentucky*. Washington, D.C.: Carnegie Institution of Washington, 1926.
- Emerson, Roger L. *Academic Patronage in the Scottish Enlightenment*. Glasgow, Edinburgh and St. Andrews. Edinburgh: Edinburgh University Press, 2008.
- Gaskell, Philip. *A Bibliography of the Foulis Press*. 2nd ed. Winchester: St. Paul’s Bibliographies, 1986.
- Grote, Simon. *The Emergence of Modern Aesthetic Theory. Religion and Morality in Enlightenment Germany and Scotland*. Cambridge: Cambridge University Press, 2017.

- Haakonssen, Knud. "The civil order: Law, punishment and social value." In *The Cambridge Companion to Pufendorf*, edited by Knud Haakonssen and Ian Hunter. Cambridge: Cambridge University Press, 2023, pp. 216–35.
- . "Early-modern natural law theories." In *Cambridge Companion to Natural Law Jurisprudence*, edited by George Duke and Robert P. George. Cambridge: Cambridge University Press, 2017, pp. 76–102.
- . "Natural rights or political prudence Toleration in Francis Hutcheson." In *Natural Law and Toleration in the Early Enlightenment*, edited by J. Parkin and T. Stanton. Proceedings of the British Academy, 2013, pp. 183–200.
- Heydt, Colin. *Moral Philosophy in Eighteenth-Century Britain. God, Self, and Other*. Cambridge: Cambridge University Press, 2018.
- Hogan, Sheena L. *A Posthumous Publication: Francis Hutcheson's System of Moral Philosophy (1755)*. Unpublished Ph.D. dissertation, University of Aberdeen, 2013.
- Leneman, Leah. *Alienated Affections. The Scottish Experience of Divorce and Separation, 168–1830*. Edinburgh: Edinburgh University Press, 1998.
- Maurer, Christian. "'The grievances from toleration': Scotland heading towards the Enlightenment." *Global Intellectual History* 5 (2020): 247–63.
- . *Self-love, Egoism and the Selfish Hypothesis. Key Debates from Eighteenth-Century British Moral Philosophy*. Edinburgh: Edinburgh University Press, 2019.
- McBride, Ian. "The school of virtue Francis Hutcheson, Irish Presbyterians and the Scottish Enlightenment." In *Political Thought in Ireland since the Seventeenth Century*, edited by D. George Boyce, Robert Eccleshall, and Vincent Geoghegan. London: Routledge, 1993, pp. 73–99.
- Moore, James. "Evangelical Calvinists versus the Hutcheson Circle: Debating the faith in Scotland, 1738–1739." In *Debating the Faith: Religion and Letter Writing in Great Britain, 1550–1800*, edited by A. Duncan-Page and C. Prunier. Dordrecht: Springer, 2013, pp. 177–93.
- . "Francis Hutcheson, 1694–1746." In *Oxford Dictionary of National Biography*. 61 vols. Oxford: Oxford University Press, 2004.
- . "Hume and Hutcheson." In *Hume and Hume's Connexions*, edited by M. A. Stewart and John P. Wright. University Park: Pennsylvania State University Press, 1995, pp. 23–57.
- Murray, David. *Some Letters of Robert Foulis*. Glasgow: J. Maclehouse and Sons, 1917.

- ODNB (*Oxford Dictionary of National Biography*). 61 vols. Oxford: Oxford University Press, 2004.
- PRONI (Public Record Office of Northern Ireland). <https://www.communities-ni.gov.uk/topics/public-record-office-northern-ireland-proni>.
- Robbins, Caroline. "'When It Is That Colonies May Turn Independent': An analysis of the environment and politics of Francis Hutcheson (1694–1746)." *William and Mary Quarterly* II (1954): 214–51.
- Scott, Hew. *Fasti ecclesiae scoticanae. The Succession of Ministers in the Church of Scotland from the Reformation*. Vol. 7. Edinburgh: Oliver and Boyd, 1928.
- Scott, William Robert. *Francis Hutcheson: His Life, Teaching and Position in the History of Philosophy*. Cambridge: Cambridge University Press, 1900.
- Seidler, Michael. "Economising natural law: Pufendorf on moral quantities and sumptuary legislation." In *Philosophy, Rights and Natural Law. Essays in Honour of Knud Haakonssen*, edited by Ian Hunter and Richard Whatmore. Edinburgh: Edinburgh University Press, 2019, pp. 241–77.
- Stewart, M. A. *The Kirk and the Infidel. An Inaugural Lecture*. Lancaster: Lancaster University Publications Office, 1995.
- . "Rational dissent in early eighteenth-century Ireland." In *Enlightenment and Religion: Rational Dissent in Eighteenth-Century Britain*, edited by Knud Haakonssen. Cambridge: Cambridge University Press, 1996, pp. 42–63.

INDEX

*Notes by Hutcheson and Leechman are indicated using symbols *, †, ‡, and § while notes from the Liberty Fund editors use numbers. Italic roman numbers indicate the illustrations in the preliminary pages. A separate index to scriptural citations follows at the end of the subject index.*

- Abernethy, John, 624, 624*n*₃
 absolute aristocracy, 517, 541–42
 absolute monarchy, 508, 516–17, 526,
 528*n*[†], 536, 541–42, 549
 accession(s), 306–7, 306*m*₅
 Addison, Joseph, 52
 adultery, 356, 448–49, 460–61*nm*₆–17,
 460–67, 461–64*n*^{*}, 464*m*₈
 adventitious rights: access to, 276;
 human dominion over animals
 and, 284–89; as ordinances of God
 and man, 537; real, 284, 309–12,
 309*m*₁, 316–18, 323, 343, 456;
 sources of, 271. *See also* personal
 rights
 affections: amiable, 91, 93, 417, 470;
 benevolent, xiii, 17, 49, 59, 73–74,
 89; calm, 46*n*^{*}, 49, 49*m*₈, 50,
 122*n*₅, 164, 227–30; character and,
 159, 161, 237; common good and,
 59, 79, 91, 218; confined, 159, 210;
 conformity of, 84; conjugal, 49,
 65, 76, 94, 128, 230, 446; con-
 sciousness of, 45, 74, 91; cultiva-
 tion of, xiv, 71, 75–76, 91, 145;
 deformity/defects in, 12*n*^{*}, 96;
 desire for, 93, 272; dignity and, 94,
 136, 158–59, 240; diligence and,
 66, 295; disinterested, xiii, 14, 24,
 71–72, 74, 78, 92, 471; dispositions
 and, 3, 59, 94; enjoyment and, 98,
 159–61, 164, 204, 210; evil and, 95,
 110, 158, 220, 222, 227; friendship
 and, 17, 96; to God, 201–8, 210,
 358; of governors, 503; gratification
 of, 98–99; guilt and, 224, 230;
 happiness and, 65, 143, 158, 230,
 295; honour and, 235; human
 nature and, 618; of Hutcheson's
 students, 24; judgment of, 226–36;
 of liberty, 170; moral approbation
 and, 59, 61, 74, 81, 85–90, 94–95,
 100; moral faculty and, 66, 71, 72,
 87, 105, 116–17, 122, 163, 194, 201,
 203, 210; moral sense and, 28, 30,
 89, 93, 96, 112, 127, 227; motives
 of, 207, 213; pity and, 76, 110, 159,
 162; private good and, 75*n*^{*}, 98;
 property rights and, 293–94;
 public, 14, 17; restraint of, 12, 80,
 164, 165, 228; selfish, 49, 71, 79–80,
 90–91, 98, 100, 158–59, 227;
 sympathetic, 56–57, 76–78, 147, 155;
 tempers and, 96–97, 166, 169, 205,

- affections (*continued*)
 218, 220, 227–28, 231; unnatural, 169*n*20; usefulness of, 157–58; vanity and, 166, 194; virtue and, 28, 63, 76, 81, 93, 135, 157, 218, 230; of will, 89. *See also* emotions; parental affections; passions; social affections
- agrarian laws, 298–99, 298*n*4, 521–22, 521*n*8, 530
- Alexander the Great, 423*m*11, 605*n**
- alienable rights, 245–46, 326, 481*n*2, 482, 535, 558
- alienation of property, 307, 309, 312, 316, 320*n**
- ambassadors, 611–14, 613*n*20
- amiableness: of affections, 91, 93, 417, 470; character and, 278; compassion and, 400; of dispositions, 17, 30, 279, 417, 451, 477; of human nature, 13; of motives, 249; of tempers, 17; virtue and, 108
- anarchy, 492, 494–99
- anger: calm mind and, 128; civil law and, 170; crime and, 233*n*†, 241; degree of vice and, 97; gratification of, 148; injuries and, 149; misery and, 178; natural causes of, 231; obstacles of, 75; passions and, 97, 105, 125, 148, 269; of political parties, 533; provocation to, 232; punishment and, 162, 241*n**; repelled by selfish passions, 56; shame and, 105, 123; sorrow and, 123; uneasiness and, 128, 162–64; ungoverned, 123; violence and, 49, 593; vows proceeding from, 364
- animals: appetites of, 284; bodily structure of, 173–75; compassion for, 286, 289; damage done by, 394–95; human dominion over, 284–89, 289*n**; instincts of, 284, 441–42; parental partnerships among, 442
- Antoninus, Marcus Aurelius, 113*n**, 232–33*n*†, 275*m*13
- appetites: of animals, 284; benevolent, 49; bodily, 50, 62; cravings and, 55, 135, 139–40, 142, 153, 267; depravity of, 163; gratifications of, 90, 125, 127–28, 141, 142, 240; impairment of, 137; injuries and, 262; instincts and, 43, 108; natural, 127, 138, 139, 189, 265, 290; pain of, 125, 142; power and, 43, 47*n**, 211; private rights and, 265; restraint of, 12, 105, 123, 132, 357, 412, 470; selfish, 48, 49, 79, 90–91, 100, 266; sensual, 68, 97, 129; temperance and, 137, 182; uneasiness of, 127, 142, 153
- Appius, Claudius, 111*m*12
- arbitrators: in child-parent disputes, 477; corruption of, 436; integrity of, 434, 435; in marital conflict, 451*n*8; power of, 435; prudence of, 403, 434; right to, 397; selection of, 66; self-interest and, 492; unbiased, 299, 344, 395, 435; during war, 400; wisdom of, 344, 398, 434, 435, 476, 487, 539
- Arbuckle, James, 8*m*14, 624, 624*n*4
- architecture, 54, 62, 105, 414, 549
- Aristippus, 71*n*4
- aristocracy: absolute, 517, 541–42; conquest rights in, 564; elective, 517, 526–27; hereditary, 517, 521, 526, 560; oligarchy and, 517, 517*n*†, 527*n**, 541, 614; property and, 521; succession rights in, 560; supreme power and, 513, 515, 517, 527, 529, 538
- Aristotle: on application of general principles, 433; on happiness, 62,

- 469; on judgment, 138; on monarchy, 528n†; on morals of good men, 225; on natural inequality, 480nm1–2; on natural slavery, 277–78; *Nicomachean Ethics*, 53n§, 232†, 491n*; on oligarchy, 517n†, 527n*; on pleasure, 60; *Politics*, 491n*; on timocracy, 517n†, 528n*
- Arminians, 573n*
- arts: cultivation of, 55, 495; dignity of, 414; imitation and, 62, 107, 142, 153, 155; improvements in, 495, 511; ingenious, 88, 90, 93, 105, 131, 135, 142–43, 150, 278, 523, 619; mechanic, 109, 300, 414, 493, 574; painting, 62, 88, 105, 107, 143, 155, 347, 414; pleasure and, 62, 95, 107, 139, 150, 153, 414; sculpture, 62, 105, 155, 414. *See also* music
- assertory oaths, 360–62, 361n7
- atheism, 28–29n*, 208–9, 208m10, 570, 573n*
- aversion: as act of the will, 46–47; to crime, 151–52; desire and, 219; to falsehoods, 420; to ignorance, 92; to infamy, 353; to labour, 123; to marriage, 457–58, 476–77; to misery, 47n*; to moral evil, 164; natural causes of, 231; to sleep, 57; uneasiness and, 72, 165
- bail contracts, 383
- Balguy, John, 627m5
- ballot. *See* voting
- Barbeyrac, Jean: on burial rights, 410n8; on coinage, 367n5; on conquest and subjection, 556n9; on conscience, 238n†, 238n4; on damages, 392n†; on divorce, 455m12; ingeniousness of, 499n7; on polygamy, 448n6; on property, 291n3, 296m1; on punishment, 583m12; on quasi contracts, 384n2; on speech, 346m1; on state of nature, 262n4; on state systems, 514m9
- Baron, Richard, xviii7
- bartering, 300, 377, 377n5
- baseness, 26, 130, 152, 155, 196, 382
- Bayle, Pierre, 184n*, 208m10
- beauty: colours and, 45; of divine law, 26; of imagination, 23, 52; imitation of, 53, 54; moral, 12n*, 96, 162, 204, 230, 232, 282; moral character and, 443; perception of, 45, 52, 142; pleasure and, 44, 54, 82, 87, 153, 203; taste for, 87; virtue and, 22, 206
- beneficence: benevolence vs., 73n9; of contracts, 373–76, 373m1; happiness and, 89; honour and, 102; of Hutcheson, 18; mediators of, 136; moral approbation and, 82; moral faculty and, 116, 262; private rights and, 265
- benevolence: as act of the will, 47; affections and, xiii, 17, 49, 59, 73–74, 89; appetites and, 49; beneficence vs., 73n9; desire and, 72; disinterested, xiii–xvi, xviii–xix, 47n*, 71n6, 73n9, 116n20; dispositions and, 63, 94, 95, 178; emotions and, 47m5; of God, 193, 224; passions and, xiii, 49, 50, 56; public good and, 18; scopes of, 48m17; tempers and, 294; universal, 79n22, 91, 98, 100, 135n*, 234m5; virtue and, 241n*
- Berkeley, George, 424m13, 426–27m17, 483n3
- Blackstone, William, 577n*
- Blair, Hugh, xxiii, 71n6
- Böhme, Jacob, 289n*

