

THOMAS  
REID

ON

PRACTICAL

ETHICS

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Edited by  
Knud Haakonssen

THOMAS REID  
ON PRACTICAL  
ETHICS

LECTURES AND PAPERS  
ON NATURAL RELIGION,  
SELF-GOVERNMENT,  
NATURAL  
JURISPRUDENCE  
AND THE LAW OF  
NATIONS

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EDITED BY  
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# Preface

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The Edinburgh Edition of Thomas Reid includes all of Reid's publications and a very considerable selection of his surviving manuscripts. While the editions of his published works simply try to follow Reid's intentions, the manuscript volumes are, of necessity, editors' constructions, and they require substantial introductions and annotations; they are in effect both by and about Reid. This applies also to the present volume. The centrepiece is an edition of Reid's manuscripts on practical ethics which are preserved in the Aberdeen University Library. Reid's text (pp. 1–175) is preceded by an Introduction and followed by a detailed Commentary on the text by the editor. At the back of the volume are a scholarly apparatus of Textual Notes, a Bibliography and an Index. In order to use this edition properly, it is important that the reader consult section 4, pp. lxxvi–lxxxiv, of the Introduction. This is followed at pp. lxxxv–lxxxvi by an Index of Manuscripts printed in this volume. The note indicators in Reid's text refer to the Commentary. The Textual Notes are identified by page and line number. Manuscript and folio numbers for Reid's original manuscripts are printed in the margin of Reid's text.

This work was first published by Princeton University Press in 1990 but has been out of print for several years. It has been revised and updated, and one manuscript has been dropped because it belongs in the subsequent volume of Reid's papers on society and politics.

In connection with this revision, it is a pleasure to acknowledge the advice of M. A. Stewart and Paul Wood and the indispensable assistance of Åsa Söderman. The Rare Books Department of Aberdeen University Library gave permission to the original publication of these manuscripts, and I am happy to repeat my grateful acknowledgement of this kindness.

Knud Haakonssen  
Eastbourne  
29 July 2006



# Abbreviations

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Full details for the abbreviated titles are in the Bibliography at the end of the book.

## Works by Thomas Reid

AP	<i>Essays on the Active Powers of Man</i>
<i>Inquiry</i>	<i>An Inquiry into the Human Mind</i>
IP	<i>Essays on the Intellectual Powers of Man</i>
<i>Orations</i>	<i>The Philosophical Orations of Thomas Reid</i> , edited by D. D. Todd

## Works by Adam Smith

LJ (A) and (B)	<i>Lectures on Jurisprudence</i>
TMS	<i>The Theory of Moral Sentiments</i>
WN	<i>An Inquiry into the Nature and Causes of the Wealth of Nations</i>

## Miscellaneous

AUL	Aberdeen University Library, Aberdeen, Scotland
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# Introduction

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BY KNUD HAAKONSSEN



## 1. Reid's Reputation

Thomas Reid spent most of his long life in church and university, holding no significant public office and, other than family life, engaging in few activities that were not related directly or indirectly to his position as a minister of the Church of Scotland and subsequently as a university teacher at Aberdeen and Glasgow. In modern terms, he was a purely professional man, though this label is misleading when dealing with men of the Enlightenment such as Reid. First, it is characteristic of the Enlightenment to resist any simple correlation between specialisation of knowledge and of occupation. Secondly, in following professions such as preaching and teaching, the man of the Enlightenment was, in Scotland, understood to be fulfilling a public office, not just in the trivial sense of an office controlled by the public authorities, but in the wider moral sense of one contributing to the formation of proper citizens.

Both points are important for an understanding of Reid. Although the longest and most distinguished part of his career was as professor of moral philosophy, the moral philosophy he professed was only part of a wider concern with human knowledge, aimed as much at the formation of character as at the imparting of knowledge. Indeed, the latter was seen as the most valuable means to the former. For a proper appreciation of Reid's moral philosophy, that philosophy must be set in its wider intellectual and historical context, and scholarship during the past decade or two has made this possible to a much higher degree than before.

Such contextualisation is all the more necessary because a long-standing common picture of Reid has tended to preclude the wider perspective that is required, and this tendency is still current, especially among philosophers. In many histories of philosophy, as well as in more specialised discussions, Reid is seen as a primarily negative or critical philosopher who only developed a philosophy of his own to the extent required by his refutation of David Hume's scepticism. This narrow view of Reid goes back to the first general presentation of his philosophy by Dugald Stewart, and it is part of the mythology of Reid as the founder of a 'School of Common Sense philosophy' to combat Hume, when in several decisive respects he was the high point in a continuous development of Common Sense theory from the moral sense tradition of Shaftesbury, Hutcheson, Butler, Turnbull and

Kames.<sup>1</sup> Reid's Common Sense philosophy in the narrower sense of an answer to modern scepticism, though obviously important, is only part of a wider philosophical framework, access to which is facilitated by Reid's considerable manuscript *Nachlass*. Through this and other contemporary sources, we can place Reid in his own philosophical scene more accurately than the debate on Humean scepticism allows and so perhaps also come to a more adequate appreciation of the latter and of the published works upon which it is based. The manuscripts show how Reid's epistemological concerns themselves were intimately connected with a much wider programme for what he called 'the culture of the mind'.<sup>2</sup> Beyond this, there are two areas in particular where Reid's manuscripts significantly alter his conventional image: natural philosophy and mathematics, and moral and political theory. Reid was both an epistemologist exploring the character of knowledge and a moral and natural philosopher contributing to the general stock of knowledge.

As far as natural philosophy and mathematics are concerned, the manuscripts show that these were among Reid's earliest intellectual pursuits and a life-long concern of his.<sup>3</sup> Reid may not have made contributions to the sciences or mathematics that were of the first rank, but his achievement was of a high order and well above that of the amateur dabbler. This endeavour grew not merely from the requirements of his teaching, especially in the curriculum of King's College, Aberdeen where each 'regent' was expected to teach the whole of natural and moral philosophy to each cohort of students; Reid also believed that it was the philosopher's basic task to explore the providential order of creation in all its aspects.

While the manuscripts clearly show that Reid's interest in natural philosophy dates back to his student days, and while he was concerned with matters of political thought from an early stage,<sup>4</sup> the situation regarding moral philosophy is somewhat different. We can document that from the age of about twenty-six or twenty-seven, Reid had some interest in moral

<sup>1</sup> See David Fate Norton, 'From Moral Sense to Common Sense' (1966). For Stewart, see his *Account of the Life and Writings of Thomas Reid*, first published in 1803. Stewart's one-sided view of Reid has been corrected by Paul Wood, 'The Hagiography of Common Sense' (1985). Full bibliographic details of all authorities cited are provided in the Bibliography.

<sup>2</sup> See *Thomas Reid on Logic, Rhetoric and the Fine Arts. Papers on the Culture of the Mind*, ed. A. Broadie (2005).

<sup>3</sup> See *Thomas Reid on the Animate Creation: Papers Relating to the Life Sciences*, ed. P. Wood (1995) and *Reid on Mathematics and Natural Philosophy*, ed. Wood (forthcoming). The main study is Paul Wood, 'Thomas Reid, Natural Philosopher' (1984).

<sup>4</sup> See *Reid on Society and Politics*, eds. K. Haakonssen and P. Wood (forthcoming).

epistemology and psychology and in metaphysical problems with moral implications, especially the moral consequences of the problem of free will, but before 1764, when as professor of moral philosophy at Glasgow University he began to give the course that is reconstructed in the present volume, there is little evidence that he took more than a cursory interest in what he then called ‘practical ethics’. The lectures and papers he wrote over the next five or six years, supplemented with some later papers, constitute a full system of practical ethics which has lain buried in the manuscripts since Reid’s death.

## 2. The Development of Reid’s Moral Thought

### **Student and Minister<sup>5</sup>**

Any attempt to trace the development of Reid’s intellect during the first half of his life is frustrated by a dearth of sources, but we know enough to identify him as a type and to add some distinguishing characteristics. In general, Reid resembles the members of the slightly younger clerical circle remembered as ‘the Moderate Literati’ of Edinburgh – namely, Hugh Blair, John Home, William Robertson, Adam Ferguson and Alexander Carlyle.<sup>6</sup> Although he was an Aberdonian, Reid’s background, like theirs, was Whig and Presbyterian, not Jacobite and Episcopalian, and his moral and intellectual outlook was apparently decisively influenced by a university training broadly similar to theirs. At Edinburgh the arts curriculum had been modernised in 1708 by the appointment of specialist professors in separate subjects, but Aberdeen’s two colleges, Marischal and King’s, retained the regent system, under which first-year students were taught by one specialist professor of Greek, Latin and Hebrew and for the remaining three years had one teacher, a regent, in all arts subjects: logic, history of natural philosophy, ethics, metaphysics and particular sciences. In addition, the professor of mathematics taught elementary arithmetic and geometry in the first two years. Even so, Marischal College had undergone a considerable intellectual renewal just before Reid’s arrival. All the staff, except the principal, were recent appointees

<sup>5</sup> This is not the place to situate Reid’s moral thought in his general biography. For this and all other aspects of Reid’s life, the reader is referred to Paul Wood’s forthcoming *The Life of Thomas Reid: The Culture of the Mind*.

<sup>6</sup> See Richard Sher’s *Church and University in the Scottish Enlightenment: The Moderate Literati of Edinburgh* (1985).

following a purge of the college for suspected Jacobite sympathies in the 1715 uprising.<sup>7</sup>

Of the young and newly recruited teachers, the most important here is George Turnbull, whose second and last regency (1723–26) included Reid as a pupil.<sup>8</sup> Turnbull's central message to his class, as set out in his graduation orations, was a providential naturalism according to which a scientific analysis of the phenomena of this world would show the hand of Providence in the regularities exhibited. The most complete example of this was Newtonian physics, but as Newton himself had pointed out, the method could and should be extended from physical phenomena to moral phenomena. Thus, contrary to the Marischal curriculum, natural philosophy would become an introduction to and an exemplar for moral philosophy, the completion of which was natural theology. Empirical investigation of the nature of the world and especially of man's mental and moral faculties would show that there are things that are inherently good and bad, and the supreme will disclosed by the providential order of the world would put man under a moral obligation to follow the laws of nature. The natural jurisprudence that Turnbull presumably outlined to his students on this basis shows only slightly in a few theses at the end of his graduation oration for Reid's class in 1726, from which the graduands were to choose their topics of disputation: (1) the right to do or not to do something derives as much from God as the similar obligation to do or not to do something – that is, there are purely permissive laws of nature; (2) all rights over things and over people derive from God; (3) man is created for society and (in the similar theses for 1723) the state of nature is not completely lawless; (4) no natural rights can be contractually alienated, and in cases of the utmost necessity the individual has a right to the property of others; (5) without divine grace no man can be good, pious and upright.<sup>9</sup> Although these theses

<sup>7</sup> For all aspects of the curriculum at the two Aberdonian colleges, see Paul Wood, *The Aberdeen Enlightenment. The Arts Curriculum in the Eighteenth Century*, Aberdeen, 1993.

<sup>8</sup> In fact, Turnbull absented himself from his class for the first months of Reid's final year in order to study with Jean Barbeyrac in Groningen. The class may have been taught by Robert Duncan, also Barbeyrac's student. See M. A. Stewart, 'George Turnbull and Educational Reform' (1987), p. 97.

<sup>9</sup> See Turnbull, *Theses academicae de pulcherrima mundi cum materialis tum rationalis constitutione* (1726), esp. p. 12; and idem, *Theses philosophicae de scientiae naturalis cum philosophia morali conjunctione* (1723); both in translation in Turnbull, *Education for Life: Correspondence and Writings on Religion and Practical Philosophy* (2009). Also Turnbull's later works are relevant here, *The Principles of Moral and Christian Philosophy* (1740–41), which derives from his lectures in Aberdeen; *Observations upon Liberal Education* (1740); and his translation of

do not establish Turnbull's precise jurisprudential line at the time, it is very likely that they reflect his teaching and are therefore evidence that Reid was introduced by Turnbull to some central issues in contemporary natural law, a topic that was to play a central role in Reid's later career. It is not clear how far Turnbull spelled out the theologico-political implications of his views, but it must soon have become evident to his students that, if the laws of morals could be arrived at independently of dogmatically enshrined religion, there was no justification for clerical authoritarianism and that the proper role of the preacher was that of a teacher of morals. Further, if independent moral character could be formed by a liberal education, then this was the proper foundation of the virtues of citizenship and, by extension, of a political system of liberty. In short, although full documentation is impossible, it seems reasonable to assume that from Turnbull Reid not only learned a providential naturalism, with its methodological and pedagogical implications, but also acquired some idea of modern natural jurisprudence, a polite Shaftesburian Stoicism and a humanism with 'republican' or Commonwealth leanings, though one in which education in a more or less formal sense had become the primary means to a full and active citizenship.<sup>10</sup>

We know little of the moral philosophical influences to which Reid was exposed for the next twenty-odd years, after his studies with Turnbull, or of Reid's reactions to them, and we know almost nothing of his theological training. But we do know that in the winter of 1736–37 he was active in a philosophical club that, according to his brief minutes, discussed theories of human nature (apparently John Locke's and Francis Hutcheson's), free will, self-love and benevolence, the passions and, most significant here, the divine government of moral agents through law.<sup>11</sup> There is further evidence

Heineccius, *Elementa juris naturae et gentium*, which is used extensively in the Commentary below. On Turnbull, see James McCosh, *Scottish Philosophy* (1966), pp. 95–106; David Norton, *David Hume: Common-Sense Moralist, Sceptical Metaphysician* (1982), pp. 152–73; M. A. Stewart, 'Berkeley and the Rankenian Club' (1985), esp. pp. 31–4; idem, 'George Turnbull and Educational Reform'; J. C. Stewart-Robertson, 'The Well-Principled Savage, or the Child of the Scottish Enlightenment' (1981).

<sup>10</sup> Elements of this general outlook were already current at Marischal. Shaftesbury's ideas had been introduced a couple of years before Turnbull's arrival by David Verner (see M. A. Stewart, 'Berkeley and the Rankenian Club', p. 32); Turnbull corresponded with Robert Molesworth, and in 1728 Colin Maclaurin, the professor of mathematics, was in touch with an old Glaswegian fellow student, Francis Hutcheson, who was then (in the 1720s) associated with the Molesworth circle in Dublin (M. A. Stewart, 'George Turnbull').

<sup>11</sup> See 2131/6/1/17. Unless otherwise noted, all such references to Reid's manuscripts are to the manuscripts in the Birkwood Collection at Aberdeen University Library. The first four



of Reid's interest in these topics at this time, especially an eight-page 'Abstract of Dr. Clarke's Notion concerning Liberty, Collected from his Papers upon that Subject Published Ao. 1717'.<sup>12</sup> Clarke had a continuing influence on Reid. After visiting England in 1736–37, Reid wrote to an unknown host in London, discussing the passions, and from 1738 we have notes on Peter Browne's *The Procedure, Extent, and Limits of the Human Understanding*.<sup>13</sup>

Much more important than any of this is a twenty-page abstract of Joseph Butler's *Analogy of Religion* dated November 1738.<sup>14</sup> In it Reid follows Butler's text and its emphases without offering any comments of his own, but in view of the many similarities between the two thinkers' moral philosophy, and considering Reid's high regard for Butler throughout his life, this early and close reading of the *Analogy* indicates a formative influence.<sup>15</sup> At the most general level, Butler reinforced the providential naturalism to which Reid would have been introduced by Turnbull. At the same time, Butler clearly practised the idea that the teaching of moral philosophy should aim primarily at inculcating morals and that theorising about morals had little relevance to practice because the ordinary person's moral faculty sufficed for the latter. The purpose of moral theory was mainly to stave off moral scepticism.<sup>16</sup> All of this remained basic to Reid and to many other moralists of the

digits (2131) are common to all the Reid manuscripts in that collection and will be omitted hereafter. Manuscripts from other collections are referred to by library and number in the usual manner. The relevant minute referred to here is quoted in the Commentary, p. 182–3 n. 5

<sup>12</sup> 3/II/8. See also 6/II/34–35 concerning free will. Also relevant are some seven pages of notes on the Clarke-Leibniz correspondence (3/II/7). Neither of these manuscripts is dated, but the type of paper and the handwriting both point clearly to the 1730s. The reference is Clarke's *Collection of Papers, which Passed between. . . Mr. Leibnitz, and Dr. Clarke in the Years 1715 and 1716* (1717). Concerning Reid and Clarke, see W. L. Rowe, *Thomas Reid on Freedom and Morality*.

<sup>13</sup> See 3/III/7 and AUL (Aberdeen University Library) MS. 3061/10,1r-2v.

<sup>14</sup> AUL MS. 3061/10,3r-12v. Apparently anticipating a later need to use the abstract, Reid paginated it separately from the surrounding notes in the manuscript.

<sup>15</sup> For Reid's later appreciation of Butler, see also n. 35 below. As late as 22 August 1781, Reid was 'revising Butler's *Analogy*' and discussing problems of probability arising from the introduction to the work (AUL MS. 3061/12,2r). For Reid, both analogical and probable reasoning remained important topics; see especially *Inquiry into the Human Mind* (hereafter *Inquiry*), pp. 203 ff., and *Essays on the Intellectual Powers of Man* (hereafter IP), I.iv and VII.

<sup>16</sup> These aspects of Butler are perhaps clearer in his *Sermons* than in the *Analogy* (in Butler, *Works*). I do not know of any direct evidence that Reid read the *Sermons* (the *Analogy* was better known throughout the eighteenth century), but D. Stewart says so (*Account*, p. 318) and in view of his high regard for Butler it is likely.

time. More distinctly important to Reid was Butler's criticism of the moral sceptics for reducing morals to self-interest and of Hutcheson for reducing it to benevolence. According to Butler, in order to understand the complexity of morals we must acknowledge the variety of 'internal principles' in human nature, which experience reveals. First, there are the 'particular passions, appetites and affections'; secondly, there is the 'general affection or principle of self-love,' which moralists have not commonly distinguished from the former; thirdly, there is the principle of benevolence; and fourthly, there is conscience, under whose authority the other principles stand.<sup>17</sup> It is difficult to avoid the impression that this pluralistic theory had a significant influence on Reid's account, many years later, of the hierarchy of active powers, and there is nothing closer to his idea of the moral faculty than Butler's notion of conscience.<sup>18</sup> It should also be noted that in his abstract of the *Analogy* Reid pays attention to the argument in the appended dissertation 'Of Personal Identity' – namely, that personal identity is presupposed in the operations of consciousness and not constituted by the latter.<sup>19</sup> If this argument were applied to those who try to disprove personal identity, it would be a form of the reflexivity or self-refuting argumentation that we shall meet in Reid below, and Butler may have inspired Reid to think along those lines.<sup>20</sup>

The letter to Reid's London host, mentioned above, also introduced his friend David Fordyce, who had taken the Arts and Divinity courses at Marischal a couple of years after Reid. The trip on which Fordyce carried Reid's letter, presumably in 1737, probably also took him for a time to Northampton Academy, which under Philip Doddridge was one of the notable dissenting academies.<sup>21</sup> Thus, when Fordyce eventually returned to

<sup>17</sup> The *locus classicus* for conscience is Butler's dissertation II, 'Of the Nature of Virtue', which is appended to the *Analogy* and was particularly valued by Reid, according to D. Stewart (*Account*, p. 318). The other principles are treated more distinctly in Butler's *Sermons* (nos. 1, 2, 3 and 11), but see also the *Analogy* (*Works*, I:5).

<sup>18</sup> On the relationship between Butler and Reid, see J. B. Schneewind, *Sidgwick's Ethics and Victorian Moral Philosophy* (1977), pp. 63–74; and for Butler's notion of conscience, see idem, 'The Use of Autonomy in Ethical Theory' (1986), *The Invention of Autonomy* (1998), 345–9, and Stephen Darwall, *The British Moralists and the Internal 'Ought', 1640–1740* (1995), pp. 244–83.

<sup>19</sup> See dissertation I, 'Of Personal Identity', in the *Analogy*.

<sup>20</sup> For Butler's direct influence on Reid's theory of personal identity, see IP, pp. 275–9, and Terence Penelhum, *Butler* (1985), pp. 132–3; cf. also René van Woudenberg, 'Reid on Memory and the Identity of Persons' in *The Cambridge Companion to Thomas Reid*, edited by Terence Cuneo and René van Woudenberg, pp. 204–21.

<sup>21</sup> See Peter Jones, 'The Polite Academy and the Presbyterians, 1720–1770'. Reid's letter, though undated, seems to have been written soon after his return from England in 1737,

Aberdeen as regent at Marischal in 1742, he strengthened the already significant links between the liberal Presbyterian intellectuals there and various groups of English dissenters and set about giving an account of their common educational ideas in his *Dialogues concerning Education* (1745) and his later writings.

From the end of the period under consideration we find two further indications of Reid's interest in moral philosophy. His first publication, 'An Essay on Quantity', was presented to the Royal Society in 1748 and appeared in its Transactions for that year.<sup>22</sup> It contains a brief criticism of Hutcheson's 'Attempt to introduce a Mathematical Calculation in Subjects of Morality' and seems to stem from his critical reading of Hutcheson's *Inquiry into the Original of our Ideas of Beauty and Virtue* prior to 1738.<sup>23</sup> As far as I know, this is the only concrete evidence that Reid in this entire period read anything directly concerned with the central problems peculiar to natural jurisprudence, and there is no suggestion that he took any interest in these.<sup>24</sup>

Finally, we have two-and-a-half pages of reading notes from Arrian's arrangement of Epictetus, probably made in 1750, which confirm Reid's familiarity with ancient Stoicism. In view of the eighteenth-century tendency to link Socrates and Stoicism and to adapt both to the framework of rational Christianity, it is of interest that the notes on Epictetus are followed by a few lines on Xenophon's defence of Socrates' religion as being in accordance with accepted doctrine.<sup>25</sup>

which makes this the most likely date for Fordyce's own departure for England (see *ibid.*, p. 161). On Fordyce, see also the literature referred to in *ibid.*, p. 177 n. 9; Stewart-Robertson, 'The Well-Principled Savage'; W. H. G. Armytage, 'David Fordyce: A Neglected Thinker' (1956); Fordyce's main works are *Dialogues Concerning Education* (1745), I–II, and *Elements of Moral Philosophy* (1748); the latter will be encountered in the Commentary below. Concerning the connections between Rational Dissent and Scotland, see also Martin Fitzpatrick, 'The Enlightenment, Politics and Providence: Some Scottish and English Comparisons' (1996).

<sup>22</sup> Reprinted in *Reid on Mathematics and Natural Philosophy*.

<sup>23</sup> The quotation is from the subtitle of the first edition of Hutcheson's *Inquiry*. Hutcheson removed the mathematical material from the fourth edition of 1738. Wood dates the first of two early sketches of Reid's 'Essay' to the 1730s on grounds of orthography and paper size (5/1/20; Wood, 'Thomas Reid', pp. 55–6). The second manuscript (5/1/22), also undated, is entitled, 'Essay Concerning the Object of Mathematics occasioned by reading a piece of Mr. Hutchesons where Virtue is measured by simple & Compound Ratios'.

<sup>24</sup> I refer to section VII of Hutcheson's *Inquiry*, entitled 'A Deduction of some Complex moral Ideas, viz of Obligation, and Right, Perfect, Imperfect, and External, Alienable, and Unalienable, from this moral Sense'.

<sup>25</sup> See 3/II/4. Concerning Reid's later use of Epictetus and Arrian, see the Commentary below at p. 181 n. 3, pp. 183–4 n. 10, and esp. p. 253–4 n. 2. The notes on Xenophon, which are dated

This sums up Reid's involvement with moral philosophical ideas directly relevant to what is here called 'practical ethics', before his removal to King's College in 1751. Moral philosophy was plainly not his main interest; his primary concern was with a range of mathematical and scientific problems, especially in astronomy, and with problems of epistemology and the philosophy of mind. He was clearly engaged with the theory of ideas, where he seems to have taken a Lockean rather than a Berkeleian line.<sup>26</sup> There is also in the manuscripts a discussion of the self which, as Paul Wood points out, is important for two reasons: it provides a slight indication that Reid took an interest in Hume at this stage, and it foreshadows the form of argumentation so characteristic of his later philosophy – namely, that certain basic notions, such as 'self', are necessarily presupposed in all cognition.<sup>27</sup>

### Regent at King's College, Aberdeen

In 1751 Reid succeeded Alexander Rait as regent at King's College. He took over Rait's class from its third year to the completion of the course in 1753 and subsequently completed three full regencies and two years of a fourth before moving to Glasgow in 1764. Reid's life in Aberdeen was a busy one, dominated by his involvement in the business of his college, of which the most important was a curriculum reform that, as we shall see, tells us something about the structure of his teaching.

Most of Reid's activities outside King's College were intellectual in character, and most of his associates had links with either King's College or Marischal College. Of particular importance is the Aberdeen Philosophical Society, better known as the Wise Club, which he helped to found in 1758. Among its first members were his kinsman John Gregory; his friend and fellow student of Newton, John Stewart; another close friend, the physician David Skene; a minister, Robert Trail; and another minister and future principal of Marischal College, the philosopher George Campbell.<sup>28</sup> To this society, soon joined by, among others, Alexander

September 1750 and are clearly later than those on Epictetus, concern 'Memorabilium Lib. 5', generally known as the *Oeconomicus*.

<sup>26</sup> Wood, 'Thomas Reid', p. 52.

<sup>27</sup> See 6/1/18 and Wood, 'Thomas Reid', p. 53. See nn. 19 and 20 above.

<sup>28</sup> See H. Lewes Ulman, *The Minutes of the Aberdeen Philosophical Society 1758–1773*, Jeffrey M. Suderman, *Orthodoxy and Enlightenment*, pp. 25–9, and Bernhard Fabian, 'David Skene and the Aberdeen Philosophical Society', *The Bibliothek* 5 (1968), pp. 81–99.

Gerard and James Beattie, Reid presented many of the ideas that he subsequently published.

We have two major sources for Reid's intellectual development during his thirteen years at King's College, the graduation *Oration*s, which he delivered at the conclusion of each of his regencies in 1753, 1756, 1759 and 1762, and the *Inquiry*, which was published in his last year in Aberdeen and was the main fruit of his work there. Together with a variety of minor sources, they show that it was in Aberdeen that Reid's general philosophical outlook, his epistemology and metaphysics, took shape and developed, while foreshadowing his approach to moral philosophy.

As regent at King's College, Reid had to take his students through the whole Arts curriculum, except first-year Greek, and thus he taught mathematics, natural history, natural and experimental philosophy, and 'the Philosophy of the Human mind and the Sciences that Depend upon it',<sup>29</sup> which a curriculum regulation at King's College, of which he was co-author, described as follows:

By the Philosophy of the Mind is Understood, An Account of the constitution of the Human mind, and of All its powers and Faculties, whether Sensitive, Intellectual or Moral. The Improvements they are capable off, and the Means of their Improvement; of the Mutual Influences of Body & Mind on each Other; and of the knowledge we may acquire of Other Minds and Particularly the Supreme Mind. And the Sciences depending on the Philosophy of the mind, Are Understood to be Logic, Rhetorick, The Laws of Nature and Nations, Politicks, Oeconomicks, the Fine Arts and Natural Religion.<sup>30</sup>

Reid's *Oration*s show how far he followed this curriculum.

Undoubtedly the philosophy of mind, or pneumatology, was central to Reid's teaching of philosophy at Aberdeen and at Glasgow, and was seen as the foundation for all other sciences inasmuch as it demonstrated the possibility of knowledge.<sup>31</sup> His approach to it was designed to show that the experimental and inductive method, which he saw as a coherent

<sup>29</sup> See 'King's College Minutes, 1753–54', AUL MS. K 43 p. 373, as quoted by Wood, *The Aberdeen Enlightenment*, p. 67. This manuscript will be republished in *Reid and the University*.

<sup>30</sup> 'King's College Minutes, 1753–54' p. 395, as quoted by Wood, *The Aberdeen Enlightenment*, p. 67.

<sup>31</sup> Though it should be pointed out – as Paul Wood has to me – that the centrality of pneumatology was not, in fact, reflected in the *order* in which the subjects were taught at either King's College or in Glasgow. The revised curriculum at King's retained the traditional division

Baconian–Newtonian one, could be as successful in mental science as in physical science and led to the conclusion that the empirical method showed that while the physical and the mental worlds are equally law-governed, they are inherently disanalogous. This was the basis of Reid’s rapidly developing criticism of the theory of ideas and Humean scepticism. With this went the articulation of Reid’s own philosophy, and especially the theory of the First Principles of Common Sense as the undeniable pre-suppositions for all knowledge and thus for all science, as we shall see below, where the theological framework of Reid’s philosophy will also be touched on.

Reid’s constant pursuit of natural philosophy and mathematics during these years has been definitively treated by Paul Wood, but what about all those sciences, the moral sciences, directly dependent upon the philosophy of mind which are more directly relevant in the context of the present volume – ‘The Laws of Nature and Nations, Politicks, Oeconomicks’? In his *Orationes* Reid mentions thinkers whom he considers particularly important for his students as they go out into the world, and there is not a single natural lawyer among them, nor any other evidence from this period that Reid had an interest in natural jurisprudence. As for ‘oeconomicks,’ it was the traditional jurisprudence of the household (Greek: *oikos*) that figured in most of the modern Protestant systems of natural law and that commonly pointed to the authority of Xenophon’s *Oikonomika*. As we have seen, Reid took notes from this work in September 1750, and in his first *Oration* he again refers to it.<sup>32</sup> Also the ‘scheme of a Course of Philosophy’ from 1752, to be quoted below, gives a brief outline of oeconomicks as a Xenophontian moral and material economy of the household, and the topic became a fixed part of Reid’s Glasgow course, as we see in the manuscripts printed in the present volume.

Taking the *Orationes* as probably a reliable guide to what was emphasised, Reid’s Aberdeen lectures on morals concentrated on the basic principles of moral knowledge, on classical notions of virtue and duty, and on ‘Politicks’.<sup>33</sup> We find the first indications of Reid’s notion of First Principles in morals, which became central to his mature moral philosophy:

between moral and natural philosophy, suggesting that natural philosophy had some degree of cognitive independence.

<sup>32</sup> See n. 25 above and Reid’s *Philosophical Orationes*, ed. Todd (hereafter *Orationes*), pp. 936–7. The *Orationes* will be republished in *Reid and the University*.

<sup>33</sup> Even these topics disappear from the 1759 and 1762 *Orationes*, which may be an indication that they received less and less attention in Reid’s course.

what has been established first in mathematics, then in physics . . . we hope will be established in other parts of philosophy as well, that is that they will be built in an orderly fashion upon common notions and phenomena. Nor have I . . . found any cause which would make this hope impossible. For there are axioms and phenomena in ethics and politics no less than in physics on which all right reasoning in these sciences depends.<sup>34</sup>

Morals is a matter of common sense, so already in 1753 Reid rejected any theorising about morals:

those, either among the ancient or the modern writers, who have tried to philosophise about the causes, origin, and nature of virtue . . . beyond the common sense of mankind in general, have made little progress and rather have rendered a subject, clear and obvious to the multitude, obscure and doubtful by their philosophical subtleties. However, in this matter Joseph Butler . . . has been seen to wrest the palm.<sup>35</sup>

Moral philosophy should rather seek to ‘strike the minds of men with the importance of the subject matter and move their hearts’.<sup>36</sup> Accordingly, we should turn first to Socrates, especially Xenophon’s Socrates, and secondly to Stoicism, especially Cicero’s *De officiis*, both of which apparently manifest the moral essence of Christianity.

The curriculum regulation and the brief passages from the *Orations* should be supplemented by the four-page ‘Scheme of a Course of Philosophy’, drawn up in 1752, for a fuller picture of Reid’s moral ideas in the 1750s.<sup>37</sup> After a two-page outline of the various branches of natural philosophy and mathematics, Reid sketches ‘The other Grand Branch of human Knowledge . . . the Mind’, later called pneumatology. The remainder of the manuscript is concerned with natural theology, ‘Ethicks’, ‘Oeconomicks’ and ‘Politicks’,

<sup>34</sup> *Orations*, pp. 955–6.

<sup>35</sup> *Ibid.*, p. 937. Reid’s Latin is ambiguous here (‘In hac parte tamen Josephus Butlerus . . . palmam praeripere visus est’ [*Philosophical Orations*, ed. Humphries, p. 14]) and misled the translator into thinking that Reid was claiming pre-eminence for Butler among the obscurantists (see *Orations*, p. 937n.). The point is that Butler has wrested the palm from those who have gone beyond common sense. From his 1738 notes on the *Analogy* (see n. 14 above), Reid’s comments on Butler are consistently favourable, and D. Stewart (*Account*, p. 318) confirms his high opinion of Butler. Even if Reid in the early 1750s wavered in his assessment of Butler, it is quite unlikely that he would single out the bishop in a graduation speech and hand him the palm for obscurantism in morals – in Reid’s eyes a fiercely competitive field.

<sup>36</sup> *Orations*, p. 935.

<sup>37</sup> See 8/v/1 (in *Reid and the University*).

and is of interest for his eventual system of practical ethics, making clear the providential framework of his moral thought and emphasising a divine government by law:

Next to the History of the Human Mind and its operations & Powers The Knowledge of God and of his Natural Government. The Laws by which he Governs Inanimate Matter Brutes & Men. Our Capacity of Moral Government. The Indications of our being under it and of our State here being a State of Discipline & Improvement in order to another.

The Natural Immortality of the Soul.<sup>38</sup>

Reid's remarks on morals show that he inculcated virtue in a setting of household 'oeconomy' inspired by Xenophon, which he took to be the proper foundation for civic life, and that he was concerned with honour and hostility toward 'Riches', as well as with the classic alliance of politics, arms and rhetoric. These topics are set out in the manuscripts and papers in *Reid on Society and Politics*.

Outside the classroom, Reid developed a number of his moral philosophical ideas in the Aberdeen Philosophical Society. The society's activities were divided between the presentation of formal discourses and the introduction of questions for discussion, and it is interesting to note that, while Reid used his discourses to develop leading themes of the *Inquiry*, his moral ideas were always aired in the form of questions. This custom, which he generally followed in the Glasgow College Literary Society, probably reflects the view that morals and politics are conversational matters. As he wrote to Andrew Skene years later:

I wish often an evening with you, such as we have enjoyed in the days of former times, to settle the important affairs of State & Church, of Colleges & Corporations. I have found this the best Expedient to enable me to think of them without Melancholy and Chagrin. And I think all that a man has to do in the world is to keep his temper and to do his duty.<sup>39</sup>

In his first paper to the new Aberdeen Society, on 22 November 1758, Reid introduced a question that remained central to his critical concerns thirty years later in the *Active Powers*, 'Whether justice be a natural or artificial

<sup>38</sup> 8/v/1,2r.

<sup>39</sup> Reid to Andrew Skene, 30 December 1765, in *Correspondence*, p. 46. For the Society's questions, see Ulman, *Minutes of the Aberdeen Philosophical Society*, pp. 189–98.



virtue?’<sup>40</sup> In 1759 he asked ‘Whether mankind with regard to morals always was and is the same?’ and in 1760 he asked ‘Whether it is proper to educate children without instilling principles into them of any kind whatsoever?’, topics that recurred constantly in his later published work.<sup>41</sup> Clear evidence that Reid’s central ideas on moral judgement and human agency were already taking final shape is provided by his discussions in 1761 and 1763: ‘Whether moral character consists in affections, wherein the will is not concerned; or in fixed habitual and constant purposes?’ and ‘Whether every action deserving moral approbation must be done from a persuasion of its being morally good?’<sup>42</sup> Finally, we see that his interests in political economy, including – as was common – what we would call demographic issues, were being formulated at this time: ‘Whether by the encouragement of proper laws the number of births in Great Britain might not be nearly doubled or at least greatly increased?’<sup>43</sup>

Reid’s first major publication, *Inquiry into the Human Mind, on the Principles of Common Sense* (1764),<sup>44</sup> is a work on epistemology and especially on sensation. It is also important for an understanding of his moral thought because it fixes the theological framework and associated methodological principles for philosophy in general and, more particularly, presents the refutation of epistemological scepticism as fundamental to the criticism of moral scepticism, but these topics are best dealt with in the systematic exposition of Reid’s philosophy in section 3 below.

We may tentatively conclude that, by the time Reid left for Glasgow in 1764, many of the basic features of his moral thought were more or less formed and in varying degrees articulated. They included the metaphysical

<sup>40</sup> In *Essays on the Active Powers of Man* (hereafter AP), Reid says that the chapter with that title, together with the three other chapters that conclude the book, were in substance ‘wrote long ago, and read in a literary society’ (p. 645b). An earlier version, perhaps very close to the original paper, is in the Birkwood Collection (6/1/9).

<sup>41</sup> See, e.g., *Inquiry*, pp. 201–2; IP, pp. 464–7; AP, pp. 529b–30b, 578a–9a, 595a–6b. See Stewart-Robertson, ‘The Well-Principled Savage,’ which discusses the theory of education developed by Turnbull, Fordyce and Reid.

<sup>42</sup> The first of these was put five years later to the Glasgow Literary Society, and Reid’s treatment of it at some stage is in 2/11/13 and 6/1/12 while his answer to the latter, at some stage before AP, may be found in 2/11/12.

<sup>43</sup> See Reid’s manuscript below, pp. 124 ff. It may be Reid’s discussion paper that is preserved as 2/11/17 (in *Reid on Society and Politics*).

<sup>44</sup> For the history of its composition and publication, see Wood, ‘David Hume on Thomas Reid’s *An Inquiry into the Human Mind, on the Principles of Common Sense*: a new letter to Hugh Blair from July 1762’ (1986); idem, Introduction to Reid, *Inquiry* (facsimile edition, 1990).

and theological foundations for morals, the methodological principles by which philosophical inquiry in general should be conducted, the dependence of the moral sciences upon the philosophy of mind, the notions of moral agency and moral judgement, the refutation of moral scepticism as represented by Hume, a view of the teaching of moral philosophy as the practical inculcation of morals, a concern with the connection between moral education and the proper conduct of civic life understood in a Christian-Stoic perspective, and an interest in classical republican, utopian and constitutional writers. When seen against the background of moral thought during the preceding 100 years, the one major omission is natural jurisprudence. There is barely a trace of interest in, and certainly no evidence of work on, any topic in natural law. This was soon to be changed.

### Professor of Moral Philosophy in Glasgow

The Glasgow chair of moral philosophy, which Thomas Reid took up in the autumn of 1764, had achieved a more than national reputation through three of its previous four occupants – Gershom Carmichael, Francis Hutcheson and Adam Smith – but Reid himself was no small contributor to its distinction. Reid's *Inquiry* had been widely noticed, favourably on the whole, and went through four editions in his lifetime. His later *Intellectual Powers* and *Active Powers* not only confirmed Reid's reputation but ensured that he would be seen as the founder of a school.

As in Aberdeen, Reid was deeply involved in the collegiate governance of the University which he served in several different offices, and he continued to be involved in public affairs on the local scene. The Glasgow Literary Society, which met at the College, was a significant factor in his life.<sup>45</sup> Although the Society had its basis in the university, it included some non-academic members and was very alert to the practical problems of the day, especially those of a growing commercial centre. Reid himself presented several papers on social and political matters to the Society, one of which belongs in the present volume (the rest are in *Reid on Society and Politics*). On 1 April 1768 he introduced the question 'Whether the supposition of a tacit contract at the beginning of societies is well founded?' The paper printed

<sup>45</sup> Wood, 'Thomas Reid', pp. 175–8. Wood lists such questions and discourse titles of Reid's as have been preserved in the now patchy records of the Literary Society (see *ibid.*, appendix III). See also Roger Emerson and Paul Wood, 'Science and Enlightenment in Glasgow, 1690–1802'; Kathleen Holcomb, 'Thomas Reid in the Glasgow Literary Society'; and Richard B. Sher, 'Commerce, Religion, and the Enlightenment in Eighteenth-Century Glasgow'.

below as Section XV is almost certainly either his paper on this occasion or closely related to it.

This aside, Reid obviously used the Glasgow Literary Society to try out material for inclusion in his later books, as the titles and in some cases the surviving manuscripts show. In metaphysics he not only developed a number of central doctrines for the *Intellectual Powers*, but also argued strongly against Hume's scepticism and Joseph Priestley's materialism and necessitarianism.<sup>46</sup> Of special relevance to 'the theory of morals' are the following: the question on moral character, 1766, which he had introduced in Aberdeen in 1761;<sup>47</sup> 'Whether moral obligations are discerned by reason or sentiment?' in 1769;<sup>48</sup> in 1776, 'Discourse on active power', and the following year another well-known theme, 'Have we any reason to ascribe active power to beings not endowed with understanding and will?'; and in 1778 'Discourse on the principles of action in the human mind'.<sup>49</sup> Reid undoubtedly presented other discourses and questions on both moral theory and practical ethics, but there are significant gaps in the records of the society's proceedings.

While Reid led a busy and useful life in many spheres, his chief concern remained the profession of philosophy, both in the classroom and in his writings. For sixteen years he gave the two traditional courses: from about 10 October until about 10 June<sup>50</sup> he lectured to the 'public' class prescribed by the Arts curriculum, on Mondays to Fridays from 7:30 to 8:30 in the morning, and between 11:00 and 12:00 he 'examined' part of the same class. From some time in November until probably the beginning of May<sup>51</sup> he gave

<sup>46</sup> See *Thomas Reid on the Animate Creation* and Wood's Introduction therein, pp. 38–40.

<sup>47</sup> See n. 42 above.

<sup>48</sup> See 8/III/4.

<sup>49</sup> See 2/I/8–10 and 2/I/12–13.

<sup>50</sup> We cannot be entirely sure of the termination of the course. In his *Statistical Account of the University of Glasgow*, Reid says, 'The annual session for teaching, in the university, begins, in the ordinary curriculum, on the tenth of October; and ends, in some of the classes, about the middle of May, and in others continues to the tenth of June' (*Works*, p. 733b). It seems clear that in his first year at Glasgow, 1764–65, Reid completed his course on 17 May: the last dated lecture-notes are from this day and are on the topic that his course outline for Politics indicates as the last (4/III/10,2r and 4/III/1,2r). But it is unlikely that in subsequent years he would have been able to complete the course so early because he extended both the Pneumatology and Practical Ethics parts by more than a fortnight and began Politics only in early May. See Reid's remark in a letter of 8 May 1766: 'My Class will be over in less than a Month . . .' (*Correspondence*, p. 53).

<sup>51</sup> These dates are uncertain. The quotation from the *Statistical Account* in n. 50 above continues: 'The lectures, in all other branches, commence on the first of November, and end about the beginning of May.' Whether these lectures included the private class of the professor of moral philosophy is unclear but seems likely. However, in the letter of 14 November 1764,

a more advanced series of lectures (the ‘private’ class), which was not prescribed for the Arts degree, three days a week from 12:00 noon to 1:00 pm.<sup>52</sup>

We know little of the students to whom Reid delivered his lectures. They were young, generally in their early teens, when they started. Most of them repeated his class; in the first year they followed the ‘public’ lecture and the ‘examination’, in the second year they repeated the ‘public’ lectures and followed also the ‘private’ ones. The lectures were given an element of maturity by the fact that ‘Many attend the Moral Philosophy Class four or five years. So that I have many Preachers & Students of Divinity and Law of considerable standing, before whom I stand in awe to speak without more preparation than I have leisure for.’<sup>53</sup>

Those who intended to become ministers of the Church of Scotland had to take the arts curriculum before beginning their divinity studies; divinity students with other plans and students of law and medicine seem often to have taken at least some part of the arts curriculum before entering their professional course. Other students simply followed classes for a year or two, to complete their schooling rather than as preparation for a career. Because of this relatively loose structure and the fact that most of a professor’s income came from class fees and not the small fixed salary, lectures had to attract students, and student numbers provide significant evidence for this. Reid’s class was always well attended; two years after his instalment in Glasgow he was boasting that ‘Dr. Smith never had so many, in one year’, though the year before he had had to admit that Ferguson, in the larger Edinburgh University, had more than twice his numbers.<sup>54</sup> Many students were also poor, some very poor, but class fees were low (one-and-a-half guineas for the ‘public’ class,

quoted in n. 52 below, Reid says that his advanced class will begin in a week or two. If the same class is meant, two possible explanations for the discrepancy spring to mind: either Reid was running late in his first year in Glasgow, or the timetable had changed between 1764 (the letter) and 1794 (the year Reid probably wrote the *Statistical Account*). As far as I know, the only evidence that Reid ended his advanced class in early May is the passage quoted above.

<sup>52</sup> In a letter to Andrew Skene of 14 November 1764, shortly after Reid had taken up his new duties, he described his schedule and classes as follows: ‘I must launch forth in the morning, so as to be at the college (which is a walk of 8 minutes) half an hour after seven, when I speak for an hour without interruption to an audience of about a hundred. At eleven I examine for an hour upon my morning prelection, but my audience is little more than a third part of what it was in the morning. In a week or two I must for three days in the week have a second prelection at twelve, upon a different Subject where my audience will be made up of those who hear me in the morning but do not attend at eleven’ (*Correspondence*, p. 36).

<sup>53</sup> *Ibid.* Reid points out that the students ‘pay fees for the first two years, and then they are *Cives* of that Class and may attend gratis as many years as they please’ (*ibid.*).

<sup>54</sup> *Ibid.*, pp. 57 and 44.

one guinea for the ‘private’), and living expenses were so low that ‘it was possible to obtain a University education at an expenditure in cash of as little as about £5 sterling a year’.<sup>55</sup> Some university training was thus possible for the middle classes and for tenant farmers, whose sons formed the majority of Glasgow students during Reid’s tenure, while the attendance of even very poor boys was helped by a number of bursaries. Since the divinity course, unlike law and medicine, was free, the typical upward path for the poorer students was to scrape through the arts curriculum and then train for the ministry.

The demographic composition of the student body is difficult to trace, but of those who formally matriculated it seems that nearly half came from west-central Scotland and more than one-fifth came from Ireland. In his first year Reid estimated the latter to be ‘Near a third part of our Students’ and, like Hutcheson before him, he found them a nuisance:

The most disagreeable thing in the teaching part is to have a great Number of stupid Irish teagues who attend classes for two or three years to qualify them for teaching Schools or being dissenting teachers. I preach to these as St Francis did to the fishes. I dont know what pleasure he had in his Audience, but I should have none in mine if there was not in it a mixture of reasonable Creatures.<sup>56</sup>

Two of Reid’s most notable students have given us brief glimpses of his class. In Dugald Stewart’s account of Reid’s lectures, they are lent a stiff and stuffy earnestness that is difficult to reconcile with the quiet and often ironical humour and the lively spirit that otherwise come across so clearly:

In his elocution and mode of instruction, there was nothing peculiarly attractive. He seldom, if ever, indulged himself in the warmth of extempore discourse; nor was his manner of reading calculated to increase the effect of what he had committed to writing. Such, however, was the simplicity and perspicuity of his style, such the gravity and authority of his character, and

<sup>55</sup> W. R. Scott, *Adam Smith as Student and Professor* (1965), p. 29.

<sup>56</sup> Reid, *Correspondence*, pp. 36 and 45. See a letter of Hutcheson’s printed in McCosh, *Scottish Philosophy*, p. 464. Apart from sources already cited, the following have been used in this brief sketch of the Glasgow students: James Coutts, *A History of the University of Glasgow* (1909); J. D. Mackie, *The University of Glasgow* (1954); W. M. Mathew, ‘The Origins and Occupations of Glasgow Students, 1740–1839’ (1966); David Murray, *Memoirs of the Old College of Glasgow* (1927); R. N. Smart, ‘Some Observations on the Provinces of the Scottish Universities, 1560–1850’ (1974).

such the general interest of his young hearers in the doctrines which he taught, that by the numerous audiences to which his instructions were addressed, he was heard uniformly with the most silent and respectful attention. On this subject I speak from personal knowledge, having had the good fortune, during a considerable part of the winter of 1772, to be one of his pupils.<sup>57</sup>

One suspects that Stewart had little appreciation of understatement and simple matter-of-factness and that, at a distance of thirty years, he used the standard of his own flowery oratory somewhat unfairly to judge a very different man in different circumstances. Stewart is almost certainly wrong in saying that Reid always read his lectures; many parts of Reid's course exist only as brief notes, and there is nothing to suggest that fuller texts ever existed.<sup>58</sup> Altogether it seems clear that Reid's style was conversational rather than declamatory. This may have made his 'examination' class more agreeable than his 'public' lecture, and it may explain the rather different impression of Reid's pedagogy preserved by George Jardine, who became his colleague in logic in 1774. Jardine graduated in 1765, so his experience probably refers to Reid's first year in Glasgow:

I remember well the striking effect produced on the minds of his students, by an instance of great simplicity and candour, on the part of the late venerable Dr. Reid, when he was professor of moral philosophy in this university. During the hour of examination they were reading to him a portion of Cicero de Finibus; when at one of those mutilated and involved passages which occasionally occur in that work, the student who was reading stopped, and was unable to proceed. The doctor attempted to explain the difficulty; but the meaning of the sentence did not immediately present itself. Instead, however, of slurring it over, as many would have done, 'Gentlemen', said he, 'I thought I had the meaning of this passage, but it has escaped me; I shall therefore be obliged to any of you who will translate it'. A student thereupon instantly stood up in his place, and translated it to the doctor's satisfaction. He politely thanked him for it; and further commended the young man for his spirited attempt. This incident had a powerful effect upon the minds of the other students, while all admired the candour of that eminent professor; nor was there

<sup>57</sup> D. Stewart, *Account*, p. 264.

<sup>58</sup> In his mode of delivery Reid probably tried to facilitate the student's taking of notes, a practice he strongly encouraged; see his inaugural lecture in Glasgow, 4/III/9,3v.

a single difficult passage which was not afterwards studied with more than usual care, that the next precious opportunity for distinction might be seized.<sup>59</sup>

In another case of responsiveness to his students, Reid is reported to have changed the sequence of his lectures in order to ‘comply’ with a petition from ‘the greatest part of the students’.<sup>60</sup>

Reid’s private class was concerned with the implications of the basic theory of the mind that he had expounded in Aberdeen and now developed further in his public class in Glasgow. In its early form the course was divided into these sections:

I intend in these Lectures to treat first of the Culture of the human Mind. Secondly of the Connection between Mind and Body and their mutual Influence on one another, which will make way for some observations on the fine Arts and Chiefly on Eloquence with which we shall conclude.<sup>61</sup>

This was how Reid saw it on 16 December 1765; over the following two decades both the arrangement and the content were endlessly refined and changed. Some of the material ended up in the *Intellectual Powers*, some did not. Taken as a whole, the manuscripts are a record of subtle philosophising, and Reid’s course on the culture of the mind has now been reconstructed to the extent that the fragmentary record allows (see *Thomas Reid on Logic, Rhetoric and the Fine Arts*).

The concentration on the philosophy of mind in the private class was a novelty in Glasgow. Hutcheson had lectured mainly on the ancient moralists, while Smith taught rhetoric and belles lettres.<sup>62</sup> Reid’s break with tradition was probably felt more strongly in the public class. Since the days of Carmichael the backbone of the course had been natural theology and moral philosophy-cum-natural jurisprudence; from Hutcheson’s time on, less attention was given to the former, and political theory had grown into an

<sup>59</sup> George Jardine, *Outlines of Philosophical Education* (1825), pp. 263–4.

<sup>60</sup> See George Baird, Notes from the Lectures of Dr Thomas Reid, Mitchell Library MS A104935 (lecture 108, 4 April 1780), 7: 66v. For discussion of this matter, see the editors’ Introduction in *Reid on Society and Politics*.

<sup>61</sup> 4/1/31, 1r, printed in *Thomas Reid on Logic, Rhetoric and the Fine Arts*, p. 10.

<sup>62</sup> Concerning Hutcheson’s class, see William Leechman, ‘Account of the Life, Writings, and Character of the Author [Hutcheson]’ (1755), p. xxxvi; and W. R. Scott, *Francis Hutcheson* (1966), p. 63. On Smith, see *ibid.*, p. 63. See also Adam Smith, *Lectures on Rhetoric and Belles Lettres* and the Introduction therein by J. D. Bryce, pp. 7–23.

independent segment.<sup>63</sup> Reid changed all this. His public course, as explained in his Introductory Lecture (Section I, below), was divided into pneumatology, ethics and politics. Of these, pneumatology, as the most important, was allocated the most time, from early October until early March. Ethics – that is, the Practical Ethics here presented – ran through the rest of March and April, while politics took up May and probably the first few days of June. In this arrangement pneumatology covered not only the general theory of the mind but also what Reid called ‘the theory of morals’, which we would call moral psychology and epistemology, and that part of natural theology concerned with the existence and nature of the divine mind. Moral theology, a part of traditional natural theology, became the opening section of Practical Ethics, on ‘Duties to God’. Much of traditional moral philosophy was compressed into the ‘Duties to Ourselves’, while the rest of Practical Ethics was treated as a system of natural jurisprudence under the general heading ‘Duties to Others’.

While the emphasis on the theory of the mind resulted from Reid’s methodological commitment to the empirical, anti-speculative study of mental phenomena, the development of Practical Ethics as an intricate system of duties was implicit in his substantive moral philosophy, as shown in section 3 below.

The third part of the course, Politics, is said to be sharply distinguished from Practical Ethics in the Introductory Lecture (Section I, below). Practical ethics, in modern terms, is a normative discipline and has a branch ‘which is very properly called political Jurisprudence’, as Reid explains at the beginning of his politics lectures. ‘The Object of this Branch’, he continues, is ‘The Rights & moral obligations that arise from the political Union’.<sup>64</sup>

<sup>63</sup> On Carmichael, see *Natural Rights on the Threshold of the Scottish Enlightenment. The Writings of Gershom Carmichael*; Robert Wodrow, *Analecta* (1842–43), 4:95–6; Murray, *Memoirs*, pp. 506–8; Hans Medick, *Naturzustand und Naturgeschichte* (1973), pp. 299 ff.; James Moore and Michael Silverthorne, ‘Gershom Carmichael and the Natural Jurisprudence Tradition in Eighteenth-Century Scotland’ (1983); idem, ‘Natural Sociability and Natural Rights in the Moral Philosophy of Gershom Carmichael’ (1984). On Hutcheson, see his textbook *Philosophiae moralis institutio compendiaria* (translated as *A Short Introduction to Moral Philosophy*); Leechman, ‘Account’, p. xxxvi, and James Moore, Introduction to Hutcheson, *Logic, Metaphysics, and the Natural Sociability of Mankind*. On Smith, see the editors’ introduction (1978) to his *Lectures on Jurisprudence* and the literature cited there. For a concise overview of the Scottish philosophy curricula in the eighteenth century, see M. A. Stewart, ‘The Curriculum in Britain, Ireland, and the Colonies’, in *The Cambridge History of Eighteenth-Century Philosophy*, pp. 103–7.

<sup>64</sup> 4/III/3,1r (5 May 1766). The lectures on politics are reconstructed in *Reid on Society and Politics*.



Politics is quite different: ‘It is not . . . the business of politics to show how men ought to act, that belongs to Morals, but to show how they will act when placed in such circumstances and under such Government.’<sup>65</sup> Politics, however, is not simply an explanatory science – that would be an anachronistic description – but rather a traditional *technē*: ‘as an expert Physician ought to understand the nature and Effects of Poisons as well as Medicines; so an able Politician ought to understand the nature & Effects of all kinds of Government the bad as well as the good.’<sup>66</sup> Despite his declared intention, Reid, however, never managed to keep practical ethics and politics entirely separate, and there are in the politics lectures various elements of importance to an understanding of practical ethics and vice versa.

The manuscript lectures, Literary Society papers, and other material, especially Reid’s scientific writings, from the Glasgow years constitute by far the largest part of the Reid *Nachlass*. When organised and presented in coherent and legible form, as in the present volume, it will be possible to investigate in detail Reid’s intellectual development from the *Inquiry* to the two *Essays* and beyond. There is much less on practical ethics than on pneumatology, and Reid’s development of the former topic can simply be divided into two parts: first, the immediate results of the move from Aberdeen to Glasgow and, secondly, developments in the Glasgow period. Undoubtedly, Reid’s great ‘discovery’ here was modern, Protestant, natural jurisprudence.<sup>67</sup> Though Reid was exposed to it under Turnbull, there is nothing to suggest interest in natural law while Reid was in Aberdeen. Reid’s earlier practical ethics seems to have been a fairly commonplace Stoic-Christian doctrine of virtue, coupled with interest in classical republican, utopian and Whig constitutional political themes.<sup>68</sup> It may be merely symbolic that his development from a traditional doctrine of virtue to a modern juridical system of duty parallels his move from a large rural centre to a larger commercial centre; he never showed any appreciation of the lawyers’ law usually associated with Edinburgh.

<sup>65</sup> 6/i/3,1r. See AP, p. 591b. Reid sometimes uses ‘morals’ instead of ‘practical ethicks’ as a contrast to ‘the theory of morals’.

<sup>66</sup> 4/iii/3,1r.

<sup>67</sup> For surveys of the Scottish connection with modern natural law, see Duncan Forbes, ‘Natural Law and the Scottish Enlightenment’ (1982); idem, *Hume’s Philosophical Politics* (1975), ch. 1; Haakonssen, *Natural Law and Moral Philosophy* (1996); idem, ‘Natural Jurisprudence and the Theory of Justice’ (2003); Haakonssen, *Natural Law and Moral Philosophy: From Grotius to the Scottish Enlightenment* (1996). James Moore, ‘Natural Rights in the Scottish Enlightenment’ (2006).

<sup>68</sup> For a comprehensive interpretation of Reid’s moral and political thought that emphasizes the continuing concern with civic humanist and republican ideas, see Peter Diamond, *Common Sense and Improvement*.

Reid's 'discovery' of natural jurisprudence clearly required considerable adjustment in order to repair his previous neglect. In the letter to Andrew Skene of November 1764, mentioned above, Reid complains of lack of time and expresses some apprehension about his audience, and in his opening lecture he asked for notes of the lectures of his predecessor Adam Smith.<sup>69</sup> It is unlikely that either pneumatology or politics would have caused him any problems, but it is understandable that having to produce at short notice a two-month course in natural law, which had been the central theme of Smith's lectures, might cause some diffidence. There are other signs of Reid's initial insecurity: in his first year he failed to treat 'Duties to God' and 'Duties to Ourselves' in any systematic way, and 'Rights and duties of states' (here printed in Section VIII as 'Duties to Others: States') was covered, if at all, only perfunctorily. Most significant, Reid, in the jurisprudence parts of his first course in Glasgow, is more dependent on a textbook – Hutcheson's – than in any other part of his course or at any other time.<sup>70</sup> This is documented in detail in the Commentary to Reid's text below.

Once Reid, with Hutcheson's help, had mastered natural jurisprudence, he clearly took to it and made it his own, recognising its congruence with his own theological ideas, and the adaptability of the Stoic-Christian doctrine of virtue to a theory of duty consistent with both his notion of divine law and his theory of moral judgement. The result was the coherent system of practical ethics set out below. On the question of how Reid developed this system, the manuscript record is little help. Most of the manuscripts written after his first year at Glasgow are undated; those that are, date from the 1760s, with only occasional additions in 1770 or 1771. It seems probable that by the end of the 1760s Reid had essentially completed his Practical Ethics on lines taken over from Hutcheson and his Pufendorfan systematics. Certainly there are few differences between his own notes and those of his students from the late years of his teaching, Robert Jack in 1776 and George Baird in 1779–80, and the parts that Reid chose to include in his *Active Powers* (1788), can all

<sup>69</sup> The passage is quoted in the Introduction below, p. lxxxi n. 208.

<sup>70</sup> There is one partial exception to this. In natural theology Reid claimed to follow Hutcheson's 'plan', but this does not seem to apply to the content. Since the 'tract' by Hutcheson to which Reid refers his students must be the *Synopsis metaphysicae*, part III, 'De Deo', this is quite understandable; in several respects it would have been too 'scholastic' and Augustinian for Reid, but it does present the tripartite division he wants – namely, God's existence, his nature and attributes, and his works. See George Baird's notes from Reid's lectures (1779–80), 5:19; and Hutcheson, *Synopsis metaphysicae*, p. 85 (in *Logic, Metaphysics, and the Natural Sociability of Mankind*, p. 151). Reid's own lecture notes on natural theology apparently have not survived and we must rely on students' notes.

be traced back to his earlier lectures. There are two exceptions to this. One is his idea of contract, and especially his criticism of Hume's theory, which was an extension of his criticism of Hume's notion of the artificiality of justice. After Reid's address to the Literary Society in 1779, he continued to be occupied by this issue, which is understandable because promises and contracts were intimately connected with his theory of language, which he constantly discussed with James Gregory.<sup>71</sup> The other point on which Reid's views remained in some flux was the exact relationship between practical ethics, specifically political jurisprudence, and politics as a *technē*.<sup>72</sup>

Upon retiring from teaching in 1780, Reid set about writing up his philosophy systematically. He divided the work into two parts, perhaps fearing that he might not live to complete it, yet in 1785 the *Essays on the Intellectual Powers of Man* appeared, and three years later the *Essays on the Active Powers of Man*.<sup>73</sup> They were well received on the whole, and within a generation, together with the works of Dugald Stewart and to a lesser extent those of James Beattie and James Oswald, they had created the general idea of a coherent Scottish school of Common Sense philosophy. In this form, Reid's philosophy had a very considerable influence during the nineteenth century, not least in France and the United States, and it was primarily as the key figure in Common Sense epistemology that his ideas in periods attracted some interest in the last century.<sup>74</sup>

In this legacy something was lost. Grand in scope though they are, the two *Essays* do not fully convey the vision of the interdependence of all human knowledge held by the Glasgow Professor of Moral Philosophy. Reid's concern with science is nowhere apparent, and his idea of the coherence between natural philosophy and his well-known theory of the mind has only now been retrieved from the manuscripts. As far as Reid's Practical Ethics is concerned, a few elements appear as three brief chapters in the *Active Powers* but give little idea of the full system as Reid presented it to his class.<sup>75</sup> No

<sup>71</sup> See the exchange with Gregory in the *Correspondence*, and the brief but helpful discussion in Barfoot, 'James Gregory,' pp. 150–4. See also the Commentary below at pp. 277–9 n. 4.

<sup>72</sup> See Introduction to *Reid on Society and Politics*.

<sup>73</sup> For the composition, publication and reception of the two *Essays*, see Introduction to IP.

<sup>74</sup> For an overview, see B. W. Redekop, 'Reid's Influence in Britain, Germany, France, and America' (2004).

<sup>75</sup> On natural philosophy, see *Reid on the Animate Creation* and *Reid on Mathematics and Natural Philosophy*. Cf. Wood, 'Thomas Reid', idem, 'Reid and the Culture of Science'; and R. Olson, *Scottish Philosophy and British Physics, 1750–1880* (1975). On ethics, see AP, essay V, chs. 1–3; chs. 4–7 deal mainly with criticism, especially of Hume, but also cover special points originating in the lectures on practical ethics.

reasons for this are given, but he may have considered the system, both as a whole and in part, as too derivative to warrant full publication. Whether or not this was justified at the time, at this distance the situation looks very different. The main difficulty in understanding the ideas that past thinkers have thought original enough to justify publication is precisely the retrieval of the background ideas that were too common to be worth publishing but that have now been lost sight of. In the case of the *Active Powers* there is certainly little prospect of fully understanding the selected normative themes in the final essay of the work without a prior acquaintance with the full system of practical ethics from which they derive.

### 3. The Coherence of Reid's Moral Thought

To provide a framework for the manuscripts and the unavoidably fragmented Commentary that follows, this portion of the introduction sets out first to give a brief survey of Reid's general presuppositions and then to present his moral philosophy as systematically as possible.

#### Human Knowledge

Given Reid's presuppositions, the argumentative coherence of his moral thought is tight and systematic. The cardinal themes are the possibility of knowledge and, deriving from this, the possibilities in knowledge. The philosophy of mind shows what knowledge, including moral knowledge, is possible for man, and practical ethics shows what possibilities this gives man as moral agent. The basic presuppositions are theological and may, as mentioned earlier, be characterised as providential naturalism, a term also used of George Turnbull and Lord Kames, Reid's principal mentors along with Butler in this regard.<sup>76</sup> For Reid – as for Turnbull, Kames, Butler and most of their contemporaries – the world in both its material and immaterial aspects was a well-organised whole whose parts by their coherence indicated an intelligent, purposeful mastermind. The existence within creation of the human mind, with its apparent cognitive powers, thus gave rise to the presumption that the purpose of the mind is to explore the created world as it is presented to these powers. However, the world appears to us not as a coherent whole but piecemeal as discontinuous events and things, and we must therefore study it piecemeal, noticing similarities and

<sup>76</sup> See Norton, *David Hume*, ch. 4. For Reid's natural theology, see esp. vol. 5 of Baird's notes from the lectures. Reid's defence of the argument from design is in IP, pp. 503–12.

regularities as they appear. If we go beyond this and form ‘hypotheses’ about connecting links outside our field of experience, we are in effect exceeding our cognitive brief and prying into God’s affairs. In other words, there is strong theological sanction for the inductive method suggested by Francis Bacon and, in Reid’s view, definitively developed and explained by Newton.

In Reid’s view, this method had been applied to the physical world with extraordinary results, but moral philosophers still employed it with what Reid considered insufficient stringency, thereby often being involved in unnecessary and dangerous problems. Modern philosophy – from René Descartes via Nicholas Malebranche, John Locke and George Berkeley – had made the possibility of knowledge more and more incomprehensible, until Hume finally drew the full sceptical conclusions.<sup>77</sup> Reid’s interpretation of the course of modern philosophy coincided in crucial aspects with the nearly contemporary one invented by Immanuel Kant; together their legacy shaped the teaching of the history of philosophy for the following two centuries.<sup>78</sup> Modern scholarship has begun to reject this simplification of the history of philosophy, but we should not forget that such simplification was an important argumentative or polemical move, for Reid as well as for Kant. Put briefly, Reid concentrated the battle against scepticism on one front by viewing epistemological scepticism as fundamental to all forms of scepticism and as pervading the whole of modern philosophy.

At the heart of the sorry confusion that was modern philosophy lay a general tendency to adopt a totally misleading analogy between body and mind in an attempt to replicate in moral philosophy the success of natural philosophy.<sup>79</sup> Treatment of the mind as analogous to material mechanisms

<sup>77</sup> In general, see, *Inquiry*, ch. 1. See also Norton, *David Hume*, pp. 171–3 and 189–203.

<sup>78</sup> See Haakonssen, ‘The History of Eighteenth-Century Philosophy: History or Philosophy?’

<sup>79</sup> The following sketch of Reid’s epistemology and its critical implications is based mainly on the *Orations* of 1759 and 1762 and on the *Inquiry*, ch. 1, with some reference also to the *Intellectual Powers of Man*. The critical literature on Reid’s philosophy as centred on epistemology is considerable. Prominent philosophical discussions, of varying historical reliability, are P. de Bary, *Thomas Reid and Scepticism* (2001); Selwyn Grave, *The Scottish Philosophy of Common Sense* (1977), E. Griffin-Collars, *La Philosophie écossaise du sens commun* (1980), K. Lehrer, *Thomas Reid* (1989); D. Schulthess, *Philosophie et sens commun chez Thomas Reid* (1983); N. Wolterstorff, *Thomas Reid and the Story of Epistemology* (2001). Historically-minded studies of relevance in the present context include M. Kuehn, *Scottish Common Sense in Germany, 1768–1800* (1987); L. Marcil-Lacoste, *Claude Buffier and Thomas Reid* (1982); C. McCracken, *Malebranche and British Philosophy* (1983), and J. W. Yolton, *Perceptual Acquaintance: From Descartes to Reid* (1984). There are several collections of recent work, including *The Cambridge Companion to Thomas Reid*, edited by T. Cuneo and R. van Woudenberg; *Thomas Reid: Context, Significance and Influence*, edited by J. Houston; *The Philosophy of Thomas Reid*, edited by J. Haldane and S. Read.

was naturally suggested and supported by the physical expressions ordinarily used to refer to its workings. Consequently the mental world was seen as composed of certain basic entities – namely, simple ideas that were imparted to the mind by its surroundings in the form of sense impressions and from which complex ideas of things, events, and so on, were composed. The materialist and mechanistic analogy for the mind thus led directly to that other basic error of modern philosophy, ‘the theory of ideas’, as Reid called it – that is, the theory that ideas, not the objects of ideas, are the immediate objects of the mind’s apprehension.

All this, for Reid, was fundamentally wrong. In fact, it rested on a total disregard of sound empirical method in the interests of formulating a purely speculative ‘empiricist’ (as it was to be known) philosophy. There was no empirical evidence to support the analogy between mind and body, and uncontaminated Common Sense clearly showed that the mind was in its nature quite different from and not comparable to the physical world. It is true that sensation suggests the presence of an object and occasions many of our ideas, but for many very important ideas – such as those of space, time and power – this is not so. Furthermore, the process of perception, from sensation to idea, cannot be understood as a causal chain, like a physical process, for not only are mental ‘images’ of a totally different nature from that of their objects in the material world, but the mind, far from being a passive recipient, is in fact active in so far as even simple perception is judgemental in character, judging that something is the case. Finally, it is empirically false that complex mental content is composed of simple ideas; on the contrary, even casual reflection shows that the mind spontaneously apprehends complex objects, which may subsequently be subjected to analysis. Reid even suggests that there is no empirical evidence whatever for the existence of ideas, in the sense of mental objects immediately present to the mind. Instead of acknowledging things and events of varying complexity that common experience shows to be present to the mind, philosophers have speculatively created an intervening phantom-world of ideas.

Reid believed this was not only false but also dangerous, as leading to scepticism. In order to solve their self-created problem of the epistemic adequacy of the ideas through which the mind is supposed to apprehend the world, philosophers have had to embark on a wild-goose chase in search of proof of such adequacy. However, because all suggested guarantors of our ideas – such as Berkeley’s God – can be apprehended only through ideas or are in some other way subjective in character, the inevitable conclusion is that each person lives in his own world of ideas with no means of knowing that there

is either a physical world or other minds or a God around him. This progressive impoverishment of the world reaches the height of absurdity with Hume's argument, as Reid understood it, that we do not even know that there is a self because we can form no idea of it.<sup>80</sup>

Reid's various arguments against the theory of ideas are further buttressed by the well-known 'reflexivity argument', as we may call it, that sceptics like Hume are entirely inconsistent because in the practice of living they presuppose the reality of all those things of whose existence their theory of ideas denies them knowledge. Even in writing down their sceptical ideas and addressing them to others they are affirming what their words deny – a line of argument well known to Hume himself.

If we abandon the materialist and mechanistic view of the mind as a passive recipient of ideas causally implanted by sense perception, we have, according to Reid, cleared the way for a proper empirical investigation of the mind. This reveals that the mind is by its very nature constituted as a highly active cognitive agency. Apart from the operations that it acquires or learns (habits), the mind is provided with various innate powers, among them instincts and such faculties as the ability instantly to form judgements or shape beliefs about objects of perception – that is, without learned process of reasoning. Finally, the mind is issued a large number of 'first principles, principles of common sense, common notions, self-evident truths' or, in other words, intuitive judgements 'which are no sooner understood than they are believed'.<sup>81</sup> These naturally absorbed First Principles are not subject to proof, but themselves unquestionably supply the starting point for all further cognitive activity:

In every branch of knowledge where disputes have been raised, it is useful to distinguish the first principles from the superstructure. They are the foundation on which the whole fabric of the science leans; and whatever is not supported by this foundation can have no stability. In all rational belief, the thing believed is either itself a first principle, or it is by just reasoning deduced from first principles.<sup>82</sup>

<sup>80</sup> Reid gave philosophical articulation to a common apprehension at the time about the tendency of modern philosophy, which was summed up by an anonymous writer in the *Weekly Magazine* as follows: 'Berkeley banished matter out of the world: H(um)e has sent the soul after it; and nothing remains now but ideas. Some succeeding genius may banish these also, and leave the world a perfect vacuum.' *Weekly Magazine, or Edinburgh Amusement* No. 22 (18 November 1773), p. 243, quoted from William Zachs, *Without Regard to Good Manners*, p. 74.

<sup>81</sup> IP, p. 452.

<sup>82</sup> AP, p. 637a. For the role of First Principles in general, see IP, VI.iv.

The First Principles of human knowledge are of two kinds: ‘They are either necessary and immutable truths, whose contrary is impossible, or they are contingent and mutable, depending upon some effect of will and power, which had a beginning, and may have an end.’<sup>83</sup> The former are divided into six categories: principles of grammar, logical axioms, mathematical axioms, axioms of taste, first principles of morals and first principles of metaphysics.<sup>84</sup> The contingent truths are not organised, but they are illustrated by twelve examples, demonstrating that they basically guarantee our knowledge of our own mental world, our personal identity, the content of our memory, ourselves as free agents, the external world, other minds as intelligences and free agents, the uniformity of nature and reliable signs and evidence. These principles, together with the intellectual powers that harbour them, are what Reid calls Common Sense.<sup>85</sup>

As we have seen, the defence of Common Sense is that its principles are inescapable or incontestable, a view often expressed in the familiar reflexivity argument *ad hominem*. This is repeatedly reinforced by the theologico-teleological argument that because Common Sense is part of our natural constitution it is, like nature in general, instituted to fulfil its ostensible function in creation by helping us to survive and lead human lives by supplying us with knowledge. Its truthfulness is therefore part of the providential arrangement of nature.<sup>86</sup>

### Human Agency

The foundations of Reid’s providential naturalism and its methodological implications were laid early, in Turnbull’s classroom. They were probably reinforced by later reading of Turnbull’s *Principles of Moral Philosophy*; Hutcheson’s *Inquiry* and probably his other works; and not least Butler’s *Analogy* and subsequently Kames’s *Essays on the Principles of Morality and Natural Religion*. By the time of his graduation orations at King’s College, it is clearly the framework for Reid’s developing theory of Common Sense as the answer to scepticism. That theory itself was long in the making, and it is quite likely that the characteristic reflexivity argument – that all claims to

<sup>83</sup> IP, p. 468.

<sup>84</sup> *Ibid.*, VI.vi.

<sup>85</sup> *Ibid.*, VI.v. See also Reid, ‘Cura Prima. Of Common Sense’, ed. Norton, in Marcil-Lacoste, *Claude Buffier and Thomas Reid*, appendix; M. A. Stewart, ‘Reid and Personal Identity: A Study in Sources’.

<sup>86</sup> See Norton, ‘From Moral Sense to Common Sense,’ pp. 53–4.



knowledge, including sceptical claims that appearances of knowledge are deceptive, necessarily presuppose the principles of Common Sense – had been developed before the theory of ideas was identified as the source of the sceptical malaise. There are already clear traces of this argument in the 1730s, which together with Reid's interest at the time in the notion of human agency make it possible that Reid was then using the reflexivity argument to show the reality of human agency. If so, then he may have begun to see epistemological scepticism as fundamental to moral scepticism and consequently Common Sense as the answer to both, before the publication of Kames's arguments in his *Essays* of 1751. Certainly he was prepared for Kames's theory and thoroughly absorbed it, including many of the key elements in the Common Sense solution to the problems of scepticism, particularly the First Principles.<sup>87</sup>

In any case, whatever the chronology or origin of the view, by the time of his *Inquiry* (1764) Reid had clearly come to see the struggle against moral scepticism in the tradition of Shaftesbury, Hutcheson, Butler and Turnbull as a mere side-skirmish in the general battle against epistemological scepticism, with Hume as the principal antagonist on both fronts. This polemical narrowing of the idea of scepticism in general and of Hume's scepticism in particular is closely connected with Reid's construction of the history of modern philosophy that was mentioned earlier. Like the latter, it has been among his most influential ideas, and again one making more argumentative sense in his problem situation than its historical accuracy would lead one to believe.

The central issue was the concept of human agency, a topic on which Reid had been influenced by Samuel Clarke in his early reading.<sup>88</sup> If the mind did not have direct access to the objects of cognition except as a sequence of discrete ideas, as Reid's reading of the theory of ideas would have it, then not only were causal connections between events unintelligible, but it would also be impossible to ascribe actions to agents or indeed to have an idea of continuous and coherent agency whether in oneself or in others. Consequently, it would be impossible to ascribe moral qualities, such as virtue and vice, to agents on the evidence of their behaviour, and it would make no sense to hold a person responsible for his actions. Hence, reward and especially punishment would be impossible and there would in general be no foundation for

<sup>87</sup> For an incisive comparison of Reid and Kames, see Norton, *ibid.*, esp. pp. 27 ff., and *idem*, *David Hume*, pp. 189–91.

<sup>88</sup> See his notes from reading Clarke, 3/II/7–8, and his notes on will and active power from 1736, 6/II/34–5.

the enforcement of law or the upholding of society. As Reid says in explanation of the wider perspective of the *Inquiry*'s otherwise narrow refutation of epistemological scepticism,

upon this hypothesis {the theory of ideas}, the whole universe about me, bodies and spirits, sun, moon, stars, and earth, friends and relations, all things without exception, which I imagined to have a permanent existence, whether I thought of them or not, vanish at once; . . . I thought it unreasonable . . . upon the authority of philosophers, to admit a hypothesis, which, in my opinion, overturns all philosophy, all religion and virtue, and all common sense.<sup>89</sup>

More specifically directed against Hume, on the lines indicated above, we find this remarkable, ironic aside:

We were always apt to imagine, that thought supposed a thinker, and love a lover, and treason a traitor: but this, it seems, was all a mistake; and it is found out, that there may be treason without a traitor, and love without a lover, laws without a legislator, and punishment without a sufferer . . . or if, in these cases, ideas are the lover, the sufferer, the traitor, it were to be wished that the author of this discovery had farther condescended to acquaint us, whether ideas can converse together, and be under obligations of duty or gratitude to each other; whether they can make promises and enter into leagues and covenants, and fulfil or break them, and be punished for the breach. If one set of ideas makes a covenant, another breaks it, and a third is punished for it, there is reason to think that justice is no natural virtue in this system.<sup>90</sup>

For Reid, as for so many of similar moral and theological outlook, such as the 'Moderate Literati' and the moderate clergy in general, it was of the utmost importance to establish the reality of free human agency. While Butler in the *Analogy* had asserted free will and agency, he had neither explained it nor defended it. After Hume, this was badly needed, because it was seen as the necessary precondition for the possibility of morals. Without it, moral education seemed a mere illusion and social improvement through education, in the widest sense, was impossible. Moral freedom was the necessary presupposition of moral personality seen as the basis of civil society, the unit of which social structure and political institutions were composed.

<sup>89</sup> *Inquiry*, pp. 4–5.

<sup>90</sup> *Inquiry*, p. 35.

Ultimately, moral freedom was at the heart of a vision of humanity as God's moral vicegerents on earth, set there to realise a moral potential in each individual life and in the collective life of society and the species as a whole.

In its context the doctrine of moral freedom was a two-edged sword.<sup>91</sup> On the one hand it was, as we have seen, directed against modern philosophy's materialist analogy of the mind, seen as necessitarian, whose logical conclusions were perceived to be moral scepticism and a Godless universe; of this Hobbes and Hume were seen as the chief representatives. On the other hand, the notion of moral freedom and its attendant ideas indicated above flew in the face of traditional Calvinist necessitarianism with its emphasis on election and justification by faith alone.