- Boulter, Hugh, 8, 8*m*11
 Bruce, William, xx, xxii, 623–29
 Brutus, Lucius Junius, 111*m*12
 burial rights, 410*n*8
 Burnet, Gilbert (pseudonym “Philaretus”), 8, 8*m*15, 12*n**, 85*n*8, 345*m*1, 501*n*8
 Butler, Joseph: *Analogy of Religion*, 181*m*12, 241*n**; *Sermons*, 111*m*18, 30*n**, 41*n*3, 70*n*2, 71*n*6, 87*m*14, 100*n*34, 234*m*15; on supremacy of conscience, 87*m*14, 100*n*34
 Bynkershoek, Cornelius van, 320*n**, 596*n*4, 606–7*m*14, 611*m*9

 Calvinists, 573*n**
 Campbell, Archibald, 9*m*17, 73*m*13, 76*m*17, 81*m*1, 103*n*3, 134*n*2
 Canonists, 256, 259–60, 459*n**, 460
 canon law, 455*m*12, 465
 capital punishment, 403–4, 447, 455, 456, 462*n**, 582*m*10
 Carmichael, Gershom: on consent to subjection, 556*n*9; on contracts, 501–2*n*8; on divorce, 460*m*16; as inspiration for Hutcheson, 121*n*3; on marriage, 459*m*15; on natural rights, 481*n*2; on property, 291*n*3, 296*m*1; on punishment, 583*m*12; on signification, 346*m*1; on state of nature, 262*n*4; as University of Glasgow professor, xvi, 9, 9*m*16
 Carteret, John (Lord Granville), 7, 7*n*8
 Carus, Titus Lucretius, 129*m*16
 celibacy, 408, 466
 census, 590–91, 590*n*21
 character: affections and, 159, 161, 237; amiableness and, 278; deformity of, 87; diligence and, 225; disagreeable, 17; good-will and, 65; judgment of, 220, 228–29; modesty and, 104; moral sense and, 28, 59; of philosophers, 15; sensual pleasure and, 160; violence in ruining of, 189; virtuous, 20, 187, 189; witness testimony and, 437. *See also* moral character
 charity: donations and, 303; good-will and, 76; indications of, 125; lending and, 379; natural rights and, 280–81; to poor, 575; of society, 410; virtue and, 426
 chastisement vs. punishment, 584
 Cheyne, George, 289*n**
 children: anger and, 58; aversion to sleep, 57; of captives in war, 387; desire for, 65, 77, 276, 408, 470; education of, 408, 442–49, 468, 471–74, 477–78; enslavement of, 387–88, 387*n*6, 479, 489; gratitude and, 57, 470–71, 476; ignorance of, 471, 472; injuries and, 58; labour of, 50, 388–90; love of, 445; maintenance of, 178, 386–90, 408, 474, 489; masters of, 388; moral faculty and, 472*n*2; motion and, 57–58; as property, 472*n*2, 473–74, 473*n**; reasoning of, 473–75, 503; rights and duties of, 470–79; sympathy and, 56, 78; truth and, 58, 92; uneasiness of, 50. *See also* parents
 Christianity: dispensations and, 256; divorce and, 463–64*n**, 464–65; marriage and, 450*n**, 456, 459, 460; natural justice and, 390; precepts of, 13; slavery and, 481*n*2, 490; theological conflicts and, 572, 573*n**; truth of, 23–24. *See also* God; scriptural citations
 Christina (queen of Sweden), 607*n**
 Church of Ireland, 1*m*1, 6*n*7, 7*n*9, 8*m*11
 Church of Scotland, xxiii, 4*m*1, 360*n**

- Cicero: on Cynics, 356*m*10; on desire for knowledge, 92; on fortune, 415, 415*n*†; on keeping promises, 376*n*†; on moral sense, 167*n**; on property cases, 306*n**; on Stoics, 46*n**, 90*m*19; *Tusculan Disputations*, 153*n**; on virtue, 88*n**, 135*n*†
- civil government: corruption in, 526, 529, 530, 533, 534; desire for, 491–92; duration of political union, 615–21; fidelity in, 518–19, 525–28; imagination and, 502; independence from foreign power, 579–80; motives for, 438, 491–502, 499*n*7; natural law and, 300; natural liberty and, 273, 409, 434, 509; numbers fittest for, 522–24; oligarchy, 517, 517*n*†, 527*n**, 541, 614; right of punishment in, 409; right of resistance in, 526, 536, 538–39, 544, 563, 593; self-interest and, 499; state of liberty and, 264; timocracy, 517*n*†, 528*n**; will in, 494, 497; wisdom in, 518–19, 525–28. *See also* aristocracy; civil law; civil society; democracy; governors; monarchy; supreme power
- civil law: accession rights and, 306; anger and, 170; commerce and, 377; on damages, 394–95, 483*m*3; divorce and, 460–62; external rights and, 581, 582; marriage and, 452–54, 459–60; nature of, 580–81; obligation and, 386, 505*n*5, 509; parental power and, 479; property rights and, 255, 307, 317; punishment for violation of, 264, 582–86; rules of prescription and, 305; sanctions of, 262, 264, 582–86; in state of liberty, 262, 264. *See also* Roman law
- civil liberty, 8, 23, 545–46
- civil power: common good and, 473, 508*m*10, 511, 539, 541–42; of conquerors, 553, 557–60; consent and, 352, 504–8, 505*n*5, 508*m*10, 560; constitution of, 549; equality and, 278; governors and, 498, 500, 510–13; justice and, 493, 496, 498, 508, 511; natural method of constituting, 503–14; necessity of, 491, 496–97; paternal authority and, 475*n*4; property and, 520*n*7; religion and, 567*nm*1–2; state of liberty and, 264; submission to, 273, 500; succession rights and, 550, 551; types of, 510–12, 512*n**, 512*n*†; witness testimony and, 352. *See also* supreme power
- civil society: atheism in, 208*m*10; contracts in, 330, 462, 499–502*nm*7–8, 504–5, 557; crime in, 399–403; dangers arising in, 524; extraordinary rights in, 524; laws disobeyed in, 262; mankind as naturally fit for, 491; secular rights in, 567*m*1; violence in, 262, 396–400, 396*n*3, 473
- Clarke, John, 73*m*13, 76*m*17
- Clarke, Samuel, 4–5, 4–5*nm*2–3, 85*n**, 627*m*15
- Cleghorn, William, 19*n*23
- coinage, 367*n*5, 368–72, 379
- Collatinus, Tarquinius, 111*m*12
- colours, 5, 44, 45, 52, 53, 550
- commerce: bartering, 300, 377, 377*n*5; civil law and, 377; coinage for, 367*n*5, 368–72, 379; contracts and, 363, 377; demand for goods in, 366–70; dignity and, 366; faith in, 311, 363, 368; prudence and, 361, 367; value of goods in, 365–72; vows and, 362; wealth and, 379, 380. *See also* loans; merchants

- commodatum contracts, 374–76
- common good: affections and, 59, 79, 91, 218; civil power and, 473, 508*n*10, 511, 539, 541–42; contributions to, 413, 415; moral faculty and, 150; moral sense and, 238*n*4; natural law and, 12, 251, 549; promotion of, 12, 14, 228, 234, 418–19; social dispositions and, 268
- compassion: amiableness and, 400; for animals, 286, 289; aversion misery as, 47*n**; impulse to, 58, 224, 235; injuries and, 156; misery and, 148; natural, 165, 191, 289, 496; social affections and, 66, 161; sympathetic, 78, 146, 155
- compensation: for child maintenance, 388, 389, 474, 478; conqueror demands for, 554–55; for damages, 235–36, 310, 361, 373, 375, 390–95, 400, 409, 486–87, 512, 548, 601–2; for enslaved people, 277*n*17, 387*n*6, 390; for inventions, 409–10; pecuniary fines as, 465, 587; perfect rights to, 482; for servants, 480–83; undue, 391*n**
- concubinage, 450–51, 450*n**, 466
- Confucius, 568*n**
- conjugal affections, 49, 65, 76, 94, 128, 230, 446
- conquest, rights of, 552, 555*n*8, 556, 557, 564
- conscience: antecedent vs. consequent, 238*n*4; Butler on supremacy of, 87*n*14, 100*n*34; erroneous, 165, 166, 223, 224; liberty of, 242; moral faculty and, 223; moral obligation and, 24; obligation and, 244, 331; Pufendorf on, 223*n*12, 237–38*n*†; rights of, 243, 244, 594
- consent: civil power and, 352, 504–8, 505*n*5, 508*n*10, 559; contracts and, 324, 328–33, 337, 374, 376, 385; duels and, 400; for governance, 278, 279; for labour, 482; for marriage, 276, 454–55, 455*n*12, 460, 473*n**, 476–77; oaths and, 360–62; to parental power, 472*n*2, 473–79, 477*n*6; to polity changes, 616; property rights and, 255, 301, 318, 321, 324, 421; to subjection, 556*n*9, 559; supreme power and, 536, 547
- Constantine (Roman emperor), 462*n**
- contracts: of bail, 383; beneficent, 373–76, 373*n*1; in civil society, 330, 462, 499–502*n*n7–8, 504–5, 557; commerce and, 363, 377; commodatum, 374–76; consent and, 324, 328–33, 337, 374, 376, 385; depositum, 376; diligence and, 373–74, 376; equality in, 480; external rights and, 326, 337–38; faith in, 358; of hazard, 381–82; imperfect, 456; insurance, 382; integrity and, 378; interpretation of, 438*n**; loans for consumption, 378–79; lotteries and gaming, 381, 382; mandatum, 373–74; marriage, 444, 446–50, 453–56, 460*n*16; master-servant, 480, 482, 483; natural law and, 501–2*n*8; negligence and, 375; onerous, 373, 373*n*1, 376–83, 480, 480*n*1; of partnership, 381, 536; personal rights and, 343, 456; political union and, 615–17; quasi, 345*n*1, 384*n*n1–2, 388–91, 478, 502*n*8; real rights and, 343, 456; setting and hiring in, 378; in social life, 373–83; of surety, 383; violation of, 364; void, 360; during war, 556–59

- controversies: avoidance of, 42;
intellectual, xix–xx; natural liberty
and, 434–38; violence in, 66,
437–38; witness testimony and,
352, 436–37. *See also* arbitrators
- Cooper, Anthony Ashley. *See*
Shaftesbury, Earl of
- corporal punishment, 452, 579, 587
- Council of Trent (1563), 455*m*12
- covenants, 244, 323, 328, 336–38, 343,
377, 556
- crime: acquittals for, 86–87; anger
and, 233*n*†, 241; aversion to,
151–52; in civil society, 399–403;
comparison of, 232–33*n*†; damages
as, 392*n**; of falsehood, 208;
ignorance and, 152; imperfect right
violations and, 246; mercy and,
578; oaths in matters involving,
362; of obscenity, 356; passions
and, 152, 156, 241; prevention of,
355; Stoics on, 233*n*†; violence and,
156. *See also* punishment
- Cumberland, Richard, xiv, 42, 42*n*4,
247*n*26
- customary signs, 347
- Cynics, 71*n*4, 355–56, 356*m*10
- Cyrenaics, 70, 71*n*4, 156
- damages: Barbeyrac on, 392*n*†; civil
law on, 394–95, 483*n*3; compensa-
tion for, 235–36, 310, 361, 373, 375,
390–95, 400, 409, 486–87, 512,
548, 601–2; as crimes, 392*n**; for
delay of payment, 395–96; by
enslaved people, 394, 395*n**; for
injuries, 392–95; liability for, 373,
378, 588–89; negligence and, 395,
403; by servants, 394, 482; during
war, 601–2
- debt and debtors: in commerce, 371;
delay of payment for, 395–96;
delegation and, 405*n**; discharge
of, 219–20, 310, 371, 385, 388–89,
404; dispensations and, 259;
inheritances and, 385, 385*n**;
insolvency and, 220, 313, 377, 383,
396–97, 403; integrity of, 310;
natural rights and, 482; of
servants, 482–83; slavery and, 390
- decency, 61, 63, 90, 105, 458
- deformity, 12*n**, 53, 87, 108, 153,
230–31, 261
- demand for goods, 366–70
- democracy: conquest rights in, 564;
equality in, 485, 517; establishment
of, 505; popular assemblies in, 527,
528, 530–34, 538, 546; property and
agrarian laws in, 521–22, 530;
supreme power and, 515, 517–18,
529, 546; wealth in, 521, 530
- depositum contracts, 376
- Derham, William, 448*n*6
- derived property, 296, 309–23, 309*m*1
- Descartes, René, 121*n*3
- desire: as act of the will, 46–47; for
affections, 93, 272; aversion and,
219; balance with reason, 266*m*12;
benevolent, 72; calm, xxiii, 29,
47–50, 90, 98–99, 122; for
children, 65, 77, 276, 408, 470; for
civil government, 491–92;
communication of, 345, 347;
enjoyment and, 48, 121, 126, 137;
for friendship, 65, 108; for
happiness, xxiii, 29, 48–49, 71,
73–74, 98, 116, 177, 272; for
honour, 49, 50, 73, 83, 103, 107,
159, 402; for knowledge, 3, 6, 17,
22, 55, 92, 278; for marriage, 276;
misery and, 97, 126; of moral
excellence, xviii–xix, 29, 80,
93*m*24, 93–95, 122, 122*n*8, 158;
motives of, 72–75; pain of, 73; for

desire (*continued*)

perfection, 29, 47–48, 104, 218;
 for pleasure, 43, 58, 64, 65, 233^{n†};
 for power, 130, 166, 168; for
 praise, 61; of private good, 48–49,
 90; private rights and, 265–66;
 for reformation, 202; for rewards,
 89, 114; self-interest and, 70^{n*},
 99; selfishness of, 72–73, 72ⁿ⁷,
 122, 226–27, 263, 265, 275;
 self-love and, 74, 75, 77; uneasi-
 ness of, 72–73, 72ⁿ⁷, 78, 125,
 162^{m10}; for virtue, 50, 234; for
 wealth, 48, 50, 72, 130, 168