Reid's solution to the problem of moral freedom should be viewed partly against the background of classical necessitarianism as represented by Hobbes and its continuation, for Reid, in Hume's notion of 'freedom', partly as a response to a controversy of the 1750s. Stated briefly, the problem is as follows. Hobbes, like many simpler minds, had held that moral freedom simply meant freedom to act as one willed. However, if one adopted a necessitarian theory of the will, as Hobbes did, this definition of freedom seemed quite inadequate to most moralists, because necessitarianism was held to make ideas of moral worth and moral responsibility, and thereby morality as such, meaningless. On the other hand, it was difficult to make sense of moral freedom as freedom of the will, because this was thought to lead to an infinite regress of acts of will: one is free to will, because one can will to will, ad infinitum – a point made by Locke. In his *Essays* Kames tried to solve this problem within a necessitarian framework by arguing that, although our acts of will, like all other natural events, are determined, we do in fact have an illusory sense of power over our will. Furthermore, because we have this natural though false belief in the freedom of will, we naturally ascribe moral worth and moral responsibility to ourselves and others, and these moral notions thus become part of the causal determinants of our will.

Despite his misguided attempt, using Jonathan Edwards as representative, to present this view as compatible with Calvinist doctrine, it caused Kames considerable trouble with great numbers of the clergy and led to charges that

<sup>91</sup> The following outline of Reid's theory of free moral agency is based upon AP, essay IV; the letters to James Gregory and to Lord Kames (in the *Correspondence*). In the critical literature, see especially J. Harris, *Of Liberty and Necessity*, ch. 8; G. Yaffe, *Manifest Activity: Thomas Reid's Theory of Action*; W. L. Rowe, *Thomas Reid on Freedom and Morality*; R. F. Stalley, 'Reid's Defence of Freedom'; and, concerning Gregory, M. Barfoot, 'James Gregory', pp. 135–58, and Harris, *of Liberty and Necessity*, pp. 204–9.

he was, like Hume, a sceptic and an infidel, although one of his principal aims in the *Essays* had been to refute Hume's views. After protests from Jonathan Edwards too, Kames dropped his theory from the second edition of the *Essays* (1758).<sup>92</sup> In this situation Reid tried to make a new start on the problem. It had occupied him from early on in his philosophical thinking, and late in life he was spurred on by the provocation of Joseph Priestley.<sup>93</sup> The core of Reid's attempt at a solution was to argue that acts of will and motives themselves presupposed freedom on the part of the agent; we know that we can change our will and that we do not always act on our motives. This experience only makes sense on the assumption that we as acting persons have freedom, and accordingly the onus of proving things to be otherwise falls on the necessitarian. Reid distinguishes between 'animal' and 'rational' motives and suggests that experience shows us to have the freedom of exercising self-command over both, and that it is this which opens the possibility of 'moral government', both self-government and government by others (including civil government), in contrast to 'mechanical' government. Along with this active power, God has bestowed upon man 'some degree . . . of reason, to direct him to the right use of his power. What connection there may be, in the nature of things, between reason and active power, we know not. But we see evidently that, as reason without active power can do nothing, so active power without reason has no guide to direct it to any end.'<sup>94</sup> In other words, we cannot show any metaphysical link between our free agency and reason, but it is the human experience that exercise of our freedom is *open* to rational argument, even if in fact we often fail to argue rationally. In so far as we do reason, the exercise of moral freedom issues in moral judgement, and in this way Reid has opened the way for moral education and moral improvement.

### Principles of Moral Judgement

The general possibility of knowledge, or of epistemically adequate judgement, has already been outlined in the discussion of Common Sense, particularly its

<sup>92</sup> Concerning the whole episode, see Harris, *Of Liberty and Necessity*, chs. 4–5; Ross, *Lord Kames*, ch. 8; and Sher, *Church and University*, pp. 65–74. Reid's interest is underlined by his four-page abstract of Jonathan Edwards' *Freedom of the Will* (1754); see 3/11/6.

<sup>93</sup> See Priestley, *Disquisitions Relating to Matter and Spirit* [with] *The Doctrine of Philosophical Necessity Illustrated*; and for the general background of controversy, Priestley, *An Examination of Dr. Reid's Inquiry into the Human Mind*.

<sup>94</sup> AP, 615b.

First Principles. It remains to apply this specifically to moral knowledge, to show how moral judgements are open to free moral agents. It is this combination that makes moral action possible, and it is the possible world of moral action that is charted in the Practical Ethics of this volume.

As so often in Reid, his own theory of moral knowledge is reached through criticism of the theories of others. Reid's main targets are Hutcheson and Hume, and the starting point is Reid's general criticism of the empiricist theory that all simple ideas stem from sense or feeling while all complex ideas are constructed by the mind from simple ideas. This, according to Reid, is as false of moral knowledge as of all other knowledge, first, because the moral faculty in fact begins with complex ideas and only by analysis reaches simple ones and, secondly, because such analysis reveals the presence of ideas – for example, the moral First Principles of Common Sense – which are not derived from any form of sensation but rather from the native operations of the mind. Furthermore, attention to the actual workings of the moral faculty shows that these are not simply a matter of feeling but a matter of judgement. When we make moral judgements, as the familiar term significantly has it, of our own or others' behaviour, we are directly conscious that we not only have a feeling but are also asserting a proposition that, in contrast to a feeling, may be true or false, and that this proposition is about the behaviour not about the feeling.

That other men judge, as well as feel, in such cases, I am convinced, because they understand me when I express my moral judgment, and express theirs by the same terms and phrases. Suppose that . . . my friend says – 'Such a man did well and worthily, his conduct is highly approvable'. This speech . . . expresses my friend's judgment of the man's conduct. . . . Suppose, again, that in relation to the same case, my friend says – 'That man's conduct gave me a very agreeable feeling'. This speech, if approbation be nothing but an agreeable feeling, must have the very same meaning with the first. . . . But this cannot be, for two reasons.

*First*, Because there is no rule in grammar or rhetoric, nor any usage in language, by which these two speeches can be construed so as to have the same meaning. The first expresses plainly an opinion or judgment of the conduct of the man, but says nothing of the speaker. The *second* only testifies a fact concerning the speaker – to wit, that he had such a feeling.

Another reason why these two speeches cannot mean the same thing is, that the first may be contradicted without any ground of offence, such contradiction being only a difference of opinion, which, to a reasonable man, gives no offence. But the second speech cannot be contradicted without an

affront: for, as every man must know his own feelings, to deny that a man had a feeling which he affirms he had, is to charge him with falsehood.<sup>95</sup>

So far from being constitutive of the operation of the moral faculty, feeling is in fact causally dependent upon our judgement: it is the judgement that some act or person is good or bad that causes certain feelings about it.

Reid's principal antagonist, Hume, would not of course have denied that judgement is relevant to the formation of our moral sentiments, commonly termed 'judgements', nor that the relationship is often a causal one. Thus the judgement that A is a means to B leads to an evaluation of A, if B is already considered to have some value or other. Such relational judgement may again lead to the evaluation of B in relation to C. But this process will have to stop somewhere, with something considered of value in itself and not simply a means, or, at least, that was how Reid saw it, and he believed that this consideration for Hume had to be a matter of feeling and not of judgement. This was how he understood Hume's maxim that reason is and ought to be the slave of the passions, a maxim that Reid rejected:

among the various ends of human actions, there are some, of which, without reason, we could not even form a conception; and that, as soon as they are conceived, a regard to them is, by our constitution, not only a principle of action, but a leading and governing principle . . . These I shall call *rational* principles; because they can exist only in beings endowed with reason, and because, to act from these principles, is what has always been meant by acting according to reason.<sup>96</sup>

Foreshadowing a later point, we may say that for Reid relative value judgements imply not facts (such as feelings) but judgements of facts – that is, moral facts. Such judgements are arrived at by the application of his 'rational principles' or ends, of which there are two – 'to wit, *What is good for us upon the whole*, and, *What appears to be our duty*.'<sup>97</sup> The former, also called prudence, is a principle of cool, rational self-interest. It presupposes that we are creatures with a complex of animal principles, desires and aims in life, whose immediate or long-term satisfaction or disappointment suggests to us a plurality of goods and evils. Prudence or 'practical reason', as it is also called,<sup>98</sup> is a judgement on the best attainable balance of these, based on past

<sup>95</sup> AP, p. 673.

<sup>96</sup> AP, p. 580.

<sup>97</sup> Ibid.

<sup>98</sup> AP p. 582a.

experience and a reasonable assessment of the future. This can plainly not be calculated on some simple, unitary scale but, though sometimes approaching value-pluralism, Reid's concept of 'our good upon the whole' depends on a teleological concept of the true nature (purpose) of human personality.

This is particularly clear in the lectures that follow, where Reid treats 'prudence' as our duty to ourselves or the duty of self-government. The proper exercise of prudence, he thinks, will show, as most ancient moralists, particularly the Stoics, had pointed out, that our good on the whole consists in the exercise of three of the four classical virtues – prudence, temperance and fortitude – and indirectly leads to the fourth, justice:

according to the best judgment which wise men have been able to form, this principle leads to the practice of every virtue. It leads directly to the virtues of Prudence, Temperance, and Fortitude. And, when we consider ourselves as social creatures, whose happiness or misery is very much connected with that of our fellowmen . . . from these considerations, this principle leads us also, though more indirectly, to the practice of justice, humanity, and all the social virtues.<sup>99</sup>

As was usual in late seventeenth- and eighteenth-century moral thought, when Reid talks of duty he adopts the Stoic (Ciceronian) concept of *officium* and adapts it to Christian beliefs by adding the notion of being called or appointed to the offices of one's life, as indicated by a natural power to fulfil these. By the same token, we are called upon to know and worship the Creator and to promote the 'good upon the whole' of the rest of creation. Consequently, Reid's lectures on our duties to ourselves are preceded by a discussion of our duties to God and followed by an elaborate treatment of our duties to others. In other words, the language of virtue, as the exercise of natural powers of moral judgement, and the language of duty, as the fulfilment of appointed offices, are one and the same and are seen to be so.<sup>100</sup>

The ancient tripartite division of man's duties had become an accepted part of contemporary teaching and lecturing practice, especially after Pufendorf adopted it in his *De officio hominis et civis* (1673).<sup>101</sup> However, because the English word 'duty', unlike *officium*, had lost the sense of a prudential duty to realise one's 'good on the whole', the *utile*, and retained only the sense of *honestum* – that is, the performance of one's duties to

<sup>99</sup> AP, p. 584. See *ibid.*, pp. 581–4 and 638.

<sup>100</sup> For the broader Scottish context, see Haakonssen, *Natural Law and Moral Philosophy*, ch. 2; and *idem*, 'Natural Jurisprudence and the Theory of Justice'.

<sup>101</sup> See the Commentary below at p. 181 n. 1.

others – Reid in his published work dropped the organisation of the lectures and restricted ‘duty’ to the latter use.<sup>102</sup>

This led Reid on to the further point that although prudential regard for our good on the whole is a basic end or principle of practical reason, it is not a genuinely moral one; only *duty* is that. Reid acknowledges that the two are so similar in their effects on human life that they lend plausibility to the attempts by ‘many of the ancient philosophers, and some among the moderns, to resolve conscience, or a sense of duty, entirely into a regard to what is good for us upon the whole’.<sup>103</sup> In fact, as he points out, if the regard to our good on the whole is fully developed it will produce the same behaviour as a regard to duty. The problem is that few, if any, can ‘attain such extensive views of human life, and so correct a judgement of good and ill, as the right application of this principle {of prudence} requires’.<sup>104</sup> Consequently, the principle of duty is necessary as the foundation of morals. Furthermore, even when truly virtuous behaviour arises from a prudent pursuit of our good on the whole, it is not considered as meritorious as when it arises from a sense of duty:

Our cordial love and esteem is due only to the man whose soul is not contracted within itself, but embraces a more extensive object: who loves virtue, not for her dowry only, but for her own sake . . . who, forgetful of himself, has the common good at heart, not as the means only, but as the end.<sup>105</sup>

Finally, the direct pursuit of our own good as the ultimate end, which Reid now polemically tends to identify with happiness,<sup>106</sup> is generally counter-productive, leading instead to ‘fear, and care, and anxiety’.<sup>107</sup> The performance of duty for its own sake alone gives real and lasting happiness. Duty as a contribution to the common good is what man is charged with as a moral being, while his ultimate happiness is God’s reward.<sup>108</sup>

<sup>102</sup> AP, p. 588a.

<sup>103</sup> AP, p. 582b.

<sup>104</sup> AP, p. 584b.

<sup>105</sup> AP, p. 585. For Butler’s somewhat different emphasis, see ‘Of the Nature of Virtue’ in his *Analogy*, pp. 333–5.

<sup>106</sup> AP, pp. 585–6.

<sup>107</sup> AP, p. 585b.

<sup>108</sup> AP, p. 586a. The idea that the piety derived from the insights of natural religion is the necessary premise for and completion of morals is forcefully stated in AP, pp. 598b–599a: ‘if we suppose a man to be an atheist in his belief, and, at the same time, by wrong judgement, to believe that virtue is contrary to his happiness upon the whole, this case, as Lord Shaftesbury justly observes, is without remedy. It will be impossible for the man to act so as not to contradict a



All this seems to Reid to indicate that regard to our good on the whole and regard to duty are two very different ends or principles of practical reason, that the latter cannot be reduced to the former, and that duty is the only properly moral principle:

This principle of honour, which is acknowledged by all men who pretend to character, is only another name for what we call a regard to duty, to rectitude, to propriety of conduct. It is a moral obligation which obliges a man to do certain things because they are right, and not to do other things because they are wrong. . . .

Men of rank call it *honour*. . . . The vulgar call it *honesty, probity, virtue, conscience*. Philosophers have given it the names of *the moral sense, the moral faculty, rectitude*. . . .

What we call *right* and *honourable* in human conduct, was, by the ancients, called *honestum*. . . . {and they} distinguished the *honestum* from the *utile*, as we distinguish what is a man's duty from what is his interest.<sup>109</sup>

He goes on to make the point noted above, that 'duty' – the English rendering of the Latin *officium* (which in Latin includes the sense of *utile*) – is commonly restricted to *honestum*. The basis of all morality is thus the doing of duty in the sense of fulfilling one's office for its own sake, and the moral faculty, by whatever name it is commonly known, is the sense of duty or conscience.

Reid, as we have seen, has no objection to calling the moral faculty a 'sense', provided this is understood, as in ordinary usage, to include judgement.<sup>110</sup> But two kinds of judgement are required of the moral faculty.<sup>111</sup> First, it must assent to the First Principles of morals previously referred to, of which Reid, in the *Intellectual Powers*, gives the following examples.

That an unjust action has more demerit than an ungenerous one: That a generous action has more merit than a merely just one: That no man ought to be blamed for what it was not in his power to hinder: That we ought not

leading principle of his nature. . . . This shews the strong connection between morality and the principles of natural religion; as the last only can secure a man from the possibility of an apprehension, that he may play the fool by doing his duty. Hence, even Lord Shaftesbury, in his gravest work, concludes, "That virtue without piety is incomplete: Without piety, it loses its brightest example, its noblest object, and its firmest support."<sup>111</sup>

<sup>109</sup> AP, pp. 587a–588a.

<sup>110</sup> AP, pp. 589b–590. See also Butler, 'Of the Nature of Virtue', p. 329.

<sup>111</sup> D. D. Raphael has pointed out that Reid does not clearly distinguish the two; see *The Moral Sense* (1947), pp. 172–89.

to do to others what we would think unjust or unfair to be done to us in like circumstances.<sup>112</sup>

In the *Active Powers* the sample is more extensive and is divided into those principles which ‘relate either to *virtue in general*, or to the different particular branches of virtue, or to the *comparison of virtues* where they seem to interfere’.<sup>113</sup>

Secondly, the moral faculty judges the moral worth of particular actions by relating such actions to the moral end – duty – through subsuming them under the relevant First Principle or Principles.<sup>114</sup> Following ordinary usage, Reid commonly calls this form of judgement moral judgement. While the First Principles of morals constitute certain knowledge to any competent moral judge, the particular moral judgements are inherently fallible because we can never have perfect knowledge of the ‘real essence’ of contingent beings such as those related in moral judgements – namely, particular agents and their particular behavioural circumstances.<sup>115</sup> He often muddles this point when, by a confused and rhetorical use of ‘axiom’ for First Principles as well as for particular moral judgements, he transfers the certainty of the former to the latter.<sup>116</sup> The necessity and importance of the point is, however, quite clear when he insists that the self-evidence of First Principles does not dispense with the need for moral education or vitiate the role of moral experience in such education. This would not be intelligible if particular moral judgements had the same epistemic standing as moral First Principles, for it is the ease of error in the former that often obscures the latter. Despite lapses, Reid manages to avoid the common error in responses to scepticism of trying to prove too much.<sup>117</sup>

### Duty and Virtue

Turning now from moral judgement to the objects of moral judgement, we must make explicit what has already been hinted at. Reid acknowledges that in ordinary language moral judgements concern the moral quality of either

<sup>112</sup> IP, p. 494.

<sup>113</sup> AP, p. 637.

<sup>114</sup> AP, pp. 589b–591a.

<sup>115</sup> IP, p. 551.

<sup>116</sup> See Raphael, *The Moral Sense*, pp. 175–6.

<sup>117</sup> AP, pp. 640b–643a. While Reid, in accordance with his rational religious outlook, maintains that revelation must be consistent with reason, he also subscribes to the view that the moral teaching of revelation may educate corrupted mankind to see the moral First Principles, which are used by reason. This is clearly how he saw the work of Christ. See *ibid.*, p. 641b. For a similar view of revelation, see Butler, *Analogy*, II, ch. I.

actions or agents or duty. However, Reid believes that philosophical scrutiny will make it clear that an action considered in abstraction from an agent and his motives can have a moral ‘quality’ only in the sense that it is a *duty* either to do it or to avoid it. As we shall see, this is the crux of his criticism of Hume. If we judge a particular action as resulting from the agent’s motive, we are judging the merit or demerit of the agent.<sup>118</sup> However, since the exercise of virtue is a duty, all judgements of moral merit ultimately depend on judgements of duty. Even when a moral quality like benevolence is the ostensible object of a moral judgement, we must understand that it derives its moral status from the fact that it is a duty. Thus, because all moral judgements are ultimately about duty, their objects must be relational in character:

If we examine the abstract notion of Duty, or Moral Obligation, it appears to be neither any real quality of the action considered by itself, nor of the agent considered without respect to the action, but a certain relation between the one and the other.

When we say a man ought to do such a thing, the *ought*, which expresses the moral obligation, has a respect, on the one hand, to the person who ought; and, on the other, to the action which he ought to do. Those two correlates are essential to every moral obligation; take away either, and it has no existence. So that, if we seek the place of moral obligation among the categories, it belongs to the category of *relation*.<sup>119</sup>

Judgements are moral in character when they express a duty relationship; a man is virtuous because he does his duty, and actions are good because they are duties to be done by people in particular circumstances.

We have already seen that Reid’s theory of the moral sense as a faculty of judgement constitutes a break with Moral Sense theory, especially as formulated by Hutcheson, though it may be smaller than Reid thought and rather less dramatic than many scholars would have it. Hutcheson has traditionally been presented as an affective subjectivist for whom moral judgements were expressions of certain affections of the moral sense. In some recent studies, he has been interpreted as a ‘moral sense cognitivist’ who saw the moral sense as a cognitive faculty perceiving objective moral qualities.<sup>120</sup> A more

<sup>118</sup> AP, p. 649a. There are lively discussions of this in the manuscripts; see esp. 7/v/17. For Butler’s similar standpoint, see ‘Of the Nature of Virtue’, p. 330.

<sup>119</sup> AP, pp. 588b–589a.

<sup>120</sup> See Norton, *David Hume*, ch. 2; idem, ‘Hutcheson’s Moral Realism’ (1985); W. Leidhold, *Ethik und Politik bei Francis Hutcheson* (1985), ch. 4. This interpretation has been criticised by, among others, K. Winkler, ‘Hutcheson’s Alleged Realism’ (1985).

adequate reading suggests that Hutcheson maintains that there is an objective correlation between the experience of moral approval and the perception of sensitivity to various natural qualities of behaviour, notably their tendencies towards promoting utility or preventing disutility. Thus I judge somebody to be morally virtuous if he or she is perceptive about the natural tendency of given behaviour to be beneficial.<sup>121</sup> This allows a Hutchesonian to distinguish between what merely appears virtuous (or vicious) and what really is so, just as it provides scope for correction of our understanding of moral matters (but it does not *reduce* virtue to utility).

This makes the real nature of Reid's break with Hutcheson clear. It was a division not between subjectivism and realism but between two different ideas of the nature of objective moral judgement. For Hutcheson the moral world consists of qualities that are perceived by the Moral Sense and ascribed to people in moral judgements. For Reid the moral world consists of relations that are judged to be the proper ones between particular people and actions in the light of the First Principles of morals. For the former, the language of virtue is the primary one; for the latter, the language of duty is primary.

It appears that Reid was precluded from an adequate appreciation of the relationship between his own Common Sense theory and the classical formulation of the Moral Sense theory by his reading of Hume. Like most of his contemporaries, Reid understood Hume as being a self-confessed sceptic for whom morality was entirely a matter of subjective states and not a body of objective knowledge. Once scepticism was seen as the result of Moral Sense theory, the possibility that the moral sense was a cognitive faculty giving access to an objective moral world was lost from sight and only its affective side was remembered.<sup>122</sup>

Leaving aside the adequacy of Reid's interpretation of Hume, we may elucidate the central point of his criticism.<sup>123</sup> He starts from the question, 'Whether an action deserving moral approbation, must be done with the belief of its being morally good',<sup>124</sup> his affirmative answer to which introduces his criticism of Hume's theory of the artificial virtues. As Reid and

<sup>121</sup> Hutcheson, *Essay on the Nature and Conduct of the Passions and Affections. With Illustrations on the Moral Sense*, pp. 234–7; and P. J. E. Kail, 'Hutcheson's Moral Sense: Realism, Scepticism and Secondary Qualities'.

<sup>122</sup> See IP, pp. 423–4.

<sup>123</sup> This is part of the critical reflection contained in the last four chapters of *Active Powers*, which have the character of appendixes rather than integrated parts of the systematic exposition; see Reid's remarks about their origins, AP, p. 645b.

<sup>124</sup> *Ibid.*, p. 646a.

most other readers have understood him, Hume maintains that it makes sense in ordinary language to say that the motive for an action is good because the action itself is good. This assumes that of certain categories of action, typically acts of justice, we can say why in the final analysis it is good. However, moral goodness cannot rest in the external action as such, but must depend upon a morally good motivation, so we are in effect arguing in a circle: the motive is good because the action is good, and the action is good because the motive is good.<sup>125</sup> Hume breaks the circle with his well-known argument that when actions of the justice type in general are performed within a group this contributes to the common good of the group, whether or not this was the intention. Because of our sympathy with the public good, we approve of such actions, and this becomes their ‘artificially’ engendered moral motive, turning them into proper acts of justice.<sup>126</sup>

Reid has several criticisms of this theory, but behind them all is one arising from the ideas discussed above. Hume’s alleged circularity of motive and action, Reid declares, is false; it never existed, and his elaborate scheme for breaking it is therefore futile. We are perfectly entitled to say that a man’s motive is good or virtuous if it intends a good action, for the goodness of the action itself does not depend on the motive. We must distinguish between the goodness of the doer of a specific good action and the goodness of the act considered in abstraction from its being done at a particular time by a particular person. Goodness in the latter case simply derives from the fact that the action in the abstract is a type or category of action that is a *prima facie* duty for *any* moral agent:

what do we mean by goodness in an action considered abstractly? To me it appears to lie in this, and in this only, that it is an action which ought to be done by those who have the power and opportunity, and the capacity of perceiving their obligation to do it. . . . And this goodness is inherent in its nature and inseparable from it. No opinion or judgment of an agent can in the least alter its nature.<sup>127</sup>

As I understand it, this is just another way of saying that the judgement that an act considered in the abstract is good is a moral First Principle and, further, that when a particular act of this kind is related to an agent by his application of this First Principle – that is, by his judging that the particular

<sup>125</sup> Hume, *Treatise*, III.ii.1, esp. pp. 479–80. Reid quotes the central passages (AP, p. 648a).

<sup>126</sup> *Treatise*, III.ii.1–2.

<sup>127</sup> AP, p. 649a.

act is his duty – then his motive is morally good. If the same action is related to the agent by sheer coincidence or by some non-moral principle of practical reason, such as self-interest, then there is no ‘transfer’ of moral goodness from the action to the agent.

This interpretation hinges upon the identification of actions in the abstract as the subjects of moral First Principles. It seems to be borne out by Reid’s example of an action considered abstractly, ‘that of relieving an innocent person out of great distress’;<sup>128</sup> that this is a duty is clearly a principle that could take its place among Reid’s explicit First Principles of morals. His criticism of Hume thus rests upon the idea that there are such undeniable First Principles that make actions good and obligatory independently of the motive of the agent.<sup>129</sup>

I have stressed Reid’s switch from a theory of virtue to a theory of duty, in the sense of offices, partly because this is an often neglected structural feature of his basic moral philosophy, as published in the *Active Powers*, and partly because it is a precondition for an adequate understanding of his Practical Ethics, as published here. As we have seen, there are rules of translation between the two languages, of virtue and of duty, so that either can be used for normative and didactic purposes – that is, in Practical Ethics. Even so, Reid considers ‘duty’ more proper and natural than ‘virtue’ in this regard also, and he arranges his lectures accordingly, as this volume demonstrates:

<sup>128</sup> Ibid.

<sup>129</sup> We cannot here consider all the moralists subjected to Reid’s critical analysis, especially in the manuscripts, but some who influenced the early Reid may be mentioned. Reid’s general criticism of the ‘selfish’ system is well known, but not his opinion that John Gay refined on it (7/v/14). Reid’s elaborate criticism of Adam Smith’s system of sympathy as essentially a variant of the same was published in 1980 and 1984 by J. C. Stewart-Robertson and D. F. Norton, ‘Thomas Reid on Adam Smith’s Theory of Morals’. Against Hutcheson, Reid argues with Butler that benevolence is not the only ultimate moral principle, and this is incorporated into the following summary of Reid’s criticism of Clarke, William Wollaston, and Shaftesbury: ‘As that System which places Virtue solely in disinterested Benevolence narrows the foundation too Much So all the three Systems of S. Clarke, Wollaston & Shaftesbury make the foundation too broad and lead us to ascribe Virtue or moral Worth to actions no wise intitled to that Character. . . . It is . . . a bad definition of Virtue to say that it is acting according to Reason, because though every Virtuous Action is according to Reason. Yet every Action that is agreeable to Reason is Not virtuous’ (8/iii/10, 1r). Elsewhere Reid spells out what he only hints at here, that Shaftesbury’s definition of virtue as ‘the Conformity of our Actions & Affections to the fair & handsome, the Sublime & Beautifull of Things’, suffers from a similar weakness and that the systems of both Shaftesbury and the intellectualists ‘tend to confound two things which are really distinct and which the french Language distinguishes more accurately than ours to wit Manners & Morals, les manniere, & les moeurs’ (7/v/1, 14r). In a brief note dated 22 February 1768, Reid again touches on this topic, this time bracketing John Balguy, Richard Hooker, and Richard Price with Clarke (4/i/21).

Morals {practical ethics} have been methodized in different ways. The ancients commonly arranged them under the four cardinal virtues of Prudence, Temperance, Fortitude, and Justice; Christian writers, I think more properly, under the three heads of the Duty we owe to God – to Ourselves – and to our Neighbour. One division may be more comprehensive, or more natural, than another; but the truths arranged are the same, and their evidence the same in all.<sup>130</sup>

This brings us to the final point to be made here concerning the primacy of duty in Reid's theory. We saw earlier that, considered as virtues in the traditional sense of qualities of persons, even the cardinal virtues were not properly *moral*, but only *prudential* ends or principles of practical reason. However, if the same behaviour is considered as *duty*, then not only the other-regarding justice but also the *prima facie* self-regarding prudence, temperance and fortitude are properly moral principles. Accordingly, the last three are included in Reid's Lectures as 'duties to oneself', alongside 'duties to God' and 'duties to others' (justice).

The apparently paradoxical notion of duties to ourselves is explained by the fact that these duties are only *prima facie* self-regarding. We have a duty to cultivate the cardinal virtues of prudence, temperance and fortitude because we are created with a moral nature and have been given a divine brief to develop it to the best of our ability. The duties to ourselves are thus really owed to God, and their value to ourselves can only be seen as a moral good in so far as it is a contribution to the good of the world as a whole, the striving for which is a duty imposed by God upon mankind individually and collectively.

This religious perspective is very important. Not only does Practical Ethics presuppose the pneumatological explanation of the divine as well as of the human mind, but practical ethics itself has as its fundamental first part 'duties to God'. As Reid explains it in his published work: 'That conscience which is in every man's breast, is the law of God written in his heart, which he cannot disobey without acting unnaturally, and being self-condemned', and again, 'Right sentiments of the Deity and of his works, not only make the duty we owe to him obvious to every intelligent being, but likewise add the authority of a Divine law to every rule of right conduct.'<sup>131</sup> The ultimate foundation of morality is divine law, and we can thus appreciate why Reid generally respected the distinction between duty

<sup>130</sup> AP, p. 642b.

<sup>131</sup> AP, pp. 638b and 639b.

and obligation.<sup>132</sup> Morality is a matter of duties imposed, not of obligations undertaken; obligations, like virtues and all other moral categories, presuppose duty and law. Remembering the inspiration Reid derived from the Stoics, we may also say that morality is an elaborate network of ‘offices’ of greatly varying extent to which God has appointed us.

Pneumatology explains the appointed place of mind within the creation and the cognitive powers and epistemic principles that make knowledge possible to the mind. The theory of morals is the part of pneumatology that explains how the mind is an active power: it has moral freedom to act guided by reason, and it can acquire the moral knowledge to inform its reasoning. Practical ethics, or morals, is not in the same way explanatory; it is, rather, a taxonomic discipline that systematically arranges the principles of our duty and thus provides a map of the network of typical offices that constitute the moral world. As Reid defined it: ‘Ethics the knowledge of these Rules or Laws by which men ought to regulate their Actions.’<sup>133</sup> And in the *Active Powers*: ‘A system of morals is not like a system of geometry, where the subsequent parts derive their evidence from the preceding, and one chain of reasoning is carried on from the beginning; so that, if the arrangement is changed, the chain is broken, and the evidence is lost. It resembles more a system of botany, or mineralogy, where the subsequent parts depend not for their evidence upon the preceding, and the arrangement is made to facilitate apprehension and memory, and not to give evidence.’<sup>134</sup> This point is central to the claim that morals, or practical ethics, in contrast to the (pneumatological) ‘theory of morals’, is not a matter of reasoning in the sense of deductive inference, but is open to any ordinary intelligence.<sup>135</sup> ‘Morals’ is thus not an inference from ‘the theory of morals’. The latter explains how morals is possible for humanity, but that is a point never doubted by anyone in the practical conduct of life, and the only practical implication in demonstrating it is to rebut sceptical metaphysicians, whose sophistries might otherwise derange the moral Common Sense of some people. We must take it that the world that is thus depicted is not the actually existing moral condition of mankind but rather that which, given the moral powers of man, is possible

<sup>132</sup> Reid occasionally confuses the subjective and objective concepts, though mostly using ‘obligation’ either for the subjective state of the person who has a duty or for obligations undertaken, e.g., by contract.

<sup>133</sup> 6/iv/1,r.

<sup>134</sup> AP, p. 642b. For the wider philosophical importance of this thought, see Haakonssen, ‘Religion, Social Morality, and the Science of Morals’.

<sup>135</sup> See Raphael, *The Moral Sense*, pp. 165–72.



in principle and a guiding ideal in practice. In this sense, ‘systems of morals’ are supportive of our haphazard moral judgements of our duty. This is what Reid understood by Practical Ethics.

### Natural Jurisprudence

We have already seen that in the lectures on practical ethics Reid adopts both of the traditional divisions of morality to structure his course: the three duties (to God, to ourselves, and to others) and the four virtues (prudence, temperance, fortitude and justice). The three duties provide the basic structure of the lectures, and of these the last is by far the most extensive; duties to ourselves consist in the exercise of the three virtues of prudence, temperance and fortitude, while the fourth, justice, applies to our duties to others. Reid often reserves the label ‘natural jurisprudence’ for the justice section of his course. The opening discussion of duties to God is brief, drawing on the pneumatology lectures on natural religion, and is generally organised around the traditional distinction between internal and external worship. Together with the lectures on the duties to ourselves, it presents an integration of Christian and Stoic ideals, which was a common theme in the moral thought of the period. The important point here is the analysis of the classical theory of virtue in terms of a Christian theory of duty and law within a teleological framework.

The section on natural jurisprudence, or duties to others, is by far the most extensive in Reid’s course on practical ethics. The basic division of the topic is between the rights and duties of individuals and those of societies. While he draws the traditional parallels between the two groups, Reid is careful to point out the significant differences, which fully justify the separate treatment of international law. The tripartite division of the law of nature pertaining to individuals is again entirely traditional. In ‘private jurisprudence’ we consider the individual in isolation from any organised society and in that sense in a state of nature, whereas the other two sections deal with the individual’s rights and duties within the household and within civil society. Though Reid adopts the old use of ‘oeconomical’ as the adjectival form of *oikos* and operates with the familiar extended concept of the household, as indicated here by the third of the three oeconomical relations, he is well aware that historically the juridical roles of the household are steadily being transferred to the state. Finally, political jurisprudence deals with rights and duties between rulers and the ruled in civil society and between citizens *qua* citizens.

Basic to Reid’s idea of natural jurisprudence is the concept of natural law. In common with all Protestant natural lawyers, he sees this as God’s

command to man, apprehended by human reason (as opposed to revelation), and he identifies it simply as the precept of our moral power or conscience. It is worth noting that Reid does not take this opportunity to revive the old dispute about a voluntarist versus a realist foundation for the obligation to natural law, which had played a significant role in modern natural law, dividing Grotians from Pufendorfians.<sup>136</sup> The law of nature so orders the moral world of human actions into rights and duties that for every right there is a corresponding duty, whereas there are some duties that cannot be claimed as rights.<sup>137</sup> This applies most obviously to our duties to ourselves but also to some other cases, which we shall look at later. Ignoring duties to God and to ourselves, Reid in the *Active Powers* takes the systems of rights and of duties to be alternative ways of dealing with morals, but more judiciously, in the lectures he sees them as complementary.<sup>138</sup> This is not just or even primarily because of the odd status of duties to God and to ourselves, but because the law of nature in some cases appoints the rights as primary and the matching duties as consequent upon them, whereas in others the reverse is true. Thus our rights of liberty (to be and to do, put simply) and our ‘real’ rights (our rights in things, i.e. property) are primary, and it is as a consequence of granting us those that the law of nature appoints duties to respect them. Our ‘personal’ rights (i.e. our rights to some performance by other persons, usually contractually established), on the other hand, are derived from the duties imposed by natural law on those others.<sup>139</sup> The important thing is that, irrespective of what in this sense is primary and what is secondary, the law of nature maintains the correspondence between natural rights and duties. Reid believes that the moral world is in principle well ordered by a natural law whose relationship to natural rights and duties is analogous to the relationship between positive law and legal rights and duties.

My emphasis here on the role of natural law may meet with some scepticism as being far too voluntaristic for a moral realist like Reid. And so it would be if we stopped there, but when we look at the concept of the common good, I hope that such scepticism will be mitigated.

Apart from the divisions of rights according to their ‘nature’ (liberty rights, real rights and personal rights), and according to their ‘relations’ (private, oeconomic and political), Reid uses a couple of other devices from

<sup>136</sup> See Haakonssen, *Natural Law and Moral Philosophy*, ch. 1.

<sup>137</sup> Below, pp. 42 ff. Page references not otherwise identified are to the manuscripts printed below in this volume.

<sup>138</sup> AP, pp. 643–5. See below, pp. 100–1, where Reid explicitly excepts duties to ourselves.

<sup>139</sup> See below, p. 98.

jurisprudential architectonics. He divides rights according to ‘subject’, into private, public and common, of which the first pertain to individuals, the second to any social grouping, and the third to mankind as a whole. This he mentions only in passing.<sup>140</sup> More important, he divides rights, according to their ‘source’ or ‘foundation’, into innate or natural and adventitious; sometimes he adds acquired rights as a third category, sometimes instead he subdivides adventitious rights into original and derived.<sup>141</sup> It is interesting to note that in the *Active Powers* Reid introduces the concept of rights as deriving from that of injury, a traditional notion that Adam Smith had developed into an original theory by means of the idea of the impartial spectator.<sup>142</sup> On this basis, though without using Smith’s theory, Reid lists six rights:

A man may be injured, first, in his person, by wounding, maiming, or killing him; secondly, in his family, by robbing him of his children, or any way injuring those he is bound to protect; thirdly, in his liberty, by confinement; fourthly, in his reputation; fifthly, in his goods, or property; and lastly, in the violation of contracts or engagements made with him. This enumeration, whether complete or not, is sufficient for the present purpose.<sup>143</sup>

Reid’s purpose then was to criticise Hume for his neglect of the first four rights, the ‘natural rights’, in his theory of justice – just as Smith’s spectator theory of justice is meant to correct Hume on this point.<sup>144</sup>

At any rate, the basis for the distinction between innate or natural rights and adventitious or acquired rights is that the former do not presuppose any human action, whereas adventitious rights do. Innate rights are thus typically life, liberty and free personal judgement. Original adventitious rights are principally the right to property, which arises from mere occupation and derives from innate rights in so far as its justification is that it helps us to preserve the latter (sustaining life, etc.). Here it should be mentioned that, according to Reid, the whole world is given to mankind from the hand of nature (or the creator) in negative community – that is, everything is equally open to occupation by everyone.<sup>145</sup> Derived rights presuppose the prior existence of original adventitious rights, which can be transferred or otherwise

<sup>140</sup> See below, pp. 46, 98, 100.

<sup>141</sup> See below, pp. 46, 98–9, 100, 105, 107.

<sup>142</sup> See Haakonssen, *Science of a Legislator* (1981), pp. 99 ff.

<sup>143</sup> AP, p. 656.

<sup>144</sup> See Haakonssen, *Science of a Legislator*, pp. 102–3.

<sup>145</sup> See pp. 104–5 and 109; AP, p. 658.

transformed through succession, contracts, testaments and the like. Reid confusingly, and inconsistently with his general terminology, talks of adventitious rights as rights that exist between people in an adventitious state – that is, in a state other than the natural one, such as the family or civil society – which rest upon contractual relationships.<sup>146</sup> Finally, he also divides rights according to their ‘mutability’, into alienable and inalienable rights – real rights, personal rights and ‘some parts of our Liberty’ being alienable.<sup>147</sup>

The most important division is, in some ways, that between perfect rights and imperfect rights.<sup>148</sup> Reid rejects the most common grounds for this distinction: that perfect rights can be legally enforced, while imperfect rights cannot, and that perfect rights alone are absolutely necessary to the very existence of society.<sup>149</sup> Instead, he relies on a more general reason: he takes perfect rights to be rights matched by negatively defined duties – for example, duties not to injure – while imperfect rights are matched by positive duties to render some good.<sup>150</sup> Though adopting this traditional distinction for conceptual clarification, Reid does not think that it has the moral and political significance often ascribed to it. First, he never gives the two kinds of rights and their matching duties different epistemological status. The moral qualities that people show in exercising them are equally objective and equally open to appreciation by our moral powers. Secondly, he does not think that they are so very different in moral urgency; in this regard the line between them will often be uncertain.<sup>151</sup> Thirdly, because of this he does not think that a society can exist merely on the basis of the protection of perfect rights. Fourthly, he consequently sees it as the task of government to protect both perfect and imperfect rights by legally enforcing their corresponding duties.<sup>152</sup>

<sup>146</sup> See p. 108.

<sup>147</sup> See p. 100.

<sup>148</sup> Although Reid occasionally talks of the distinction between perfect and imperfect rights as a general division of the field, his more considered view was that the distinction was really only relevant to personal rights (see p. 97). I take his point to be that liberty-rights are all obviously perfect. It should also be noticed that Reid, in accordance with the jurisprudential tradition, distinguishes a third category, external rights (pp. 101, 108; AP, p. 644). These are in fact a mere *factio juris* created to match duties arising from ignorance, as in the case where one person innocently borrows something from another, who has in fact stolen it. The law of nature here imposes an obligation on the former, in his ignorance, to restore the thing borrowed, and while the latter actually has no matching right, he has a semblance of right which is called external.

<sup>149</sup> See p. 96; AP, p. 645b.

<sup>150</sup> See pp. 92–3; AP, pp. 643b–644a.

<sup>151</sup> See pp. 101–2; AP, p. 645b.

<sup>152</sup> I return to this below in connection with political jurisprudence; but see AP, p. 645b.

Reid does not name his adversaries in this argument, but it should be noted that these four points collide head-on with ideas central to both David Hume and Adam Smith.<sup>153</sup> Hume and especially Smith had argued that some basic features of justice, conceived negatively as a matter of the protection of perfect rights (terms that Hume did not employ), are much more universally recognisable than other parts of morality. The uncertainty of the latter, the ‘positive’ virtues, in itself makes them less morally urgent and makes it both difficult and dangerous to enforce them as legal duties. This does not, however, mean that the positive virtues on their view are irrelevant to the well-being of society; indeed, in some form or other they are indispensable for its stability, and in many historical situations it may be necessary for governments to further them by educational and cultural policies if for any reason they are endangered. For Hume and Smith the pursuit of some of the positive virtues is thus a matter of policy, for Reid it is a matter of legal enforcement. This contrast makes clear the far-reaching political implications of the form of the doctrine of rights.

### Property

Although Reid’s discussion of the fundamental issues concerning natural law, rights and duties is somewhat fragmentary in the manuscripts published here, there is much subtlety in this material and it adds considerably to the brief discussion in the published work. The same applies to the treatment of property, a topic already encountered in the general discussion of rights but to which some pages are directly devoted. We have seen how original and derived property rights are placed within the system of rights and how they serve in a way to realise natural rights. Here some further explanation is required, for as it stands it sounds far too individualistic.

As we saw above, the world is given to mankind in negative community from the hand of the creator – that is, everything is equally open to occupation by everyone. The justification for this is that it is a means to secure our innate or natural rights, such as life and liberty, but this conventionally individualist argument is combined with views of a different tendency. In occupying the world, man not only must discharge his obligation to look after his own natural rights but also is under a constant obligation to look after the rights of others. Reid illustrates this by a splendid allegory, taken from

<sup>153</sup> I am here presupposing the interpretation of Hume and Smith in Haakonssen, *Science of a Legislator*.

Epictetus and Simplicius, in which human life is depicted as a party, and the natural world as the refreshments provided by the host (the Lord).<sup>154</sup> While looking after himself, every guest must still be constantly concerned for the satisfaction of his neighbour, the general happiness of the party and the honouring of his host. In short, individual claims are legitimate rights only when they do not conflict with the common good but, as far as possible, contribute to it.

When Reid says that the law of nature gives us all an equal right to occupy and use the non-human creation, he is not implying that this had been so arranged in order that we may realise our natural rights. The point is that we should do so in order to realise the common good, for only those requirements – of liberty, of goods and of services – whose satisfaction contributes to the common good are in fact rights at all. This is the real significance of maintaining that all rights are matched by duties. Because all duty is pointed out by natural law, whose ultimate objective is the realisation of the common good, the assurance that there are no free-floating rights unengaged by duties shows that all genuine rights claims are in harmony with the common good.

This use of the concept of the common good (or public good) may lead to a charge of inconsistency, in view of Reid's well-known criticism of Hume for using 'public utility' as the justifying ground for the artificial virtues, especially justice. This issue is connected with his problematic use of natural law, and the two problems can in fact be resolved together when we know more about Reid's concept of the common good. Meanwhile, we may take the common good to mean the fullest possible honouring of duties and hence protection of rights.<sup>155</sup>

All this is simply to say that the right to property is heavily circumscribed.<sup>156</sup> We may occupy only such parts of nature as are necessary for the satisfaction of the needs and wants of ourselves and those dependent upon us, and we may do so provided only that we do not injure others in their similar rights (the basic sufficiency of nature is an unstated premise here; it was a common one). Further, such things as air, water and the ocean, which can benefit us without becoming private property, may not be occupied by individuals (or societies). This leads Reid to the interesting Lockean suggestion that perhaps only what is actually consumed may become private property, while things of a 'permanent Nature' may 'be left in the Community of

<sup>154</sup> See pp. 103–4.

<sup>155</sup> See pp. lxxiv–lxxv.

<sup>156</sup> See pp. 105–7; AP, pp. 658b–659a.

Nature or at least remain in a State of positive Communion'.<sup>157</sup> Although Reid does not use it as an example of such durable things, he undoubtedly meant to include all real estate, especially land, and this view is very close to that ascribed to Locke by some interpreters.<sup>158</sup> Reid's own references are to Plato, 'Utopia' (undoubtedly More's) and 'Paraguay', by which he means the Jesuit social experiments, to which he refers also elsewhere. In his lectures, as in *Active Powers*, Reid rejects this idea, and it would indeed have been extraordinary if the professor had lectured his young charges on the illegitimacy of private property in land. In his final political statement, however, he did toy with the idea in its most radical, utopian form.<sup>159</sup>

The reasons Reid gives in the lectures for the legitimacy of private property, in durable as well as consumable things, are such that it is not a long step to arguing for the abolition of private property. Prominent among the reasons is the idea that the acquisition of such property is a means to make us realise our moral potential, partly by making us more diligent and thus socially useful, partly by enabling us to show generosity. In fact, the overriding justification for all private property is that it is a means to create a common good; once civil society has been instituted as the guardian of the common good, it has a complete prerogative over private property:

In General as Property is introduced among Men for the Common Good it ought to be secure where it does not interfere with that end but when that is the Case private Property ought to yield to the Publick Good when there is a repugnancy between them. Individuals may be compelled in such cases to part with their Property if they are unwilling, but ought to be indemnified as far as possible.<sup>160</sup>

In fact, 'A Man or a Nation may be hindred from acquiring such an extent of Property as endangers the Safety and Liberty of others', which Reid takes to imply the abolition of private monopolies and the legitimacy of restricting 'the disposal of Property by will or by Entails'. Further, 'A Proprietor has no Right to destroy his Property when the common Good requires that should be preserved, not to keep up Mercatable Commodities when the common Good requires that they should be brought to Market'.<sup>161</sup> Finally, the state

<sup>157</sup> See p. 109; AP, p. 658a.

<sup>158</sup> Especially J. Tully, *A Discourse on Property: John Locke and His Adversaries* (1980).

<sup>159</sup> See the essay on the 'Utopian system' (in *Reid on Society and Politics*).

<sup>160</sup> See p. 107.

<sup>161</sup> Reid was always suspicious of the emerging market society and its alleged acquisitiveness. The most extreme expression of this occurs in his utopian scheme, but note his reaction to

may secure its own political stability by setting ‘Bounds to the Acquisition of Property by Agrarian Laws or other Means of that kind’ and may secure itself militarily by confiscating necessary property.<sup>162</sup> Reid’s juristic justification of the classical republican idea of an agrarian law and his whole treatment of property emphasises the very direct political implications of his jurisprudential system.

The discussion of succession to property is disappointingly fragmentary, as only a few brief manuscripts seem to have survived, but two points deserve notice even in this survey. In keeping with the long-standing interest in feudal institutions and their influence on contemporary society in Britain, Reid is tempted into a more historical consideration than usual of one issue, that of entail, and a brief aside indicates that he has done the same with testamentary succession. Moreover, he condemns entail on natural law grounds as contrary to the moral good of both the individual and society, as we might expect from his justification of property in general, and thus adds his voice to the chorus of Scots philosophers who campaigned against this institution during the eighteenth century.

### Contract

From ‘real’ rights – rights in things – Reid’s lectures turn to ‘personal’ rights: rights to some prestation from particular people. Following the natural lawyers, Reid here considers not only the paradigm of contract but also the wider question, whether the use of language as such gives rise to rights and obligations. This leads to some of his most original ideas in combining his theory of language with moral and political themes as in the chapter on contract in the *Active Powers*<sup>163</sup> and the paper on implied contract given to the Glasgow Literary Society and printed below in section XV.

Bentham’s *Defence of Usury*: Writing to James Gregory on 5 September 1788, Reid says: ‘I am much pleased with the tract you sent me on usury. I think the reasoning unanswerable, and have long been of the author’s opinion, though I suspect that the general principle, that bargains ought to be left to the judgement of the parties, may admit of some exceptions, when the buyers are the many, the poor, and the simple – the sellers few, rich, and cunning; the former may need the aid of the magistrate to prevent their being oppressed by the latter. It seems to be upon this principle that portage, freight, the hire of chairs and coaches, and the price of bread, are regulated in most great towns. But with regard to the loan of money in a commercial state, the exception can have no place – the borrowers and lenders are upon an equal footing, and each may be left to take care of his own interest’ (*Correspondence*, pp. 202–3).

<sup>162</sup> See p. 106.

<sup>163</sup> AP, pp. 663 ff.



Behind Reid's idea of language lies his important distinction between 'solitary' and 'social' acts of mind.<sup>164</sup> The central point here is that the latter kind of acts, unlike the former, presuppose the existence and (in some sense) presence of another mind or other minds. Social acts are necessarily communicative and thus a matter of signs, while solitary acts may or may not be expressed. Examples of the latter are seeing, hearing, remembering, judging, reasoning, deliberating and deciding, while the former include questioning, testifying, commanding, promising, contracting, and the like. For mental acts to be social, there must therefore be a community of signs so that mutual understanding is possible, and nature has in fact provided such a community of signs. It is, however, not only language in the narrower sense that functions as a set of signs.<sup>165</sup> Any behaviour directed by a will and judgement and perceived to be so is a sign, or part of language. Consequently verbal promises and contracts are only special cases of the wider question concerning the moral implications of communicative behaviour. Because this is a large part of voluntary behaviour, it is subject to ordinary moral judgement in terms of the principles of duty. Veracity in our use of signs must thus be a First Principle of morals, and as such Reid maintains it. Veracity is an *undeniable* principle in the use of signs, for were it not assumed as the *prima facie* duty of all sign-users, no communication would be possible and to attempt it would involve a contradiction. The reflexivity argument encountered earlier is obviously not far off. How can Hume hope to argue that fidelity to promises is an artificial virtue without presupposing that the general virtue of veracity is being naturally imputed to him by the readers of this argument?

The voluntary undertaking of obligations and consequent creation of rights in others is, in traditional subjective rights theories, the fundamental operation upon which morality rests. The fact that Reid reduces such obligations and rights to the operation of the principles of duty and thus to natural law merely strengthens the thesis with which we began. This is reinforced when we see how he extends the argument to contractual obligations. Because any voluntary behaviour may function as a sign and thus 'engage' the agent to some obligation, well-known patterns of behaviour or common roles must invariably do so, and they are then, in the proper Ciceronian sense, the offices of human life. These offices will be known in their general character to any competent moral agent and, while all the moral facts making up

<sup>164</sup> IP, pp. 68–70; AP, pp. 663b–666b. Cf. C. A. J. Coady, 'Reid and the Social Operations of Mind'.

<sup>165</sup> For the philosophical background to Reid's broadening of the concept of language, see Hans Aarsleff, 'Philosophy of Language'.

the role may not be foreseen by the agent, the office is *prima facie* binding once the latter has signalled its beginning by his behaviour. Once the agent has initiated a role, the reliance of others upon his fulfilment of it shows that his behaviour has been taken as a sign and puts him under an obligation to complete the role, as if he had promised or contracted to do so. Failure in this would be to deny that the preceding behaviour was what it pretended to be.

In other words, by broadening the concept of signs (or language) Reid relativises the distinction between explicit and implicit promises and contracts and reduces the moral status of both to that of voluntary behaviour in general. He almost certainly arrived at this idea by generalisation from natural law ideas of quasi-contract, probably by following up a brief hint in Hutcheson to the effect that continuing obligation to government ‘is an obligation *quasi ex contractu*’.<sup>166</sup> It was undoubtedly with the aim of reinterpreting the idea of a contractual basis for government that Reid developed the theory.

### Oeconomical Jurisprudence

Having dealt with the duties and rights of individuals, Reid turns to the topic of oeconomical jurisprudence. Oeconomical jurisprudence deals with the rights and duties of three relationships: between husband and wife, between parents and children, and between master and servants. In the manuscripts as preserved,<sup>167</sup> he considers the first two at considerable length, in a discussion that well illustrates his argument that we can read the intentions of the Creator from non-moral facts of nature and thus derive the precepts of natural law that apply in this area. From such facts and alleged facts as the natural passion of love between men and women, its tendency to concentrate on one person and to exclude third parties through the passion of jealousy, from the natural modesty of women in sexual relations, the roughly equal numbers of men and women in the world and their parity in parental affection, and the protracted infancy of human offspring and its consequent need of parental care over many years – from all these we can easily see that

<sup>166</sup> Hutcheson, *Short Introduction*, p. 287. ‘Implied contract’ and ‘quasi-contract’ are complex topics in modern natural law. Some details are supplied in the Commentary below at pp. 230–4 nn. 122–7, pp. 277–9 n. 4 and 281–2 n. 9, but see principally Peter Birks and Grant McLeod, ‘The Implied Contract Theory of Quasi-Contract’ (1986).

<sup>167</sup> See pp. 69–71 and 116–35. For a general discussion, see J. C. Stewart-Robertson, ‘“Horse-Bogey Bites Little Boys”'; or, Reid’s Oeconomicks of the Family’ (1986), and Haakonssen, ‘Religion, Social Morality, and the Science of Morals in Eighteenth-Century Britain’.

nature has prescribed lifelong marriage between one man and one woman for mutual love and care and with the aims of procreation and the rearing of children. On the negative side this means that other forms of sexual relations, including homosexuality and polygamy,<sup>168</sup> and sexual relations with other aims are proscribed.

As far as the parental relationship is concerned, distinctions must be drawn between minors, adult children living in the parental home and adult children living outside the home.<sup>169</sup> While the children are minors, the parents' moral guardianship is complete, with all the rights and duties this implies – especially to bring them up to be full moral agents. As long as adult children are living at home, they owe obedience to the parents 'as the heads of the Family'; they must have their parents' consent to marry and must help them when in need. Like minors they can own property, but the parents are no longer guardians of such property. The mutual obligations when children have left the parental home are not specified, but apparently obedience is then reduced to respect. All these duties are of course the duties imposed by natural law, but Reid indicates that the role of positive law here is great.<sup>170</sup>

The relationship between master and servants is contractual;<sup>171</sup> it is based on an 'onerous' contract in which there ought to be equivalence between the value of the service and its remuneration. Nevertheless, the master will normally have a social and moral authority that it is his duty to employ for the protection and edification of his servants' morals. In addition to our special offices, we always carry the overriding duty of promoting the common moral good according to our means. Reid here draws a parallel between the family (in the extended sense) and the state, which is equally revealing of his views on both:

Every Family is a little political Society wherein the Master of the Family is the Supreme Magistrate, & is in some degree accountable for the conduct of those under his Authority, & therefore that Authority ought to be employed to make them understand their duty and to engage them to the

<sup>168</sup> Note, however, Reid's caution concerning polygamy: 'Polygamy I conceive cannot be said to be absolutely forbid in all cases by the Laws of Nature, otherwise it would not have been permitted among the Jews by God himself. Yet on the other hand it appears evidently more for the common good of human Society, that monogamy should be established. And where it is established by the civil authority there Polygamy may be forbid under the severest penalty. The Laws of Christianity absolutely forbid polygamy' (p. 129).

<sup>169</sup> See pp. 131–2.

<sup>170</sup> See p. 132.

<sup>171</sup> See pp. 132–5.

practice of it. The Supreme Magistrate in a State cannot with innocence be unconcerned or negligent with regard to the Morals of his Subjects neither can the Master of a Family with regard to the Morals of his Family.<sup>172</sup>

While a person may contract for lifelong service, one cannot validly contract for posterity, nor can one's inalienable rights be relinquished. Reid mentions that servitude may also be based 'on Delict, on Captivity, or on Incapacity',<sup>173</sup> but he does not explain whether this is justified under natural law. In his paper on the 'Utopian System', he maintains that incurable criminals and the morally incapacitated – which come to much the same thing – may justifiably be enslaved by the public.

### **Political Jurisprudence: The Contract of Government**

Many of the preceding parts of the jurisprudential system have clear political implications that are of importance in interpreting the manuscripts concerned with political jurisprudence proper. Reid distinguishes sharply between the actual historical origins of political society and the question of 'The Reasons that ought to induce men Sufficiently enlightened to prefer the Political State to that of Natural Liberty'.<sup>174</sup> As was common at the time, he sought the origins of government in the need for leadership in tribal warfare and collective expeditions and ventures, subsequently reinforced by the need for arbitrators in internal disputes. The rational person's motivation for living in civil society is partly prudential, partly moral: to gain protection and better living conditions, and to be enabled to develop morally as an active member of the moral community that the creator obviously intended for mankind.<sup>175</sup>

This rational foundation for political society must be understood in what appear to be contractual terms, but instead of operating with the conventional ideas of explicit and tacit contract and consent, Reid adopts an argument around the difficulties of contract theory by means of which he largely deprives 'contract' of its usual meaning and role. In the paper on contract (section XV below) the central idea of implicit contract is probably inspired by Carmichael's and Hutcheson's speculations on the concept of obligations *quasi ex contractu*, which Grotius and Pufendorf, among others,

<sup>172</sup> See p. 134. See also Thomas More, *Utopia*, p. 149.

<sup>173</sup> See 134 and 135.

<sup>174</sup> See p. 147.

<sup>175</sup> See 73 ff. and 146 ff.

had originally constructed from Roman law materials.<sup>176</sup> More particularly, Reid appears to be seeking to support the idea of a contractual basis for political authority by developing Hutcheson's suggestion, already noted, that continuing obligation to government 'is an obligation *quasi ex contractu*'.<sup>177</sup>

Reid's strategy here is to argue that there is no moral difference between an explicitly stated contractual obligation, a tacitly implied contractual obligation and an obligation implied *as if (quasi)* there were a contract, when in fact there is none. That the obligation is not altered by these different situations is underlined by the fact that we are not always able to draw clear distinctions between them. The point is that contractual obligation does not really depend upon contract at all, but upon the assumption of an 'office' as a position carrying specifiable obligations. In short, Reid's basic idea is that, whatever our walk in life or whatever social action we engage in, we assume an office or a set of duties pointed out to us by the common good and the law of nature, which are matched by corresponding rights and which our moral powers enable us to perceive directly. This applies as much to the offices of magistrate and citizen as to any other offices. To hold the position of a magistrate carries with it certain obligations, and these point out the rights that the citizens hold against him. The same is true in reverse for the duties implied in being a citizen and the rights in being a ruler. These rights and duties are held together *as if* they had arisen from a contract, but they are in fact in the nature of things, to use the natural lawyers' idiom.

This interpretation of the relationship between rulers and the ruled means, for Reid, that the origins of government have nothing to do with its justification. Just as a marriage originating in rape is legitimate, according to Reid, if the offices of husband and wife are subsequently discharged properly, so a government begun in violence, conquest or revolution is legitimate if the governors proceed to carry out the duties of their office. Its origins are entirely irrelevant. 'A Government unjustly imposed may afterwards acquire Right by tacit consent',<sup>178</sup> if we understand tacit consent in the wide sense of implied contract as characterised by the mutual offices and rights of rulers and ruled,

<sup>176</sup> Carmichael, supplementum IV, 'De Quasi Contractibus', in Pufendorf, *De officio* (translation in Carmichael, *Natural Rights*, pp. 112–17); Hutcheson, *Short Introduction*, pp. 223–7; and idem, *System*, II.77–86. See pp. lxiv–lxv and n. 166 above, and see also Birks and McLeod, 'The Implied Contract Theory of Quasi-Contract', who provide the wider context and draw attention to the connection that Blackstone saw between the original contract and quasi-contractual obligation (pp. 50–1), but there is no evidence that this weighed with Reid; they do not discuss Carmichael or Hutcheson.

<sup>177</sup> Hutcheson, *Short Introduction*, p. 287.

<sup>178</sup> See pp. 141–2 and 76.

which are matched by the law of nature so as to promote the common good. Accordingly we find Reid repeatedly emphasising the classical principle that ‘The Sole End of Government is the Good of the Society’, that ‘The Publick Safety {is} the Supreme Law to Prince & People’.<sup>179</sup>

This argument is explicitly directed against Hume’s criticism of contract theory and I believe it is also implicitly against his rejection of the providential justification of government. It may therefore be useful briefly to develop this view as a supplement to what is said in the Commentary below. Put very simply, we may say that Hume conflated the various theories justifying the post-revolutionary settlement of British government into two main categories which often functioned as one – namely, contract and consent, and what may be called ‘providential de factoism’.<sup>180</sup> In the former I include the many attempts to rest the new settlement upon one or more contractual arrangements, such as the Convention Parliament’s call to William and Mary, the oath of allegiance and the coronation oath, and the supposed consent of the people as shown, for example, in their acceptance of the benefits – the provision of protection and law and order – offered by the government. Hume’s rejection of these ideas is too well known to need repetition here. ‘Providential de factoism’ is the general idea that Providence has appointed government to secure the common good of society and that any government that does so is ipso facto legitimate.

Hume rejects the notion of providentially appointed aims of government while retaining the idea that a government that serves the common good, understood as the interests of the governed, is legitimate as long as it is seen to do so. This brings Hume close to one aspect of de facto theory in the stricter sense: namely, the argument that the Stuarts remained kings de jure but the line that was settled by the historical accident of the revolution was the only government that could function and was therefore owed allegiance de facto. While denying that the de jure question could be settled by history, he accepted the second part of this argument, virtually reducing the de jure question to a de facto one.

Reid agreed that the legitimacy of government did not depend on its origins, and to that extent he was predisposed towards some form of ‘de factoism’, but he could not accept Hume’s idea that opinion of interest was the basis for de facto government, since this would make it an amoral institution. For Reid, government was a moral institution resting upon moral judgement, but

<sup>179</sup> See p. 151.

<sup>180</sup> I am indebted to Conal Condren for a discussion of these matters.

because such moral judgement could not properly be held to be expressed in an original contract and because tacit consent, as commonly understood, seemed to be empirically meaningless, he had to reinterpret it as a matter of Common Sense perception of the implications of the respective offices of ruler and ruled. Finally, because the offices of life were divinely instituted in natural law, Reid's theory may be seen as a refinement of 'providential de factoism'. Civil society was ultimately legitimated by its end, which was the common good elevated by natural law, and the offices of rulers and ruled were instituted accordingly.

### **Rulers and the Ruled**

As indicated earlier, the relationship between rulers and the ruled may be considered either from the point of view of the rights of the individual and the duties of the government or from that of the rights of the government and the duties of the governed. When Reid takes the former line, he sounds at first almost libertarian: the task of the government is to protect the rights of its citizens, who may legitimately hold it to its task, because government rests on consent and is limited in its authority by the law of nature. Although this is the impression eager eyes may get from the manuscripts referred to here, there are a number of difficulties. First, it is disquieting that Reid indicates neither which rights are to be protected nor to what extent. This problem will be solved when we look at it from the point of view of the government's rights; we shall then find that all rights, even those one might have thought inalienable, may on occasion be overruled by concern for the common good. Let us deal first, however, with the question of resistance.

Reid is quite clear that the authority of government is bounded by what is in accordance with the law of nature and that rulers 'are not to {be} obeyed in things unlawful'.<sup>181</sup> This is further explained in brief form: 'Active Obedience due onely in things lawfull . . . Passive Obedience . . . Due in many cases where our Rights are violated. Due wherever the publick good requires it. The Example of Socrates.'<sup>182</sup> The legitimacy of a government's action is one thing, the right of resistance to such action quite another, for the right of the governed that the governors fulfil their duty to act according to natural law is obviously not identical with a right of resistance. The latter is a separate natural law question – whether the exercise of such a right of resistance contributes to the common good – and this will normally be doubtful:

<sup>181</sup> See p. 150.

<sup>182</sup> See p. 151.

‘Changes in a form of Government that hath been established & acquiesced in ought not to be made without very weighty Reasons.’<sup>183</sup> Indeed, ‘The great mischief arising from violent changes of Government shew that they ought not to be attempted without urgent Necessity.’<sup>184</sup> The right of resistance is certainly there in cases of dire necessity, but so it was for everyone who employed natural law modes of thinking, including Hobbes and the various German natural lawyers who were concerned with legitimating absolutist forms of government. The fact is that for the mainstream of natural lawyers until late in the eighteenth century the right of resistance was heavily circumscribed, and Reid plainly agreed with them.

The true character of Reid’s politics is revealed in the relationship between rulers and ruled, considered as a matter of the former’s right over the latter. He here elaborates a point implicit in natural law, namely that the rights of the political society over its members derive from its duties under natural law. First he argues that the state consists of moral individuals who

unite in one incorporate Body so as to have in a manner one Understanding one will one Active power, & thereby resemble one person {, and consequently} this political Person must be a moral Person and partake of the Nature of the individuals of which it is made up. . . . Political Bodies therefore or States are under the Same Obligation to regard . . . each others Rights as individuals. And hence it follows that the Law of Nations is in reality a very exact Copy of the Law of Nature. . . . As therefore we Divided the Duty of Individuals into that which they Owe to God to themselves and to others we might divide in the same Manner the duty of Nations or States.<sup>185</sup>

Nations are as dependent as individuals upon the deity, and like them cannot well live without the four cardinal virtues, for which ‘the most powerfull motive’ is religion. ‘It necessarily follows that a State neglects one of its most essential Interests if it neglects Religion and leaves that altogether out of its Consideration.’<sup>186</sup> The state must by law provide for the religious education of

<sup>183</sup> See p. 152.

<sup>184</sup> See p. 76. See also the first pages of Reid’s paper on the utopian system (in *Reid on Society and Politics*), esp: ‘violent & sudden Changes of the Form of Government . . . are so dangerous in the Attempt, so uncertain in the Issue, and so dismal and destructive in the means by which they are brought about, that it must be a very bad form of Government indeed, with circumstances very favourable to a Change concurring that will justify a Wise and good Man in putting a hand to them’.

<sup>185</sup> See pp. 153–4. Cf. p. 80.

<sup>186</sup> See p. 155. For the following, see pp. 156–8.



the citizens by establishing an official religion, which if it is to serve its moral function cannot be a mere form of worship but must have a doctrinal content. Because not even ‘good and pious men’ can agree on such matters, ‘it is necessary in every State, that there be a Toleration for those whose sentiments do not allow them to joyn in the National Religion, while at the same time they may have no notions of Religion that are inconsistent with their being good Subjects and good members of the Society.’<sup>187</sup> Reid does not make it clear how wide a religious toleration he would accept. This comes under the general principles of the state’s duty to itself, which are that ‘A State may lay restraints upon Actions of Men that are hurtfull though not criminal’ and that it may not only restrain, but also punish as a crime, actions that spring from a ‘malus animus’, such as immorality, even when not injurious to other individuals.

Whatever impairs the Morals, enervates the mindes, or bodies of the Members of a State is hurtfull to the State and as every individual so every political Body has right and is obliged to use its endeavours to preserve all its Members in that Sound State which fits them for being most usefull to the Society.<sup>188</sup>

In this way the four cardinal virtues very appropriately find a place in the jurisprudential system at the collective, political level, becoming in effect civic virtues. Indeed, when we remember Cicero’s broadly practical interpretation of them, the following sample of the state’s duties appears much less heterogeneous than it otherwise might:

The duty of a State to promote Industry Agriculture Arts and Science. To provide for the Necessities of the Poor. to Punish idleness Riot and Dissipation. To manage the Publick Revenue to provide Ships & Harbours and all the Implements of forreign Trade to drain Marches make highways Bridges Canals Fortresses. To polish the Manners as well as preserve the Morals of its Subjects. To maintain the Respect due to Magistrates Parents Seniors persons of Superior Rank. . . . To attend carefully to the Glory of the Nation. The Dominium Eminens of the State over the Lives & Property of the Subjects.

Reid’s elaboration of this last right of the state over its citizens (or duty under natural law) not only spells out the full extent of the authority of civil society, but also shows the structure of the general argument:

<sup>187</sup> See pp. 156–7.

<sup>188</sup> See pp. 157–8.

The State not onely ought to defend the property of its Subjects against all who invade it, but has also a Right to Use it in as far as the publick Good Requires. When a Mans personal Service and even his life itself is . . . due to his country when its Safety demands it, it would be very odd to imagine that his Country should not have right to demand a farthing of his Money without his Consent. In a State the good and Safety of the whole is the very End of the Political Union . . . and therefore must be the supreme Law to which both the Life and the property of Individuals must submit as far as the Publick good Requires.

One part of this *dominium eminens* is the right of taxation. This is, naturally, restricted to what is necessary for the public good, and taxes must be ‘frugally managed’ and ‘made as equal as possible’.

But there does not appear to me a Shaddow of Reason why the Consent of a Subject should be necessary to his bearing an equal Share of the publick burdthen which the service of the State demands. An Error of Mr Locke on this Subject Second Treatise concerning Government § 138.<sup>189</sup>

The pivot of his argument is clearly the natural law idea of the common (or public) good. It is this that allows such rights as individuals have and that imposes the duty on civil society to exercise a range of rights over its members, a duty limited only by the requirements of the common good. The rights of individuals are by no means open-ended claims to satisfaction, subject to the vicissitudes of fortune, the bargaining of life. Consequently, it is quite erroneous to think with Locke – as Reid understood him – that the state’s *dominium eminens* over the property of individuals is a matter of negotiation, to be settled by consent. The common good settles this and all similar questions. The rights of individuals are not claims against others, including the state, beyond what the law of nature and the common good allow, and the same applies to the rights of the state against citizens. While the principle is symmetrical, the outcome is far from being so.

<sup>189</sup> See pp. 158–9. On *dominium eminens*, see AP, p. 659. Reid’s view of taxation and consent is the exact opposite of that put forward by Americans and their British supporters in the Stamp Act crisis and the debates leading up to the American Revolution. See p. 159 and the Commentary below at pp. 302–3 n. 24. There is scant evidence from Reid’s own hand about his attitude towards the American conflict, though his interest is clear from a letter written during the Stamp Act crisis (*Correspondence*, p. 46), and Jack’s notes from the lectures in 1776 (lecture xx, pp. 667 ff.) confirm his hostility to the American cause and its Lockean principle. For a brief discussion, see J. C. Stewart-Robertson, ‘Sancte Socrates’ (1982).

It is now abundantly clear that the overriding element in Reid's notion of the common good is moral perfection. The striving for all-round moral perfection is the basic precept of natural law that justifies the imposition of all necessary duties. Against this individual rights have no force; there are simply no other rights than those whose enforcement is in keeping with this common good.

This enables us to consider the two central problems, noted briefly above, concerning the role of natural law and the common good. We may unite them and describe Reid's suspected dilemma as follows. As we have seen, he held that the basic moral category is an objective relation – namely, duty – between a person and an action; the relation is objective in the sense that it is established by moral First Principles, which cannot in any sense be reduced to subjective states, whether cognitive or emotive, of the agent or the spectator. At the same time, he held that human actions are sorted into rights and duties by the law of nature, which God prescribes for humanity in order to create the common good. Are these views compatible?

Reid does not, of course, suggest that natural law *makes* actions good or bad; it points out which actions *are* in fact good or bad, by being internalised as each person's conscience or moral faculty. Further, the actions that are good and that natural law therefore prescribes do indeed contribute to the common good. This is moral in character, which means that it is realised when the doing of one's duty – that is, the carrying out of morally right actions – is optimal. We can therefore take it as a sign that an action is not morally right if it conflicts with the common good, and if an individual claims a right to perform such an action we can be certain that he has no right in the matter, for there cannot be any duty to respect his claim.

We may also understand Reid's position by contrasting it with the theory of the artificial virtues, particularly justice, which he found in Hume.<sup>190</sup> As Reid saw it, Hume maintained that acts of justice have no inherent or natural moral quality but are lent a certain moral colouring by their connection with public utility; they are morally justified because in general they contribute to the public good. By contrast, Reid maintains that the common good is made up of actions that are in themselves or inherently morally good. Moreover, although not the ground justifying the moral goodness of actions, it may obviously be the criterion by which we can discern morally right actions in situations where their direct contemplation is not sufficient, such as situations

<sup>190</sup> AP, V.v, and *ibid.*, pp. 667–70. On Hume's and Smith's concept of public utility, see Haakonsen, *Science of a Legislator*, pp. 40–1, 87–8, 120–3.

with competing rights-claims or situations where people's moral sense is warped by selfishness, criminal inclinations, and so on. This is why the concept of the common good plays a key role in Reid's system of *practical* ethics and hence in his utopian polity.

When Reid's version of natural law is combined with the idea that all morality can be certainly taught, his utopian vision follows readily:

if ever civil government shall be brought to perfection, it must be the principal care of the state to make good citizens by proper education, and proper instruction and discipline. . . . The end of government is to make the society happy, which can only be done by making it good and virtuous. That men in general will be good or bad members of society, according to the education and discipline by which they have been trained, experience may convince us. The present age has made great advances in the art of training men to military duty. . . . And I know not why it should be thought impossible to train men to equal perfection in the other duties of good citizens. What an immense difference is there, for the purposes of war, between an army properly trained, and a militia hastily drawn out of the multitude? What should hinder us from thinking that, for every purpose of civil government, there may be a like difference between a civil society properly trained to virtue, good habits, and right sentiments, and those civil societies which we now behold?<sup>191</sup>

Reid's political theory combines a brand of natural jurisprudence with humanist utopianism. In fact, his jurisprudential notion of duty is the *completion* of his political humanism. The former undoubtedly developed during his tenure of the Glasgow chair with its jurisprudential tradition; the latter had its roots in his early introduction to the Commonwealth tradition. With much greater philosophical sophistication than his teacher, George Turnbull, Reid tried to make a coherent argument out of this eclecticism, but he never resolved the tension between the moral perfectibilism, indicated in the previous quotation and elaborated in his paper on the Utopian System, and an acceptance of man's inherent moral imperfectibility. The former points towards a 'perfect moral commonwealth' in which politics will wither, the latter to institutional arrangements that will make up for humanity's moral failings, i.e. to a Utopia proper with a total politicisation of life.<sup>192</sup> This ambiguity about politics is reflected in the fact that Reid never clearly

<sup>191</sup> AP, pp. 577b-578a.

<sup>192</sup> For this general distinction, see J. C. Davis, *Utopia and the Ideal Society* (1981), ch. 1.

resolved the relationship between his lectures on Practical Ethics and those on Politicks.<sup>193</sup>

#### 4. Reid's Manuscripts and the Editor's Commentary

##### Organisation of the Text

All the manuscripts printed in this volume are in the Birkwood Collection held by Aberdeen University Library. This extensive collection includes well over 500 manuscripts, which encompass the full range of Reid's intellectual concerns as well as some more private papers. There are a few manuscripts from the years before Reid became a regent at King's College, Aberdeen, in 1751, and some from his time in Aberdeen from 1751 to 1764, but the bulk of the material dates from his years in Glasgow, from 1764 to his death in 1796.

The papers on practical ethics all appear to have been written in Glasgow. The paper printed in this book in Section XV was undoubtedly presented in this or a similar form to the Glasgow Literary Society. Apart from this and the reading notes in Sections X and XVII, all the papers in this volume, directly or indirectly, were notes for Reid's lectures to the 'public' class prescribed for the arts degree and perhaps for his examination session, which supplemented it.<sup>194</sup> A large number of the manuscripts are admittedly undated, but most of these elaborate on themes dealt with in Reid's first winter of lecturing in Glasgow. I suspect that nearly all were written during the first four or five years of the Glasgow period, with occasional small additions dated 1770 and 1771. It is safe to say that Reid gave substantially the same lectures on practical ethics throughout his years in Glasgow, for the notes taken by students towards the end of this period (Robert Jack, 1775–76; George Baird, 1779–80) agree with Reid's own notes from the 1760s.

The order in which the manuscripts, including those on practical ethics, have been preserved and catalogued bears little relationship to the intellectual order from which they sprang and which it has been the editor's first task to reconstruct. As far as the core of the lectures on practical ethics is concerned – namely, the sections on Duties to Others – this task was greatly aided by the lucky circumstance that it was possible to find *dated* material for this group of lectures on natural jurisprudence as presented in the spring of 1765,

<sup>193</sup> See the Introduction to *Reid on Society and Politics*.

<sup>194</sup> See pp. xxvi–xxvii above.

Reid's first academic year at Glasgow.<sup>195</sup> This provided the basic structure for the major part of Reid's course, which, as we see from the students' notes, he retained thereafter. These 1765 notes are printed without interruption in Sections IV, V, VI, VII and VIII, while all material that systematically belongs with this portion but is dated later than 1765, or not dated, is presented in Sections X–XVI (elements of Section XVII belong here as well).

The lectures on 'Duties to Others' did not exhaust the field of practical ethics. At the opening of his second Glasgow session on 5 November 1765, Reid's notes suggested that 'The End of Ethicks or Morals is to shew what is right and what is wrong in human Action. The Duty of a Man in all the different circumstances and Relations in which he may be placed is the Object of this Branch of Philosophy.'<sup>196</sup> Later in that session (see Sections II and III below) he elaborated this in accordance with the Pufendorffian tripartite scheme by lecturing on duties to God and to ourselves before dealing with duties to others. We have no equivalent material from the 1764–65 academic session, and there is clear evidence that Reid, presumably pressed for time, passed from pneumatology, as the foundation of practical ethics and politics, to 'duties to others', as the dominant branch of practical ethics, by way of some very brief remarks on the other duties.<sup>197</sup> The first two parts of Reid's Practical Ethics, Sections II and III below, thus do not date from Reid's first year in Glasgow, but from 1765–66 and 1768–69, and to these is added some undated material in Section IX.

Conventionally, modern natural lawyers dealt with rights and obligations between states as part of natural jurisprudence, and Reid plainly intended to follow convention,<sup>198</sup> though it is not entirely clear whether he managed to do so in his first year at Glasgow. The brief, undated manuscript printed below in Section VIII seems either to have been delivered in that session or

<sup>195</sup> A few days are not explicitly noted but can be accounted for as follows. Friday, 8 March: It seems obvious that Reid covered the separate topic of 'Adventitious Rights' (p. 47); Friday, 15 March: Here Reid must have dealt with 'Pledges. Morgages. Servitudes' (pp. 52–3); Monday, 18 March: Transfer of property must have taken up this lecture (pp. 52–3); Friday, 29 March: This is only apparently missing; in fact, Reid made an error in his dating, as explained in the Textual Notes at 61/35; 5 and 8 April were Good Friday and Easter Monday; finally, there is no lecture dated 16 April but, as explained in the Commentary. pp. 244–5 n. 9. Reid probably finished Practical Ethics at the end of his lecture on 15 April or the beginning of 16 April with some brief comments on international law and then started directly on Politics, for by 17 April he was already well advanced into Politics. Reid's general lecturing calendar is explained above, pp. xxvi–xxvii.

<sup>196</sup> 4/II/1, 1r.

<sup>197</sup> See the Commentary, p. 192 n. 1.

<sup>198</sup> See the Commentary, p. 193 n. 7.

to have been written later in 1765 as part of the preparation for the 1765–66 session.<sup>199</sup> On this topic there are, however, very ample materials, undated or from later years, and these are collected in Section XVII.

Finally, I print at the head of Reid's course in practical ethics an Introductory Lecture. Before embarking on his survey of pneumatology, ethics and politics, Reid gave a general introduction to his course. In 1765–66 the notes for this ran to a mere three pages; over the next few years this material increased, until at some time after 1769, probably in 1770 or 1771, it had become a substantial seventeen-page lecture, which I print as Section I.

It should be noted that in the Commentary, as in the Introduction, when I refer to the manuscripts of the Birkwood Collection I drop the first four digits (2131), which are common to all the manuscripts. Thus 2131/8/IV/9 becomes 8/IV/9.