Didius, Titus, 533^{n†}

dignity: affections and, 94, 136,
 158–59, 240; of appearance, 27; of
 arts, 414; commerce and, 366;
 consciousness of, 87; dispositions
 and, 90; enjoyment and, 88, 135–38,
 143, 145; funerals and, 410; of
 governors, 509; of human nature,
 10, 42, 252; moral and, 126, 130,
 143, 273; personal, 196, 614; piety
 and, 352; pleasure and, 93, 134ⁿ²,
 135; of professions, 413–14; sacred,
 502; sense of, 61–62, 105; sources of,
 22, 63; universal goodness and, 412;
 virtue and, 75^{n*}, 90^{m19}, 352

diligence: affections and, 66, 295;
 character and, 225; contracts and,
 373–74, 376; in discharge of debts,
 219–20; duty and, 115, 225;
 education and, 4; enjoyment and,
 144; error prevention through,
 222; industry and, 574; inventions
 and, 409; of servants, 483;
 universal, 293–94, 410

Diogenes of Sinope, 356^{m10}

dispensations, 256–60

dispositions: affections and, 3, 59, 94;
 amiable, 17, 30, 279, 417, 451, 477;

benevolent, 63, 94, 95, 178; calm,
 228; conformity of, 619; corrupt,
 492; decency and, 90; defects of,
 220; dignity and, 90; evil, 493;
 good-will and, 89, 94; honour
 and, 83; humane, 224; imitation
 and, 53; kind, 75, 228; malicious,
 96, 165, 223; marriage and, 27;
 moral sense and, 83, 92, 93, 112;
 natural, 11, 14, 54, 56, 68, 106, 442,
 444; passionate, 94; permanent,
 163; selfish, 59; social, 207, 268,
 276, 325, 523, 568; sympathetic, 77;
 universal, 67–68; virtuous, 206,
 226, 352; of will, 63, 69, 176, 178

Dissenters, xiii, xiii^{m1}, xxiii, 3, 6,
 455^{m12}

divine command theory, xv

divine law: beauty of, 26; conformity
 to, 83, 83ⁿ⁷, 223; goodness of, 224;
 justice and, 83; motives of, 234;
 natural equality and, 276;
 polygamy and, 460^{m16}; revelation
 of, 223, 254; sanctions of, 75, 251

divorce: bodily infirmity and, 450–51;
 Christianity and, 463–64^{n*},
 464–65; civil law and, 460–62;
 courts of justice and, 462–64;
 enslaved people and, 490; just
 causes of, 460–62, 461^{m17},
 462–64^{n*}, 465

Doddridge, Philip, 626

Drennan, Thomas, 623–25, 623^{m1}

duels, 400–403, 400ⁿ⁵, 402ⁿ⁶, 595^{n†}

duty: of children, 470–79; of
 citizens, 317, 616; to cultivate
 universal benevolence, 234^{m15};
 diligence and, 115, 225; of friend-
 ship, 244; to God, 161, 201–2,
 206–7, 211, 213, 224, 249, 274–75,
 361, 571; of governors, 537–38,
 543; of gratitude, 244, 282–83; in

- juridical mode of moral philosophy, xiii; knowledge of, 26; of life, 159, 241–42, 275, 279, 303, 324, 330, 382, 568, 575; of magistrates, 569, 570, 594; of masters, 480–90; moral faculty and, 171; moral states and, 261*n*2; natural law and, 123*n*9, 392*n*1, 419*n*8, 472*n*2; negligence in, 362; to obey commands, 586, 591–92; of parents, 470–79, 471–72*n*2; of piety, 132, 176; prudence and, 407–8, 411; public interest and, 14; seduction away from, 25; sense of, 12, 227, 244, 265, 406–7, 443, 466; of servants, 480–90; social, 427, 568, 572; to speak truth, 349*n*5; of worship, 341. *See also* obligation
- education: of children, 408, 442–49, 468, 471–74, 477–78; civilized, 618; diligence and, 4; ethics in, xx; happiness and, 442; of Hutcheson, 3–6; music in, 53*n*4; natural law and, xvi; power of, 64; as remedy for imbecillity, 43; superstition and, 125, 165; vice prevented through, 568; virtue and, 160. *See also specific institutions*
- elective aristocracy, 517, 526–27
- elective monarchy, 517, 525
- Elliot, Gilbert, 19*n*23
- emotions: benevolent, 47*n*15; calm, 46*n**, 49*n*18; disinterested, 47*n*15; religion as check on, 20; Stoics on, 46–47*n**; subdivision of, 46–47, 46*n*3; transient, 162, 163; violent, 46*n**, 49*n*18. *See also* affections; passions; *specific emotions*
- enjoyment: affections and, 98, 159–61, 164, 204, 210; attributed to God, 20; capability for, 42, 43, 47, 101; comparing and ranking, 47–48, 48*n*16; comparison of types of, 134–49; desire and, 48, 121, 126, 137; dignity and, 88, 135–38, 143, 145; diligence and, 144; external, 19, 267, 620; guilt and, 141; instincts and, 86; judgment and, 138; labour and, 144; moral, 107, 136, 142, 145–47, 157, 159–60, 192, 211; of natural liberty, 273; noble, 43, 75*n**, 131, 210, 212, 618; preciousness of, 409; private, 70, 79; sacrifice of, 13, 88; self-enjoyment, 89; selfish, 49; sensual, 126, 138, 140–42, 147–48, 160, 188, 211, 357; social, 136, 139, 159–60, 169, 211, 268–69, 448; of supreme good, 213; sympathetic, 157; tempers and, 171; underestimation of, 191*n*17; uneasiness and, 134, 138–40, 143, 154; vanity and, 620; virtue and, 147, 148, 196, 211, 212. *See also* happiness; joy; pleasure
- entails, succession in, 316–17, 316*n*10
- envy: calm mind and, 128; gratification of, 148, 355; habitual nature of, 163; of mankind, 408; misery and, 149, 161, 178; natural causes of, 231; protection against, 283; repression of, 213; shame and, 105; of success and merit, 164, 169; as violent passion, 49, 169; vows proceeding from, 364
- Epicurus and Epicureans: on appetites, 139; Aristippus and, 71*n*4; cradle argument and, 43*n*7; on good and evil, 156; on motives for actions, 70; neo-Epicureans, 266*n*12; objections to contrivance good, 180; on perception of senses, 55*n**

- equality: in bartering, 377; civil power and, 278; in contracts, 480; in democracy, 485, 517; in friendship, 448, 451; gratitude and, 283; in marriage, 451, 451ⁿ8; natural, 276–77, 480^m, 509; of power, 501ⁿ8; of proportion in figures, 52; of rights, 447
- ethics, xx, 71ⁿ4, 85ⁿ8
- Eumenes of Cardia, 423, 423^m11
- evil: abhorrence of, 208, 362; affections and, 95, 110, 158, 220, 222, 227; anarchy and, 492, 496; condemnation of, 127; dispositions and, 493; fear of, 72, 162, 172, 236; in Manicheanism, 186^m14; natural, 43, 63, 232; perception of, 121; piety as restraint from, 207; prevention of, 416–17, 432; punishment of, 241ⁿ*, 358, 393, 399; security from, 46; selfish passions and, 56, 90–91; uneasiness and, 153. *See also* crime; moral evil
- expletory oaths, 362
- external rights: civil law and, 581, 582; contracts and, 326, 337–38; description of, 243–44; of governors, 542–43; imperfect rights in conflict with, 243^m15, 244; prudence and, 244; of superiority, 452; waiver of, 435; war and, 484, 604
- extraordinary rights, 416–33, 509, 512, 524, 598
- fear: of death, 232; of disappointment, 72; of evil, 72, 162, 172, 236; as motive for civil government, 499ⁿ7; of pain, 58, 74, 123; of persecution, 442ⁿ*, of punishment, xv, 60, 73, 76, 114, 202, 254, 393; repelled by selfish passions, 56; of shame, 154; of slavery, 232; of solitude, 267; sympathetic, 57
- feelings. *See* affections; emotions; passions
- figures, 44–45, 52, 53, 196
- Filmer, Robert, 263ⁿ7, 290–91ⁿ7, 301, 472ⁿ2, 548ⁿ3, 549ⁿ5
- Fletcher, Andrew, 483ⁿ3
- fortitude, virtue of, 573, 578
- Foulis, Andrew, xviii^m13, xxv, xxx–xxxi, 626ⁿ8
- Foulis, Robert: correspondence with Mr. Harvock (1754), 626; Leechman's manuscript notes to, xxvii, xxviiiⁿ4, 629–30, 630ⁿ23; publication of *A System of Moral Philosophy*, xviii^m13, xxv, xxviii–xxxi, 626, 626ⁿ8; as student of Hutcheson, xviii^m13, 626ⁿ8
- Fourth Lateran Council (1215), 459^m15
- freedom. *See* liberty
- friendship: affections and, 17, 96; desire for, 65, 108; duty of, 244; equality in, 448, 451; with God, 204; goodness and, 128; happiness and, 19; Hutcheson and, 1, 6–9, 16, 17, 19, 27; natural rights and, 280; partnership contracts and, 381; pleasure and, 19; professions of, 17, 429, 601; selfishness and, 108–9ⁿ†; sensual enjoyment and, 141, 142
- frugality, 168, 575
- funerals, 302, 410–11
- gaming contracts, 381, 382
- Gaskell, Philip, 631ⁿ24
- Gay, John, 73^m13, 76^m17, 85ⁿ9
- general good. *See* common good
- geometry, 55ⁿ*, 58, 143, 173, 430–31
- God: affections toward, 201–8, 210, 358; benevolence of, 193, 224; duty

- to, 161, 201–2, 206–7, 211, 213, 224, 249, 274–75, 361, 571; existence of, 5, 11, 15, 172–76, 173*n*4, 198, 201–2; friendship with, 204; goodness of, 22, 25*n**, 161, 196–200, 203–6, 210, 224, 365, 620; government of, 15, 266; gratitude to, 23, 76, 80, 89, 202–8, 218, 235, 248–49, 358, 415; happiness and, 80, 147, 177, 199, 204–6; imitation of, 80, 204; love of, 22–23, 76, 80, 89, 158, 202–8, 208*n*10, 210–11, 218, 235, 358; mercy of, 342, 355, 428; moral excellence of, 89, 94, 161, 231, 249; omnipotence of, 131, 177–81, 193, 197, 202, 204–6, 248, 250, 620; original property and, 298–99, 301–3; perfection of, 4, 11–12, 15, 21, 23, 132, 201–7, 210, 218; power of, 203, 210, 359; punishment by, 362; rewards from, 74–76, 203; talents and enjoyments attributed to, 20; will of, 10–12, 13*n**, 23, 83, 158, 202, 205, 208, 210, 248–51, 284, 407; wisdom of, 21–22, 25*n**, 51, 161, 199–200, 204–5, 210, 248, 365, 618; as witness in oaths, 208, 358, 360, 361; wrath of, 22*n*26. *See also* Christianity; divine law; worship
- gold, 367, 369–72
- good and goodness: of divine law, 224; formal, 237–38; friendship and, 128; of God, 22, 25*n**, 161, 196–200, 203–6, 210, 224, 365, 620; happiness and, 206, 239; infinite, 202–3, 249; joy and, 145–46; love of, 23, 128; in Manicheanism, 186*n*14; material, 237–38; moral, 12, 83–84, 88, 110, 180, 189, 218–25, 254; motives of, 233; natural, 43, 63, 188; perception of, 121, 196; perfect, 179, 182, 187–88, 200, 248, 258, 584; private, 48–50, 56, 75*n**, 78–79, 90, 98, 158–59, 554, 580; of providence, 145; sense of, 67, 140, 182; stable, 202, 279; supreme, 66, 156, 179, 213; universal, 23, 179, 200, 249, 412. *See also* common good
- good-will: calm, 50, 227, 230; character and, 65; charity and, 76; consciousness of, 181; cultivation of, 270; dispositions and, 89, 94; of God, 178, 204; happiness and, 59, 99, 162; of Hutcheson, 17, 19; injuries and, 400; inward, 74, 77; kindness and, 75; moral excellence and, 93, 164; parental affections and, 477; sympathy and, 77, 78; tempers and, 231; universal, 94, 145, 165, 237, 237*n*2; to unknown persons, 77; virtue and, 89, 218
- government: of God, 15, 266; moral, 67, 249, 266; self-government, 111*n*12, 140, 142, 167, 467, 526. *See also* civil government
- governors: affections of, 503; civil power and, 498, 500, 510–13; coinage and, 369; dignity of, 509; duty of, 537–38, 543; impartial, 286; laws and, 250, 257; legal power exceeded by, 592–93; moral, 200; parents as, 472; rebellions against, 525, 544; rights of, 421, 503, 535–46, 591, 618; selfish passions of, 619; unjust, 485–87; veneration for, 66; war captives and, 485; will of, 251. *See also* supreme power
- gratitude: as benevolent passion, 49, 50; bonds of, 165, 476; children and, 57, 470–71, 476; duty of, 244, 282–83; equality and, 283;

- gratitude (*continued*)
 expressions of, 60; to God, 23, 76, 80, 89, 202–8, 218, 235, 248–49, 358, 415; parental affections and, 77, 230
 gratuitous loans, 373*n**, 374*n*||, 375, 376
 Gronovius, Johann Friedrich, 519*n*6
 Grotius, Hugo: on burial rights, 410*n*8; on civil power, 558; on conquest and subjection, 556*n*9; on duels, 400*n*5, 402*n*6; on extreme necessity, 418*n*8; on marriage, 441*m*1; on oaths, 361*n*7; on parental power, 471–72*n*2; on property, 290–91*n*7, 296*m*1, 301, 302*n**, 418*n*8; on Protestant natural law, 242*m*10; on seasons of life, 475*n*4; on signification, 345–46*m*1; on slavery, 481*n*2; Stoic theory adopted by, 266*n*12; on succession, 560*m*11; on war, 595*n*†, 595*n*2, 596, 596–97*n*n4–5, 598*n**
 guilt: affections and, 224, 230; consciousness of, 189; degrees of vice and, 96, 97; divorce and, 462, 462*n**, 464; enjoyment and, 141; for evil actions, 154, 221, 232; for failure to discharge debts, 220; falsehoods and, 358; ignorance in alleviation of, 152, 222, 258; judgment of, 229, 232, 498; moral sense and, 152; perfect right violations and, 246; polygamy and, 449*n**; temptations and, 96, 227, 232, 236, 362; unjust war and, 485; of wicked advisors, 235
 Hamilton, Dunbar (Lord Selkirk), 629, 629*m*19
 Hannibal, 144*n**
 happiness: affections and, 65, 143, 158, 230, 295; animals and, 286; Aristotle on, 62, 469; capacity for, 48; communication of, 95, 99; desire for, xxiii, 29, 48–49, 71, 73–74, 98, 116, 177, 272; devotion to, 20; education and, 442; external, 432, 618–19; friendship and, 19; future, 89, 154, 203; God and, 80, 147, 177, 199, 204–6; goodness and, 206, 239; good-will and, 59, 99, 162; instincts for, 47; internal, 432; inventions and, 409; judgment of, 135; liberty and, 23, 477; marriage and, 276; moral sense and, 61, 100, 211, 238; motives and, 89; natural philosophy and, 10; of others, xiv, 28–29, 48, 69–71, 75, 89, 110, 145, 177, 189, 270; perception of, 121; private, 28–29, 49, 70–73, 79, 99–100, 116, 212, 265, 274; promotion of, 18, 41, 87, 94, 207, 211, 217, 255, 265–66, 270, 274, 491, 495, 510; public, 100, 122, 158, 228, 346, 541, 543, 570; religion and, 208, 209; right to, 264; seduction away from, 25; self-love and, 69*n**, 75, 77, 86, 100; of servants, 482; sources of, 22, 41, 58–59, 62, 160, 210; supreme, 12, 42, 121, 141, 203, 210; sympathetic, 70, 76–78; unmixed, 132, 132*n*21; virtue and, 28*n**, 41*n*2, 135–36, 146, 186, 234–35, 380; wisdom and, 19. *See also* enjoyment; joy; universal happiness
 harmony: justice and, 200; moral faculty and, 98–100; perception of, 45, 52, 142; pleasure and, 44, 153, 203; religion and, 29; taste for, 87, 174

- Harrington, James, 298n4, 380n*, 518n*, 520n7, 529m14, 533n*
- hatred: hazards due to, 270; injuries and, 164; of mankind, 127, 408, 411; moral evil and, 113, 164; provocation of, 414
- Heineccius, Johann Gottlieb, 450–51n*
- hereditary aristocracy, 517, 521, 526, 560
- hereditary monarchy, 508, 517, 525–26, 536, 549, 560, 614
- heresy, xx, 4m1, 336, 571n4, 625
- Heugh, Hugh, xx, 424m13, 428m19
- Hobbes, Thomas: on children as property, 472n2, 473n*; Epicurean theory of, 266m12; on friendship, 109n†; on laughter, 8; *Leviathan*, 509m12; on parental power, 472n2; Pufendorf compared to, xv; on punishment, 583m12; on slavery, 481n2; on state of nature, 109m10, 262n4
- Home, Henry (Lord Kames), xx
- Homer, 184n*
- honour: activities in promotion of, 90; affections and, 235; desire for, 49, 50, 73, 83, 103, 107, 159, 402; dispositions and, 83; hereditary, 583; love of, 141; mercy and, 315; moral faculty and, 102, 105–7; moral sense and, 83, 104, 107, 109; motives and, 74, 83; neglect of, 97; pleasure of, 147; of professions, 414; pursuit of, 136; sense of, 60–61, 66, 93, 101–2, 104, 106, 106m8, 109, 140, 353; in social life, 358, 427, 582; virtue and, 60–61, 83, 83n6, 147, 582–83
- Hooker, Richard, 501n8
- Hostilius, Tullus, 423, 423m11
- human nature: affections and, 618; amiableness of, 13; constitution of, 10–14, 25n*, 29, 41–51, 91, 131, 247, 265, 618; determinations of, 84, 150; dignity of, 10, 42, 252; disinterested affections and, 24; imbecillity and, 42n5, 43, 269m17; imitation and, 43; laughter and, 8; natural law notions as extraneous to, xv; power of, 41–51; science of, 28; selfish hypothesis and, 13
- human race, preservation of, 407–8
- Hume, David: *Dialogues concerning Natural Religion*, 23n27, 173n4, 176n6, 181m12, 193m19; *Enquiry concerning the Principles of Morals*, 70n3; *Natural History of Religion*, 67n20, 172n3; prevented from becoming University of Edinburgh professor, xxi, 19n23; on relationship between nature and artifice in morals, 456m13; reluctant use of distinction between calm and violent, 49m18; *A Treatise of Human Nature*, xx–xxi, 185n†
- humility, 132, 169, 203
- Hutcheson, Alexander (grandfather), 3
- Hutcheson, Francis, *iii*; appearance of, 27; birth and early life, 3; character of, 3, 10, 14, 17–20, 26; comparison with Shaftesbury, xxiii, 80n25; correspondence of, xix, 5, 8, 623–25; as Dublin academy professor, xiii, xiv, 6, 9–10, 623m1; educational background, 3–6; friendships, 1, 6–9, 16, 17, 19, 27; health challenges, 26–27; intellectual controversy involving, xix–xx; marriage and family life, 27, 456m13; pseudonym “Philanthropus” adopted by, 8m15; sociopolitical engagement by, xvi; as University of Glasgow professor, xiii, xvi, xix, 9–10, 9m17, 21–26

- Hutcheson, Francis, works of: *An Essay on the Nature and Conduct of the Passions and Affections*, xiii, xvii, 8, 8*n*13, 70*n*4; *An Inquiry into the Original of Our Ideas of Beauty and Virtue*, xiii, xv, xvii, xix, xxi, 6–8, 6*nn*6–7, 7*n*10, 13*n**, 15*n*22, 70*n*4; *On the Natural Sociability of Mankind*, 42*n*4, 262*n*4; *Philosophiae moralis institutio compendiarum*, xiii, xv, xxi; *A Short Introduction to Moral Philosophy*, xvi, 41*n*2, 42*n*4. *See also* *A System of Moral Philosophy*
- Hutcheson, Francis (son), xxii, xxi*n*28, 1, 27
- Hutcheson, John (father), 3
- Hutcheson, Mary Wilson (wife), 27, 456*n*13
- ideas: association of, 54, 63–65, 68, 83, 85, 114, 124, 127, 136; concomitant, 44–45; of consciousness, 45; innate, 115; of sensation, 44–45, 55*n**
- idleness, 294, 304, 483
- ignorance: aversion to, 92; of children, 471, 472; contrivance good and, 180; corruption and, 620; crime and, 152; culpable, 393; of evil consequences of action, 221–22; guilt alleviated by, 152, 222, 258; of injustice, 487; of laws, 222–23, 222–23*n*†, 253
- imagination: beauty of, 23, 52; civil government and, 502; confused, 83, 102–3, 126–27, 141, 148, 170, 291, 304, 314, 545; false, 126, 413; moral ideas in, 167; pleasure and, 55, 124, 128, 138, 142, 145, 148, 153, 188, 286; restraint of, 143, 202; sympathetic, 77
- imbecillity, 42*n*5, 43, 269*n*17
- imitation: arts and, 62, 107, 142, 153, 155; of beauty, 53, 54; danger of, 431; of deformity, 53; of God, 80, 204; human nature and, 43; of moral excellence, 88; patterns for, 200; pleasure and, 53–55, 62, 63; power of, 86; of speech, 53; of virtue, 155, 283, 583
- imperfect rights: description of, 243; external rights in conflict with, 243*n*15, 244; of human society, 411–15; moral states and, 264–65; natural, 279–83; of parents, 472*n*2; in Protestant natural law, 242*n*10; violation of, 246; virtue and, 411
- inalienable rights. *See* unalienable rights
- incest, 115, 356, 448*n*6, 456–57*nn*13–14, 459
- industry, virtue of, 573–76
- inheritances, 385, 385*n**, 456*n*13, 474, 506, 549–52, 560–64, 561*n**, 588*n**
- injuries: abstaining from, 269, 434; anger and, 149; appetites and, 262; children and, 58; compassion and, 156; damages for, 392–95; defined, 392; forgiveness of, 23; future, 395, 487, 548, 589; good-will and, 400; hatred and, 164; passions and, 97, 262, 269, 397; prevention of, 398; provocation of, 270, 487; public vs. private, 231; repelling, 162, 163, 400, 408, 548; in state of war, 262; vanity and, 414; virtue and, 185–86
- insolvency, 220, 313, 377, 383, 396–97, 403
- instincts: of animals, 284, 441–42; appetites and, 43, 108; cradle argument and, 43*n*7; enjoyment and, 86; for happiness, 47; moral obligation and, 408; for perfec-

- tion, 47; power and, 47*n**, 57; of propagation, 441–42, 444; of will, 84
- insurance contracts, 382
- integrity: of arbitrators, 434, 435; contracts and, 378; of debtors, 310; inviolability of, 17; mind stripped of, 140; motives for, 197; oaths and, 362; perception of, 196; perfect rights and, 242, 354; pleas of necessity and, 430; reputation for, 168, 582; sense of, 153; social life and, 582
- intellectual power, 58, 139, 628
- interest on loans, 375, 378–81, 380*n**
- inventions, 67, 81, 268, 369, 409–10, 409*n*6, 500
- James II (king of England), 562–63*m*2
- James VI (king of Scotland), 514*m*9
- jealousy. *See* envy
- Jews and Judaism: divorce in, 464*n**; marriages in, 459; Mosaic law, 258, 490*m*1; polygamy permitted by, 245; on servitude, 483, 490
- joy: as act of the will, 46–47; goodness and, 145–46; moral character and, 60; of parents, 472; prosperity and, 144, 145, 204, 205; of self-approbation, 71; social, 58, 128, 138, 161, 268; sources of, 129; of success, 72–73, 88, 132, 203; sympathetic, 56, 77, 78, 128, 144–47, 149, 153. *See also* enjoyment; happiness
- judgment: of affections, 226–36; of character, 220, 228–29; consciousness of, 45; enjoyment and, 138; erroneous, 223–24; of guilt, 229, 232, 498; of happiness, 135; hastiness of, 87; moral, 100*n*38, 238*n*4, 345*m*1; natural law and, 223*m*2; of passions, 135, 190, 230–31; of perfection, 135; private, 246, 273, 568–69; self-interest and, 434; tradition as influence on, 172*n*3; undue respect of persons in, 587; of virtue, 228–33, 273
- judicial oaths, 362
- jurisprudence, xiii–xvii, 23, 267*m*14, 603*n**
- justice: admiration for, 492; arbitrators and, 434; civil power and, 493, 496, 498, 508, 511; conformity to, 83; harmony and, 200; laws and, 244–45, 252, 254; luxury and, 137–38; moral faculty and, 248; moral sense and, 270; natural, 390, 480, 596*n*4; negligence and, 219, 220; pity and, 86–87; promotion of, 435; prudence of, 592; punishment and, 241, 553, 587, 593; sense of, 112, 198, 278, 493; servitude and, 490; in state of liberty, 262; uniform practice of, 13*n**; virtue of, 129, 211, 212, 573, 576–78
- Justinian, 219*n**, 247*m*26, 306–7*n*†, 374*n*||, 377*n*†, 462*n**, 486*n**, 603*n**
- just war, 426, 524*n**, 589, 595*n*†, 596–97*m*4–5, 598–601, 608
- kindness, 27, 90, 106, 108, 187, 228, 331–32, 375, 386, 412
- King, William, 7, 7*m*9–10
- knowledge: desire for, 3, 6, 17, 22, 55, 92, 278; of duty, 26; imperfect, 193*m*9, 194; of laws, 233, 253; love of, 14, 18, 21; natural, 173, 187; of perfection, 137; pleasure and, 53, 58, 153–54, 188, 204; pursuit of, 90, 137; scientific, 6, 30; speculative, 145; of truth, 221, 325; universal, 199