### **The Principles of the Commentary**

In commenting on Reid's text I have been guided by four related principles.

1. I have seen it as a primary task to identify the questions Reid was addressing. This has been a major undertaking, partly because the tradition in which his course stands is no longer well known, partly because his text sometimes consists of mere keywords and briefly indicated points to assist him in his lecturing.
2. I have also tried to identify Reid's sources, but because he is rarely explicit about these I have in most cases only been able to suggest possibilities.
3. In order to identify Reid's topics and justify his possible sources, I have attempted to reconstruct the wider context in which Reid's discussions must be viewed. This is, however, a virtually endless task, and I have in general restricted myself to providing pointers, leaving the remaining work to the reader.
4. In identifying Reid's topics, sources and contexts, I have generally sought to avoid interpretation of what Reid himself had to say on these topics and sources and thus of what he contributed to the contexts. This goal may appear to be unattainable. The very organisation of the manuscripts rests on an interpretation – the selection of some points rather than others for commentary or further reference implies some interpretation, and so do the contents of such commentaries and references. The fact that the

<sup>199</sup> See pp. 244–5 n. 9.

distinction between identifying topics, sources and contexts, and interpreting Reid's contributions to these, is an elusive one is, however, exactly what makes the maintenance of this distinction an important restraint on editorial interference. If it were a sharp criterion, rather than merely a guiding ideal, its discipline would not be so necessary.

In view of the difficulties in identifying Reid's sources, a few general remarks are called for here. At one point Reid recommends to his students a list of 'Authors upon this Subject {Natural Jurisprudence}: Grotius, Hobbes Selden Puffendorf. Barbeyrac upon Grotius & Puffendorf. Carmichael upon Puffendorf. Locke. Hoadly. Hutcheson Burlamaqui Vattel. Coccejij.'<sup>200</sup> It is clear that he himself did not make use of all these in his lectures, while there are several others that he did use. Reid's most immediate sources for long parts of his course were Hutcheson's *Short Introduction* (or its Latin original) and *System*.<sup>201</sup> Its organisation was Pufendorfian, and in his reading of Pufendorf he was undoubtedly aided by Barbeyrac's and Carmichael's annotations and commentaries, though it is difficult to gauge to what extent – in the case of Carmichael partly because so much of Hutcheson is borrowed from Carmichael. It is interesting that Reid does not mention any of the numerous other commentators on Pufendorf, perhaps especially Titius, who is discussed frequently by Barbeyrac and Carmichael and to whom Reid refers in *Active Powers*.<sup>202</sup> I have therefore used Titius only occasionally.

Reid certainly studied Grotius closely, apparently in a Latin edition with Barbeyrac's notes, though it is likely that he was also acquainted with Barbeyrac's edition in either English or French. The only reference to the vast array of commentaries on Grotius, apart from Barbeyrac, is to Coccejij, and here Reid does not make it clear whether he means Heinrich Coccejij's enormous four-volume commentary or his son Samuel's 500-page introduction to the latter. Apart from the passing mention, there is no decisive evidence that Reid used either, and I have accordingly compromised as follows. Because every reference to Grotius can be used as a reference to the commentary, which follows the *De iure* point for point, I have not provided references to Heinrich Coccejij. I have, however, given references to Samuel Coccejij for most of the topics central to the discipline, namely, private jurisprudence – partly because Reid may have used the work here and others may be able to

<sup>200</sup> See p. 96.

<sup>201</sup> See Archibald Arthur's notes from Reid's lectures (Mitchell Library, Glasgow, MS 891.086, f. 3v): 'We follow Hutcheson's order'.

<sup>202</sup> AP, p. 663a.



take the matter further than I have, partly because the organisation of the younger Cocceij's work is a good deal more opaque than that of his father.

Returning to the rest of Reid's list, Hobbes, Locke and Hoadly are mainly used in political jurisprudence, while Vattel completely dominates Reid's discussion of the rights and obligations of states. As for Selden, there can be little doubt that Reid had some acquaintance with his *Mare clausum* and must at least have known of Selden's other main work of relevance for natural jurisprudence, *De jure naturali et gentium juxta disciplinam Ebraeorum*, from the frequent discussions of it in his main jurisprudential reading. I do not find any evidence that Reid used Selden for his lectures and have therefore not used him in the Commentary. The same applies to Burlamaqui, whose main work, *The Principles of Natural and Politic Law*, was translated into English in 1748, with a second edition in 1763. While Reid knew of and may have read the book, there seem to be no traces of it in his lectures.

There are two works to which I have referred systematically in the Commentary although Reid himself does not do so in the text. The first is Heineccius's *System of Universal Law*, the other is David Fordyce's *Elements of Moral Philosophy*. Heineccius's work was translated by Reid's teacher, George Turnbull, and Reid could hardly have avoided it. In Turnbull's supplements we find an explicit attempt to draw together the teachings of modern natural law and of Harrington, and this alone requires the presence of the work in our context. Furthermore, Heineccius's text is a particularly systematic exposition of natural law that had some influence on Scottish legal thought – for example, on Erskine. References to Fordyce's *Elements* are provided mainly because the work represents the moralising–educative function of practical ethics which was important in Reid's environment and in his own work.<sup>203</sup>

Of all the natural lawyers who play little or no role in the Commentary, four should be mentioned. Leibniz's metaphysics was certainly known to Reid, but Reid's acquaintance with Leibniz's practical philosophy probably derived largely from Barbeyrac and Carmichael. Thomasiaus seems to have been as unknown to Reid as to nearly everybody else in Britain. As for Wolff, Reid knew his *Psychologia empirica* (though apparently not the *Psychologia rationalis*) and the *Ontologia*,<sup>204</sup> but the works on jurisprudence seem to have been known to him only through Vattel. Because Wolff had little influence on

<sup>203</sup> Reid's familiarity with Fordyce's work is hardly in doubt in view of their friendship; see pp. xvii–xviii above.

<sup>204</sup> See IP, pp. 19, 188 and 329–30.

British moral thought, I have hardly made use of him. The same applies to Richard Cumberland. Reid knew Cumberland's work, but he simply bracketed it with that of Pufendorf and Hutcheson in a rather broad category. In some notes he says that 'Cumberland, Puffendorf and Dr. Hutcheson build their moral Reasoning Chiefly upon' the following axiom, 'That course of conduct which conduces to the happiness and perfection of human Society is Right & the contrary wrong.'<sup>205</sup> Beyond this I have not been able to trace more specific influences on Reid's scheme of practical ethics.

Reid had no legal training, and his reading of Roman law seems to have been sporadic and mainly, though not entirely, guided by Grotius and Pufendorf. More remarkable is the lack of evidence that Reid made use of any of the great Dutch civilians, such as Vinnius, Voet, Huber and Bynkershoek, or the French Jean Domat, whose weighty *Les loix civiles dans leur ordre naturel* (Paris, 1695) enjoyed two editions in English translation and was invoked by Turnbull.<sup>206</sup> As for Scots law, Reid's knowledge appears patchy; he had certainly informed himself on particular topics, such as entails, with his friend Lord Kames as the apparent chief source, but it is not possible to determine his use of such authorities as Mackenzie, Stair or Erskine.

With regard to ancient and modern historians and moralists, the Commentary should be self-explanatory both in what it includes and in what it omits, but special mention of a few authors should be made. Cicero is ever present, as we would expect, but it should be noted that Reid actually began a translation of the *De officiis*.<sup>207</sup> As for Adam Smith, Reid had succeeded Smith in the Glasgow chair, and in what seems to have been his inaugural lecture he asked his audience for notes of Smith's lectures.<sup>208</sup> It is quite possible that

<sup>205</sup> 7/v/5,lr. Cumberland's *De legibus naturae* was published in 1672, and there were English translations in 1727 and 1750 and an important French translation with annotations by Barbeyrac in 1744. The latter is the most satisfactory and the one with which generally I have checked Reid's manuscripts. Cf. Haakonssen, 'The Character and Obligation of Natural Law According to Richard Cumberland' (2000), Kirk, *Richard Cumberland and Natural Law. Secularisation of Thought in Seventeenth-Century England* (1987), and Parkin, *Science, Religion and Politics in Restoration England* (1999).

<sup>206</sup> In Heineccius, *Universal Law*, I, p. 214.

<sup>207</sup> See 2/ii/8.

<sup>208</sup> 4/ii/9,2r: 'I am . . . much a stranger to his {Smith's} System unless so far as he hath published it to the world. But {as} . . . a man of so great Genius and penetration must have struck new light into the Subjects which he treated, as well as have handled them in an excellent and instructive manner, I shall be much obliged to any of you Gentlemen or to any other, who can furnish me with Notes of his Prelections whether in Morals, Jurisprudence, Police or in Rhetoric.' See p. xxxiii above.

Reid's request was met, but because the tracing of specific influences is at best speculative and because comparison of Smith's and Reid's lectures, thanks to the analytical table provided by the former's editors,<sup>209</sup> is easy, the present and Smith-inclined editor has restrained himself in this regard. Finally, it is remarkable that there is no trace of Reid's metaphysical kinsman, Adam Ferguson, in the former's work. Presumably politics – and perhaps style – divided them.<sup>210</sup>

Finally, I should point out that, in view of the many repetitions of themes in the manuscripts and the difficulty of deciding which is the most significant, I have *in general* provided the main annotation and discussion of a theme on its *first* occurrence. This, together with the often very abbreviated form of the notes from Reid's first Glasgow session, explains why the Commentary for Sections IV–VIII is so extensive.

### The Printing of the Manuscripts

My aim has been to maintain as accurate a representation of the manuscripts as is compatible with the creation of a readable text. Because most of the manuscripts contain a good many deletions, insertions, corrections, and the like, this has been difficult. The main body of the text presents what I consider to be the final version of each manuscript. Everything else of significance on the manuscript pages is printed or explained in the Textual Notes following the Commentary, according to principles explained below.

#### *Editorial Interventions in the Main Text*

I have very occasionally inserted words or letters into Reid's text to facilitate reading. Such insertions are contained in {braces}, except in the case of added headings, which are noted in the Textual Notes. In cases where it seems clear that Reid has made a slip of the pen and where augmentation is required for intelligibility, I have made additions in <angle brackets>.<sup>211</sup> Much more infrequently, I have tried to assist readability by enclosing the reverse kind of slips of the pen – that is, material that should *not* be in the text – in [square brackets]. It should be stressed, however, that one type of editorial deletion has been made silently – without square brackets and without remark in the Textual Notes. These are repetitions of phrases, some of which are simply

<sup>209</sup> Smith, *Lectures on Jurisprudence*, Introduction, pp. 24–7.

<sup>210</sup> Cf. *Correspondence*, p. 44.

<sup>211</sup> I have maintained similar conventions in the case of all other authors.

errors; others are the conventional catchwords at the bottom of a page. On two occasions (p. 45 l. 7 and p. 98 ll. 34–5) I have enclosed superscribed additions in (parentheses) in order to make the passage readable, as explained in the Textual Notes to those places. Within these guidelines and with these exceptions, Reid's spelling and grammar have been left untouched, and the reader will simply have to trust my proofreading.

### *Punctuation*

With the exception of two deletions (at p. 65 l. 27 and p. 108 l. 15), as noted in the Textual Notes), I have preserved Reid's punctuation, however much it varies from present conventions and from his own conventions in published work. Often Reid signals a full stop by an otherwise unexpected capitalisation but without using a full stop. On such occasions I have *silently* inserted the full stop. Otherwise, no punctuation has been editorially added. The reader should be aware that Reid often used a full stop where we would expect a comma. It is my impression that he often inserted much of his punctuation after completing a paragraph or more, and this would certainly explain many peculiarities. Something similar applies to the consecutive dates in the notes from 1765. In my opinion, most if not all of the dates were inserted after the writing and probably also after the delivery of the lectures.

### *Page Breaks*

Page breaks in the manuscripts are indicated by an oblique: / . In the page margin at the line with which Reid began a new manuscript page the conventionally abbreviated manuscript number is printed and followed, after a comma, by an indication of the page number in the original manuscript. In the case of the fully paginated manuscript – the Introductory Lecture that is Section I – the manuscript *page* is given. Thus, in the margin of page 5, line 25, I indicate that the text turns to MS. 2131/7/v/4, page 3, by printing '7/v/4,3'. In the case of unpaginated or incompletely paginated manuscripts, I give the folio number and the side – recto (r) or verso (v) – of the folio. Thus on page 38, line 9, I indicate that the text turns to the verso side of folio number 4 of MS. 2131/8/iv/3 by printing '8/iv/3,4v' in the margin. This should allow the reader to follow the way I have arranged the manuscripts. Reid often used the same pad of paper for different purposes, so it has been necessary to divide a number of manuscripts. Similarly, the rejoining of manuscripts that cohered originally has meant that their pages are printed here in an order different from that in which they happen to have been preserved.

*The Textual Notes*

In the Textual Notes, which follow the Commentary, Reid's wording is printed in roman and everything supplied by the editor is in *italics*. The notes first of all record text variants, according to the following principle. Deletions that never formed an autonomous part of the text – false starts – are *not* recorded. Variants that conceivably may be considered complete are printed. Because the text often takes the form of notes, a number of doubtful cases were left for the editor's judgement; I have been generous in my recording of such cases. Text variants are indicated by the page and line number(s), followed by the first and the last word in the final text to which a variant exists, followed by the sign ], followed by the variant. For example, on page 57, lines 37–8, Reid had at first written 'thinks himself highly dishonoured' but changed it to the final version: 'is affronted in the highest degree'. This is recorded thus:

57/37–8 man is . . . degree] man thinks himself highly dishonoured.

In some cases there are variants of the variants; these are recorded according to the same principle. Frequently there is nothing in the final text that corresponds to a deletion. Thus on page 105, line 8, Reid mentions rights that are 'original', but in an earlier version of the manuscript he had written 'original which are either Real or personal', subsequently deleting 'which. . . personal'. In such cases it is necessary that the notes maintain an overlap in the wording of the final text and the variant, in this case the word 'original', in order to 'anchor' the deletion to the appropriate place in the final text. The note for this example therefore reads:

105/8 original] original which are either Real or personal.

In other words, where a word from the final text reappears at the beginning of the variant, this word is not itself part of the variant. (In a few cases Reid actually does repeat words in such situations, but these would be silently passed over, as mentioned above.) In addition to recording text variants, the Textual Notes explain a wide variety of features in the appearance of the text and note the few deviations from the general principles explained here. Finally, the Textual Notes for the beginning of each section list the manuscript(s) printed in that section and give an indication of the length and the amount of text in each.

*Note Indicators*

All note indicators in the text are to the Commentary. The notes are consecutive within each section. The Textual Notes are not referred to in the text.

## 5. Index of Manuscripts

Below are indexed all the Thomas Reid manuscripts printed in whole or in part in this book. This includes manuscripts quoted in the editor's Introduction and Commentary but not those merely referred to. Details of the collections from which these manuscripts stem are given above, p. lxxvi. It is important to note that for all the manuscripts from the Birkwood Collection – that is, all the manuscripts indexed – the manuscript numbers printed below and elsewhere in this book drop the first four digits (namely, 2131), which they have in common. The page numbers in italics refer to Reid's text, the remainder to the Introduction and the Commentary.

*Birkwood collection Manuscripts*

MS. NUMBER	PAGES IN THIS VOLUME	MS. NUMBER	PAGES IN THIS VOLUME
2/ii/10	<i>136–44</i>	7/vii/6,1r	224 (n. 105)
3/ii/4,1v	254 (n. 2)	7/vii/6,2r	226 (n. 109)
3/ii/5	<i>168–9, 172–5</i>	7/vii/8	83–4
4/i/27	3–4	7/vii/11,1r–v	<i>105–7</i>
4/i/31,1r	xxx	7/vii/11,2v	<i>107–8</i>
4/ii/3	179–80 (n. 4)	7/vii/12	<i>112–13</i>
4/ii/9,2r	lxxxix (n. 208)	7/vii/13	<i>107, 108–11</i>
4/iii/4	<i>58–61, 64–5</i>	7/vii/14	218 (n. 79)
4/iii/17	<i>61–4</i>	7/vii/15	<i>116–18</i>
4/iii/23c	<i>169–71</i>	7/vii/17	<i>118–21</i>
6/i/17,1r	182–3 (n. 5)	7/vii/18	<i>121–5</i>
6/v/34,1v	271 (n. 13)	7/vii/19	<i>125–8</i>
7/v/1,14r	liii (n. 129)	7/vii/20	<i>128–35</i>
7/v/3	<i>87–9</i>	7/vii/21	<i>81–2</i>
7/v/4	3–16	7/vii/22	<i>167–8</i>
7/v/5,1r	lxxxix	7/vii/23	<i>156–63</i>
7/v/5,5r–v	84–6	7/vii/25	<i>114–15</i>
7/vii/1	<i>89–91</i>	8/iii/2,2r–v	<i>51–3</i>
7/vii/1a	92–6	8/iii/10,1r	liii (n. 129)
7/vii/1b	<i>100–2</i>	8/iv/1	<i>39–48</i>
7/vii/1c,1r–2r	<i>103–4</i>	8/iv/2	<i>17–31</i>
7/vii/1c,1v	319 (n. 158)	8/iv/3	<i>31–8</i>
7/vii/1c,2r–2v	<i>96–100</i>	8/iv/4	<i>91–2</i>

8/IV/5,2r-v	49-51	8/IV/9	144-56
8/IV/6	256 (n. 11)	8/IV/10	72-80
8/IV/7	53-8, 65-71	8/v/1	xxii
8/IV/8	163-7		

## 6. Diagrams of Reid's System

Diagram I represents Reid's general view of philosophy as he sets it out in his Introductory Lecture (Section I below). Diagram II begins with the structure of Reid's basic course in philosophy in Glasgow and proceeds to set out in some detail the portion on practical ethics, which is reconstructed in this volume. This diagram gives only a general orientation, but combined with the General Index it provides a detailed guide to the system.

### DIAGRAM 1

Thomas Reid's general view of philosophy as set out in his Introductory Lecture.

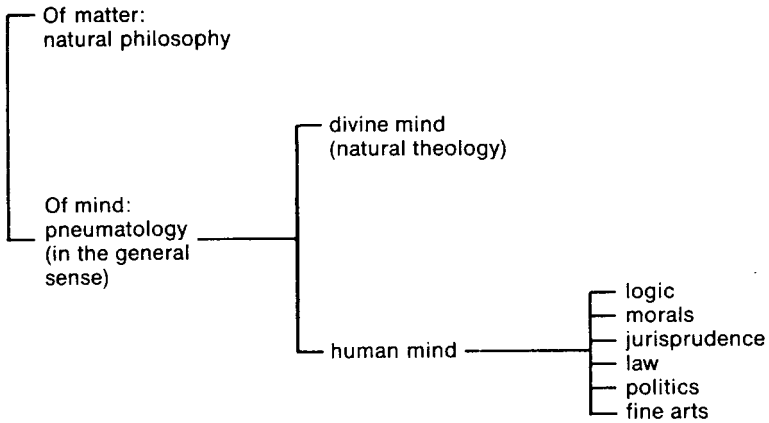
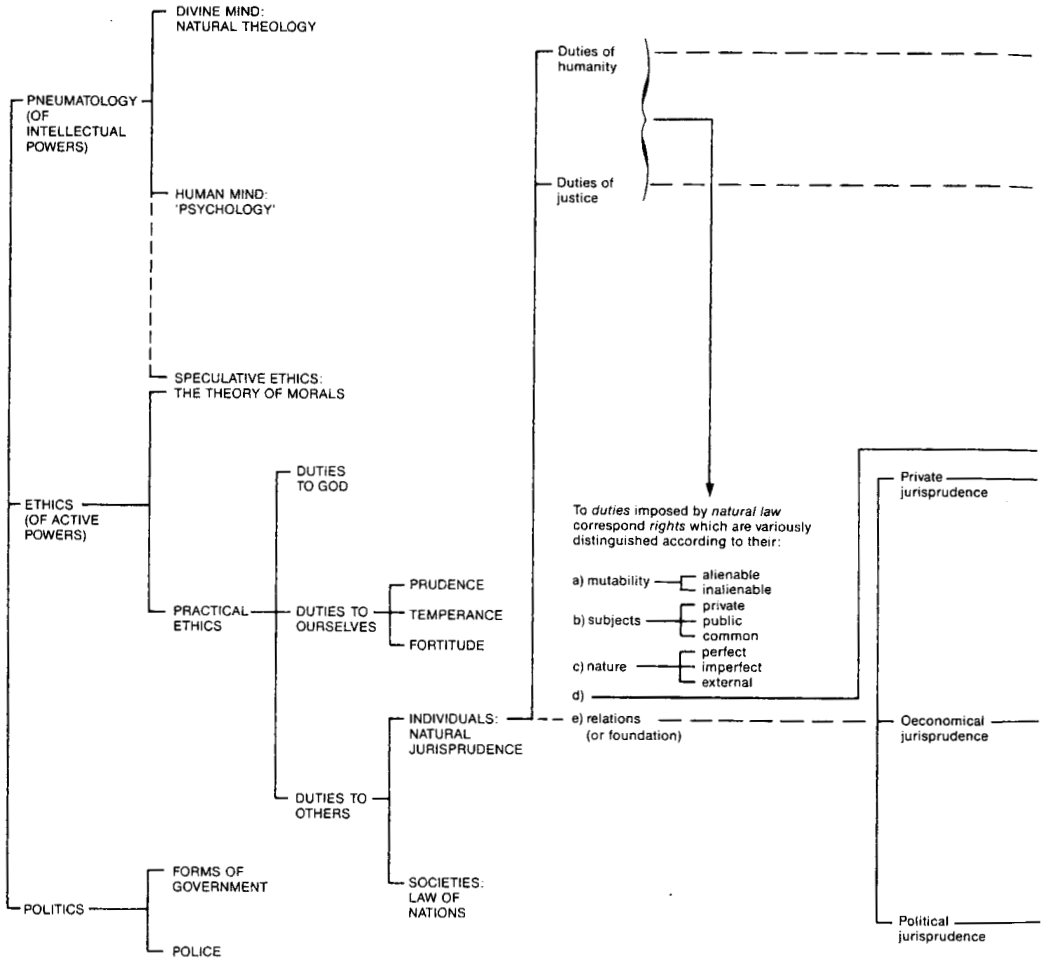
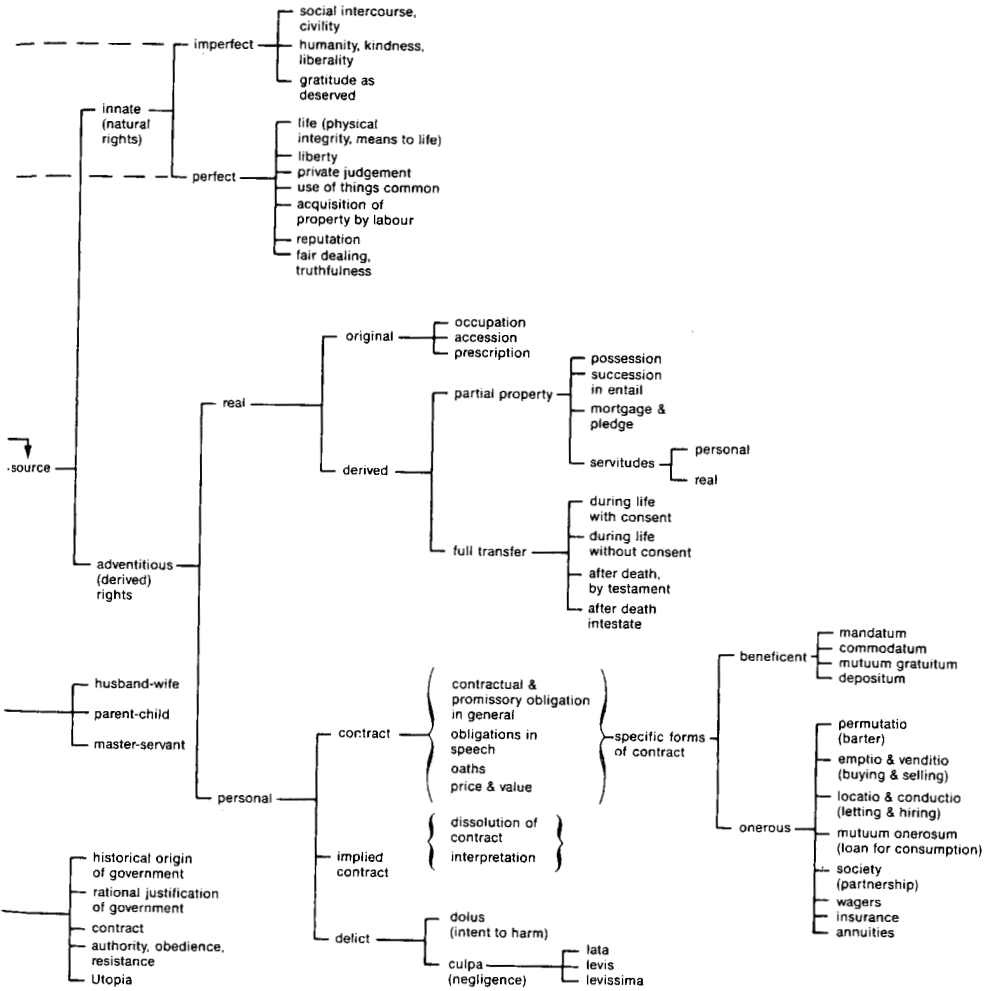




DIAGRAM 1

The structure of Thomas Reid's basic course in philosophy, with the portion on practical ethics in detail.







Thomas Reid  
Lectures and Papers on  
Practical Ethics





# I. Introductory Lecture

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7/v/4,1 My Course consists of these three Branches, Pneumatology, Ethicks and Politicks.<sup>1</sup> I shall in the beginning of it give some general View of these three Parts of this Course & of the dependance they have one upon another, for although they are distinct  
5 Branches of Philosophy and have always been considered as such, yet their Connection and Dependance is greater than has commonly been thought. The two last in particular depend so much upon the first, that they can not be understood nor treated scientifically unless they are built upon Sound Principles drawn from  
10 Pneumatology.

4/t/27v 1 To begin with Pneumatology then, we may observe that / All Human Knowledge is employed either about Body or Mind about things Material or things Intellectual. The whole System of Bodies in the Universe, of which we know but a very little part,  
15 may be called the Material World; And the whole System of Minds or thinking Beings in the Universe from the Infinite Creator to the meanest Creature endued with thought may be called the Intellectual World. About the one or the other of these or something pertaining to them all Sciences treat, & all Arts  
20 are occupied. Those are the two great Kingdoms of Nature to which human thought is limited. Nor can the boldest flight of Imagination carry us beyond their limits. Whether there be in the Universe any other kinds of being, which are neither Extended Solid and inert like Body, nor thinking & intelligent like Mind is  
25 beyond the Reach of our Knowledge; and therefore it would be rash to determine. There is indeed a vast interval between Body & Mind; whether there may be some intermediate Substance that connects them together we know not. We have no Reason to ascribe Intelligence, or even Sensation to Plants, yet there is an  
30 active Force and Energy in them which cannot be the result {of} any arrangement or combination of inert Matter. The same thing may be said of those active Powers by which animals grow & by

which Matter gravitates, by which Electrical & Magnetical Bodies attract and repell each other, & by which the parts of Solid Bodies cohere. Some have conjectured that the Phenomena of the Material World which require active Force are produced by the continual operation of intelligent Beings. Others have conjectured that there may be in the Universe Beings that are active without Intelligence, which as a kind of incorporeal Machinery contrived by the supreme Wisdom perform their destined task without any Knowledge or Intention. But laying aside conjecture & all pretence to form Determinations in things beyond the reach of the human faculties we must rest in this that Body and Mind are the only kinds of Being of which we have any Knowledge or can form any Conception. If there are other kinds they are not discoverable by the faculties which God hath given us, & with regard to us are as if they were not. /

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7/v/4,1

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As therefore all our Knowledge is confined to these two Objects of Bodies & Minds, or things belonging to one or other of these, so there are two great Branches of Philosophy; one of which relates to Bodies another to Minds. The general Properties of Bodies and the Laws that obtain in the Material World are the Object of Natural Philosophy or Physicks as that word is now used. The Nature & Operations of Minds is the Object of Pneumatology. /

4/v/27,v

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What variety there may be of Minds or Thinking Beings Throughout this vast Universe, we cannot pretend to say. We dwell in a little Corner of Gods Dominion, disjoined from the rest. The Globe which we inhabit is but one of six Planets which encircle our Sun. What various Orders of Beings and with what Powers endowed, may inhabit the other five, their Secondaries, & the Comets belonging to our System; & how many other Suns may be encircled with like Systems, are things altogether hid from us. Although human Ingenuity and Industry have discovered with great Accuracy the Order & Distances of the Planets & the Laws of their Motion, we have no means of corresponding with them. That they may be the habitation of animated Beings, we probably conjecture; But of the Nature or Powers of their Inhabitants we cannot even form a conjecture. It may therefore be asked, What are the thinking Beings of which we may attain any Knowledge? I answer Our own Minds.<sup>2</sup> /

7/v/4,2 Every Man is conscious that he thinks, & therefore concludes the  
Existence of a Mind or thinking Principle in himself. And we have  
sufficient Evidence of such a Principle in other Men. Even the  
Actions of Brutes show that they have some thinking Principle,  
5 though of a Nature far inferior to the human Mind. Every thing we  
see about us may convince us of the Existence of a Supreme Mind  
the Maker and Governour of the Universe. The Supreme Mind  
therefore, the Minds of Men, and those of the brute Animals that  
inhabit this Earth, are all the Minds that Reason discovers to us.  
10 Although Revelation teaches us the Existence of Angels and  
Archangels of various Orders some of whom fell from their first  
Estate of Purity and Happiness and others continued in it as this is  
a Doctrine of Revelation it does not belong to Philosophy but to  
theology.

15 I Divide Pneumatology therefore into two Branches; the first  
treats of the human Mind, To which Wolfius has given the name of  
Psychologie<sup>3</sup> the other treats of the Supreme Mind, and commonly  
goes by the name of Natural Theology. As the human Mind seems  
to be possessed of all the Faculties which we observe in Brutes,  
20 besides some of a Superior Nature of which there is no appearance  
in the most sagacious Brutes; there is no Necessity for treating sep-  
arately of the Minds of Brutes. The agreements and Differences  
between their Faculties and those of Men may be noted in treating  
of the human Mind. /

7/v/4,3 We are therefore First to treat of the human Mind which is one  
constituent part of Man & the noblest part; & here we shall endeav-  
our first to explain as distinctly as we are able the various powers  
and Faculties of the human Mind, & then shew what Reason dis-  
covers of its nature & duration whether it be material or immater-  
30 ial Whether we have reason to think that it shall perish with the  
Body or continue to live in some future State.

The Mind of Man is the noblest Work of God that our Reason  
discovers to us, and therefore on account of its dignity deserves to  
{be} known.

35 It is justly reckoned a valuable branch of human knowledge to  
know the Structure of the human Body, the Uses of its various  
parts external & internal, the disorders and diseases to which they  
are liable & the Proper Remedies. There is a Structure of the Mind  
as well as of the Body. which is not less worthy to be known. Its



various Powers & Faculties are the Workmanship of God no less than the various Parts of the Body and no less wisely adapted to their several Ends. See Burke on the Sublime pag 35.<sup>4</sup> The knowledge of it is indeed attended with many and great difficulties as I shall afterwards shew. And there is no part of Philosophy in which Speculative Men have run into so many and so great Errors and even absurdities. This has raised a Prejudice against this Branch of Knowledge with the Ignorant and superficial. Because ingenious Men in different ages have given different and contradictory accounts of the powers of the Mind they conclude that all that can be said upon this Subject must be chimerical and visionary. But such general Prejudices whatever Effect they may have upon superficial thinkers, will, by the judicious and discerning, be easily perceived to be built upon very weak grounds. About 150 years ago, nay much later, the opinions of men in natural Philosophy were as various and contradictory as they are at present with regard to Pneumatology. Galileo, Torricelli / Kepler Bacon and Newton had the same Discouragements in their attempts to find the Truth in natural Philosophy as we have in the Philosophy of Mind. If they had been deterred by such General Prejudices as that we have implied we should never have enjoyed the benefit of their noble Discoveries, which do Honour to Human Nature and will render their Names Immortal. Those elevated Spirits that have a true relish for Science, are roused by difficulties, & the Motto of a Philosopher is *Inveniam viam aut faciam*.<sup>5</sup>

There is a natural Order in the Progress of the Sciences, as well as of the Arts: and good Reasons can be assigned why the Philosophy of Body should both be elder Sister to the Philosophy of Mind, and of a quicker Growth. But the last hath the *stamina vitae* no less than the first, & will, though perhaps slowly grow up to Maturity. Des Cartes was the first that pointed out the right road in this Branch of Philosophy. Malebranch, Arnaud Locke Berkely, Shaftsbury. Hutcheson Butler Hume & others have laboured in it, nor have they lavoured in vain;<sup>6</sup> for however different and contrary their conclusions in many things are, & however sceptical some of them they have all given new light to the Subject; & have cleared the way in many respects to those that shall follow them. Nor ought we at all to despair of human Genius and Industry; but rather to hope that in time it may produce a System of the powers and operations

of the human Mind built upon principles no less certain than those of Opticks or Astronomy.

This is the more devoutly to be wished, that it is certain, a distinct knowledge of the Powers of the human Mind would give great  
5 Light to many other branches of Philosophy. Mr Hume hath very  
justly observed that all the Sciences have a Reference to the human  
Mind & however far they may seem to go off from it, they still  
return by one channel or another.<sup>7</sup> This is the main fortress of  
Science & if we can once become Masters of it we shall extend our  
10 Conquest far and wide. The first Principles of all the Sciences are  
to be found in the Science of human Nature. This is a just & impor-  
tant Observation. I shall add that as Mr Humes sceptical System is  
all built upon a wrong & mistaken Account of the intellectual  
Powers of Man, so it can onely be refuted by giving a true Account  
15 of them. /

7/v/4,5 It is evident that the faculties of the human Mind are the Engines  
and Tools with which we work in every branch of Science and there-  
fore it must be of great Importance to the advancement of every  
Science to understand well the Nature and Force of the Tools we  
20 use. Locke gives this Account of the occasion of his entring upon  
his Essay concerning human Understanding Pref. Pag 2d: 'Five or  
six Friends, says he, meeting at my Chamber and discoursing on a  
Subject very remote from this, found themselves quickly at a stand  
by the difficulties that rose on every side. After we had for a while  
25 puzzled our selves without coming any nearer to a Resolution of  
those Doubts which perplexed us; it came into my Thoughts that  
we took a wrong Course; and that before we set our selves upon  
Enquiries of that Nature, it was necessary to examine our own abil-  
ities, & see what Objects our Understandings were fitted, or were  
30 not fitted to deal with. This I proposed to the Company who all  
readily assented. And thereupon it was agreed that this should be  
our first Enquiry.'<sup>8</sup>

We shall find this indeed to be generally the case; when we are  
puzzled and perplexed in any scientifick Enquiry, and can neither  
35 see our way clearly nor discover whether it is possible to be seen or  
not. The Cause of this perplexity commonly is the want of a Right  
understanding of the powers of our own Minds. If this is the Case  
even in those Sciences which have the least relation to the human  
Mind, as the most Judicious Philosophers have acknowledged, it

must be much more so, in those Sciences that have a very close & immediate connection with it.

7/v/4,6  
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10  
As all the objects of our Knowledge are reducible {to} these two Heads of Body and Mind, or what belongs to one or / other, so the Sciences may be distinguished into two Classes; They are either such as relate to Body, or such as relate to Mind. Medicine Chemistry Agriculture & all the Mechanical Arts are employed about Bodies: But Logic, Natural Theology, Morals Jurisprudence Law Politicks and the fine Arts are employed about Mind and what belongs to it. And therefore the Knowledge of the Mind and of its Powers must be in a more particular Manner subservient to these Sciences.

15  
20  
Whether therefore we consider the Dignity of the Object of Pneumatology, or its subserviency to Science in General, & to the noblest branches of Science in particular; it certainly deserves our closest study and attention. It is indeed the ground work and foundation of all that follows in my Course, And I cannot expect that those who are inattentive to this part of it, can attain any just and accurate Notions in the subsequent Parts which are built upon it. And as there are many things that are New in what I shall deliver upon this Subject, which are not to be found in the Authors who have treated of it I expect that those who desire to improve will give the closer attention.

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7/v/4,7  
35  
The second part of Pneumatology is Natural Theology, by which is meant what Reason discovers of the Nature & Operations of the Supreme Mind. I need not use many words to convince you of the dignity and importance of this branch of Philosophy. It is the prerogative of Man among all the inhabitants of this Earth, to be capable of knowing his maker, of worshiping him, and imitating his Perfections. There is no Knowledge that tends so much to elevate and to purify the Mind as the Knowledge of God. Piety towards God is an essential part of the Duty incumbent upon us as Men. It is the strongest Support of every other Virtue & the onely rational Foundation of tranquility & peace of Mind, of / hope and Comfort and Magnanimity of Fortitude in all the adverse Circumstances of Life. And there can be no rational Piety but what is founded upon just Notions of the Perfections and Providence of God.

It is true that Revelation teaches the Truths of natural Religion, as well as *other Truths*, which Reason could not discover. But it is

no less true that Reason as well as Revelation comes from God. Both are lights afforded us by the Father of Light, and we ought to make the best use of both, and not to put out one that we may use the other. Revelation has indeed been of great Use to enlighten men even with regard to the truths of Natural Religion. As one Man may enlighten another in things that can be discovered by Reason, it is easy to conceive how a Revelation from Heaven may give men new Light in things which Reason can discover. And that it has actually done so is sufficiently evident to those who compare the System of Natural Religion that is to be found in Christian Writers, with that which we find in the most enlightned Heathens. We acknowledge therefore that Men have been much indebted to Revelation even in Matters of Natural Religion. But this is no Reason why we should not make the best Use we can of our Reason in these Matters. Revelation is given to us as reasonable Creatures, not to hinder the Use of Reason, but to aid and encourage it. It is by Reason that we must Judge whether that which claims to be a Revelation be really such. It is by Reason that we must judge of the meaning of what is revealed, and guard against such interpretations of it, as are absurd or / impious or inconsistent. As the best things may be abused, so Revelation itself when men lay aside the Use of Reason, may be made the tool of low Superstition or wild Fanaticism. And that Man is surely best prepared for the study of revealed Religion, who has just and Rational Sentiments of natural Religion.

The best Notions we can Form of the Divine Nature are extremely imperfect and inadequate. But such as they are, they must be drawn from what we know of our own Minds. We cannot form the least Idea of any Attribute intellectual or Moral of which there is not some Image or Resemblance in the Human Mind. And therefore our Knowledge of the Deity must be grounded upon the Knowledge of the human Mind.

When we have acquired just Notions of ourselves and of the Supreme Being, we may more easily discover the Duty we owe to God and to one another, this is the Business of Ethicks the Second branch of my Course.

It is mentioned by many Ancient writers, to the honour of Socrates the greatest & wisest of all the Greek Philosophers, that he called off mens Attention from vain Enquiries Into the Origin and

Generation of the Heavens and the Earth, to the study of their Duty as Men, and as Citizens. The Philosophy of Socrates was entirely of the moral Kind, adapted to make Men wiser and better; and for this Reason, as we may presume, he obtained from the Oracle, the Appellation of the wisest of the Greeks.<sup>9</sup> He has allways been reckoned the Father of Moral Philosophy, as Hipocrates has been of Medicine. The several Sects among the Greek Philosophers who derived themselves from the Socratick School ever accounted Ethicks or morals as the most important Branch of Philosophy. Haec quidem Quaestio communis est omnium Philosophorum: quis est enim qui nullis officii praeceptis tradendis, philosophum se audeat dicere Cic Off Lib 1.<sup>10</sup> /

7/v/4,9 There are two capital Powers or faculties of the human Mind to which all the rest have been referred, to wit the contemplative and the Active. The first is employed in the Discovery of Truth; the second in directing our Conduct in Life. The contemplative power is intended to be subservient to the active, and this is its main purpose. As therefore the End is allways to be accounted more noble than the Means, so the right application of our Active power, is a matter of higher moment than the Right application of our Speculative power. The Dignity the Glory and Perfection of a Man consists in doing his duty and acting the Part that is Proper for him. Ethicks therefore or Moral Philosophy which treats of human Duty and of the conduct that men ought to hold in the various Stations in which they may be placed in Society, has allways on account of its Dignity and importance been considered as a chief branch of Philosophy.