- labour: of animals, 286–88; aversion to, 123; bodily, 277, 444, 579; of children, 50, 388–90; consent for, 482; for cultivation of property, 296–97; for discharging debt, 388–89; division of, 267*m*14, 268; enjoyment and, 144; immunity from, 141; inventions and, 409–10; patience of, 62, 90; subsistence through, 42, 268; value of, 367, 369, 372. *See also* servants; slavery and enslaved people
- Lang, Patrick, 518*n*5, 519*n*6
- language. *See* signs, speech
- laughter, 8, 57, 63
- Law, William, 289*n**
- laws: agrarian, 298–99, 298*n*4, 521–22, 521*n*8, 530; canon, 455*n*12, 465; coinage and, 368–72; conformity to, 83, 83*n*7, 223; constitutional, 534; dispensations from, 256–60; establishment of, 66; ignorance of, 222–23, 222–23*n*†, 253; for interest on loans, 380–81; interpretation of, 438*n**; Jewish, 490, 490*n*11; justice and, 244–45, 252, 254; knowledge of, 233, 253; on lotteries and gaming, 381, 382; marriage, 106, 441*n*1, 450–51*n**, 452–55, 458–60, 460*n*16; moral states and, 261–65; of nations, 410*n*8, 509, 524*n**, 596*n*4, 602–3, 602–3*n**, 611*n*9; partiality in, 387; positive, 251–53, 302*n**, 330, 419*n*8, 441*n*1, 452–53, 460*n*16, 475*n*4, 550; precepts of, 250–51, 254–57; sanctions of, xiv, 75, 197, 200, 233, 250–51, 257, 262, 264, 582–86; of sensations, 177, 183–86; in state of liberty, 262–64; sumptuary, 590*n*20–21; of war, 597–608; wisdom of, 254, 259, 495. *See also* civil law; divine law; jurisprudence; natural law; Roman law
- Leechman, William: Hutcheson on, xxii*n*27, 625; letter to William Bruce (1749), xxii, 626–29; manuscript notes to Foulis, xxvii, xxvii*n*4, 629–30, 630*n*23; preface to *A System of Moral Philosophy*, xxiii–xxiv, xxvii, 3–30, 71*n*6; role in publication of *A System of Moral Philosophy*, xxii–xxiii, xxvi–xxviii, 626–30; as University of Glasgow professor, xxii
- Leibniz, Gottfried Wilhelm, 181*n*12, 320*n**
- Leslie, John, 630*n*23
- liberty: affections of, 170; civil, 8, 23, 545–46; of conscience, 242; of enslaved people, 387*n*6, 390; happiness and, 23, 477; love of, 23, 27, 498; religious, 8, 23; state of, 262–64, 262*n*4, 399. *See also* natural liberty
- Livy, 144*n**, 518–19*n*n5–6, 527*n**
- loans: for consumption, 373*n**, 375, 378–79; gratuitous, 373*n**, 374*n*||, 375, 376; interest on, 375, 378–81, 380*n**; for use, 374–76
- Locke, John: on civil obligation, 505*n*5; on civil power, 512*n**; on contracts, 501*n*8; on desire as uneasiness, 162*n*10; on natural rights, 481*n*2; on parental authority, 472*n*2; on property, 290–91*n*7, 296*n*1; on punishment, 583*n*12; on slavery, 486*n*7; *Two Treatises of Government*, 549*n*5, 552*n*7
- lotteries, 381
- love: as act of understanding, 218; of children, 445; conjugal, 446, 447;

- of country, 66–67, 94; of God, 22–23, 76, 80, 89, 158, 202–8, 208*m*10, 210–11, 218, 235, 358; of goodness, 23, 128; of grandeur, 10; of honour, 141; idolatrous forms of, 208*m*10; of knowledge, 14, 18, 21; of liberty, 23, 27, 498; of life, 166–67; of moral excellence, 93–95, 141, 201, 210, 237; of moral perfection, 202; mutual, 65, 192, 203, 444, 469; natural causes of, 231; sensual enjoyment and, 141; of society, 87, 94; sympathetic, 57, 77, 78; of truth, 14, 27; of virtue, xv, 60*m*12, 279, 448; of wealth, 10. *See also* self-love
- Lucretius, 181*n**
- luxury: corruption and, 192, 363, 382, 526; justice and, 137–38; pleasure and, 107, 168, 619; selfish passions and, 166; sensual enjoyments and, 141; temptations and, 303
- Lycurgus, 53, 53*n*‡
- mandatum contracts, 373–74
- Mandeville, Bernard, 70*n**, 83*n*6, 85*n*9, 103*n*3, 106*n*8, 109*m*11, 448*n*6
- Manicheanism, 186*m*14
- marriage: aversion to, 457–58, 476–77; Christian, 450*n**, 456, 459, 460; consent for, 276, 454–55, 455*m*12, 460, 473*n**, 476–77; contracts, 444, 446–50, 453–56, 460*m*16; degrees of consanguinity and affinity in, 456–60, 456*m*13, 459*m*15; desire for, 276; dispositions and, 27; equality in, 451, 451*n*8; happiness and, 276; impediments to, 453–60, 454*m*10; laws regarding, 106, 441*m*1, 450–51*n**, 452–55, 458–60, 460*m*16; misery and, 276; natural rights and, 276, 455*m*12; obligation and, 444; prudence and, 458, 467; rights in, 473*n**; Roman law on, 450–51*n**, 519*n*6; sensual enjoyment in, 142; virtue and, 27; wisdom and, 27. *See also* adultery; divorce; polygamy
- masters: despotism of, 497; duties and rights of, 480–90; of enslaved children, 387*n*6, 388; of families, 475; mercy of, 490; power of, 482; tempers of, 482; violence by, 482–83
- mathematics, 15, 15*n*22, 82*n*4, 134*n*2, 142. *See also* geometry
- meanness, 96, 153, 211, 281, 574, 620
- merchants, 369–70, 372, 386, 390, 422, 575, 590–91, 607. *See also* commerce
- mercy: crime and, 578; of God, 342, 355, 428; honour and, 315; liberality and, 182; of masters, 490; sense of, 113; virtue and, 400, 426, 431
- metals, 304, 367–72
- military service, 511, 578–79, 578*n*8, 585–86, 591
- Milton, John, 191, 191*m*18
- misery: anarchy and, 492; anger and, 178; animals and, 286; attraction to spectacles of, 154, 154*n*23; aversion to, 47*n**; capacity for, 48; compassion and, 148; desire and, 97, 126; distress caused by, 144; divorce and, 463; envy and, 149, 161, 178; external senses and, 43; future, 206; marriage and, 276; moral disapprobation and, 59; moral evil and, 178, 187, 211; moral sense and, 61; natural liberty loss and, 272; pain and, 150, 151, 154, 156, 178; perception of, 46, 121; pity and, 178; regret and, 145;

- misery (*continued*)
 selfish passions and, 167, 169–71;
 of slavery, 484; sorrow and, 149;
 sources of, 64, 87, 160–61, 566;
 sympathetic, 56, 76–78; uneasiness
 of, 148, 161, 178, 187–88; universal,
 177–78
- modesty, 20, 30, 104–6, 132, 167–69,
 225, 357, 442–47
- Molesworth, Robert, 6, 6*ns*, 6*n*7
- monarchy: absolute, 508, 516–17, 526,
 528*n*†, 536, 541–42, 549; conquest
 rights in, 564; elective, 517, 525;
 hereditary, 508, 517, 525–26, 536,
 549, 560, 614; property and,
 520–21; succession rights in, 560–61;
 supreme power and, 513, 515–17,
 526, 529, 538
- money. *See* coinage
- Moor, James, 113*n**
- moral approbation, 59–62, 74, 81–83,
 81*m*, 85–91, 94–95, 100, 114
- moral beauty, 12*n**, 96, 162, 204, 230,
 232, 282
- moral character: beauty and, 443;
 civil obligation and, 505*ns*; joy
 and, 60; judgment of, 220; music
 and, 53; piety and, 176; safeguard-
 ing of, 505*ns*; self-esteem and,
 70*n**; sorrow and, 60
- moral dignity, 126, 130, 143, 273
- moral disapprobation, 59, 91, 96,
 249, 307–8, 325, 627
- moral enjoyments, 107, 136, 142,
 145–47, 157, 159–60, 192, 211
- moral evil: abhorrence of, 208;
 affections and, 220; aversion to,
 164; baseness of self and, 155–56;
 existence of, 182; hatred and, 113,
 164; increasing or decreasing
 through actions, 218–25; misery
 and, 178, 187, 211; natural causes
 of, 231; origins of, 12; pain and,
 151, 152, 271; practice of, 88; private
 rights and, 266; punishment of,
 241*n**; selfishness and, 227; sense
 of, 271–72; sensual enjoyment
 and, 141; shame and, 211
- moral excellence: approbation of, 82,
 88; desire of, xviii–xix, 29, 80,
 93*n*24, 93–95, 122, 122*n*8, 158; of
 God, 89, 94, 161, 231, 249;
 good-will and, 93, 164; imitation
 of, 88; love of, 93–95, 141, 201, 210,
 237; moral faculty and, 171, 207;
 perception of, 80; pursuit of, 97;
 sense of, 203; supreme, 80, 231;
 sympathy and, 77, 78; tempers
 and, 164–65; virtue and, 93, 431
- moral faculty: affections and, 66, 71,
 72, 87, 105, 116–17, 122, 163, 194,
 201, 203, 210; children and, 472*n*2;
 common good and, 150; con-
 science and, 223; constitution of,
 92, 179, 237; corroboration of, 101;
 degrees of vice and, 97; disorders
 within, 87; duty and, 171; har-
 mony and, 98–100; honour and,
 102, 105–7; judgment of, 238*n*4;
 justice and, 248; moral excellence
 and, 171, 207; moral states and,
 262, 266; natural rights and, 274,
 275; original determination of, 80;
 reasoning and, 113, 248; shame
 and, 102, 105–6; sympathy and,
 141; uniformity in, 110–11, 114;
 universal happiness and, 196;
 virtue and, 12*n**, 82, 152, 196
- moral forms, 59–60, 103, 127, 129,
 129*m*17, 141, 146, 239
- moral good and goodness, 12,
 83–84, 88, 110, 157–58, 180, 189,
 218–25, 254
- moral government, 67, 249, 266

- moral judgment, 100*n*38, 238*n*4, 345*m*
- moral mathematics, 82*n*4, 134*n*2
- moral obligation: children and, 471; instincts and, 408; moral states and, 261–64; to obey will of God, 249; origins of, 12, 24; pleas of necessity and, 402; Pufendorf on, xiv, xv; punishment for violation of, 25*n**; self-interest and, xiv; virtue and, 13, 13*n**, 25, 138
- moral perfection: affections and, 89; conformity to, 83–84; desire for, 29, 218; of God, 132, 201, 218; love of, 202; promotion of, xiv, 41
- moral philosophy: as academic field of study, xiii, xiii*m*, xvi, 6, 10; in cultivation of virtue, xiv; modes of, xiii, xvi, xviii; natural law and, 41; practicality of, 21*n*25, 41*n*2; purposes of, 41, 41*n*2
- moral power, 22, 116, 241*n**, 275, 326*n*†, 342, 361, 363
- moral sense: affections and, 28, 30, 89, 93, 96, 112, 127, 227; animals and, 289*n**; character and, 28, 59; Cicero on, 167*n**; common good and, 238*n*4; dignity and, 273; disinterested, 81*m*, 116*n*20; dispositions and, 83, 92, 93, 112; guilt and, 152; happiness and, 61, 100, 211, 238; honour and, 83, 104, 107, 109; inaction of, 100; justice and, 270; misery and, 61; natural law and, xiv, xv; natural liberty and, 273; objects of, 63, 92; origins of, 24; peace and, 270; perception and, xiii, 177; perversions of, 87*n*13; pleasure and, xv, xix, 86, 141; power governed by, 87–89, 122; reality of, xviii–xix, 25*n**; reasoning and, 115; shame and, 167*n**; speech and, 346*m*1; virtue and, 13, 13*n**, 61, 63, 92, 223, 238
- moral states, 261–70, 261*n*2
- moral truth, 30, 84
- moral worth, 108, 124, 142, 168, 282, 345*m*, 354
- More, Henry, 93*n*24, 121*n*3, 225*n**
- More, Thomas, 295
- mortgages, 305, 310–12, 312*n*4, 317, 383, 606
- motion: children and, 57–58; in concomitant ideas of sensation, 44–45; imitation of, 53; power of, 86; spontaneous, 43, 50–51, 174; of will, 47–50, 72, 78–79, 184*n*†
- motives: of affections, 207, 213; amiableness of, 249; for civil government, 438, 491–502, 499*n*7; of desire, 72–75; of divine law, 234; of goodness, 233; happiness and, 89; honour and, 74, 83; for integrity, 197; for materially good actions, 238; to obey will of God, 250; from pain, 184*n**; of private interest, 226–27, 232–35; of public interest, 97; of secular interest, 266–67; selfish, 227, 232; self-love and, 70; tempers and, 234; for truth, 358
- music: complexity of, 86; in education, 53*n*‡; imitation in, 62, 107, 155; moral character and, 53; pleasure and, 414; taste for, 105, 143. *See also* sounds
- natural equality, 276–77, 480*m*, 509
- natural law: burial rights and, 410*n*8; civil government and, 300; common good and, 12, 251, 549; contracts and, 501–2*n*8; dispensations from, 256–60; duty and,

natural law (*continued*)

123*n*9, 392*m*, 419*n*8, 472*n*2;
 education and, xvi; European debate
 on, xviii, xix; judgment in accor-
 dance with, 223*m*2; in juridical
 mode of moral philosophy, xiii;
 justice and, 252; logomachy and,
 602–3*n**; marriage and, 441*m*,
 460*m*6; moral philosophy and, 41;
 moral sense and, xiv, xv; perfection
 of, 253–54; of personal rights, 329*n*6;
 piety and, 418; precepts of, 254–56,
 418–19; private property and, 294;
 private rights and, 537; property
 rights and, 300, 314; Protestant,
 242*m*0, 251*n*35; Pufendorf on, xiv,
 xv, 9*m*6; punishment and, 583*m*2;
 sanctions of, xiv, 251, 257; slavery
 and, 481*n*2; in state of liberty,
 263–64; transfer of property and,
 321–23; treaties and, 61; violations
 of, 481*n*2; virtue and, xviii; war
 captives and, 488

natural liberty: agrarian laws and,
 298–99; civil government and,
 273, 409, 434, 509; civil liberty
 compared to, 545–46; controversies
 and, 434–38; enjoyment of,
 273; extraordinary rights and, 524;
 misery and loss of, 272; moral
 sense and, 273; perfect rights and,
 242, 598; personal rights and, 309,
 323; pleas of necessity in, 421–22;
 punishment and, 399, 409, 584;
 transfers of, 309, 548; violence
 and, 396–99; witness testimony
 and, 436–37

natural philosophy, 4, 10–11, 15,
 181*n**, 414

natural religion, 20, 23, 25, 67

natural rights: charity and, 280–81;
 of children, 474; debtors and, 482;

in defense against wrongs, 539; for
 enslaved people, 486, 490; equality
 and, 276–77, 480*m*1; friendship
 and, 280; imperfect, 279–83; in
 juridical mode of moral philoso-
 phy, xiii; marriage and, 276, 455*m*2;
 moral faculty and, 274, 275; of
 parents, 474; perfect, 271–79;
 personhood and, 481*n*2; prop-
 erty and, 275; sources of, 271;
 violation of, 276, 571; wisdom
 and, 278–79

necessary oaths, 361

negative community, 290–91*n*7, 301

negligence: contracts and, 375;

culpable, 225, 306, 392, 589;

damages done by, 395, 403; in

discharge of debts, 219–20; dislike

of, 95; in duty, 362; of lenders, 383;

temper and, 224

Nepos, Q. Caecilius Metellus,
 533*n*†

oaths: of allegiance, 359; assertory,
 360–62, 361*n*7; consent and,
 360–62; expletory, 362; God as
 witness in, 208, 358, 360, 361;
 judicial, 362; necessary, 361;
 obligation and, 359–61; promis-
 sary, 360, 361, 361*n*7; punishment
 for breaking, 360; purgatory,
 362; voluntary, 362; witness
 testimony and, 358, 360, 362,
 436. *See also* vows

obligation: abolition of, 405; for
 child maintenance, 386, 408; civil
 law and, 386, 505*n*5, 509; con-
 science and, 244, 331; to country,
 615; to human society, 406–15;
 marriage and, 444; oaths and,
 359–61; in partnership contracts,
 381; *quasi ex contractu*, 328–29*n*6,

- 328–30, 384–91, 384*m*, 385*n**, 478, 507*n**, 509; rights and, 247–48; Roman law on, 384*m*; self-interest and, xiv, 247*n*26; sense of, 359, 406; speech and, 345–57; treaties and, 608–10; vows and, 362–64; will-theory of, 320*n**. *See also* duty; moral obligation
- oligarchy, 517, 517*n*†, 527*n**, 541, 614
- onerous contracts, 373, 373*m*, 376–83, 480, 480*m*
- original property, 296–309
- pain: of appetites, 125, 142; bodily, 58, 125, 149–54, 156, 160, 188, 620; comparison of types of, 150–52; cradle argument and, 43*n*7; crime incited by, 233*n*†; degrees of, 121; of desire, 73; fear of, 58, 74, 123; immunity from, 56, 141; intensity of, 150, 151; misery and, 150, 151, 154, 156, 178; moral evil and, 151, 152, 271; motives from, 184*n**; perception of, 43, 44, 46, 195–96; resistance to, 153; sensations of, 44, 45, 188; sympathetic, 56, 76–78, 128, 148, 151, 154; vice and, 184. *See also* uneasiness
- painting, 62, 88, 105, 107, 143, 155, 347, 414
- parental affections: as benevolent passion, 49, 50; children of strangers and, 386; endurance of, 442, 470–73, 476, 477; good-will and, 477; gratitude and, 77, 230; happiness and, 65; love, 94, 159, 189; moral approbation and, 94; as remedy for imbecillity, 43; universality of, 128; virtue and, 76, 230. *See also* children
- parents: obligations for maintenance of children, 386, 408; power of, 263, 263*n*7, 410, 471–79, 472*m*2, 474*m*3, 477*n*6, 503; rights and duties of, 470–79, 471–72*m*2; tempers of, 477. *See also* children; parental affections
- partnership contracts, 381, 536
- passions: as acts of will, 49–50; angry, 97, 105, 125, 148, 269; benevolent, xiii, 49, 50, 56; confined, 210; consciousness of, 45; crime and, 152, 156, 241; cultivation of, xiv; disinterested, xiii; dispositions and, 94; injuries and, 97, 262, 269, 397; judgment of, 135, 190, 230–31; restraint of, 241, 568; sensual, 13, 25, 105, 167; subdivision of, 46–47, 46*m*13; suppression of, 12, 206; sympathetic, 56; turbulent, 46*n**, 49–50, 78, 94, 122*n*5, 123, 164, 227–28; uneasiness and, 149, 162; universal, 61; unkind, 163–64, 231, 239; vanity and, 169; violent, 46*n**, 49, 49*m*18, 166–69, 235, 434; virtue and, 218; vows proceeding from, 364; youthful, 22. *See also* affections; emotions; selfish passions
- patience, 62, 64, 90, 182, 186, 293, 407, 476
- patriarchalism, 475*n*4, 548*n*3
- Paul (saint), 428
- Paullus, Lucius Aemilius, 144*n**
- peace: arts cultivation during, 55; cultivation of, 270; inward, 235, 414; maintenance of, 434, 556*n*9; moral sense and, 270; promotion of, 269, 435, 510; restoration of, 263; in state of liberty, 262, 263; treaties for, 350, 511, 601, 608–11, 616; virtue and, 235
- Peace of Westphalia (1648), 603*n**

- pecuniary fines, 465, 587
- perception: of beauty, 45, 52, 142; of colours, 44, 52; consciousness and, 45; of evil, 121; of figures, 52; of goodness, 121, 196; of grandeur, 55; of happiness, 121; of harmony, 45, 52, 142; of integrity, 196; internal, 11, 45; of misery, 46, 121; of moral beauty, 12*n**; of moral excellence, 80; moral sense and, xiii, 177; of pain, 43, 44, 46, 195–96; of pleasure, 43, 45, 46, 52, 195–96; power of, 41, 43–45, 52–69, 55*n**, 80, 84–88, 102, 131, 137, 176–79; sensation and, 43–45; of sounds, 44, 52
- perfection: bodily, 90; desire for, 29, 47–48, 104, 218; of God, 4, 11–12, 15, 21, 23, 132, 201–7, 210, 218; goodness and, 179, 182, 187–88, 200, 248, 258, 584; instincts for, 47; judgment of, 135; knowledge of, 137; of natural law, 253–54; natural philosophy and, 10–11; supreme, 42, 203; universal goodness and, 412; of virtue, 20, 212–13, 230; wisdom and, 249, 258. *See also* moral perfection
- perfect rights: arbitrators and, 435; burial rights as, 410*n*8; to compensation, 482; description of, 242; of human society, 406–11; integrity and, 242, 354; moral states and, 264–65; natural, 271–79; oaths and, 361; of parents, 472*n*2; in Protestant natural law, 242*n*10; of servants, 480–81; violation of, 242, 243, 246, 397, 598–99; violence in defense of, 396–97, 598–99; vows and, 363
- persecution, 113, 115, 115*n*17, 166, 224, 442*n**, 466, 571–72, 594
- Perseus of Macedonia, 144*n**
- personal rights: contracts and, 343, 456; natural law of, 329*n*6; natural liberty and, 309, 323; real rights compared to, 284, 309–11, 309*n*1
- Philip of Macedon, 423*n*11
- philosophy. *See* moral philosophy; natural philosophy
- piety: carelessness with, 76; dignity and, 352; duty of, 132, 176; indications of, 125, 303; moral character and, 176; natural forms of, 67; natural law and, 418; oaths and, 362; promotion of, 28, 207–8, 412, 414, 568; rational, 143; reputation for, 3; social worship and, 280; vows and, 363
- pity: affections and, 76, 110, 159, 162; as benevolent passion, 49, 50, 56; calm mind and, 128; justice and, 86–87; misery and, 178; moral evil and, 272; restraint of, 241, 346; sense of, 288; sympathetic, 56; for unjust violence, 269; of witnesses, 352
- Plato: *Alcibiades*, 196*n**; *Apology*, 275*n*13; community scheme of, 295, 467–69; on moral character of music, 53; on oligarchy, 517*n*†; on timocracy, 517*n*†
- pleas of necessity: contracts and, 559; denial of, 421, 424–25, 428; extent of, 429–30; fear of evil threatened and, 236, 393; integrity and, 430; just nature of, 338, 420–22; moral obligation and, 402; in natural liberty, 421–22; preventing abuses of, 431–33; supreme power and, 536, 538, 542; during war, 488, 606
- pleasure: Aristotle on, 53*n*§, 60; arts and, 62, 95, 107, 139, 150, 153, 414; beauty and, 44, 54, 82, 87, 153,

- 203; bodily, 70, 74, 150, 160, 188, 195; cradle argument and, 43*n*7; desire for, 43, 58, 64, 65, 233*n*†; dignity and, 93, 134*n*2, 135; disinterested benevolence and, xv, xix; duration of, 134–40, 134*n*1, 139*n*10, 143–45, 188; friendship and, 19; future, 46, 77, 82, 136; geometry and, 55*n**; harmony and, 44, 153, 203; of honour, 147; of Hutcheson's students, 21, 22, 24; imagination and, 55, 124, 128, 138, 142, 145, 148, 153, 188, 286; imitation and, 53–55, 62, 63; intensity of, 134–37, 134*n*1; knowledge and, 53, 58, 153–54, 188, 204; luxury and, 107, 168, 619; moral approbation and, 60, 81–82; moral sense and, xv, xix, 86, 141; natural, 53, 58, 105, 107, 124, 365–66; perception of, 43, 45, 46, 52, 195–96; power and, 138, 148; sacrifice of, 88, 121, 476; of self-approbation, 74, 75, 83; of social life, 348; sources of, 52–55, 58; sympathetic, 76, 128, 143, 144, 154–55; of taste, 138–39; temperance and, 132, 168; wealth and, 55, 124, 138, 148. *See also* enjoyment; sensual pleasure
- Plutarch, 53*n*‡, 289*n**
- polity. *See* civil government
- polygamy, 115, 245, 448–49, 448*n*6, 449*n**, 453, 460*n*16, 490
- polytheism, 199, 563
- Porphry, 289*n**
- positive community, 291*n*7, 301
- possession rights, 312–16
- poverty, 47*n**, 74, 130
- power: abuse of, 508, 525, 539, 544, 563, 571*n*5, 572, 585, 586, 592; active, 47, 53, 57, 64, 272, 292, 492; appetites and, 43, 47*n**, 211; of arbitrators, 435; censorial, 295, 534, 583; consciousness and, 45, 50, 87; defect of, 196, 231; desire for, 130, 166, 168; of education, 64; equality of, 501*n*8; of God, 203, 210, 359; governed by moral sense, 87–89, 122; of human nature, 41–51; of imitation, 86; instincts and, 47*n**, 57; intellectual, 58, 139, 628; of masters, 482; moral, 22, 116, 241*n**, 275, 326*n*†, 342, 361, 363; of motion, 86; natural, 45, 52, 53*n*§, 62, 125, 248, 267, 273, 285; parental, 263, 263*n*7, 410, 471–79, 472*n*2, 474*n*3, 477*n*6, 503; patriarchal, 548*n*3; of perception, 41, 43–45, 52–69, 55*n**, 80, 84–88, 102, 131, 137, 176–79; pleasure and, 138, 148; political, 298*n*4, 456*n*13; pursuit of, 136; of reason and reasoning, 45, 50, 85–87, 100–101, 112, 116, 122, 251, 265, 618; sacrifice of, 88; secular, 564, 579; of speech, 345–46; of spontaneous motion, 43, 50–51, 174; stable goodness and, 202. *See also* civil power; supreme power
- prescription, rules of, 305
- pride, 16, 20, 70*n**, 163, 170–71, 206, 354–55, 494, 501, 508
- Pringle, John, 19*n*23
- private good, 48–50, 56, 75*n**, 78–79, 90, 98, 158–59, 554, 580
- private happiness, 28–29, 49, 70–73, 79, 99–100, 116, 212, 265, 274
- private property, 290–91*n*3, 290–95
- private rights: appetites and, 265; beneficence and, 265; desire and, 265–66; fulfillment of, 279; moral evil and, 266; natural law and, 537; selfish passions and, 266; state

- private rights (*continued*)
 systems and, 514; violence and, 255. *See also* adventitious rights; natural rights
- promissary oaths, 360, 361, 361*n*7
- property: acquisition of, 296–308; agrarian laws and, 298–99, 298*n*4, 521–22, 521*n*8, 530; alienation of, 307, 309, 312, 316, 320*n**; aristocracy and, 521; children as, 472*n*2, 473–74, 473*n**; civil power and, 520*n*7; derived, 296, 309–23, 309*n*1; inheritances and, 456*n*13, 506; monarchy and, 520–21; mortgages and, 305, 310–12, 312*n*4, 317, 383, 606; nature of, 330, 385; oaths in matters involving, 362; original, 296–309; private, 290–91*n*3, 290–95; *res nullius* and, 302, 302*n**; servitudes and, 312, 317–18, 317*n*12; supreme power and, 520–22; transfers of, 311–12, 318–23, 377
- property rights: accession, 306–7; affections and, 293–94; civil law and, 255, 307, 317; consent and, 255, 301, 318, 321, 324, 421; diminution of, 274*n**, 302; natural law and, 300, 314; natural rights and, 275; possession, 312–16; prescription, 305; private property and, 290–95; real rights and, 309, 312; succession, 312, 316–17
- Protestant natural law, 242*n*10, 251*n*35
- prudence: of arbitrators, 403, 434; of civilized nations, 245*n**; commerce and, 361, 367; deceitful proofs of, 17; in discharge of debts, 219–20; duty and, 407–8, 411; external rights and, 244; of justice, 592; marriage and, 458, 467; modern vs. ancient, 529*n*14; obedience to laws and, xv; political, 594; private happiness and, 212; social affections and, 66; virtue of, 212
- public affections, 14, 17
- public good. *See* common good
- public happiness, 100, 122, 158, 228, 346, 541, 543, 570
- Pufendorf, Samuel: on animals, 289*n**; on burial rights, 410*n*8; on conscience, 223*n*12, 237–38*n*†; on contracts, 373*n*1, 384*n*1, 501*n*8; on divorce, 455*n*12; on duels, 400*n*5; *On the Duty of Man and Citizen*, 9*n*16, 218*n*2, 223*n*12; *Elementa jurisprudentiae universalis*, 218*n*2; on extreme necessity, 418–19*n*8; Hobbes compared to, xv; on ignorance of laws, 222–23*n*†; on imputation of actions, 218*n*2; *Law of Nature*, 223*n*12, 373*n*1, 374*n*||, 377*n*†, 502*n*8, 509*n*12; on moral obligation, xiv, xv; on natural law, xiv, xv, 9*n*16; on necessity of social life, 267*n*14; on parental authority, 472*n*2; on passions and desires, 266*n*12; on property, 301; on punishment, 583*n*12; on signification, 345–46*n*1; on state of nature, 262*n*4, 475*n*4; on state systems, 514*n*19, 515*n*1; on succession, 560*n*11; on suicide, 407*n*2; on war, 596*n*4; will-theory of obligation, 320*n**
- punishment: for adultery, 461–62*n**, 465–67; of advisors, 235; anger and, 162, 241*n**; capital, 403–4, 447, 455, 456, 462*n**, 582*n*10; chastisement vs., 584; for civil law violations, 264, 582–86; corporal, 452, 579, 587; of corporations, 589–90; for counteracting public interest, 61; of evil, 241*n**, 358, 393,