30 There is in Ethicks as in most Sciences a Speculative and a practical Part, the first is subservient to the last. This Division of Ethicks is very Ancient. It must have occurred to Men as soon as they began to study this branch of science. Cicero mentions it in the beginning of his Offices<sup>11</sup> and his three books of Offices are a System of practical Ethicks as his five books De Finibus explain the several speculative Systems of the Greek Philosophers on this Subject.

35 The practical Part of Ethicks is for the most part easy and level to all capacities. There is hardly any moral Duty which when properly explained and delineated, does not / recommend itself to the heart of every candid and unbiased Man. For every Man has within

7/v/4,10

him a touchstone of Morals, the dictates of his own Conscience which approves of what is Right and condemns what is wrong, when it is fairly represented and considered without prejudice.

5 There is therefore no branch of Science wherein Men would be more harmonious in their opinions than in Morals were they free from all Biass and Prejudice. But this is hardly the case with any Man. Mens private Interests, their Passions, and vicious inclinations & habits, do often blind their understandings, and bias their Judgments. And as Men are much disposed to take the Rules of  
10 Conduct from Fashion rather than from the Dictates of Reason, so with Regard to Vices which are authorized by Fashion the Judgments of Men are apt to be blinded by the Authority of the Multitude especially when Interest or Appetite leads the same Way. It is therefore of great consequence to those who would judge right  
15 in matters relating to their own Conductor or that of others, to have the Rules of Morals fixed & settled in their Minds, before they have occasion to apply them to cases wherein they may be interested. It must also be observed that although the Rules of Morals are in most cases very plain, yet there are intricate and perplexed cases  
20 even in Morals wherin it is no easy matter to form a determinate Judgement.

With Regard to the Theory of Morals, its chief Use as we have already observed is to be subservient to the practical part of this Science, and to furnish those principles from which we reason with  
25 regard to duty. The practical part of Morals is not more plain & level to all capacities, than the Theory is intricate, subtile, and abstract. The proper object of the Theory of Morals is to explain the Constitution of the human Mind so far as regards Morals, that is to explain the Moral and active Powers of the human Mind. In  
30 this Men have gone into very different Systems both in ancient and modern times. And the disputes upon this Subject are / as intricate and subtile as any in Philosophy. These disputes are owing to the small Progress men have made in Pneumatology. For the Theory of  
7/v/4,11 Morals must be founded upon the knowledge of Pneumatology or rather makes a part of it. The duty of a Man must be grounded  
35 upon the human Constitution. If we had not the powers and faculties of Man the duty of a Man would not be incumbent upon us. Therefore if ever we come to an end in the Disputes that have been raised about the Theory of Morals, it must be by a clearer insight

into the Principles of Pneumatology. This is one Reason why I think it necessary in my Course to spend so much Time as I have usually done on Pneumatology.

5 If anyone should imagine that because the Theory of Morals is so intricate and disputable, the practical Rules of Morals must therefore be built upon a slippery Foundation; I say if any Person thinks thus he deceives himself greatly. I shall have occasion to show this more fully hereafter; at present let it suffice to observe that the same conclusions may be drawn from very different principles. 10 It is so in the present case. The various Theorists differ not about what is to be accounted virtuous Conduct but why it is so to be accounted. They agree for instance that Justice and Humanity are Virtues. But according to one they are to be accounted Virtues because they tend to promote our private Interest according to another System because they promote the publick good to another because they are agreeable to our moral Sense to another because they agree with the Relations of things. But although it is true and ought to be / understood that very different Theories in Morals do 15 in most instances lead to the same practical Conclusions yet it must also be owned that there have been Licentious Theories advanced on this Subject that tend to overturn all good Morals, and that even of those Theories that do not deserve the Name of Licencious, some have a happier influence upon morals than others, and there is no false Theory whatsoever which may not in some cases at least mislead a Man in Practice. We shall therefore consider the different Theories concerning Morals that have been advanced; and hope that those who are capable of entring in to such abstract Speculations will find this intricate Subject set in a clearer light than it has hitherto been by the Authors that have Wrote upon it. 20

30 The practical Part of Ethicks is a very wide Field.<sup>12</sup> For there are certain duties which we owe to the Supreme Being and under this Head we comprehend all the Duties of Piety or of Natural Religion and their Counterfeits or Opposites there are in the Second Place certain Duties which are incumbent upon us considered meerly as Reasonable Creatures without any Relation to society, These Duties we are commonly said to owe to ourselves, & under them we explain the Virtues of Prudence Temperance and Fortitude. There are Thirdly certain duties which as social Creatures we owe to other Men. And these all comprehended under two General Heads of 35

Justice & Humanity. The Claim which one Man has upon another in point of Justice is called a Perfect Right, and the claim which he has upon another in point of Humanity is called an imperfect Right. And these Rights of Mankind perfect and imperfect / are various according to the different Relations which men bear to each other. There is a general Relation which every Man bears to every Man, as a reasonable & social Creature of the same Nature and origin with himself. And the Rights arising from this Relation are called the natural Rights of Mankind. There are more Special Relations which we bear to others of the same family and the Rights arising from family Relations are called Oeconomical Rights. There are other Special Relations which we bear to persons that belong to the same State or political Society, and the Rights arising from these Relations are called Political Rights. The Oeconomical & Political Rights of Mankind are properly natural as well as those which have that special Designation for all these Rights are founded upon Natural Reason and Equity, and not barely upon positive institution and Compact, and therefore all of them taken together are called the Law of Nature.

I need not use many words to show the utility and Importance of Jurisprudence.

The end of all Constitutions of Government of all Civil Laws and of all Civil Judicatories is to preserve & support the Rights of Mankind. And this is the proper Test or Touchstone by which Forms of Government & of Civil Judicatories and Systems of civil Laws are to be tried and Judged, Namely, if such Forms or such Systems are agreeable to the Rights of Mankind and conducive to the preservation of them, that is if they are founded upon the Law of Nature, they are good, otherwise they are bad and ought to be corrected.

Moreover all Civil Laws require Interpretation, & Application to Particular Cases, and the chief Rule in all Interpretation or Application of Civil Laws is to make it as agreeable as possible to the Laws of Nature. /

From these general Hints I conceive it is sufficiently evident of what great Importance it is to Men to be well acquainted with the Rights of Mankind or with the Law {of} Nature, not onely for the direction of their private conduct that they may deal with every man according to the Rules of Justice and Humanity, but also for



the direction of their publick conduct when they act in the Capacity of Legislators of Judges or Council, and in general in every instance wherein they have any Concern, in the framing or amending, in the Interpretation or application of Civil Laws.

5        There is yet another branch of practical Ethicks, For besides the Rights competent to Individuals, as Men, as Members of a Family, as Members of a State; There are also Rights competent to Communities of Men and particularly to States, that is to Communities which have no superior on Earth. One independent  
10        State may have a just Claim upon another either in point of Justice or Humanity, and that either in peace or in War. The Sum of these Rights of Nations is called the Law of Nations, or the Law of Peace & War the Jus Belli & Pacis. This is a Law to which Sovereigns are most Sacredly bound, in all their transactions with other Sovereigns  
15        or Independent States whether in Peace or in War as well as with individuals who are not their Subjects. All Sovereigns profess to act according to this Law otherwise they would justly be deemed the common Enemies of Mankind. And the more this Law is understood and practised the more will the peace & Happiness of  
20        Mankind be promoted. If wars and devastations of Enemies are less frequent in Europe at this day than in former Ages, if when  
7/v/4,15 Wars happen they are carried on with less cruelty / and more humanity we may justly attribute so happy an Event to this that the Laws of Peace and War are more distinctly and more generally  
25        understood than they were in former Ages.

Thus you see that Practical Morality or Ethicks comprehends these four Branches all of them of vast importance to the well being of Mankind. Namely The duties of Natural Religion, The Duties of self Government, The Law of Nature or natural Jurisprudence  
30        and the Law of Nations.

The last General Branch of my Course is Politicks.<sup>13</sup> This word Politicks is sometimes used to signify the knowledge of the Political Rights of Mankind, or of political Jurisprudence, and in this sense it is a part of Ethicks as has been already mentioned. But I consider  
35        Politicks as a Science quite distinct from every part of Ethicks; and, it may be defined to be the Knowledge of the Causes Connexions and Effects of Political Events. By Political Events I understand those Events, which are produced by the joint force and council of Numbers joynd in Society. Every individual of the human Kind

has a certain Sphere of Power and may produce Effects that are not Inconsiderable. But the grandest Effects of human Power are these that are produced by the concurrence of many joyned in Society. I call these Political Events. Such are the Establishment of Empires or Commonwealths, their Growth Progress and Decline, & their various Revolutions & Changes Their Wars Conquests and Colonies, their Laws & Judicatures their Establishments for Regulating police, for promoting Religion and Virtue, Arts and Sciences, Agriculture Trade / Manufactures. These are the grand Effects of human Powers, and of all Events that concern this Life the most important, because the happiness and Improvement of Mankind or their Misery and degeneracy depend upon them. We see these great Political Events produced, improved, impaired, destroyed, & again revived variously in various parts of the Globe. We see some Nations Barbarous and some civilized. Among these we see different Forms of Government, different Laws Customs and Manners. We see some Nations, who for Ages nay for thousands of years continue in the same State and cannot be said to have improved declined or changed in a long tract of ages. Their Government their Laws their Manners and their national Character is still the same. We see other Nations in a perpetual Flux in regard to all these things, still going from worse to better, or from better to worse, from poverty to Riches, from laziness to industry, from Ignorance to Barbarity to Knowledge and politeness; from simplicity to Luxury; from a high Degree of Publick Spirit and Contempt of Riches & pleasure to Venality Avarice and Voluptuousness.

These great Events whether they be good or Evil proceed from human Operation, they are the Effects of human Reason and human Passions operating variously according to the Characters of the Agents and the Circumstances in which they are placed, and by their cooperation in multitudes producing, very often without Design, one great Event.

Now it is the design of Political Knowledge, to discover the causes of Such great Events whether good or evil in the tempers Characters and Circumstances of those / Societies in which they are produced, and to point out the Means by which political Events that are good may be brought about and the bad prevented. I divide Politicks into two Parts the first treats of the various Forms of

Government their Causes & Effects the Second of Police. The Form of a Government depends chiefly upon the hands in which the Sovereign Power in a State is placed. And the Sovereign Power may be placed either in the hands of One, of a few or of Many which make the Simple forms of Government or Some parts of the Supreme power may be placed in one of these ways others in others, which makes the mixed forms of Government.

By Police I understand those Regulations which are common to Different forms of Government for Promoting Religion Virtue Education, Arts & Sciences Agriculture Trade Manufactures & for Regulating the Arms and Finances of the State and other Objects of that kind which are not essential to the being of a State or Government but conducive to its well being and Security.

Thus I have given you a General Notion of my Course. And because I know not anyone or even a few Authors who have treated these Subjects in that Order & Method which to me seems most Natural. I shall not confine my self by any Text Book. But under the different branches shall direct you to such Authors as I think have wrote best on these Subjects. /

## II. Duties to God

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8/iv/2,1r

### Of the Duty we owe to the Supreme Being<sup>1</sup>

Mar 7 1766

5 As all that Duty we owe to God must be grounded upon just sentiments of him, Our first Duty must be to endeavour by the best use of our Reason to attain just Notions of him, his perfections and Universal Government. But having already in the Lectures on Natural Theology endeavoured to point out what Reason teaches us concerning his Nature his Attributes and his Government<sup>2</sup> we shall not resume what was then Delivered but suppose it as the proper Ground {of} all that Piety and devout Affection which is due to him.

15 <sup>2</sup> The Duty to the Supreme Being consists in a Devout and Loyal Affection of the heart towards him corresponding to his Nature & the relations we stand in to him. Love Esteem Veneration Gratitude Submission Obedience. External Religion.<sup>4</sup>

20 <sup>2</sup> Supposing then that we have just Sentiments of the Supreme Being. It is our Duty to maintain upon our Minds constant and lively impression of our Dependance upon {him} as we are his Creatures. It is the saying of a heathen poet, adopted by one of the Sacred writers, that we are his offspring.<sup>5</sup> We are so in a much stricker sense than we are the offspring of our Natural Parents. He is the Universal Mind and Soul that pervades all Nature that upholds its whole frame and directs all its movements. From his infinite Intelligence all created intelligence is derived.

25 In what Sense God may be said to be the Soul of the World. All the life & light that is found in finite beings are emanations from him the father of Lights the fountain of Life. The curious texture of our Bodies the more curious and wonderfull structure of our Minds, with all their several intelligent and Active powers are his workmanship. Our noblest powers, our Rational & Moral Powers, which are the Glory of the human Nature, are a faint Image of the

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Deity, and by them it is that we are capable of resembling him in some degree as well as of knowing him. The inanimate and brute creation are his property and his Servants, for he is Lord of all. But the Human kind by their Rational & moral Natures are so far exalted as to be dignified with the title of his children, his offspring. And as he has given to man some resemblance of his intellectuall and moral Perfections, in the constitution of the human Nature he has likewise given him some Image of his Dominion in this World. The extent of human Power is so very considerable when it is properly Exerted, especially in the higher Stations of Life; That such Persons are justly represented as Gods Vicegerents on Earth.<sup>6</sup> /

8/iv/2,1v Now it is evidently most Just and reasonable that our Minds should be constantly impressed with a lively sense and Conviction that we derive our being and all the Privileges & Prerogatives of it from our father in heaven. That every blessing we taste is his gift that every degree of power we are possessed of is derived from him that all the tender Charities of Relations friends Benefactors Country are Rays of his Benignity and Goodness. That all human Excellence, even the most exalted and most heroick virtues which every heart admires, and every tongue celebrates; are onely faint images & copies of that Perfection of moral Excellence which is in the Supreme Being. It is just and reasonable that we should see the Supreme Beauty in all the Beauties of Nature, the Supreme Wisdom in the admirable contrivance of all his Works, the Supreme Goodness in everything that is agreable to us or to our fellow creatures.

2 It is just and reasonable that we have a constant and lively Conviction of his Presence with us, and of his Perfect Knowledge of all our Actions and even of our most secret thoughts; So that no secret wickedness can escape his Eye nor any good intention fail of his gracious notice & approbation. Men see not our Intentions, they onely guess at them by their outward signs, and these Signs are sometimes ambiguous, and often misinterpreted from prejudice Envy or Malignity. These considerations ought to moderate our desire of the praise & applauses of Men especially of the foolish and ignorant Rabble, and make their Censure more tollerable when we are conscious that it is unjust. It is no small Comfort to a good man in such circumstances that he has a witness in his own breast that cannot be bribed. But it is still a much greater Comfort that he has a higher Witness whose Judgment is infallible as his Knowledge

is perfect, and whose Approbation is of more avail than that of all the World besides.<sup>7</sup> He can discern Integrity of heart where it is the prevailing principle under every disadvantage that may cloud or disfigure it in the eyes of the World. He onely can make the proper Allowances for the frailty of our Nature, for our involuntary errors, and for the strength of temptations, for he knows our frame & remembers our frailty and pities us as a father pities his Children. It is therefore most reasonable that our desire of the Approbation of our Supreme Judge & the Supreme Judge of Men & Angels should in a great measure Swallow up our desire of the Approbation of our fellow Men. This the true the proper and Natural Direction of that thirst of Honour which God himself hath planted in the human Breast. That as the Gravitation of the Planets bends chiefly towards the / Sun the Center of the System & in a much inferior degree towards one another; So this desire of Honour should lean chiefly toward that Honour that is from God the fountain of true Honour & the sole infallible Judge of Worth, and more weakly towards the honour that is from Men.

3 It is just and reasonable that we consider the Supreme Being not onely as the Witness and the Judge of our whole Conduct, but as our compassionate Father and faithfull Guardian, whose goodness sympathizes with us even in the afflictions and trials which his wisdom sees necessary for our discipline and culture, who does not afflict willingly, but onely for the best purposes, as a father may sometimes chastise, & sometimes prescribe severe tasks to his dear children. Reason and Revelation concur in representing the Deity as the Refuge of the Distressed and those who have none to help them. We are led by a kind of Instinct to implore his mercy when all help of Man fails. Nor will he who gave us this instinct be deaf to its voice. Reason and Revelation concur in representing him to us as a faithfull Guardian ready to afford divine Aid to every Soul that makes any virtuous Effort and pants after true Glory & Honour. The Wisdom of God for ends which perhaps it is impossible now fully to comprehend, has placed us in such a State that the path of Virtue is not always smooth and easy. It is sometimes beset with briars & thorns, sometimes steep & difficult. Reason can discover some causes of this and there may be others which our Reason cannot discover. Our Appetites and Passions are of quicker Growth than Reason & Conscience and ripen more early. They are

strengthened by habits of Indulgence before the Governing powers can exercise their Authority. And although there is no natural appetite affection or passion which is not usefull & necessary as a subordinate part of the human Constitutions, yet however usefull  
 5 they may be as servants they are hurtfull as masters and give often a violent impulse to courses which are contrary both to our real happiness and our duty. If we add to this the influence of bad example and of bad education; it is easy to see that a steady Course of Virtue requires a continued Effort. It is a conflict between the  
 10 flesh and the Spirit, between the inferior principles of our Nature and those which ought to bear Sway. In this conflict a man who has good purposes in the main, finds many reasons to be diffident of himself. / He can recollect many instances wherein his purposes  
 8/iv/2,2v have failed him and have been baffled by a strong temptation. As between Winter & summer there is a Season wherein these two seem to struggle against each other and sometimes one seems to gain the  
 15 Ascendant and sometimes the other. it happens so in this Struggle in the human Mind between Virtue and Vice especially while good habits have not been long confirmed or bad ones retain a considerable degree of their power. In this dubious Conflict as in every other  
 20 circumstance of distress or danger, a Mind impressed with just sentiments of the supreme Being, naturally looks up to him for divine Aid to strengthen his weakness, to fortify his good purposes to guard him in the Course of his Providence from such temptations  
 25 as might be too strong for him. Nor will the hearer of Prayer be deaf to these requests. Virtue is his Care. Its votaries are under his protection & guardianship. He will cherish the Divine Principle as his own offspring, till it grows up to maturity.

Lastly it is just and Reasonable to consider what befalls us  
 30 whether in it self agreeable or disagreeable as a part of the Divine administration as what seems meet to the Supreme Governour to do or permit, as a part of that Culture & Discipline which he sees meet for us. In Distress and Affliction, to which all Men are equally liable from the Accidents of Life, the firm perswasion that nothing  
 35 befalls us but by the appointment or permission of our Father in Heaven, is the truest Source of Consolation to a pious Mind. He pretends not to a Stoical insensibility to pain and Grief. But he is perswaded that the Evils that befall him are a part of that Discipline which a wise and compassionate Father sees necessary for his good.

He takes them therefore as he does a harsh but salutary Medicine. The Cup which my Father hath given me shall I not drink.<sup>8</sup> To bear our Afflictions in this way, as it is an essential Part of true Piety so it is the most sovereign Cordial to the Afflicted. Resignation to God is the softest Pillow upon which a man can lay his Head in Distress. That perfect indifference with regard to pain Sickness poverty loss of Friends, which the Stoicks pretended to, grounded on the persuasion that there are no Evils, I say this Indifference were it really attainable by human Nature, would be so far from adding to the Worth of the Virtues of Patience under these Evils & perfect Resignation to the Will of God, that it would diminish it, or rather totally annihilate {it}. For where lies the Merit of bearing patiently what is no Evil or the loss of what is no God.

An indifference with regard to what happens to us, whether health or sickness, poverty or Riches, the favour of great Men or their Neglect, a publick Employment or a private Station, was much inculcated by the Stoicks they taught Men to employ their whole concern not about what should happen to them but about what they should do and how they should behave themselves in that station and in those circumstances in which they were placed what ever they were. This was surely a very Noble lesson and does great honour to that Ancient System of Morals. Yet Zeno<sup>9</sup> and the more ancient Stoicks seem to have built this elevated System upon too weak a foundation, when they left out of their System the consideration of the Providence of the Deity. and maintained that health Riches Honour were not at all goods nor the contrary, Evils. That the former were not objects of Desire but of Election, the latter were not objects of Aversion but of Rejection, that Virtue was the onely good and therefore the onely object that ought to be desired, and Vice the onely Evil that ought {to be} shunned. The Solidity and firmness of the Foundation does not Answer to the Grandeur and Sublimity of the Superstructure. And a Man must already be possessed of a very high love and Admiration of Virtue who can Enter into the reasonings of the Ancient Stoical School and feel the force of them so strongly as to influence his conduct. They have too much the appearance of Rant and Enthusiasm rather than of Sober Reason. But when we consider a good Man as under the Paternal Care of a Supreme Being so that Nothing can befall him but by the Order and direction of Infinite Wisdom and Goodness, his



Conduct may be justified to the Soberest Reason, when he leaves the care of his happiness to him that made him, being perfectly assured that he can never suffer in that Respect While he is carefull to do his duty and to act properly. /

8/iv/2,3r But tho Zeno and some of the More Ancient Stoicks left out the Consideration of the Providence of God of their System yet we find even some of the heathen Philosophers Urging this as an Argument to moderate our Concern about external goods or evils that happen to us. Plato in his Alcibiades represents Socrates as urging this doctrine in a most beautiful manner and with great Strength of Reason the later Stoicks Epictetus Arrian and M. A. Antoninus frequently use the Same Argument.<sup>10</sup> None of them in a more beautiful and Striking Manner than Juvenal in his Satyre

15 Nil ergo optabunt homines? Si consilium vis,  
Permittes ipsis expendere Numinibus, quid  
Conveniat nobis rebusque sit utile nostris.  
Nam pro Jucundis aptissima quaeque dabunt Dii  
20 Carior est illis homo quam sibi. Nos animorum  
Impulsu, et caeca magnaue cupidine ducti  
Conjugium petimus, partumque Uxoris; at illis  
Notum, qui pueri, qualisque futura sit uxor. . . .  
Orandum est, ut sit mens sana in corpore sano  
Fortem posce animum et mortis terrore carentem  
25 Qui spatium vitae extremum inter munera ponat  
Naturae; qui ferre queat quoscumque labores;  
Nesciat irasci, cupiat Nihil, et potiores  
Herculis aerumnas Credat, saevosque labores  
Et venere, et cenis et plumis Sardanapalli.<sup>11</sup>

30 These Oracles of Right Reason correspond exactly with the Oracles of Divine Wisdom in the Christian Religion. Not my Will but thine be done. says our divine teacher. – Take no thought what you shall eat or what you shall drink or where withall ye shall be  
35 cloathed. Your heavenly Father knoweth that ye have need of these things. But seek ye first the Kingdom of God and his Righteousness and all these things shall be added unto you.<sup>12</sup> The passage I have quoted from Juvenal looks as if it had been intended for a paraphrase upon these Precepts of our Divine Teacher.

I must not Omit as a part of the Duty we owe to the supreme Being Obedience to his commands.

Every act of Virtue becomes an Act of Piety towards God when it is done from a Regard to his Authority, a desire to imitate his perfection and obtain his approbation. /

5

8/IV/2,3v

The vices contrary to Piety come under the Denomination of Impiety. The neglect or contempt of those duties of true Piety. Dishonourable Sentiments of the Supreme Being lead to those Corruptions of true Piety. Superstition. a Persecuting Spirit, Enthusiasm Fanaticism. Irreverence to the Deity in common Swearing. Contempt of Publick Worship. Attributing to Chanc Fortune Luck, the Events that befall us. Discontent with our Condition. Undue Anxiety about Events. Every Vice is in some Sense Impiety.

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Reflexions. 1 Piety an essential Part of Virtue and one of the Strongest Inducements to every other part of it. A Source of Joy. 2 Too little considered by heathen Philosophers in this view.

15

3 The Christian System more Rational in this Respect. /

8/IV/2,4r

March 8 1768

There are some persons who pretend to high Notions of Virtue and Honour, who seem to entertain a very mean Opinion of Piety & Devotion as something that may be fit for the Entertainment of Monks and Old Women, but is rather an unnecessary incumbrance to a Man in Active Life; and that one may be a Man of Virtue and Honour without minding Religion at all.<sup>13</sup> /

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8/IV/2,4v

Nothing in human Character is more surprising or unaccountable than the manner in which some Men impose upon themselves by empty forms of Virtue and Honour, others by no less empty forms of Religion. No Man can bear the thought of being perfectly worthless this would make a man detestable to himself and to account his existence a Curse. Therefore a Man to preserve a Character with himself as well as with the rest of Mankind will cultivate some good Quality which may cover all his faults with himself and perhaps with others. His good Qualities however must be dignified with the sacred Names of Virtue, Honour or Religion. /

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8/IV/2,4r

But I cannot help thinking that such Virtue as disdains any aid of Religion stands upon a very slippery foundation, & will hardly be able to endure any severe trial. For how can we conceive a man to

believe himself under an obligation to reverence his parents and at the same time to owe no Reverence or filial Affection to his Maker and father in heaven, Whose Offspring he is in a stricter sense than of his earthly parents. Is a Man bound to be gratefull to his benefactors and under no obligation of Gratitude to his greatest and best benefactor. A Man who vainly imagines that he has no need of the Aid the protection and Guardianship of the Almighty, must be extremely arrogant and ignorant of himself. And he who has a just sense of his own weakness and frailty, but thinks it useless and unprofitable to implore divine Aid and Direction must have very wrong notions of the Deity & be deaf to the voice of his own Conscience.

The exercises of a rational Piety and Devotion have a manifest & powerfull tendency in their very Nature to strengthen every virtuous principle to confirm every good purpose, to fortify the Mind against every temptation, to raise it in adversity, to temper the giddiness of prosperity and to enlarge our hearts in Sentiments of humanity & kind affection towards the whole creation of God.

Besides The exercises of Piety towards God, as they have the most salutary effects for cherishing and strengthning every virtuous Disposition, so they have afforded to the worthiest and best Men in every Age the most rational and most elevated Joy and Consolation, especially in circumstances of the greatest distress when men stand most in need of Consolation. The Testimony of Christians Jews and Heathens who have experienced this leaves no Room to doubt of the Fact. For these reasons I conceive that those who profess to be friends to Virtue while they hold in contempt Piety towards God, must either be hypocrites or very grossly deluded. Shaftsbury Enquiry End of the first Book.

‘Hence we may determine justly the Relation which Virtue has to Piety, the first being not compleat but in the later: Since where the later is wanting, there can neither be the same benignity firmness nor constancy; the same good composure of the Affections or uniformity of Mind. And thus the perfection and height of Virtue, must be owing to the Belief of a God.’<sup>14</sup> /

8/iv/2,4v The Same Noble Author elsewhere Observes {‘} That the Notion of a Real Divinity is not dry and Barren, but such consequences are Necessarily drawn from it as must set us in Action and find Employment for our Strongest Affections. All the Duties of Religion evidently flow hence and no Exception remains against

any of those great Maxims which Revelation has established.<sup>15</sup> These are the Sentiments of my Lord Shaftsbury whose freedom of thinking in Matters that concern Religion will not be questioned. Let me add to this the Opinion of a free thinking Heathen. The Person I mean is the great Roman Orator & Philosopher Tully in his second Book de Legibus. The passage I am to recite is the Preface to his Code of Laws, the passage is rather long for a quotation, but on account of its sublimity and Elegance, as well as justness of Sentiment it deserves to be got by heart.

Cicero de Legibus 2.7 Sit igitur hoc {iam} a principio persuasum civibus, Dominos esse omnium rerum ac Moderatores Deos, eaque quae gerantur, eorum geri, vi, ditione,<sup>16</sup> ac numine eosdemque optime de genere hominum mereri, et qualis quisque sit, quid agat, quid in se admittat, qua mente, qua pietate colat religiones, intueri : piorumque et impiorum habere rationem. His enim rebus imbutae mentes, haud sane abhorrebunt ab utile et a vere sententia. Quid est enim verius, quam neminem esse oportere tam stulte arrogantem, ut in se, rationem, et mentem putet inesse, in caelo, mundoque non putet? aut {ut} ea, quae vix summa ingenij ratione comprehendat, nulla ratione moveri putet? Quem vero, astrorum ordines, quem dierum noctiumque vicissitudines, quem mensium temperatio, quemque ea, quae gignuntur nobis ad fruendum, non gratum esse cogant {cogunt}, hunc hominem omnino numerare {-rari} qui decet? cumque omnia quae rationem habent praestent iis quae sint rationis expertia, nefasque sit dicere, ullam rem praestare naturae omnium rerum, rationem inesse in ea confitendum est. Utilis esse autem opiniones has {has op.}, quis neget cum intellegat, quam multa firmantur {firmentur} iure iurando, quanta Salutis {-ti} sint foederum religiones, quam multos divini supplicij {-ci} metus a Scelere revocarit, quamque sancta sit societas civium inter ipsos diis immortalibus interpositis, tum iudicibus, tum testibus.<sup>17</sup> To this I shall add an Authority which I respect as much as Any human Authority whatsoever.

Sir I. Newton in the Queries subjoyned to his Opticks Q 31 at the End Observes that this is the first Precept of the Moral Law given to all Nations.<sup>18</sup> Unum esse agnoscendum summum Dominum Deum ejusque cultum non esse in alios transferendum, to which he subjoyns this Remark of his own, Etenim sine hoc Principio, nihil esset Virtus aliud nisi merum Nomen.<sup>19</sup>

### III. Duties to Ourselves

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#### Prudence, Temperance, Fortitude

8/v/2,4v Justice in the division of the Ancients comprehends all the duty we owe to our Fellow Creatures. This like most other words regarding Morals is taken sometimes in a larger Sense & sometimes in a more restrained one.<sup>1</sup> /

8/v/2,5r Three of the Cardinal Virtues so celebrated among the Ancients To wit Prudence Temperance & Fortitude relate to the duties of Self Government. I shall endeavour to give some brief View of these duties under these three heads beginning first with Prudence which here we must take in a like most enlarge sense of the word<sup>2</sup> so as to  
10 Signify the proposing to our selves worthy ends in our Conduct and prosecuting these ends by the most proper Means. The first of these may perhaps more properly {be} called Wisdom, the Second Prudence in the strict Sense of the Word.<sup>3</sup>

15 1 As to the former It is evident that Nature intended us for action and that we can neither answer the end of our being nor enjoy any degree of happiness in a lazy inactive slouthfull life. This our Divine teacher has very properly taught us in one of his Parables wherein Mankind are represented as the Servants of one Master who gives to each of them so many talents to be laid out in the most profitable  
20 way till he come to call them to an account.<sup>4</sup> All the powers & abilities of body & mind fortune or Station which a man is possessed of by Nature, or may acquire by his industry are the talents which God has given him. We cannot indeed profit our maker by the right use of these talents but we may please him and deserve his  
25 approbation, and may greatly profit our selves and our fellow creatures, by using our talents in a right manner this God requires of us as our Duty, and we must be accountable to him for the proper Discharge of it. And if we had no Account to make to God, our own Conscience must condemn us if we do not employ the powers  
30 and Abilities that Nature has given us to the best and worthiest

Purposes. This {is} the proper Notion of Wisdom which excells folly as far as light excells darkness.

5 The Ends which Men may pursue are as various as the Active principles of their Natures, nay they are much more various for the same Original Principle may lead different men different ways in pursuit of its Gratifications. Thus the desire of Power may lead one man to accumulate Riches, and to starve every other desire in order to have the means of gratifying it. The same Desire of Power leads another man to lay out all his fortune in courting the favour  
10 of those by whose means he expects advancement. The same desire of Knowledge leads one man to wander over the Surface of the Globe from pole to pole to discover & arrange the Productions of Nature. Another to wear himself out in retirement with study and application to some of the Abstruse Sciences. Of the infinite Variety of Ends which men may & do pursue, it is impossible for us not to prefer some to others in point of Dignity. Some we  
15 cannot help judging to be mean, trifling, / and useless and on that account altogether unworthy of a Man. Who for instance can approve of a Roman Emperor employing himself in catching flies consuming that time which ought to have been employed in the important business of that vast Empire.<sup>5</sup> Supposing a man could employ his life in an exercise of this kind with pleasure, as perhaps any kind of Exercise may by habit be made agreeable. Yet whatever pleasure the man enjoyed in this his favourite Exercise all the  
20 world must look upon him as a mean, contemptible, useless animal, unworthy of the name of a man, because he is a disgrace to his kind. If he is capable of Reflexion he will think thus of himself.

25 There are other employments that are low & humble but usefull and necessary. Thus a man that threshes his corn or beats hemp has a humble employment but such employments are usefull and necessary in human Society. We have reason to admire the wisdom of Divine Providence who has given such various talents to different individuals of the same Species, that one is fit onely to forge  
30 hob nails while another is fit to fabricate or to govern a Commonwealth. Therefore we do not, we ought not to despise a man placed in the lowest usefull station of life, if his talents his fortune & circumstances render him unfit for a higher or set it out of his reach. He is usefully employed though in a humble Station,  
35

and may be a good man and a good Citizen. Tho' the employment of a great part of his Life be meer bodily labour perhaps little above what a brute might be employed in; yet his End in being thus employed may be honourable and good and far beyond what a  
 5 brute is capable of. He intends by his honest Industry to provide for his family to educate his children to virtue and Industry, to be injurious or burdensome to no man to be just to all and usefull to his country according to his power. A man therefore even in the  
 10 lowest Station in Society may act from honourable and worthy motives and have good Ends. But there are ends of mens Actions that on account of their meanness are unworthy of a man others that are base. The improvement of our Minds in usefull Knowledge and Wisdom is a more worthy end than the enjoyment of any bodily pleasure. The relief of the miserable the promoting  
 15 the happiness of our fellow Creatures is a more worthy end than the attainment of Knowledge.<sup>6</sup> Every Station in life is more honourable according as it gives an Opportunity to being more extensively usefull to Mankind, and as it requires the Exertion of the noblest powers and faculties of the human Mind.

20 True Wisdom therefore will direct a Man, in the Conduct of his Life to pursue the best and the Noblest Ends. And it is evident  
 8/iv/2,6r beyond all / doubt that the noblest ends we can propose in the conduct of Life are to obtain the Approbation of Almighty God, to be usefull to Mankind & to behave suitable to the Dignity of our  
 25 Nature.

Mar 10 1766

These are ends which every man in the lowest Station of Life is capable of pursuing and they are the Noblest that can be pursued  
 30 by men in the highest Station. The Man who has these ends in view and Steadily pursues them has the most essential Part of true Wisdom as well as of true worth and real Magnanimity. And as these are the Worthiest & Noblest Ends a Man can pursue so they are most in our Power. Every man may obtain by right conduct the  
 35 Approbation of his maker; Every man may live suitably to the dignity of a Man; Every man may be usefull to mankind in Some degree, tho indeed persons possessed of greater natural Abilities or whom fortune has placed in more eminent Stations may be more usefull to Mankind than Others.

Inferior Ends may be pursued for their own Sake in subordination to those we have Mentioned. Health Life Riches Honour Knowledge. Wisdom requires that we make a just Estimate of the Value of these, & that our Zeal and Ardor in pursuit of them be  
 5 only in proportion to their real Value & that they be never pursued by means inconsistent with what ought to be our main Ends.

## 2 Prudence

10 2 Prudence strictly so called consists in the choice of proper means for the attainment of our Ends. Deliberation Impartiality.

It is no small point of Wisdom for a Man to Know himself and to make a right judgment of his own Talents that he may not put on a Person which Nature has not qualified him to act Nor attempt  
 15 things beyond his Force. Here the contrary extremes are to be avoided of Presumption & Arrogance on the one hand & of Pusillanimity on the other. Every Man should endeavour to know his weak side and his Strong.

As Speech is one of the Main Instruments of transacting Matters with our fellow Creatures a Capital Part of Prudence consists in the  
 20 Right Government of Speech. Extreams of being too open or too close Speaking too much or too little. An habit of circumspection. Obstnacy & facility. Moroseness and Flattery.

How far Prudence is to be accounted a Moral Virtue? How far a  
 25 Quality of the Understanding?<sup>7</sup>

Knowledge of Men wherein there are two Extremes. Excessive Suspicion & excessive Credulity & Trust. Firmness in our Purposes.

Vices opposite to Wisdom & Prudence. Sloath. To have no end in  
 30 Life. Inconstancy. Putting an undue Value upon things. Ignorance of our Selves. & all the ridiculous follies that arise from it. Rashness Irresolution & Procrastination.

Prudence to be distinguished from Cunning Craft & Dissimulation<sup>8</sup> on one hand and from Simplicity and folly on the  
 Other. /

8/iv/2,6v Mar 11 1766

In Order to have a Just Idea of the Virtue of Temperance taken in its most extensive meaning, we may observe that our appetites and Passions and Affections, have their particular Objects. The attain-



ment of the Object is all they aim at. They give an impulse to the Mind towards the object, more or less forcible according to their Strength. The Mind carried on by these impulses without restraint would be like a ship that drives before the Wind without any person at the helm in which case she would soon be over set or dashed to pieces upon Rocks or Shouls it is the business of him that sits at the helm to temper & direct her Motion so that she may not go wherever the wind would drive her, but that she may steadily keep the Course and at last arrive at the port he intends. Our Passions and Appetites if indulged without restraint, would be as far from carrying us on in that course of life we ought to pursue or bringing us to the port we have in view as the winds without any government of the ship would be from carrying her safely to her desired ports. In order therefore to carry us on in a Right Course Our Passions and Appetites may indeed be of great Use, as the winds in carrying the ship in her voyage. But there must be some Gouverning Principle in the Mind as well as in the ship otherwise all would soon go to wreck. We are conscious that we have power to restrain our Appetites {and} to bridle our passions, or we can give them the Rein and be carried away wherever they lead us. Temperance is that Noble and manly Effort of the Mind whereby we temper restrain and check those inferior principles when they would lead us out of our destined Course of Life & dash us upon dangerous Rocks and inhospitable Shores.<sup>9</sup> No Man can steadily pursue any end in Life who has not the command of himself. The Passions and Appetites are not to be extinguished as the stoicks maintained.

General Rules of Temperance. Some Indulgences of our Inclinations are directly contrary to Virtue. Some to health, Some too Expensive Some unfit or disable us for doing our Duty. Some are indecent and unmanly, when they betray want of self command. or a Superiority of passion or Appetite to the calm dictates of Reason or Conscience. Some Passions may be indulged to a degree of Enthousiasm.

Enthousiasm in friendship, in Love, in Patriotism, in Virtue, in Religion. Different Objects of Temperance. Bodily Appetites. Desires of every subordinate Good. Temperance in our Behaviour and Speech in every thing wherein there is an Excess and Defect.