- 399; fear of, xv, 60, 73, 76, 114, 202, 254, 393; for fraud, 381; by God, 362; of internal designs, 586; justice and, 241, 553, 587, 593; for moral obligation violations, 25*n**; natural law and, 583*nn*2; natural liberty and, 399, 409, 584; for oath breaking, 360; patriarchal power and, 548*n*3; proportionality of, 587–88; public infamy as, 354–55; rights of, 409, 475; servitude and slavery as, 481*n*, 482, 483, 483*n*3; threats of, 236; unjust, 594
- purgatory oaths, 362
- Pythagoras, 275
- quasi contracts, 345*n*1, 384*nn*1–2, 388–91, 478, 502*n*8
- Rachel, Samuel, 603*n**
- real rights, 284, 309–12, 309*n*1, 316–18, 323, 343, 456
- reason and reasoning: abstract, 178; balance with desire, 266*n*12; of children, 473–75, 503; conformity to, 84; consciousness of, 45; disturbances of, 204; just, 63, 211, 248, 300–301, 305, 447, 456, 484*n*4, 544; moral faculty and, 113, 248; moral sense and, 115; moral states and, 262–63; power of, 45, 50, 85–87, 100–101, 112, 116, 122, 251, 265, 618
- refugees, 606–8
- regret, 27, 128, 145, 149, 162, 192, 316, 356, 600
- Reid, Thomas, xvii*n*7
- religion: as check on selfish passions, 25; civil power and, 567*nn*1–2; errors in, 563; happiness and, 208, 209; harmony and, 29; liberty and, 8, 23; as moral enjoyment, 146–47; natural, 20, 23, 25, 67; promotion of, 26, 363; revealed, 20, 25; rites of, 252; skepticism as threat to, 5; tempers and, 20; toleration of, 571, 571*n*4; truth and, 20. *See also* Christianity; Jews and Judaism; worship
- resistance, rights of, 526, 536, 538–39, 544, 563, 593
- revenge, 97, 111, 148, 163, 400, 401, 461, 627
- reverence, 171, 358–59, 457, 477, 534, 583
- rights: abolition of, 404–5, 550, 550*n**, 560; accession, 306–7, 306*n*15; alienable, 245–46, 326, 481*n*2, 482, 535, 558; of burial, 410*n*8; of buyers, 377; of children, 470–79; of conquest, 552, 555*n*8, 556, 557, 564; of conscience, 243, 244, 594; divine, 257, 549–52, 549*n*5, 564; equality of, 447; extraordinary, 416–33, 509, 512, 524, 598; of governors, 421, 503, 535–46, 591, 618; gradation of, 246–47; to happiness, 264; of human society, 406–15, 406*n*1; inalienable, 480–81*nn*1–2; in marriage, 473*n**; of masters, 480–90; moral states and, 261–62, 264–67; nature of, 238–39; of necessity, 512–13*n*17, 598; obligation and, 247–48; of parents, 470–79, 471–72*n*2; in partnership contracts, 381; of possession, 312–16; of punishment, 409, 475; real, 284, 309–12, 309*n*1, 316–18, 323, 343, 456; of redemption, 377*n*†, 478; of resistance, 526, 536, 538–39, 544, 563, 593; sacred, 261, 276, 314, 569; secular, 388, 567*n*1; of servants, 480–90; succession, 312, 316–17, 549–52,

rights (*continued*)

560–64; unalienable, 242, 245–46, 273, 480–81*nn*1–2, 568, 594; violence and, 242, 255, 264, 397, 400. *See also* adventurous rights; external rights; imperfect rights; natural rights; perfect rights; personal rights; private rights; property rights

Roebuck, John, 626, 626*n*7

Roman law: on accessions, 306*n*15; on adultery, 461–62*n**; age requisites in, 531*n*16; on census, 590–91, 590*n*21; on concubinage, 450*n**; court of justice and, 577; on leasing objects vs. letting out work power, 378*n**; on marriage, 450–51*n**, 519*n*6; on natural equality, 276; on obligation, 384*n*1; on parental power, 474, 474*n*3; political assembly and, 518*n**, 519*n*6; servitudes in, 317*n*12; on slavery, 481*n*2, 484; Twelve Tables, 111*n*12; on undue compensation, 391*n**; on voting, 513*n**, 513*n*†; on war and war captives, 596, 596*n*4, 602*n*11. *See also* civil law

Rose, William, xxiii–xxiv, xxiv*n*38

Rundle, Thomas, 624, 624*n*3

school. *See* education

Scipio Africanus, 111–12*n*12, 144*n**

sculpture, 62, 105, 155, 414

secular power, 564, 579

secular rights, 388, 567*n*1

self-esteem, 69–70*n**, 140, 153

self-government, 111*n*12, 140, 142, 167, 467, 526

self-interest: arbitrators and, 492; in attraction to spectacles of misery, 154*n*23; civil government and, 499; desire and, 70*n**, 99; judgment

and, 434; moral approbation and, 81*n*1; moral ideas derived from, 85*n*9; moral states and, 269; obligation and, xiv, 247*n*26; selfishness vs., 47*n*15; voluntary submission and, 481*n*2

selfishness: as act of the will, 47; affections and, 49, 71, 80, 91, 98, 100, 158–59, 227; appetites and, 48, 49, 79, 90–91, 100, 266; calm, 71, 97; of desire, 72–73, 72*n*7, 122, 226–27, 263, 265, 275; dispositions and, 59; enjoyment and, 49; friendship and, 108–9*n*†; hypothesis of, 13, 13*n*19; moral evil and, 227; of motives, 227, 232; schemes of, 71, 71*n*6, 98*n*33; self-interest vs., 47*n*15; shame and, 105, 106; as subservient to public interest, 61

selfish passions: affections and, 79–80, 90; corruption and, 13; evil and, 56, 90–91; of governors, 619; inaction of, 48; indulgence of, 68; injuries from, 97; luxury and, 166; misery and, 167, 169–71; private rights and, 266; religion as check on, 25; restraint of, 123, 269, 412; self-love and, 98; for sensual pleasure, 49, 166; in speech, 169–70; susceptibility to, 231; tempers and, 166–70; vice and, 189; violent, 166–69; for wealth, 49

self-love: Butler on, 70*n*2, 71*n*6; calm, 69–70, 72, 100; desire and, 74, 75, 77; happiness and, 69*n**, 75, 77, 86, 100; higher scheme of, xix; pride and, 70*n**, as principle of action, 69–71, 70*n*2; selfish hypothesis and, 13; selfish passions and, 98; uniformity in, 111

senses and sensations: concomitant ideas of, 44–45, 45*n*10; external,

- II, 43–45, 55ⁿ*, 109, 125, 138, 155, 163, 179, 195, 286; impairment of, 137; internal, xviii, 45; laws of, 177, 183–86; passive, 64, 210; perception and, 43–45; sympathetic, 56, 141, 152; transient nature of, 140; uneasy, 49, 51, 64, 72, 79, 125, 143, 153, 162–63; usefulness of, 157–58. *See also specific sensations*
- sensual pleasure: character and, 160; desire for, 65; duration of, 135, 140; ingenuity and, 58; innocence of, 138, 141; receipt of, 44, 267; selfish passions for, 49, 166; shame and, 620; vice and, 152, 357
- servants: acquisition of, 299; compensation for, 480–83; damages by, 394, 482; debt of, 482–83; diligence of, 483; duties and rights of, 480–90; happiness of, 482. *See also slavery and enslaved people*
- servitudes, 312, 317–18, 317^m12
- Shaftesbury, Earl of (Anthony Ashley Cooper): as ally in defense of natural sociability, 42ⁿ4; comparison with Hutcheson, xxiii, 80^m25; on dignity of virtue, 75ⁿ*; on disinterested benevolence, 71ⁿ6; *An Inquiry concerning Virtue or Merit*, 28ⁿ*; literary circle discussions on, 6ⁿ5; on unnatural affections, 169ⁿ20
- shame: anger and, 105, 123; envy and, 105; fear of, 154; ingenuous, 202; moral evil and, 211; moral faculty and, 102, 105–6; moral sense and, 167ⁿ*; restraint of, 354; selfishness and, 105, 106; sense of, 60, 102, 104, 106, 106ⁿ8, 167, 357; sensual pleasure and, 620; sorrow and, 104; sources of, 62, 262
- signs: artificial, 345–46^m1; instituted, 347; natural, 345–46^m1, 347
- signification, 347–50, 353, 356
- silver, 367, 369–72
- Simson, John, 4, 4^m1
- skepticism, xxi, 5, 25ⁿ*, 172ⁿ3, 185ⁿ†
- slavery and enslaved people:
 - children, 387–88, 387ⁿ6, 479, 489; Christianity and, 481ⁿ2, 490; damages by, 394, 395ⁿ*; debt and, 390; fear of, 232; liberty of, 387ⁿ6, 390; maintenance of, 277^m17, 387ⁿ6, 390; Mosaic law on s, 490^m11; natural, 277–78, 387ⁿ6, 481ⁿ2; natural rights for, 486, 490; perpetual, 404, 478, 479, 483–89, 557; Roman law on, 481ⁿ2, 484; sociopolitical engagement on, xvi; temporary, 483ⁿ3; of war captives, 387, 484–90, 486ⁿ7. *See also servants*
- Smith, Adam, xvii
- sobriety, 573–76
- sociability, xiv, 42ⁿ4, 130, 267^m14, 472ⁿ2, 491
- social affections: character and, 159, 161; compassion and, 66, 161; disinterested, 14; enjoyment and, 160–61, 164; kindness and, 66; moral faculty and, 66, 105; moral goodness and, 157–58; moral states and, 268–69; private interest and, 157ⁿ2; prudence and, 66; tempers and, 166, 169; virtue and, 157
- social life: contracts in, 373–83; dispositions for, 276; honour in, 358, 427, 582; ill-will toward, 164; integrity and, 582; moral states and, 268–69; natural business of, 192; necessity of, 267^m14, 268–69; pleasure of, 348
- Socrates, 275

- sorrow: as act of the will, 46–47;
 anger and, 123; ingenuous, 202;
 misery and, 149; moral character
 and, 60; natural liberty loss and,
 272; persistence of, 126; shame
 and, 104; for sins, 76; social, 161;
 sympathetic, 56, 76, 78, 128, 152,
 161, 183, 205
- sounds, 5, 44, 52, 53, 325. *See also*
 music
- sovereignty, 248^{n*}, 257, 387ⁿ⁶,
 510^{m14}, 558^{m10}, 580, 607^{n*}, 610
- speech: duty to speak truth, 349ⁿ⁵;
 imitation of, 53; modesty in, 447;
 moral sense and, 346^m; natural
 formation of, 67; obligations in
 use of, 345–57; power of, 345–46;
 promoting or opposing laws with,
 533^{n†}; selfish passions in, 169–70
- spontaneous motion, 43, 50–51, 174
- Stair, James Dalrymple, 477ⁿ⁶
- state of nature: family in, 475ⁿ⁴;
 Hobbes on, 109^{m10}, 262ⁿ⁴;
 parental power in, 472ⁿ²;
 rejection of, 262ⁿ⁴, 263ⁿ⁷; rights
 of necessity in, 512–13^{m17}; as state
 of war, 262ⁿ⁴, 595ⁿ²
- Stoics: on balance between desire and
 reason, 266^{m12}; Cicero on, 46^{n*},
 90^{m19}; cradle argument and, 43ⁿ⁷;
 on crime, 233^{n†}; criticisms of,
 132ⁿ²¹, 161ⁿ⁹, 176ⁿ⁵; on duty of
 piety, 176; on emotions, 46–47^{n*};
 as inspiration for Hutcheson, 121ⁿ³;
 on Plato's *Apology*, 275^{m3}; on
 virtue, 88^{n*}, 135^{n†}
- succession rights, 312, 316–17, 549–52,
 560–64
- suicide, 274^{m11}, 407, 407ⁿ²
- sullenness, 109, 161, 267, 325
- supreme power: acquisition of, 543,
 547–66; aristocracy and, 513,
 515, 517, 527, 529, 538; consent
 and, 536, 547; democracy and, 515,
 517–18, 529, 546; distribution
 of, 519–20; essential parts of, 510,
 514, 518–20, 527; exercising force
 against enemies as, 606–7; joint
 exercise between polities, 513–14;
 lack of accountability and, 535;
 monarchy and, 513, 515–17, 526,
 529, 538; pleas of necessity
 and, 536, 538, 542; property and,
 520–22; resistance against, 526,
 536, 538–39, 544, 563, 593; virtue
 and, 573; wealth and, 518
- surety contracts, 383
- sympathy: affections and, 56–57,
 76–78, 147, 155; children and, 56,
 78; compassion and, 78, 146, 155;
 dispositions and, 77; enjoyment
 and, 157; fear and, 57; good-will
 and, 77, 78; happiness and, 70,
 76–78; imagination and, 77; joy
 and, 56, 77, 78, 128, 144–47, 149,
 153; laughter and, 57; love and, 57,
 77, 78; misery and, 56, 76–78;
 moral excellence and, 77, 78;
 moral faculty and, 141; pain and,
 56, 76–78, 128, 148, 151, 154;
 passions and, 56; pity and, 56;
 pleasure and, 76, 128, 143, 144,
 154–55; sensations and, 56, 141, 152;
 sorrow and, 56, 76, 78, 128, 152,
 161, 183, 205; uneasiness of, 155
- Synge, Edward, 1, 6–7, 6ⁿ⁷, 624,
 624ⁿ³, 625
- A System of Moral Philosophy*
 (Hutcheson), xxx–xxxii: abandon-
 ment of, xvii, xix–xxi, 571ⁿ⁴;
 advertisements for, xviii^{m11}, xxiii,
 630–31; audience for, xvii, xviii,
 xxii; dedication to Synge, 1;
 documentation for history of,

- 623–31; Hutcheson's desire to publish anonymously, xx, 623; Leechman's preface to, xxiii–xxiv, xxvii, 3–30, 71*n*6; place in Hutcheson's intellectual career, xiv, xvii; posthumous publication of, xiii–xiv, xvii, xix, xxii–xxxi, 626–30; reviews of, xxiii–xxiv, 71*n*6, 80*n*25; revisions made to, xxi–xxiii, xxvi, xxviii*n*5, 626–29; subscribers to, xvii, xxiii, xxviii*n*4, 31–37, 626
- Talbot, Charles, 387*n*6
- Tarquinius, Sextus, 111*n*12
- tax, 281, 371, 463, 485, 507, 511, 554, 574, 579, 590–92
- temperance, 132, 137, 168, 182, 211, 412, 568, 569
- temper: affections and, 96–97, 166, 169, 205, 218, 220, 227–28, 231; amiable, 17; benevolent, 294; depravity of, 164, 227, 228, 233, 420; disinterested, 3–4; enjoyment and, 171; forgiving, 76; good-will and, 231; indications of, 65; inward, 76, 108, 213; of masters, 482; moral approbation and, 60; moral excellence and, 164–65; motives and, 234; munificent, 8; negligence and, 224; of parents, 477; reflection on, 86; religion and, 20; selfish passions and, 166–70; sensible, 21, 26; virtue and, 131, 147, 231
- Thomasius, Christian, 596*n*4
- timocracy, 517*n*†, 528*n**
- Timoleon (Corinthian general), 424, 424*n*12
- Titius, Gottlieb Gerhard, 222–23*n*†, 262*n*4, 291*n*3, 296*n*1, 499*n*7
- trade. *See* commerce
- transfer of property, 311–12, 318–23, 377
- treason, 547*n**
- treaties, 350, 511, 601, 608–11, 616
- truth: children and, 58, 92; of Christianity, 23–24; communication of, 346; conformity to, 84; discovery of, 63, 72; duty to speak, 349*n*5; of God's existence, 15; inquiries into, 19; knowledge of, 221, 325; light of, 22; love of, 14, 27; moral, 30, 84; motives for, 358; promotion of, 26; religion and, 20; skepticism as threat to, 5; zeal for, 127
- Tullius, Servius, 518*n**
- unalienable rights, 242, 245–46, 273, 480–81*n*1–2, 568, 594
- understanding, acts of, 45, 50, 63, 69, 218
- uneasiness: anger and, 128, 162–64; of appetites, 127, 142, 153; aversion and, 72, 165; of children, 50; of desire, 72–73, 72*n*7, 78, 125, 162*n*10; enjoyment and, 134, 138–40, 143, 154; evil and, 153; of misery, 148, 161, 178, 187–88; passions and, 149, 162; of sensations, 49, 51, 64, 72, 79, 125, 143, 153, 162–63; of sympathy, 155. *See also* pain
- universal benevolence, 79*n*22, 91, 98, 100, 135*n**, 234*n*15
- universal goodness, 23, 179, 200, 249, 412
- universal happiness: affections and, 57, 230; desire for, 48–49, 177; God's intention for, 80, 147, 177, 199, 206; goodness and, 206, 239; moral faculty and, 196; promotion of, 211, 255, 265–66, 274

- University of Edinburgh, xxi, xxiii, 19, 19*m*23
- University of Glasgow: Baron as student at, xvi*n*7; Carmichael as professor at, xvi, 9, 9*m*16; financial donations made to, 8; Hutcheson as professor at, xiii, xvi, xix, 9–10, 9*m*17, 21–26; Hutcheson as student at, 4–6; Leechman as professor at, xxii; Reid as professor at, xvi*n*7; Simson as professor at, 4*n*1
- useful objects, preventing destruction of, 408
- value of goods, 365–72
- vanity: affections and, 166, 194; corruption and, 526; enjoyment and, 620; geometry and, 173; gratification of, 355; injuries and, 414; just notions of, 23; passions and, 169; of polytheism, 199; pride and, 170; of princes, 612; repression of, 16, 203; selfish passions and, 166, 169
- veracity. *See* truth
- vice: abhorrence of, 411; causes of, 68; degrees of, 90, 95–97, 95*m*29, 226, 228, 392*n**; education in prevention of, 568; exposure of, 22; habits of, 64; indignation against, 17; moral truth regarding, 84; pain and, 184; public, 355; punishment for, 394, 483; selfish passions and, 189; sensual pleasure and, 152, 357; temptations and, 189, 232–33
- violence: abstaining from, 247; active powers restrained through, 64; anger and, 49, 593; of bodily pain, 150; character ruined by, 189; in civil society, 262, 396–400, 396*n*3, 473; condemnation of, 240; in controversies, 66, 437–38; crime and, 156; duels, 400–403, 400*n*5, 402*n*6, 595*n*†; justification for, 397, 403; by masters, 482–83; natural liberty and, 396–99; of passions, 46*n**, 49, 49*m*18, 166–69, 235, 434; perfect rights defended through, 396–97, 598–99; restraint of subjects by, 615; rights and, 242, 255, 264, 397, 400; in state of liberty, 262; unjust, 73, 269, 312, 350, 408, 559. *See also* war
- Virgil, 181*n**
- virtue: active, 185, 203; affections and, 28, 63, 76, 81, 93, 135, 157, 218, 230; amiableness and, 108; beauty and, 22, 206; benevolence and, 241*n**; cardinal, 212; carelessness with, 76; character and, 20, 187, 189; charity and, 426; cultivation of, xiii, xiv, xxiii; degrees of, 90, 226, 228, 247, 392*n**, 583; desire for, 50, 234; dignity and, 75*n**, 90*n*19, 352; disinterested, 13; dispositions and, 206, 226, 352; disturbances of, 204; education and, 160; enjoyment and, 147, 148, 196, 211, 212; of fortitude, 573, 578; good-will and, 89, 218; habits of, 64, 212; happiness and, 28*n**, 41*n*2, 135–36, 146, 186, 234–35, 380; honour and, 60–61, 83, 83*n*6, 147, 582–83; imitation of, 155, 283, 583; imperfect rights and, 411; injuries and, 185–86; judgment of, 228–33, 273; of justice, 129, 211, 212, 573, 576–78; love of, xv, 60*n*12, 279, 448; marriage and, 27; mercy and, 400, 426, 431; in modes of moral philosophy, xiii, xvi; moral approbation and, 82–83, 90; moral excellence and, 93, 431; moral

- faculty and, 12*n**, 82, 152, 196;
moral obligation and, 13, 13*n**, 25,
138; moral sense and, 13, 13*n**, 61,
63, 92, 223, 238; moral truth
regarding, 84; natural law and,
xviii; opportunities for practicing,
23; passions and, 218; peace and,
235; perception of moral beauty
and, 12*n**; perfection of, 20, 212–13,
230; promotion of, 26, 28, 207,
412, 414, 567–68, 573; of prudence,
212; pursuit of, xiv, 131, 166, 212;
reputation for, 3; sense of, 67, 151,
152, 167, 407, 431, 443; sobriety
and, 573–76; social, 138, 278,
569–72, 571*n*5, 573*n**; Spartan,
53*n*‡; Stoics on, 88*n**, 135*n*‡;
supreme power and, 573; tempers
and, 131, 147, 231; usefulness of,
17, 569
voluntary oaths, 362
voting, 513*n**, 513*n*‡, 516*n*2, 533, 533*n**
vows, 360*n**, 362–64, 455. *See also* oaths
- war: arbitrators during, 400; captives
in, 387, 484–90, 486*n*7, 602, 602*m*11,
610, 610*m*18; civil, 338, 519, 525–26,
537, 542, 563, 585, 597, 603, 608; civil
power and, 511–12; contracts during,
556–59; cruel practices during, 600;
damages during, 601–2; declarations
of, 596, 596*n*4, 597; deserters during,
585; duels for ending of, 400–401,
402*n*6; external rights and, 484,
604; force as method for, 599; frauds
during, 600–601; just, 426, 524*n**,
589, 595*n*‡, 596–97*m*4–5, 598–601,
608; laws of, 597–608; neutral states
during, 598*n**, 602–7; pleas of
necessity during, 488, 606; private,
396*n*3, 595, 595*n*2; public, 338–39,
396*n*3, 555, 556, 595–97, 595*n*2;
refugees during, 606–8; responsibil-
ity for, 487*n*8; rights of conquest
and, 552, 555*n*8, 556, 557, 564; seizure
of goods during, 555, 602; solemn,
338, 595–97, 595*n*‡, 595*n*2, 608, 609;
state of, 262, 262*n*4, 595*n*2;
strategems in, 348*n*4; treaties
following, 350, 511, 601, 608–11, 616;
unjust, 485, 487, 556, 592, 597*n*5. *See
also* Grotius, Hugo; Roman law
- wealth: activities in promotion of,
90; census and, 590–91; commerce
and, 379, 380; of criminals, 587; in
democracy, 521, 530; desire for, 48,
50, 72, 130, 168; imposture of, 620;
love of, 10; pleasure and, 55, 124,
138, 148; property rights and, 293;
prospects for, 19; pursuit of, 136;
sacrifice of, 88; selfish passions for,
49; of states, 381, 530, 555, 574, 575;
supreme power and, 518; taxes
and, 590, 591; treaties and, 610
- West, Richard, 8, 8*m*12
Westminster Confession of Faith,
22*m*26, 571*n*4
- wickedness. *See* evil
- Wicquefort, Abraham, 611*m*9
- will: acts of, 45–47, 72, 74; affections
of, 89; in civil government, 494,
497; command of, 74, 75*n**, 236;
declaration of, 296*n*1; determina-
tions of, 46–48, 52, 64, 80, 85–86;
dispositions of, 63, 69, 176, 178; of
God, 10–12, 13*n**, 23, 83, 158, 202,
205, 208, 210, 248–51, 284, 407; of
governors, 251; instincts of, 84;
motions of, 47–50, 72, 78–79,
184*n*‡; passionate motions of the,
49–50; spontaneous motion and,
50–51. *See also* good-will
- William III (king of England), 578*n*8
- will-theory of obligation, 320*n**

- Wilson, Francis, 27
 Wilson, Mary, 27, 456*m*3
 wisdom: admiration for, 492; of
 arbitrators, 344, 398, 434, 435, 476,
 487, 539; in civil government,
 518–19, 525–28; of God, 21–22,
 25*n**, 51, 161, 199–200, 204–5, 210,
 248, 365, 618; happiness and, 19; of
 Hutcheson's selection to Univer-
 sity of Glasgow, 9; infinite, 203,
 249; of laws, 254, 259, 495;
 marriage and, 27; natural rights
 and, 278–79; perfect, 249, 258; of
 providence, 145; stable goodness
 and, 202
 witness testimony, 352, 358, 360, 362,
 436–37
 Wollaston, William, 84*n*8, 345*m*1
 worship: duty of, 341; external, 202,
 207, 341, 432, 571; internal, 202;
 natural forms of, 67; public, 303,
 342; by servants, 482–83; social,
 207, 252, 280. *See also* God
 wrath. *See* anger
 Yorke, Philip, 387*n*6

Index to Scriptural Citations

Genesis 2:18, 464<i>n</i>* Genesis 2:24, 464<i>n</i>* Exodus 23:3, 398<i>n</i>* Joshua 6:17, 259<i>n</i>54 1 Kings 16:3, 259<i>n</i>54 Jeremiah 17:1, 424<i>n</i>14 Matthew 5:32, 463<i>n</i>* Matthew 5:34, 360<i>n</i>*, 463<i>n</i>* Matthew 7:12, 335<i>n</i>* Matthew 23:16–22, 463<i>n</i>*	Mark 10:5–12, 463<i>n</i>* Mark 10:34–35, 221<i>n</i>† Mark 12:30, 218<i>n</i>† Luke 6:31, 335<i>n</i>* Luke 16:18, 463<i>n</i>* Romans 2:14, 87<i>m</i>14 Romans 3:3–8, 428<i>m</i>18 1 Corinthians 4:7, 20<i>n</i>24 1 Corinthians 7:15, 464<i>n</i>* James 5:12, 463<i>n</i>*

This book is set in Adobe Garamond, a modern adaptation by Robert Slimbach of the typeface originally cut around 1540 by the French typographer and printer Claude Garamond. The Garamond face, with its small lowercase height and restrained contrast between thick and thin strokes, is a classic “old-style” face and has long been one of the most influential and widely used typefaces.

This paper meets the requirements of ANSI/NISO Z39.48-1992
(Permanence of Paper). ☹

Book design by Louise OFarrell
Gainesville, Florida
Typography by Westchester Publishing Services
Danbury, Connecticut
Index by Indexing Partners LLC
Rehoboth Beach, Delaware
Printed and bound by Sheridan Books, Inc.
Chelsea, Michigan