It is easy to see the End of every Appetite and Passion God has implanted in us. And this End should be made the Measure of them beyond which they are not to be indulged. /

8/iv/2,3v

**Fortitude**

March 10 1767

5 Of all the Virtues there is none that leads so directly to the temple  
of Honour as Fortitude. The Admiration of this Virtue is equal in  
the Savage and in the civilized. The word Virtus in Latin & ἀρετή  
in Greek<sup>10</sup> in their original and most proper Signification denoted  
Valour or Fortitude. Justice and Humanity excite our Love,  
Prudence and Temperance our Esteem, but Fortitude commands  
10 our Admiration.<sup>11</sup> Time, which is said to be the devourer of things  
soon buries in oblivion the Memory of Men of their Councils &  
Projects. But Heroes and Heroick Deeds resist its fore longest. The  
Labours of Hercules, the Conquests of Sesostris of Gengiskan of  
Tamerlane<sup>12</sup> transmitted to us through the wreck of Time are a  
15 proof of this. The most admired & elevated Species of Poetry has  
Heroick Virtue for its Subject. There is something therefore in  
Fortitude more than in any other Virtue which raises the admira-  
tion of Mankind. and gives immortal Fame to those who are pos-  
sessed of it. The only Charm of a Military Life is that it gives so  
20 frequent opportunities of displaying this Virtue. The Ardor that a  
Brave man feels in the day of Battle in encountering danger &  
Death gives him more real Happiness than the soft and enervating  
Pleasures of Wine and Love and all the Luxury of high Living.  
Those who have been well acquainted with both have born witness  
25 to this. There is indeed in Mankind a strange Partiality in favour of  
Military Glory in the Estimation of most Men it covers a multitude  
of imperfections and even of great Vices. We are more apt to admire  
the heroism & magnanimity of Alexander and Caesar than to  
detest their ambition & thirst of Power to which they sacrificed the  
30 lives and liberties of so many thousands. The proper Use of  
Fortitude is to arm us against all the Evils of Life which we either  
feel or fear, and to prevent our being deterred or dispirited by  
difficulties that occur in the course of our Duty. Fals Sham. /

8/iv/3,1r

March 7 1769

We have considered the Duty which we are taught by Reason to pay  
to the Author of our Being: This is the first part of Practical Ethicks.  
We have likewise considered the Duties of Self Government under  
these three heads of Prudence Temperance & Fortitude. Prudence

teaches us to weigh in an even Ballance both the Ends we pursue & the Means of attaining them.

5 It is the prerogative of Man in his adult state to be able to propose to himself and to prosecute one great End in Life & by this to reduce the whole of his Life to a connected System making every part of it subservient to his main End and regulating the whole of his conduct with a view to that. The brutes are incapable of this: They are necessarily carried away by the appetite or Instinct which {is} strongest at the time without any view more distant than its  
10 Gratification. We have a Superior Principle given us by the Author of our Being, by which we can, from an Eminence as it were, take a view of the whole Course of human Life; and consider the different Roads that men take & the Ends to which they lead.

15 When we thus take a general View of human Life we can not but perceive that some Roads we may take lead to Ruin and infamy, others are mean and below the dignity of our Natures; Prudence will direct us to chuse that which is most excellent in itself & which has the most desireable Issue. Nor can any Man who uses his Reason be in doubt which is the best. The noblest End we can  
20 pursue is to Act Suitably to the Dignity of that Nature which God hath given us. And to acquire his Approbation who is the best Judge of Real worth & will infallibly Reward it. This End every man in the lowest Station of Life may pursue and may Attain. But as men have various Talents bestowed upon them, which fit them for different  
25 Provinces in Life wherein they may Act their Part with honour to themselves and advantage to Society. Prudence will lead us to study to know our selves and what we are fit to undertake and to know mankind among whom we live, that we may avoid the fatal Extremes of unreasonable distrust and suspicion of every man on  
30 the one hand, and of exposing our selves to the Arts of the crafty, by too great trust and security on the other. /

8/iv/3,1v He who makes a right choice of the main and Ultimate End of his Life hath the most essential Part of true Wisdom and he who has that Knowledge of himself and of Mankind which a man of  
35 ordinary talents may by Experience & Study acquire will rarely be at a loss to know the proper Means of prosecuting his Main End or to Judge of those subordinate ends that conspire with it. Integrity of heart & uprightness of intention enlighten the understanding. & often give better direction in the Path of Wisdom & true Prudence

than greater intellectuall Abilities that are clouded & distorted by malignant passions.

5 Temperance the bridle of the Passions the appetites and all the inferior principles of Action. It is in vain for a Man to propose any end in Life whether good or bad who has not the command of himself. As a ship without hands to guide her motion, driven wherever the winds or the tides carry her, cannot be said to be bound to any port, nor will probably ever arive at any port as little can a man be said to have any End in Life who is the Dupe of his passions and his appetites. It is not the business of Temperance to eradicate our passions or appetites, if it were in our power; this would onely be to make our selves other Creatures than God has made us. Every passion every Appetite that God has implanted in us has a good End and makes a proper part of our Constitution: as every Muscle nerve and artery in the body has its use, so has every part in the constitution of the Mind. And the Ends for which our Several Passions and Appetites are intended by the Author of our Nature are no less apparent than the Ends of the several parts of our bodies. While we regulate them according to those Ends we live temperately. The restraint of our passions in our power.

15 Fortitude is that Virtue which enables us to face dangers and struggle with difficulties that occur in the way of our Duty with a Noble Ardour of Soul. To bear up in Adversity with Magnanimity. & to acquire a Superiority over the fear of Death over Pain over Poverty over unjust Reproach & in a word over every Evil that is incident to a good Man. When this Virtue is called forth in great and Arduous Attempts and / properly exerted, every heart admires it and every tongue celebrates its praises. Justice & Benevolence procure our Love, Prudence and Temperance our Esteem, but Fortitude & Magnanimity raise our admiration. Hence we account that the highest Species of Poetry which has heroick Virtue for its Subject.

25 Nor is this Virtue above the Reach of any Rank of Men or even of the weaker sex. History Profane & Sa(c)red as well as Experience furnish many Instances of true Fortitude and Magnanimity in every station of Life, & among the Savage as well as the civilized. Indeed the Polish of Life often enervates the Mind and we see among Canadians & Eskimaux Examples of a Superiority to Death and torment and to all the Evils of Life which civilized Nations would

{have} been apt to conceive to be beyond the pitch of human nature, if Experience had not taught us that every savage is capable of acquiring it.<sup>13</sup>

5 As Dishonour, to every generous Mind, is more terrible than Death, the greatest Effort of Magnanimity is to adhere to what {is} right even when it may bring upon us the contempt or Scorn of the multitude whose judgment is not always according to truth. Such Cases may sometimes happen in Life where false honour or false Shame draw one way, while the Duty we owe to God and to  
10 Mankind draw the Contrary, So that a man must make a Sacrifice either of his Reputation or of his Conscience. In such a case as this True fortitude and Magnanimity will make a man glory in the Opportunity of offering so costly a Sacrifice to the inviolable Law of his own Mind. And why should a Man who fears not Death, fear  
15 the Opinion of an unthinking and deluded multitude, while he is secure of the Approbation of his own Conscience & the Approbation of his Supreme Judge. /

8/iv/3,3v The Virtue of Fortitude lays a Man under no obligation to expose himself to danger or to any Evil without Just Cause. It is the  
20 duty of every Man to preserve his life & his limbs when by lawfull & honourable means he can do it. If a Man exposes his Life to imminent danger without any reasonable call to do so, this is Temerity and folly but it is not fortitude nor ought it to be honoured with that Name. But when he is called to expose his Life in defence  
25 of his Country of his Friend or family or in his own just Defence. Fortitude requires that the fear of Death should not induce him to desert his Duty or to betray his Trust. In like Manner it is a Mans Duty to gain & to preserve the good Opinion of others by all fair and Laudable means, and to avoid what may lessen his Reputation  
30 with them. But when a Mans Duty calls him to do what may lessen his Reputation with others, through their ignorance or prejudice, though it ought not; then fortitude requires of him that he prefer a good Conscience to a good Name, & do not desert his Duty through the fear of Unjust Reproach.

35 There are many Arguments that Justify true Fortitude & Magnanimity in every instance wherein we are called to exercise it. The passion of Fear when excessive defeats its own end. It magnifies the Evil which we dread, and the fear is often a greater Evil than the thing feared. It depresses the Mind, & deprives us of the free

Use of our Reason: which might often discover a way of avoiding the Danger, if our faculties were not benumbed by fear. It is the common Effect of a Panick, to make a Man run headlong into the very danger he dreads, because the Mans Mind is disorded & he knows not what he does. While the Man of Fortitude who can look danger in the face with a Composed Mind, & retains the Use of all his faculties, has a much better chance of escaping the danger. A Man of true fortitude not onely retains the Use of his Reason in Danger. but is elevated above himself. That Magnanimity of which he is conscious not onely makes his Countenance to shine but brightens all his faculties. /

8/iv/3,4r From what I have said it appears evident that in Evils or Dangers that may be avoided honourably, Fortitude puts us in a more probable way than Fear of avoiding the Evil.

15 And as to those Evils which cannot be avoided at all or not in a consistency with our Duty. The timorous and weakminded Man anticipates the Evil by his dread of it, like one who dies for fear of Death. Pain sickness and Disease are often unavoidable. Yet we see these evils born by some Men, even in the highest Degree, with such Fortitude & Magnanimity, that they cannot be said to be unhappy. A Man never is so till his Spirit is sunk & his courage fails. Then indeed the slightest Evils are a burthen too heavy to be born.

25 Death is an evil which we must all undergo. And while a Man fears Death it is impossible he can be happy. This enemy lurks in every corner of his Body. It is carried about by every Element. And he is liable to its attack every Moment. No Man therefore can enjoy real tranquillity of Mind untill he has overcome the fear of Death. /

8/iv/3,3r There are Cases respecting each of thes Virtues of Prudence Temperance and Fortitude in which it {is} difficult to discern the precise line which divides the Right from the wrong. But these cases rarely occur in practice, & where they do a man of an upright heart is in no danger from them, he will avoid going too near the dubious limit. And while he follows the best Light of his Mind after making due Enquiry; his Error, if he is in any, will not be imputed by his righteous judge.

35 But the excellence and the Obligation of these virtues in the general, cannot be hid from any man who calmly and impartially considers them. They are / intended as a Rule of Life to all Mankind and therefore their Obligation is obvious to all nor does

5 it require any deep or refined Reasoning to discover it. They tend equally to the happiness and perfection of our own Nature and to the benefite of human Society. The constitution of our Nature considered as a System made up {of} various principles some of which are subordinate & others intended to lead and Govern, immediately points them out to us as the course intended for us by the author of our being. And they have an intrinsick worth and dignity which every human heart acknowledges and reveres, even those who have not the resolution to practise them. /

## IV. Duties to Others: Justice

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8/iv/3,4r The third general Branch of our Duty is that which we owe to our Fellow Creatures. The Latin Word Iustitia, as well as the greek Word δικαιοσυνη were sometimes taken in so large a Sense as to include the whole of our Social duty, but in English the Word Justice has a more restrained Signification. We account him a Just Man who does no Injury to any Man. Justice & Humanity may however include the whole of Social Duty. The first implying the abstaining from all Injury, the second that we do all the good in our Power.<sup>1</sup>

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Justice has been distinguished into two kinds Commutative & distributive.<sup>2</sup> Commutative Justice is employed in the Ordinary affairs between Man & Man considered as on a footing of equality. It implies that we invade no Mans property nor violate his Right. That we do not injure him in his person in his family, in his good Name or in his friends. That we pay our just Debts. make Reparation to the best of our Power for any damage we have done or offence we have given to others. That we fullfill our contracts and be faithfull to our promises. That we use no fraudulent dealing nor take advantage of the weakness Ignorance or Necessity of those with whom we deal. And in a word that we be fair honest and without guile in our Speech and Behaviour. These things and others of like Nature constitute what we call fair dealing, honesty, integrity, Justice. It is opposed both to Violence and to Deceit. So Necessary is this Commutative Justice to the very being of human Society, that without it there could {be} no Society at all. And it has been very justly observed that even Gangs of Robbers and Pirates who pay no Regard to the Rights of other Men must observe the Rules of Justice and fidelity to one another otherwise they could not possibly keep together.<sup>3</sup> It would be more safe as well as more comfortable for a Man to renounce all human Society & to live as a hermit in the wilderness, or to dwell with the beasts of the field than with Men who had no regard to Justice. It is chiefly with a view to defend themselves from Injury that men Associate & form



human Societies. The first end of all Government & the chief Object of human Laws is to secure Men from unjust violations of their Rights that may be attempted either by Violence or fraud; and to deter men by punishments from all such violations of the Rights of others.

Distributive Justice in its strict and proper Sense is the Justice of a Judge in executing the Laws and distributing Rewards or Punishments. /

Humanity is another branch of the Duty we owe to our fellow Men. He is a just Man who does no Injury to any Man, though he should at the same time do no good. Such a Man may be very useless very insignificant fruges consumere Natus;<sup>4</sup> and therefore may be very far from discharging the duty incumbent upon him as a Member of Human Society. As a withered Arm or hand is to the natural Body an Useless incumbrance, so that the body would be as well or better without it: In like Manner a Person who is in no way subservient to the good of the Political Body, is onely a dead weight upon it. it receives no benefite from him, it would be at no loss if he were extinct.

It is I think to the honour of the British Nation that in our Language all the Amiable and Benevolent Virtues which prompt us to do good to our fellow Creatures are summed up in the Word Humanity, which implys their being the proper Characteristicks of a Man. Homo sum & nihil humanum a me alienum puto.<sup>5</sup> This noble Sentiment is interwoven into our Language. And indeed as man is by his very Constitution a Social Animal, & is not born for himself alone but for his friends his family his Country;<sup>6</sup> he who has no social and benevolent Dispositions is surely Defective in one of the Noblest and best Parts of human Nature, as really Deficient in what belongs to the Nature of Man as if he were without hands and feet, or without the sense & Understanding of a Man.

# V. Duties to Others: Individuals in Private Jurisprudence

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8/iv/1,1r In That common and ancient Division of Virtue into Four heads  
Prudence Temperance Fortitude and Justice. The former three  
comprehend the duties of Self Government of which we have  
Spoke, in General.<sup>1</sup> nor do I intend to lay down any particular rules  
5 concerning them and it is indeed impossible to lay down such Rules  
with regard to these as will distinguish the right from the wrong in  
every particular case. And although there is no doubt a line that  
separates them our faculties are not so nice and acute as to be  
able to see with the utmost precision what lyes on this Side of the  
10 line and what on the other. And although in most cases we can very  
easily determine that this is the prudent Course that the  
Imprudent. This is temperance that Intemperance. This is fortitude  
that pusillanimity. yet there are some particular cases where the  
right and the wrong are as it were contiguous to each other and it  
15 is hard to determine precisely where one ends and the other begins.  
What seems prudent to one wise and good man, may to another  
equally wise and good in the same circumstances seem rather to be  
crafty and to imply a faulty dissimulation. What to one man may  
seem a lawfull indulgence may to another seem to be some degree  
20 of intemperance. But in such cases a man may often prescribe  
Rules to himself, which he ought not to prescribe nor has any tittle  
to prescribe to another.

This vicinity of good to ill in many cases of Prudence Temperance  
and Fortitude in men who do not heartily love virtue but want to  
25 satisfy themselves with a certain Mediocrity in it leaves great Room  
for self deceit and leads them by degrees to extend the limits of what  
is law full into the territory of Vice. But to men of thorough  
integrity it is no ways hurtfull.

The best general course in such Cases is to be strict in the rules we prescribe to our selves and not to venture too near the disputed limit but to be large in our Charity when we pass Judgement on others. Instance in the Rules of Temperance with regard to eating and drinking & fasting. Instance with regard to Economy & Expence. /

8/iv/1,1v

### Jurisprudence

March 1

10 We come now to the 4th of these called Cardinal Virtues. to wit Justice which in this Division is taken in so large a Sense as to comprehend under it all that duty which we owe to our fellow creatures and that part of Morals which treats of Justice in this large Sense is called Natural Jurisprudence. In order to give a more distinct notion of this part of Morals, It is proper to attend to consider the origin of the Name that is commonly given to it *Natural Jurisprudence* and to give some account how it came to be considered as a particular Science in modern times and how it is distinguished from politicks. Jurisprudentia among the Romans signified the knowledge of their Civil Laws. Those who were Skilled in the knowledge of the roman Law were called Juris prudentes and Juris consulti in Ciceros time.<sup>2</sup> and afterwards in Justinians time we find them called Jurisprudentes from whence the Word Jurisprudentia, which signified with them nothing else than Skill and knowledge in the Roman Law.

25 The words Jus and Fas in the latin tongue originally signify what the law commands or allows and are derived from Jubere & Fari.<sup>3</sup> As all words are apt in course of time to undergo some change of their original Signification and to be transferred to things similar to or connected with that which they originally signified. The word Jus among the Romans came to signify the body or System of the Roman Law. And those who were skilled in this System of the Roman Laws were called &c.

Mar 4

35 Jus came afterwards to signify what we would call a legal right, or what a man had a tittle by law to do or possess or enjoy.<sup>4</sup> All Laws circumscribe a Mans actions and confine him within a certain Sphere within which he may exercise his power and act according to his pleasure but he cannot go beyond this Sphere without

transgressing the laws and thereby becoming obnoxious to punishment. And this sphere of Action within which if a man confined himself, he was no way obnoxious was called his Right. The Law not onely circumscribes my Actions and fixes certain limits to them, but it likewise directs & prescribes certain actions to be done by others that respect me & tend to my benefite. Thus it obliges those who owe me to pay their just debts, & those who have contrated with me to perform their Engagements. It obliges my tutors or Curators to the faith full management of what belongs to me while I am under age. Now what the Lawiers call my right includes not onely what I may lawfully do or possess but likewise what others are bound by Law to do towards me every prestation for which I have a legal demand upon them. It appears from what has been said that this later Sense of the Word Jus must have taken place onely after Law became a formal Study and Profession. The Latin Writers use the Words Facultas and Potestas in the same Sense.<sup>5</sup> The Word Jus is taken in the former / of these Senses when it is joyned with the Name of any Particular Country or State As Jus Romanum. As Jus Romanum signifies the Body or System of the Roman or Civil Law. But when the word Jus is joyned with a particular person Office or Relation it is taken in the later Sense as Jus mariti Jus meum or Jus tuum, and signifies the Same thing as the later Words facultas or potestas. So the Jus patria and the Patria potestas mean one and the same thing. These two meanings of the latin Word Jus are better distinguished in our Language for we call the one Law the other Right. Jus Civile would be improperly translated the Civil Right but the proper English for it is the Civil Law. Again Jus Mariti would be improperly translated the Law of a husband and the English for it is the Rights of a husband. Jus Dominii the Right of Property. Jus therefore in this later Sense, includes not onely all that a man can do enjoy or possess without breaking the Law, but likewise all that his fellow citizens one or all are bound by law to do or perform for his benefit. The including all these things under one word of Jus or Right shews a considerable degree of Refinement in Speculations with regard to law. And therefore this Sense of the Word is later than the others I have mentioned, & answers precisely to what we call a mans Right.

Another meaning of the word Right equivalent to Rectum Honestum.

Jurisprudentia signifies the Knowledge both of the Laws and of the rights of men which are founded upon the Laws.

5 Having shewn the original Meanings of the Latin Words Jus and Jurisprudentia. It is easy to see how men those especially who made the Laws their Study would be led to form a Notion of a Natural Law and Natural Rights of Men which were not grounded upon the Code or Pandects<sup>6</sup> but in the human Nature and in that faculty by which we discern Right from Wrong.

10 The best System of Civil Laws cannot provide against every wrong suppose then that the Laws of the State of which I am a Member do not admit an Action for the implementing of a promise or bargain made privately between the parties without witnesses without writ & without the Interposition of a Judge. If a man refuses to fulfill his promise made to me in such  
15 Circumstances. I find I am wronged I cannot but think him under an obligation, altho the law does not oblige him, I am sensible that he wrongs me altho he withholds nothing from me which the law obliges him to give nor is deficient in any prestation which the law requires of him. I am therefore very naturally led to conceive of  
20 some more extensive law which is more adequate to my notions of right and wrong.

The Law of Nations.<sup>7</sup> /

8/1v/1,2v When men have thus formed the Conception of a Law of Nature and a Law of Nations. They are apt to Consider it in the same light  
25 as they were wont to consider the Civil Law to borrow both their Notions of one from the other, and to apply the words that belong to one, in explaining the other and even to treat of the Laws of nature in the Same order and under the same divisions which have been commonly used in treating of the Civil Law.

30 As Civilians have comprehended, all that a man may do, all that he may possess or enjoy, according to Law, and all that the Law obliges others to do towards him or for his benefite;<sup>8</sup> under the Name of the mans Right so writers on natural Jurisprudence in like manner comprehend all that a man may do possess or enjoy according  
35 to the Law of Nature and all likewise that others ought to do for his benefit; as the mans Right by the Law of Nature. A Mans legal Rights therefore have the Same Relation to the Civil Laws under which he lives as these Rights which writers on Jurisprudence ascribe to him have to the Law of Nature.

To every Right there is an Obligation which Corresponds. And a Right in me implies an Obligation upon some other person or persons.<sup>9</sup> The onely exceptions to this Rule are either. Where [there] the right is unknown to the person who would be under the obligation if he knew it. Or where a Right is believed where there is none.<sup>10</sup> But where there is neither ignorance of the Right nor a wrong Notion of it. It is impossible that any Right can belong to me, but it must imply some obligation upon another one or more.

In order to make these two Notions of Right tally with each other Civilians as well as writers on Jurisprudence have

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In treating of the Principles of Morals in General we endeavoured to shew that by our Moral Faculty we have an immediate perception of Right and wrong of Moral Rectitude & Depravity in moral Agents in like Manner as we have a perception of black and white in visible Objects by the Eyes of harmony and Discord by a Musical Ear and of other qualities in objects by means of the several faculties of our Nature which are adapted so by the Author of our Nature as to give us not onely the Ideas of such Qualities but an immediate perception of their Existence in certain Subjects.<sup>11</sup> This Moral Rectitude or Depravity is the immediate Object of our Approbation & Disapprobation. This Right or wrong this moral Rectitude or pravity is a real Quality in Moral agents but as it is onely on Account of some Action of an Agent or some determination of his will that we either approve or disapprove / of him, hence by a figure of Speech we say the Action is right or wrong and deserves to be approved or disapproved, although in reality and in strict propriety the Rectitude or pravity is in the Agent and it is the Agent that is the proper object of approbation or disapprobation. This is the most proper and direct Sense of the Word Right in Morals and it answers to what the Ancients called the *Honestum* as its contrary answers to the *turpe*.<sup>12</sup> In this Sense we say its right for a Man to honour his parents to obey his Maker to love his neighbour.

In Natural Jurisprudence the word Right is taken in a very different Sense when I say I have a Right to such a house or have no right to it.<sup>13</sup> When we speak of the rights of Men and divide them into perfect unperfect & external.<sup>14</sup> In order therefore to have a clear

and distinct Notion of these Rights of Men which are the Objects of Natural Jurisprudence, it is necessary to observe that such Rights have the Same Relation to our moral faculty as the legal or civil Rights of men have to the law of the Land. Every mans  
 5 Conscience is a law to him. It enjoyns certain actions & forbids others it prescribes to him a certain rule of conduct and as far as he deviates from this Rule, so far is he guilty in his own Judgment and in the Judgment of others. He deserves punishment for every such transgression of the Law of his mind. And the conscience of guilt  
 10 and dread of punishment, is indeed a real punishment for his transgression. Moreover the dictates of our Conscience or Moral faculty ought to be considered as the Law of the supreme Legislator who has given us this faculty to be the guide of our Lives, and made us so that we cannot transgress its laws without an inward conviction  
 15 that we do what is displeasing to him and are obnoxious<sup>15</sup> to his just punishment. Juven Sat 13 V 393 & seq

Cur tamen hos tu

Evasisse putes quos diri conscia facti  
 20 Mens habet attonitos, & surdo verbera caedit;  
 Occultum quatiente animo tortore flagellum  
 Poena autem vehemens ac multo saevior illis  
 Quas et Caeditius gravis invenit & Radamanthus  
 Nocte dieque suum gestare in pectore testem<sup>16</sup>

25 Since therefore the dictates of our Moral faculty are a law to which we are Subjected by the constitution of our Nature, even without considering our Relation to the deity;<sup>17</sup> Since when we reflect upon our Relation to the Deity, this law of our Nature appears also the  
 30 Law of God, and a plain indication of his will, it is undoubtedly very natural and Just to conceive of Mankind / as Subject to a Law  
 8/v/1,3v by means of their moral Nature; a Law which is antecedent to all civil Laws, and of higher obligation, as being both the Law of our Nature and the law of God. Hence it is that writers on Natural  
 35 Jurisprudence have with great propriety given the Name of the Law of Nature to the Whole System of Conduct which our moral faculty shews to be right & honest.

Justinians Def. of the' Law of Nature. Quod Natura omnia animanlia docuit.

Jus Gentium quod Naturalis Ratio inter omnes homines Constituit. Grotio jus Gentium. Quod Gentium omnium aut multarum Voluntate vim obligandi accepit.

Eidem jus Naturae Dictatum Rectae Rationes indicans Actui alicui inesse M. turpitudinem aut Nec M.<sup>18</sup>

Of this Law of Nature that duty which we owe to our fellow men (see all the different relations we may stand to {them}) is an essential part and is by writers on Natural jurisprudence called by the name of justice. But it is evident that justice taken in this large Sense so as to comprehend all the Duty we owe to our fellow men is only a technical Word, and that the meaning of the word justice in common conversation is very different. We conceive of justice as only a negative kind of Virtue and implying rather the doing no hurt than the doing good to our fellow creatures. We call a man just if he neither injures another in his person nor in his just fame and estimation nor in his property nor in his family nor in any of his Relations. But such a just man may yet have no social Virtue no kind Affection, no Generosity or publick Spirit no concern for the good of his fellow creatures. As writers on natural jurisprudence therefore extend the meaning of the word justice so as to extend it to all Social Virtues. They find it necessary to Divide it in to various branches so as to make it comprehend all the duty we owe to our fellow Creatures.<sup>19</sup> Those Writers have also given a technical meaning to the Word Right corresponding to that which they give to the word justice.<sup>20</sup> For these two words are relative to each other and ought to have equal Extent.

What a Right to any thing implies.

It is not a Quality of the thing or of the Person having right. Nor is it any Real Relation between the thing and the Person. Nor is it any connexion or association between the thing and Person in our Imagination.<sup>21</sup>

When we say that a man has a Right to such a house or to such a prestation from an other, This is no more but a short technical way of expressing what would require many words to express it in the most direct and natural way. It is an artificial way of signifying that certain actions of the person who is said to have the right are within the limits of his duty, and at the same time it signifies certain actions of others towards him to be their duty. Upon the



whole therefore Mans Civil Right is a figure of Speech by which we understand all that the Law of the State allows him to do possess and enjoy and all which the Law obliges others to do for his benefit. /

5

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so the Rights of Men which are the Objects of Natural Jurisprudence signify by a like figure of Speech what the Law of Nature allows a man to do possess or enjoy and what that Law requires others to do towards him.

10

Obligation and Right are Relative and Reciprocal, unless where upon account of some Error in Judgment they are unnaturally Separated. Perfect Imperfect & external Rights.

15

Wherein the Right of the Deity to govern his Creatures is founded. Acknowledged Superiority in Wisdom and Goodness gives Authority. What he commands must be right.<sup>22</sup>

Whether the Law of Nature is Perfect, & immutable. Does it admit of any Dispensation.<sup>23</sup>

20

Another Division of Rights 1 Private 2 Publick 3 Common.<sup>24</sup>

The Rights of Men Correspond to their different States.<sup>25</sup>

1 The State of Natural Liberty, not a chimerical one. Whether a State of War. Perfect Rights competent to this State. 1 Life & the Integrity of our Members & the necessary means of Life. Of a Mans Power over his own Life of Suicide.<sup>26</sup>

25

2. Liberty 3 Private Judgment 4 The Use of things Common and the Acquisition of Property by our Labour 5 Estimation of Probity Character 6 To fair dealing and Truth in those that converse with them.

30

Mar 7

The Natural Equality of Men in these Rights. None naturally born to be Slaves.

35

Imperfect Rights competent to this State. 1 To Social Intercourse and civil Treatment. 2 To such offices of humanity from others as cost them little or no trouble. 3 Even to offices of some Expense in cases of Distress. 4 To all offices of humanity & Kindness & Liberality which are suited to their worth and uniqueness and our abilities. 5 To the Gratitude of those who have been benefited by us.

In General It cannot be said that in a perfect Conformity to the Imperfect Rights of Mankind<sup>27</sup> but following that admirable rule of our Divine Teacher of doing to others whatsoever we would and think reasonable that they should do to us in like Circumstances. It seems impossible to fall upon a more happy expedient to divest ourselves of that bias which inordinate selflove and other private affections give us than to apply this Rule.

Cautions about Liberality. 1 Worth 2 Indigence 3 Natural 4 Affection 5 Gratitude 6 usefull Offices rather than Pleasing.

See Cicero Offic Lib 1 c 14.18

Ne obsit benignitas iis quibus beneficere velle videamur.  
Ne major sit benignitas quam facultates. Ut pro dignitate cuique tribuatur<sup>28</sup>

### Adventitious Rights<sup>29</sup>

Distinguished into Real and Personal.

- 1 To the fruits of the Earth for food
- 2 To the Service of the inferior Animals. Gen 1 29, 30<sup>30</sup>
- 3 To Use them {for} food. Gen 9. 2,3
- 4 The Right of private Property. Original Derived.

Of Things in the State of Negative Communion Res Nullius &c, of Positive Com(munion).<sup>31</sup>

Of Occupation. 1 Of things for present Use 2 Of permanent Property<sup>32</sup>

1 Of Moveables 2 Of Immoveables

Of Dereliction<sup>33/</sup>

Mar 11

The foundation of Property. D Humes Notion of it.<sup>34</sup> Extension of Property in Different Periods of Society. Wills Land Property. What things are incapable of Occupation.<sup>35</sup>

Mar 12

We have endeavoured to shew that Although permanent Original Rights may be obtained by Occupation yet there are some things to which either Private Men or States cannot obtain an exclusive Right in this Way. And all Right of Occupation as it is founded upon the common good of human Society, so it must be limited and restrained as the common good requires. By the Law of Nature & Right Reason occupation then onely founds a valid Right when it is made without any injurious intention towards our fellow men and when in reality it neither hurts them nor deprives them of any advantage ease or Security which they formerly enjoyed. Our moral faculty here approves of the Occupier, it disapproves of the person or State by whom he is molested or distrurbed in an acquisition which hurts no body. But if this occupation is of Such a Nature as to threaten the Safety of others who are not subject to the Occupant. The occupation gives no right. it<sup>36</sup> Why? because every candid Spectator must disapprove of such occupation {as} an encroachment upon the peace the Security of those who are exposed to danger by it, and must approve of their using their best endeavours to guard against such a danger.

Example. Suppose an Island discovered by the French or English in the Atalantick.

Ex 2 The Encroachments of Europeans upon the hunting Grounds of the Americans.

Ex 3 A Deserted City occupied at the Same time by two neighbouring States.<sup>37</sup>

Rights by the Law of Nature may depend even upon the intentions of Men civil Rights must therefore often be different and determined by different Rules.<sup>38</sup>

Accessions.<sup>39</sup> Fructus, Alluvio, Insula Nata in flumine, Adjunctio, Inaedificatio. Scriptura. Specificatio. Commixtio Confusio Plantatio and Satio. What full property implies.<sup>40</sup>

13 Mar.

The Right of Occupation by private Persons limited by the Laws and Customs of States. Land. New Discoveries. Large accessions. Royal Mines. Royal Fishes. Excheats. Hunting Game.<sup>41</sup>

Prescription a Kind of Intermediate Right between the Original and Derived.<sup>42</sup> /

8/iv/5,2r      Derived Rights Either Real or Personal. This Distinction is grounded in Reason and has considerable Effects even by the Law of Nature.<sup>43</sup>

5                Real Derived Rights are either the full Property or some part of it. There are several Real Rights which include not the full property of the Subject but onely some part of the full Right detached from the Rest.<sup>44</sup> These are here to be explained and they are.

10              1 The Right of Possession. Rules regarding it.<sup>45</sup>

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2 The Right of Succession in Entails.<sup>46</sup>

15              En(t)ails a Modern Invention. State of the Great Barons in the Feudal Times they either did not contract debt or if they did it was either to Merchants or Jews neither of whom were in those days considered as being in a condition of evicting their Just Debts from a great Lord. So that Estates without any aid of Entails often continued in one family for many Generations.

20              The Natural Respect payed to the Representative of a very ancient family who can count among his Ancestors many illustrious Heroes and Statesmen that have been remarkably usefull to their Country and whose Actions make a figure in the History of Mankind.

25              This is a great part of the Natural Reward of heroic virtue that it reflects Honour not onely upon the hero or Patriot himself while History preserves the Memory of his Actions, but it also reflects Honour upon his descendants and even upon his Ancestors.

30              How by the gradual Change of Manners the great Land holders began to lose their Estates and to have their families sunk in Oblivion. It was very reasonable and lawfull for them to remedy this Evil if it could be done by fair Means, and Entails seem to afford a Remedy for it.

35              To pledge of the Equity and Reasonableness of Entails it would be necessary to weigh in an even Ballance the good and the bad Effects of them 1 with regard to the Family itself 2 with regard to the Publick. 3 How far they correspond with the general Laws of Nature & Providence. 1 With Regard to the Family. All the advantage that can be procured by them to the family is to perpetuate the

Estate in it. If this could be effected it is doubtfull whether it be any great Benefit. Every man would wish his Son to have an Estate providing he can make a proper use of it. But it does not appear that it would be a real good to one half of Mankind that they had Estates.

5 If we take an equal Number of those who have been properly educated without the Expectation of any Fortune but what they may acquire by industry / and Virtue, with such as have been educated in the hopes of enjoying a plentiful fortune we shall not find the latter to have any great advantage over the former in point of real

8/1v/5,2v Happiness or of Virtue.

10

On the contrary the sure prospect of an ample Fortune very often weakens those incitements to Industry and Virtue which the Wisdom of Providence has provided in the natural Course of things. And a young Heir has less inducement to Industry and

15 Virtue than one who has his fortune to make.

Every human Institution is unfavourable to Virtue & Industry which provides other Roads to Riches and honour than this which Nature has appointed. Entails, therefore seem to have a natural Influence to take away the incitements to Virtue and Industry in a

20 family, in the same degree as they secure Riches to every Heir of Entail without those Qualities which onely can enable a man to make a proper use of them.

2 Entails seem to lessen too much the Paternal Authority which Nature has ordained for the benefite of Children and for the

25 Punishment of those who are incorrigibly vicious.

3 They prove a great hardship upon the younger Children, whose right naturally is equal by straitning them in their Education and provision after they have been brought up in Opulence. Hinder them from marrying and so families often become extinct or the estate

30 and honours go to distant collaterals {in} Entails.<sup>47</sup>

Effects of Entails with regard to the Publick.

1 They are an unreasonable Extension of Property, beyond what can be justified by the Law of Nature. A man is capable of acquiring property because Nature has endowed him with such a measure

35 of Judgment and Understanding as that he may make a good use of it. And if he had not such a measure of Reason and Understanding there is nothing in the Law of Nature that could justify the Acquisition of Permanent Property. Now tho a Man may

5 make a good use of a very extensive Property in his lifetime, although perhaps he may act reasonably in leaving it at his Death to persons then in being who as he may have grounds to think will make a proper Use of it. Yet Nature has not given to him such a measure of Understanding as that he can foresee how his Estate ought to be disposed of to the end of the World. When he substitutes heirs of Entail who have yet no Existence, this can be justified by no other principle but that fond partiality Which leads a man to conceive that his heirs of entail to the end of the world shall be such  
10 Persons as ought to enjoy his Estate, that they shall be endowed with such Qualities that it is for their own Good the Good of the Family and the publick Good that they should hold this Estate.

8/III/2,2r If I have an Estate I am capable of Judging which of my Children or / relations is like to make a good Use of it for themselves for the family or for the publick. As I may therefore make a rational Choice there may be some Reason why I should have the power of making this Choice. But with regard to persons yet unborn it is impossible I can make a rational Choice and therefore no Law of Nature can entitle me to make such a Choice.  
15

20 2 It is for the Publick good that Riches and that Power which is consequent upon them should as much as possible be the reward of Virtue and Industry, and in the Natural Course of things, they are so in a great degree. Entails counteract this order of Nature By Securing Riches to a Succession of Men, who have no greater probability of being men of Industry and Virtue than Others; Nay who have the greatest temptations by this very institution to Vice and Sloth.  
25

30 3 The Ambition of great Men to perpetuate their family, which is both a Natural and laudable Ambition, would perhaps take a turn more favourable to the good of Society as well as more proper for answering its end if the hopes of accomplishing this end by entails were cut off. The onely mean then left for a man to perpetuate his family would be to take all possible care to train all his children to those qualities which make men truly great and to put each of them in this way of raising families of their own whom they  
35 might train in like Manner. The great families in Rome kept up in this way not by Entails.

4 Entails are a great Discouragement to trade 1 As they lessen Credit. 2 As they exclude Entailed Estates from being Subjects of

Commerce, Preclude those who have made fortunes by their Industry from the great end they have in View in all their Labours, And tend to lead us back to that Gothick Constitution wherein Merchants Manufacturers & Farmers were the Slaves of the Land holders. Prosperous traders will desert a Country where they can find no land to purchase.<sup>48</sup>

5 They discourage the improvement of Estates.

Whether a hereditary Nobility may not be allowed unalienable Estates. This seems not disagreeable to our Constitution. /

10

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If we consider in the last place how far perpetual Entails are agreeable to the laws of Nature and the Course of the Divine Providence.

Every Extension of the Right of Property which is hurtfull to human Society must be contrary to the Law of Nature which justifies & guards Property onely as far as it conduces to publick Utility. If perpetual Entails therefore be contrary to common Utility especially in a commercial State as I conceive they are for the Reasons already Mentioned, they cannot be justified by the Laws of Nature.

15

20

By the Course of Nature appointed for the wisest Purpose by the Divine Providence Prodigality Luxury & Idleness & Vices bring Men & Families to Poverty and Want. This is the Appointment of God for the Discouragement of those vices and for a Constant Warning to Mankind. Perpetual Entails are a vain & impotent Attempt to counteract this Order of the Divine Providence; and to secure Greatness and Riches for ever to a family without any Regard to Merit. Which if it could be effected would be a most dangerous temptation to Vice to those who represent that family and a most pernicious Example to Mankind in General. The Heirs of the Caesars the Alexanders the Gengiskhans and the Sesostris's are now mixed with the common herd of Mankind unknown and undistinguished As the Ashes of those Mighty Conquerors are mixed with the Common Dust. Not onely great Estates but mighty Kingdoms and Empires are crumbled into dust by all devouring Time. And could the Secret be found (which is as hopeless {as} finding the Philosophers Stone or the Universal Medicine) of embalming and preserving them to all future Generations like so many Egyptian Mummies they would be as useless an encumbrance to the Earth as those Monuments of Ancient Vanity are.<sup>49</sup> /

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30

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Pledges. Morgages.<sup>50</sup>

Servitudes. Personal. The Use of any thing for a time or for Life.  
Life rent.

Real Urban. tigne immittendi, Altius non tollendi, luminum  
prospectus. Stillicidii.

5 Rural Iter, Actus, Via, /

8/III/2,2v Compleat property May be transferred either during the  
Proprietors life or in the Event of his Death.<sup>51</sup>

10 1 During the Proprietors Life 1 With his Consent by Gift or Sale  
which will be treated of Afterwards under the head of Contracts 2  
Without the proprietors Consent when it is necessary to satisfy any  
Just Claim against him this will be afterwards considered under the  
head of the Rights arising from the injuries done by others.

15 2 In the Event of the Proprietors Death the Property he enjoyed  
may be conveyed two Ways. 1 By his Will or Testament 2 By  
Succession to the intestate.

1 Wills Grot. Testamentum est alienatio in Mortis Eventum, ante  
eam revocabilis, retento interim Jure possidendi ac fruendi.<sup>52</sup> The  
Objections of Puffendorf against this Definition.<sup>53</sup> /

8/IV/7,1r

#### Of Succession to the Intestate<sup>54</sup>

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25 The most early Custom in most Nations seems to have been that  
Children who were not foris familiate<sup>55</sup> Succeeded to their fathers  
and that rather as continuing in the possession of the Goods of the  
family than by any other Right.<sup>56</sup> And if ther were no Children in  
the family even Servants Succeeded to their masters in the Same  
way as continuing the possession of the goods belonging to the  
family. If a man intended to convey his Succession to one who was  
30 not of his family the method of doing this in the most early ages  
seems to have been not by any Testamentary deed but by adopting  
him into his family.<sup>57</sup>

35 In the Gradual Improvement of Society the connection between  
parents and Children becomes more Strong and even between more  
distant Relations, Men come to have more property and are able not  
only to leave the necessary means of Subsistence to the survivors  
of the family but to better the Situation of their Children who are  
foris familiate and of other near Relations. In a Rude and Savage  
State men hardly consider any connexions beyond their own family.



They have no dependance upon others and very little intercourse with them especially if settled at any distance from them. But as Society improves mens connexions enlarge their wants their dependance their power are increased and the most natural of these is the association of Near Relations who have been once in the Same family and thereby contracted friendship as an additional tie to natural Affection, and thereby come to have an interest in one another.

Much is left to the civil Laws in the Matter of Succession. Yet every thing determined by civil laws in this matter is not just as for instance that Shipwrecks should belong to the proprietor of the Coast.<sup>58/</sup>

8/iv/7,1v

### Contracts and Covenants

The definition of a Contract not easy.<sup>59</sup>

In a Contract or promise the Will or intention does not bind unless it be expressed Nor 2 The expressing an intention without actually contracting Nor 3 Words without intention, Nor 4 Does the want of an intention to perform hinder the Obligation. Not even when the person with whom the Contract is made perceives that it is made without the intention of performance.

We must here distinguish between the intention of performing and the intention of binding or contracting. The second is absolutely necessary the first is not. This intention signified and accepted of constitutes a contract or Covenant. The Effect of such a Covenant is that by the immediate judgment of our Moral faculty the person contracting is under a moral obligation to perform what he has lawfully contracted to do or perform & the person with whom he has contracted has a right to the performance of what is contracted.<sup>60</sup> Bargains between the Negroes and the Bartering people.

A Contract[ed] supposes a moral faculty. Therefore no definition can express the Nature of it which does not include the notion of obligation. Hence likewise Brutes cannot make contracts nor Children before they are capable of understanding moral obligation. Contracts of Pupils Minors. Men Drunk or Disordered.<sup>61</sup>

How far Error makes a Contract Void.<sup>62</sup>

When the Contract is founded upon the presumption of something which is not found to hold.<sup>63</sup>

The necessity of Signs. The baseness of Equivocation mental Reservation &c.<sup>64</sup>

How far a Contract extorted by fear binding.<sup>65</sup>

Faith to be kept with Hereticks Rebels & the worst of Men.<sup>66</sup>

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Mar 20

Contracts to do an unlawful thing not binding.<sup>67</sup>

Contracts may be binding although rash and hurtfull to the party contracting.<sup>68</sup> The duty of the other party in such a case.

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Candor and open dealing in Contracts indispensibly obligatory.<sup>69</sup>

Fundamentum autem Justitiae Fides i.e. dictorum pactorumq constantia & veritas.<sup>70</sup>

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It is very justly observed by Cicero and many other Ancient Authors, that Justice and Fidelity towards those who live in Society is so Necessary, that it is found even in the dens of Robbers & Crews of Pirates. Altho' they have no regards to the Rights of other Men that are not of the Gang, yet they find a Necessity of observing strict justice towards one another. Their Associates in Iniquity must be prescried by Justice and fair dealing to each other.<sup>71</sup> Pudor & Justitiae Soror incorrupta Fides nudaque Veritas.<sup>72</sup>

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Acceptation how far Necessary.<sup>73</sup>

The consideration of Contracts alone sufficient to convince us of the Existence of a Moral Faculty. Because without such a faculty we could not have the very Idea of a Contract. And because all Mankind not onely have the Idea but a Conviction of the Obligation of Contracts this shews that the Moral faculty is common to all Mankind.<sup>74</sup>

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From this also we may infer that Justice is a Natural Not an Artificial Virtue. The justice of keeping contracts if grounded upon an immediate perception.<sup>75</sup>

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Without fidelity in Contracts there could be no Society among Mankind,<sup>76</sup> and if according to the Ancient Fable Astraea should quite abandon the Earth human Society must disband & Men keep at as great distance from each other as possible.<sup>77/</sup>

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We come now to speak of the Obligations whether perfect or imperfect which we are under in the Use of Speech.<sup>78</sup> And these may be deduced without much Labour from the manifest intention of the

supreme being in endowing us with this noble faculty of Speech from the immediate Judgment of our Moral Powers from the common good of Society and from the honour and advantage accruing to our selves & the benefit to human Society arising from a proper Use of this excellent Gift of God.<sup>79</sup>

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By Speech I understand not only those artificial Signs whether of Sound or Writing by which men are wont to communicate their minds to one another, but under the Name of Speech I comprehend every Sign whether natural or Artificial by which men can affirm or deny accept or refuse, promise or contract, threaten or Supplicate, praise or blame, encourage or discourage, and in a word by which we can communicate to others our thoughts our Sentiments our purposes our passions and afflictions.<sup>80</sup>

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When we treat of Speech in Morals and of our obligations in the use of it we ought to take it in this extensive sense; because as a Contract or promise has the same force and obligation whether made in french or English whether by word or writing so it has the same force whether made by means of artificial or of Natural Signs and the same thing may be affirmed of every obligation arising from the use of Speech.<sup>81</sup> We gave an instance of A traffick carried on between nations who never saw one another nor employed any agent or factor to go between them. Yet these nations tho extremely rude and unimproved are conscious of their obligation to deal fairly & honestly by one another and act accordingly.<sup>82</sup>

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Now having explained what we mean by Speech it will easily be allowed that it is one of the best gifts that God has given to men that without it human Life would be a most dismal state of being. Even the brute animals have something that may be called speech in the sense we now use this word.<sup>83</sup> They can express their love or hatred, their hostile or amicable disposition, their shame or pride, their submission or Authority. But they are incapable of entering into contracts of promising or bearing testimony the old cannot communicate their Experience to the Young or inform them of what they have seen or heard or learned. Thus they are incapable of any improvement and to the end of the World can neither be wiser nor more foolish better nor worse than they were at the beginning. Man by being endowed with the gift of Speech is put on a very different footing. A young man may learn more of things of real Importance to his happiness in one Month than he would have been

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8/iv/7,2v able to discover by his / own natural and unimproved powers in a long life. What would man be without any kind of instruction? We may learn to answer this Question by the Accounts we have of Some of the Species who having been early exposed or left in woods  
5 have grown up to mans Estate without any Instruction, without conversing with any of their kind. Such was a young man found in the woods in Hanover 20 or thirty years ago. and some others.<sup>84</sup> All of them as far as appears seemed in nothing to differ from brutes but in their outward form. All the improvement which Mankind  
10 have attained beyond the pitch of these wild Men we owe to the use of Speech. By means of which the knowledge and Experience of one Generation can be conveyed down {to} the next. And Mankind as if animated by one Soul may be still in a progressive state with regard to knowledge and improvement. This is evidently the inten-  
15 tion of the faculty of Speech and it is admirably fitted for this end. The various parts of our frame both of body and mind by which we are fitted for this communication of our Sentiments by Speech shew that the Author of Nature had this end in view but has been Sollicitous about it. For this purpose the Features of the Face the  
20 Motions and Attitudes of the body the modulations of the Voice are made to be naturally signs of our thoughts purposes and affections we are taught by Nature without any human Instruction or Experience to interpret those Signs.<sup>85</sup> The human Organs are fitted for a Vast Variety not onely of tones and Modulations, but of  
25 Articulate Sounds which are the most proper materials for artificial Signs of our thoughts. Children learn very early to understand & to imitate the Language of those about them and by particular Instincts are led to believe what is told them and to express their own Sentiments with Candor. This point ought to be treated more  
30 fully.<sup>86</sup>

2 When they grow up to years of Understanding they perceive themselves to be under the most perfect moral Obligation to that candor and truth in their declarations which in infancy they practiced from mere instinct.<sup>87</sup> There are Some Vices which men may  
35 have the effrontery to own and to glory in. But lying and falsehood never was nor will be justified by the worst men. The turpitude of those Actions is so manifest as to admit of no disguise. Every man is affronted in the highest degree by the imputation of them and is conscious of his being abused and injured by those who impose

4/III/4,1r upon him by means / of this Kind. And if giving the Lye be the most  
 heighnous affront as it is in the judgment of all mankind, then  
 making a Lye must be one of the basest and most dishonourable  
 actions. Every man hates lying and falsehood in others and there-  
 5 fore must be self condemned if he practices it himself. Every man  
 desires to be trusted in his declarations and therefore ought to  
 deserve it.

Mar 22

10 3 The influence of Faith and Truth on the good of Society. Want of  
 regard to Truth a Sign of the utmost depravity.

4 The Effect of Faith on a mans own happiness as it needs no Art  
 fears no discovery, procures Credit and Trust which {is} one of the  
 chief engines of business.

15 Two Kinds of Deception.<sup>88</sup> When we give occasion to a mans  
 making a false Judgment. 2 When by testifying or affirming what is  
 false we abuse the trust which others have in our veracity. All lawfull  
 Stratagems of War reducible to the former head. The latter in no  
 case lawful.<sup>89</sup> The former onely to be used with those whom we are  
 20 at liberty to use either as enemies or as weak headstrong unreason-  
 able men. To conceal our sentiments artfully sometimes allowable,  
 but the less it is used the better. The character of an artfull man to  
 be avoided. An open undisguised behaviour amiable, easy to our-  
 selves & to others. The character of Nathaniel.<sup>90</sup> In a witness it may  
 25 be a great crime to conceal the truth.<sup>91</sup>

Reproof. Witnessbearing. Selfdefence. Caution to a third  
 person. What is publick.<sup>92</sup> Duties of Conversation. Candor kind  
 affection good Manners. Vices. Calumny. Slander. Detraction.  
 Defamation. Sowing seeds of Discord. Invective Ranting &  
 30 Backbiting. Obscenity. Most things have three kinds of Names in  
 Language 1 Such as barely denote the Object without any affection  
 of the speaker 2 Such as denote Esteem Approbation or Liking in  
 the Speaker 3 Such as denote Dislike Contempt or abhorrence in  
 the Speaker.<sup>93</sup>

35 Of Oaths and Vows. Definition. Act of Religion.<sup>94</sup> Est  
 Iusjurandum affirmatio religiosa, quod autem affirmate quasi Deo  
 teste promiseris id tenendum est. Cic.<sup>95</sup> Nullum vinculum ad  
 adstringendam Fidem majoris nostri jurejurando artius esse  
 voluerunt. Idem.<sup>96</sup> Lawfully onely on weighty occasions. Quakers.

Common swearing. Imposing of oaths unnecessarily or where there is temptation to perjury.<sup>97</sup> By whom we should Swear.<sup>98</sup> The form of an Oath.<sup>99</sup> The end of an Oath, to give security. The kinds of Oaths.<sup>100</sup> The Strict obligation of an Oath, & guilt of Perjury.<sup>101</sup> An Oath brings no new obligation but strengthens what we confirm by it.<sup>102</sup> Cannot oblige to what is unlawfull.<sup>103</sup> /

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**Of the Price of Things.**<sup>104</sup>

10 Mar 25

That men may be enabled to make exchanges with one another in traffick it is necessary that some price or value should be put upon things which are the subjects of traffick. Traffick and Commerce when carried to a considerable pitch produces a wonderfull Change in many of our Notions, but in none of them does it produce a greater Change than in our notions of the Value of things which may be the Subjects of Traffick. If we suppose a man cut off from all traffick and exchange with other men. The several things which he accounts his property would return to their original Value pretty nearly, and be estimated by him pretty much in the same manner as they would be before traffick was begun. In this case a man will value everything according to the benefit advantage or pleasure he receives by it. Land can be of no use to him but as far as he tills and plants it or feeds his cattle on it or hunts on it. If he is not straitned in these Articles anybody may take the rest that pleases he does not think it worth occupation. If he had a forrest of the finest Wood a very small part of it serves all the purposes he can have for wood. If he had full granaries he can consume but a very small part before the grain is corrupted and all that is over is of no more value to him than the clods of the field. If he had Gold and Jewels in abundance they would probably be of no more value in his eye than a bud of tulips. He would not even find that pleasure in his riches which they borrow from the vanity of a man who enjoys them in civil Society because they could procure him no courtship or flattery.

35 Yet even in this unsocial State the man would put some comparative estimation upon the things that were usefull or agreeable in proportion to their Use or agreeableness. Thus if we should suppose his habitation to take fire and that it is not in his power to save every thing: he would endeavour to save in the first place what he valued

highest and other things in proportion to the value he put upon them. However the comparative value he puts upon things in this State is measured onely by his own wants & Desires.

5 If we now shift the Scene and suppose him to have access to exchange his property with other men for what he had occasion for, his notion of the Value of things will by degrees be altered will become more complete and be subjected to a different Measure. For although he will at first be disposed to consider onely his own wants and desires in rating things, he will soon learn to take in the desires and wants of other men into the Account. Thus we shall suppose 10 him / very dextrous above others at making bows and arrows and that he has a store of this kind by him of which he uses onely a few of the best. The rest are of no use to him and he could without any loss give them for a song. Others however who have not the skill to 15 make so good for themselves will desire to have them and find great benefit from what is altogether useless to him. They will therefore be willing to give him for one of them something which he values. And now his superfluous bows acquire a value in his own Eye, for every thing is worth what it brings. So that we see this value or 20 Estimation is produced Solely by the wants and desires of others not by his own. He will in like manner learn to put a value upon all his Superfluities which may be usefull to others. Nay he will learn to estimate his time his Labour and his Skill upon which before he could never have thought of putting a price now his labour for a day or a week may be valued according to the value of what is produced 25 by it. Indeed in his former State we may account among his superfluities all the time which was not employed in providing his conveniencies. But now this as well as other superfluities can be turned to account.

30 The State of Society not onely gives a value to those things which the proprietor put no value upon before Such as all his superfluities that can be usefull to other people & even his superfluous time his skill and ingenuity: but it likewise greatly alters the value of things which men formerly put some value upon. Every part of my property is more or less valuable according to what I can have in 35 exchange for it. And what was highly valuable to me in a solitary state because usefull and Scarce, may perhaps in the Social State be easily had from others who have more than they have use for. So that their plenty diminishes the value of my small pittance.

We may add that if there were no Exchanges among men no man would ever think of putting any value upon what was the property of another man because it is not attainable by him and therefore can be of no use to him. There may be fruitfull fields and rich materials on the Moon for what we know but we never think of valuing the commodities of that planet while we despair of having any traffick thither. But we put a value upon the Lands and moveables of other men as well as upon our own because they are in commerce and are bought and Sold.<sup>105</sup> /

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We have seen how men estimate things in a solitary or unsocial State and what a mighty change is made in the value they put upon them in a social & commercial State. But it may still be asked by what rule or measure must they be estimated in this last State or can any such rule be discovered.

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It is difficult in this question to separate the Provinces of Morals and Politicks. Though I have given such Definitions of these as make them very Distinct Sciences, & propose to handle them distinctly yet; yet in this particular Inst(ance) and in some others they meet as it were together. In Politicks we do not enquire what is Right or wrong, but what are the Causes that produce such or such Events in Society; or on the other hand what are the Effects and consequences that follow from such or Such constitutions. But in Morals of which Iurisprudence is a part we enquire what is right or wrong in human Conduct, what conduct in us is consistent with the rights of our fellow Men & what inconsistent.<sup>106</sup> When therefore we here enquire into the natural Measure of the Price of things in Society it is that we may be able to determine more justly the limits of right and wrong in those Contracts wherein a price or value is put upon things. It can admit of no doubt that a Man taking advantage of the Ignorance or Necessity of another may take an unreasonable or exorbitant Price and thereby Injure his Neighbour; even the civil Laws of all Nations suppose this and allow redress for such injuries. But it is impossible to determine when we injure others in this way without knowing upon what principles the Natural and Reasonable Price depends & how it is measured. /

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As the natural Use of Commodities which are the Object of Commerce is to Supply Mens real or Imaginary Wants and to gratify their desires; their greater or less subserviency to this End, must be the Natural Measure of their Value. But this Value is by



no means the measure of their Price. It is onely the utmost limit beyond which the price cannot go. A Man that sells his Birthright for a Mess of Pottage, shewes that in his present distress he values the one more than the other.<sup>107</sup> Yet on ordinary occasions he would  
 5 pay no more for his pottage than the Market price. When Bargains are made there is a kind of Conflict between the desires of the buyer and those of the Seller. The buyer desires to have the Commodity as cheap as he can have it. The Seller desires to have as good a price as he can get. These contrary desires after some  
 10 bidding and Edging like lines that cross one another meet in a certain point, and there the bargain is struck. Since therefore the price of things hath such dependance upon the wants of individuals real or imaginary their opinions whether wise or foolish, their desires whether reasonable or unreasonable; it may seem impossi-  
 15 ble to discover any fixed principles or Rules by which it is governed. The Price of things in Commerce is an Event that depends upon a vast Multitude of Contingencies which may seem beyond the reach of Human Prudence and foresight. Indeed I apprehend it is so in some Measure and that the most skillfull in Subjects of this  
 20 Nature ought to be modest & even somewhat diffident in their Conclusions.

Yet as the Rules or Maxims that Regulate the price of things are a subject of Curious Speculation to a Philosopher, & as the knowledge of them, if they can be known, is of great importance in a  
 25 Commercial State Every Attempt to discover and ascertain such Maxims is laudable. Nor ought we to despair of being able to do something in this way that may be of Use. Although the Many are made up of individuals, yet is it easier, in many cases relating both to Government & Commerce, to guess at the behaviour of the  
 30 Many than at that of individuals taken Separately. The jarring passions interests & views of individuals when thrown together into one Body, make a compound whose nature is more fixed and determined than that of the Ingredients of which it is made up. Wisdom and Folly Reason and Passion Virtue and Vice blended together  
 35 make a pretty uniform Character in the Multitude of all Nations and in all Ages. It is from this Uniformity of Character in a Multitude of Men, notwithstanding the diversity of the Individuals that all general Principles relating both to Government & Commerce must be derived.

When a man brings his Goods to Market he deals with the Multitude of which some indeed would easily be imposed upon but there are others as quicksighted as he is himself. & he must deall equally by all otherwise he will soon lose his character. He must  
5 likewise consider that if he fixes his price too high other dealers in the same commodity may undersell him and draw all the business. Prudence therefore will lead him to sell at what is, in his own Estimation, a moderate Profit.

If one Man had the sole Property of any of the Necessaries of Life, & power to defend that Property he might make all others /  
4/m/17,1v give him what he pleased to demand, that is he might make them his Servants. Thus Pharaoh by monopolizing the Corn of Egypt became proprietor of all Egypt.

But when the Necessaries or Conveniencies of Life are in many  
15 hands who have separate interests, & cannot combine or have not such Confidence in each other to fix a price upon their Commodities, every ones desire of a high price is tempered by his fear of having his good lie on his hands while others sell theirs, at a reasonable rate. As all goods that come to Market are produced by  
20 human Labour or Ingenuity, the price of them may be considered as the price of that Labour & skill which is employed in fitting them for the Market. This is the lowest price they can have for any considerable Time. However there is not such an equality among men even {in} the State of Nature, far less in political Society but that  
25 days Labour of one Man may bear a much higher price than a days Labour of another man. One mans Labour may require a Stock of expensive Tools, a Stock of Materials, or of Money, it may require an expensive apprenticeship or education; Fashion regulates the manner in which persons of particular occupations & professions  
30 must live and that must in a great degree regulate the price of their Labour or the profits of their profession. Some Occupations require uncommon talents or such a degree of study and Thought as the bulk of Mankind are incapable of, and where such uncommon Endowments are turned to supply the Wants or gratify the desires  
35 of a few of the Rich or a great many of the Multitude they bear a high price. Such a Poet as John Milton might at this day make a Fortune in Brittain, tho an hundred years ago he could hardly make bread. I know no reason for this but that the productions of such Artists were much less in demand at that time than Now.

From these genneral Observations we may form some Notion of what we may call the Natural or Reasonable Price of a Commodity To Wit that it is such as enables those by whose Labour the Commodity is produced to live in the manner in which according to the Customs and Opinions of the Country, they are entitled to live. I cannot fix any other Standart of what is commonly called a Reasonable Price. Yet this very Standart must vary as Customs and Opinions vary in different Countrys or change in the Same country in Succession of time.

It may seem to be a necessary consequence of the Definition we have given of the natural price of Commodities, that when the Expence of living among all ranks even down to the lowest is increased by the spread of Luxury the Price of the Commodities produced by their Labour should be increased nearly in the same proportion. I think indeed this must be the case & I apprehend will be found to be the case where the Labourers are not more industrious, nor have discovered any methods of producing the same quantity of the Commodity in the same time by fewer hands, either by the help of Machines or by the division of the work into different professions or by some such Means. /

I believe it will be found that the wages of a Journeyman Taylor Weaver watchmaker or of a journeyman in any other profession is risen within a hundred years much in the same proportion as the expence of his living. yet the work produced by him may bear no greater price now than it would have done then. This may be the case when by greater skill & industry or by new Inventions or the division of Labour, when I say by any or all of these means his work turns out to as good account to the Master as it would have done in former times when the wages was less.

But when human Wit is at a stand in the invention of better ways of making any particular commodity then the price of it must rise as the expence of living of the people employed in it rises.<sup>108</sup> /

Profits of those who sell may vary from other circumstances Such as that the commodity often lyes long on hand, is perishable, got or kept with danger much subject to variation in the price. Combinations to raise prices wrong. Monopolies in order to raise the price to an unreasonable height no less so. The Utility and Necessity of a common Measure. The properties requisite in such a Measure. Universal Estimation & permanent Value. Durable easily

conveyed. Divisible into Small parts. Silver & Gold fittest for this Purpose. They may either {be} 1 weighed. Alloy to prevent wearing. or 2 Coined & Stamped. The intention of the Stamp to ascertain their Value. Gives no value. The Practices of Princes and States in debasing the Coin or Raising its Nominal Value Contrary to Equity. These practices injurious to individuals because Money is not barely a Measure of the price of things but it is a commodity which has an instrinsic value according to its weight and fineness. The counterfiting coining clipping or washing the Coin highly Criminal or uttering false coin knowingly. Melting it down or exporting it made criminal in most nations.<sup>109</sup> /

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### Contracts 1 Beneficent

1 Mandatum <sup>110</sup>

2 Commodatum & mutuum gratuitum.<sup>111</sup> In the first the real Right to the thing is not transferred, in the Mutuum it is, and the obligation on the borrower is onely personal.

3 Depositum.<sup>112</sup>

Mar 26

### 2 Onerous Contracts.

Permutatio,<sup>113</sup> Emptio venditio. Delivery present or future. Payment present or future,<sup>114</sup> Monopolies Engrossing.<sup>115</sup> Locatio Conductio,<sup>116</sup> Mutuum onerosum.<sup>117</sup> Usury.<sup>118</sup> Society.<sup>119</sup> Wagers.<sup>120</sup> Games of Chance. Lottery private and Publick. Insurance. Purchase and Sale of Annuities and Reversions.<sup>121</sup> Purchase of Stocks on Time. Interpretation.<sup>122</sup>

Mar 27

### Obligations quasi ex Contractu <sup>123</sup>

Negotium Utile Gestum. Possession bona fide. In absense.<sup>124</sup> In Pupilarity or Minority in Passion Melancholy or disorder of Mind.<sup>125</sup> In Parents acting for their Children. In purchase of Slaves or in Educating Children that are Destitute.<sup>126</sup> The Rhodean Law de jactu.<sup>127</sup>

Mar 28

Of Rights arising from the Delinquencies of others.<sup>128</sup> *Damnum datum sive ab incio sive nostri commodi causa.*<sup>129</sup> *Culpa lata, levis, levissima.*<sup>130</sup> The imperfect Obligation to pass over such faults when not very hurtfull, to put the best construction upon the Actions of others no punishment due. The obligation of the delinquent to indemnifie. *Dolus.* The obligation of the delinquent to reparation to repentance & to Security.<sup>131</sup> The Right of punishment.

Apr 1

We had considered the rights arising from the Injuries of others. The person Injured has a right to demand just Reparation & future Security. In trifling injuries indeed which are not like to be so often repeated as to become intollerable it is the part of a great and generous Soul to forgive, to do good for evil & if possible to overcome evil with good, to make friends to enemies by patience forbearance, and lenity. This Conduct towards those who offend us is essential to true greatness of Mind. It is an imitation of the benignity and forgiving Disposition of the Supreme being which we have must have recognition & ought to imitate. Where benevolence humanity and pity the noblest disposition that can lodge in the human breast, I say where these take possession of the heart they will check that waspish pronness to resent and revenge every little injury. The Romans reckoned it noble and a sign of true greatness of Mind *donare inimicitias rei publicae*<sup>132</sup> to sacrifice their private quarrels to the good of their country. And every man perceives that in this they judge Right - The Same principle will lead us to sacrifice private Resentment in slight injuries at least to the peace of human Society and the common good of Mankind.

The proneness to revenge every Injury is always most remarkable in Savages with whom courage and ferocity is accounted the highest accomplishment of a Man. The revenging of Injuries and affronts gives frequent occasion to display courage & is honoured upon this Account / and the inclination to revenge is strengthened by indulgence as all other inclinations are, & still more by being considered as honourable.<sup>133</sup> Yet even Savages think it honourable to forgive injuries done by parents by children by brothers by near relations or those to whom we ly under great obligations. The notions even of Savages therefore lead us to conceive that the more we are united

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with others in Society the more we ought to be disposed to a mild and forgiving disposition towards them. Now the most perfect virtue leads men to that gentleness and indulgence to others which the Savage sees he ought to exercise towards his Children, while he  
 5 wants that noble enlargement of Soul which ought to extend his good affections beyond the narrow limits of his own family.

The Symbol which our Scotch Kings were wont to put upon their Coins of a Thistle with this Motto *Nemo me impune lacessit*,<sup>134</sup> suits well enough with the Notions of a barbarous age. And this is the  
 10 best apology we can make for it. A Canadian chief at the head of his tribe might think himself honoured by such a motto. And our Kings were probably little better than Indian Chiefs when this Symbol was invented. If we consider the state of a Mind enflamed by resentment and meditating upon Revenge: It is surely of all  
 15 states the most undesirable the most unlovely. A fever or Ague cannot be more opposite to the sound health of the body than this State is to the health and happiness of the Mind. From these considerations I think it appears that that gentle forbearing and forgiving disposition of mind which was so amiably exemplified and  
 20 so strongly inculcated by the divine Author of our Religion is so far from being contrary to reason, & good morals, that it appears even to Reason and to the Judgment of our moral faculty to be a magnanimous and heroical Virtue. As it is an imitation of that attribute of the divine Nature which we most admire and love and to which  
 25 we are most indebted. It is the natural Issue of an enlarged and ardent affection to mankind. It is {the} noblest sacrifice we can make to the publick good, & the peace and happiness of Society. And one of the noblest exertions of Self government, in subjecting our strongest passions to the dominion of Reason and  
 30 Conscience.<sup>135</sup> Juvenal last Pag

Juv At Vindicta bonum, vitâ jucundius ipsâ.  
 Nempe hoc indocti, quorum praecordia nullis  
 Interdum, aut laevibus, videas flagrantia causis:  
 35 Quantulacumque adeo est occasio, sufficit irae.  
 Chrysippus non dicet idem nec mite Thaletis  
 Ingenium dulcique Senex vicinus Hymetto  
 Qui partem acceptae, seva inter vincla cicutae  
 Accusatori nolet dare.

. . . quippe minuti

Semper et infirmi est animi exiguique voluptas

Ultio: continuo sic collige, quod vindicta

Nemo magis gaudet quam faemina.

5 Semper et infirmi e Saturra 13 lin 180 &c<sup>136</sup>

10 But after all there may be injuries so atrocious in their own Nature or so frequently repeated and persisted in that a man of the best disposition for his own Sake, for the sake of his family or friends, or for the sake of the publick may think it his duty to seek redress of them. He has a perfect right to do so for every injury, and if his Virtue and Generosity leads him to give up this right where the publick good requires such a sacrifice the same disposition will lead him to assert and maintain his right where the good of others or of the publick requires that he should do so.

15 However in seeking redress of such Injuries a good man will act consistently with his Character. He is not guided by resentment / or Revenge but by nobler principles.

20 Resentment sometimes is used to signify a sudden impulse to resist whatever hurts us. This {is} an Instinct common to men and Brutes. Sometimes a Sense of injury done us this peculiar to man. But not intended to be a principle of action.<sup>137</sup> It is however Lawfull to repell Atrocious injuries and defend our selves even by violence when all fair Means have been Used in Vain.

25 The just Causes of War in the State of Nature.<sup>138</sup> The means to prevent it and to terminate Differences. The Rights of the Conqueror.

Of Duels.<sup>139</sup>

30 May 2 1771

Of the Right of Punishment of crimes that do not directly injure us but are of bad Example & hurtfull to Human Society grounded upon this that every man ought to do his utmost to promote the common Good of the human kind.

# VI. Duties to Others: Individuals in Oeconomical Jurisprudence

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8/iv/7,4r

## Book 2 Of the Rights & Duties arising from the Domestick Relation.<sup>1</sup>

Apr 2

### 1 OF THE MARRIAGE RELATION.

Account of the Oeconomy of Nature in the Continuance of the  
several species of Animals.<sup>2</sup>

5       The passion of Love between the Sexes in the human kind. – Lays  
a foundation for a lasting Union between one Male and one female  
and points out the Marriage alliance as the way in which Nature  
intended that the human Species should be continued. This passion  
gives an attachment & preference to one object which it is impossi-  
10       ble to have to more than one. It cannot be satisfied without a like rec-  
iprocal attachment and preference in the person beloved. Jealousy –  
The offspring of Love. Love always supposes some worth and dignity  
in the object. It is the most disinterested passion and leads the lover  
to undergo any toil to run any hazard that may make him agreeable  
15       to the object of his love or may promote her happiness, without  
desire of any other reward than the good acceptance of his Service  
& a mutual Return of the like affection. This passion supposes some  
equality between the persons and is not satisfied with a return that is  
the effect of force or fear. Nature has so contrived our make that the  
20       same Object does not equally attract this passion in all men. Variety  
of Faces proportions Graces and Manners in the Sex, suited to the  
various modifications of this passion in Men. Every thing which  
excites the passion must appear amiable and must either be some  
agreeable quality in the person or the sign of some agreeable Quality.



The different Modifications of this Passion in the different Sexes.

The Effects it produces in both. The qualifications in Men that are chiefly amiable to women & vice versa.

- 5 Polygamy.  
Divorce.  
Prohibited degrees of Consanguinity.<sup>3</sup> /

8/iv/7,4v OF THE PARENTAL RELATION<sup>4</sup>

10

Apr 3

Parental Authority Founded in the Parental Affection and the indigence of the Children. Their need of Education and Instruction. Not upon Generation, as Hobbs grossly imagines.

- 15 Here we are first to consider the Grounds of the Authority of Parents, for that which is the foundation of it must likewise be the measure of it and set bounds to it. 2 How far it Extends and what are the mutual Obligations of Parents and Children. 3ly Make some observations upon the Civil Laws of different nations with respect to the parental Authority. Hobbes Notion Filmers.<sup>5</sup>
- 20

- All Original Authority over Persons according to Grotius arises from one or other of these three Sources Generation, Consent Delict. To which we may add want of Reason on the part of the Person Governed and The Tuition of the person undertaken from a Benevolent Motive on the part of the Person Governing. The necessities of Children & the Parental Affection. 1 It is the intention of Nature that children should be reared & educated. 2 Nature points out the parents as the Persons to whom this b(1)essing is committed not onely by their being the instruments of the Childs being brought into the World but chiefly by the Natural Affection planted in their breasts.
- 25
- 30

- The desire of offspring natural to those who enter into the relation of Marriage. The affection of husband and wife strengthened by it. Affection disinterested. The duties of Parents. How far their Authority reaches.<sup>6</sup> Relation Perpetual. Common to both Parents.<sup>7</sup> May be lost by esposing, selling. Cruelty. Duties of Children in the family in Marriage. Foris familiat.<sup>8</sup> Adoption. Tutory. When children have a separate Property.
- 35

OF THE RELATION OF MASTERS AND SERVANTS<sup>9</sup>

Apr 4

5 The Notion of Servitude which prevailed among ancient Nations  
That the Servant was the property of his Master, inconsistent with  
the Natural Rights of Men, and their natural equality.<sup>10</sup>

10 How this Servitude was introduced. Its effects among the  
Romans & Greeks.<sup>11</sup> The pretences by which it is justified.<sup>12</sup>  
Domestick & farming Servants.<sup>13</sup> The former gradually disused as  
Christianity prevailed. The latter still continue in some parts of  
Europe. Adscriptitij Glebae.<sup>14</sup> The steps by which their condition  
has been bettered.

# VII. Duties to Others: Individuals in Political Jurisprudence

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8/iv/10,1r Apr 9 1765

We have considered the Rights and Duties arising from the several Relations of the Domestick State. And it now remains that we consider the Rights and duties that arise from the political State or that of Civil Government. There is onely one Relation that is proper to this State, that of civil Magistrates and Subjects. Before we enquire into the reciprocal Duties and rights of these it will be necessary to consider the Origin of Civil Government and the ends of it and what principles in the human Constitution are adapted to it.

There can be no civil Government whatsoever which does not in some degree abridge the liberty of those who live under it. I Now the Love of Liberty is so natural to mankind that there must be some considerable inducement to engage them to give up their Natural Liberty & to subject them selves to laws and taxes. And be bound to that submission and allegiance which is due to the civil Powers. There is nothing which men desire more earnestly than independence and it is not to be supposed that any man will subject himself to the will of others and submit his actions to their controul without some urgent cause.

If we should suppose a ships crew to lose their master & mate upon a voyage. They will very naturally chuse a master and submit themselves and their ship to his direction because it is absolutely necessary to their preservation that they should be under some government. If they should be cast away upon some unknown Island or coast, and found it necessary for their common safety either against wild beasts, or savage inhabitants, to keep united they would still chuse a leader and submit to his command. But if they should be cast upon some desert Island where every man

could provide for his own Subsistence independant of the rest; their political union would probably cease, and every man would chuse to live after his own way. Nor indeed does there seem to be any need for a political Union in such a case if all of them were  
5 wise and good, and had plenty of Subsistance. Men may enjoy the pleasure of mutual conversation they may trafick with one another they may do mutual good offices or unite their strength and council upon occasion in order to promote any common good without being under any common political Government. And if  
10 they are just & human and peaceable and wise they may live happily together without any common superior. Thus in all ages many tribes have lived without laws and without Government. And thus most of the nations in North America live at this day, unless when they make war upon any of their Neighbours. But  
8/iv/10,1v there are two / causes that require a political union among people living in such an independent way. First when they are invaded by any foreforeign power which might easily subdue the individuals one after another and yet may be resisted by the united force of the whole. In this case necessity will lead them to unite and to chuse  
20 a leader or commander to whom they will be subject in the operations of the War. When such wars are rare and happen after long intervals, the power of the commander will probably cease when peace is restored. And then men will resume their natural liberty and independance. And this is the State of the North  
25 Americans.

2 Another cause of Mens uniting into political Bodies is for the redress of private injuries. When the wants of men are multiplied and the innocence and simplicity of Life gives way to Avarice Fraud and Rapacity, Men find themselves under a necessity of having  
30 Laws and Magistrates for the protection of their Rights and the punishment of Crimes.

The first regular Governments would probably be established among those who were very frequently engaged in war, among whom that Government and Discipline which they found neces-  
35 sary in War would continue in the short intervalls of peace untill the people being accustomed to it, or conceiving themselves benefited by it came to acquiesc in it. This probably is the reason why the most ancient Governments we know of Were kingly Governments.

Apr 10

When kingly Governments consist of a small territory such as one city and its dependant territory, so that the Subjects meet often together and inflame one another with their resentiments they will not bear a kingly Government when it degenerates into Tyranny. They commonly change into an Aristocracy or Democracy as the Ancient states of Greece and Italy for the most part did. But when a kingly Government spreads out far and includes a number of tribes which differ in their customs and Manners, and have little communication with one another. Such large kingdoms affording great Revenues to support the Royal Dignity, it becomes too strong for the people. They cannot unite together to obtain a redress of their Grievances and therefore must bear them however heavy. The Monarch enlarges his power more and more supports it by a strong standing Army and becomes master of the lives and properties of his Subjects and transmits his power to his children after him. The people long inured to arbitrary Government grow tame and think no more of / changing the form of their Government than of changing the Elements or the course of Nature. Such Governments we see established throughout Asia. Where every Subject is taught an absolute submission to the Sovereign as the most essential article of his Religion and when an Executioner comes with orders from the Sovereign or his Visier to Strangle him without a trial without so much as telling him his crime, he receives the Order as devoutly as if it came immediately from Heaven, spends his last breath in praying for the life of the Emperor and extends his neck to the bowstring. Under such Governments people come in some Generations to lose all sense of the Rights and privileges of human Nature & become incapable of Liberty. The ignorance in which they are kept & the slavish doctrines of their Religion prevent any sentiments of liberty from entering into their minds or if they can enter fear and Superstion and that pusillanimity which are their natural Effect immediately stifle every desire of asserting their Liberty. So wonderfull Effects does Education and Custom produce in the minds of men a Tyger and a Lamb are not more contrary in their natures than a Canadian and an Asiatick. You would think it impossible that they could be of the same Species. In The one country we see creatures each of whom would die a thousand deaths rather than own

any son of Adam as a Superior. In the other Myriads who are willing to stretch their necks to the sword of one Man and adore him most devoutly when he gives orders to strike off their head. Yet there can be no doubt but an Asiatick brought up from infancy among the Canadians would be a canadian in ferocity and the Spirit of independancy and on the other hand a Canadian brought up from infancy in the dominion of the great Mogul would be as tame as other Asiaticks. So flexible is the human Disposition by Education and Discipline that it may with regard to political Notions be wound up to the highest Spirit of Liberty and Independance, or brought down to the lowest pitch of Servility even to adore the chain that binds it. Nor do we see less flexibility in mens Religious opinions which when formed entirely by Authority and Education may be eith(er) wound up to the most extravagant heights of Enthusiasm or sunk into the most abject Superstition.

It is impossible that any just Notions of Political Government can be found either among those who never were under any Government or who never had any Idea but of the Worst. We must turn our eyes to the more mild and Equitable Governments if we would form any / Notions of the Ends that may be attained by Government from which we must deduce both the rights of civil Governours and the duties of Subjects. And Europe is the happy Continent which can afford us any Models from which we can form any just notions of Political Government. Moderate Governments give occasion to the noblest exercise of human Power. To the most Enlarged Affections. They tend to make mankind gentle without Servility They furnish occasion for the most extensive plans for the improvement of Mankind in Knowledge in Virtue in Arts that are usefull to life.<sup>2</sup>

The ends first in view in voluntary Submission to Government would be protection from forreign enemies and the preservation of private Rights.

A Government of Laws better than independence. To obtain redress of injuries by the Law better than by private revenge. The burthen of taxes compensated by the advantage of defence by the Laws and arms of the State.

There are certain Instincts that lead men to submission Respect to Age and Wisdom and Valour.

Respect to the Rich & powerfull & especially to those who have had riches and power transmitted to them through a long Race of Ancestors. These instincts ground a Natural Subordination and men more easily submit to the Government of Such.<sup>3</sup>

5

Apr 11

From the Account we have given of the Valuable Ends that may be attained by a good plan of Government it is evident that such a Plan is indeed the greatest Good that can be bestowed upon a Nation. Why? Hence Legislators so highly revered. Every Man ought in his Station to contribute his best endeavours for the preservation and defence of such a Government. And to be ready to sacrifice his Life and all that is dear to him in so important a Cause. Every man ought to pay that obedience to the Laws of his Country which is necessary to the good estate of Government. No state can subsist without a veneration for its laws. Also a Respect to those who have the administration of the Government.

10

15

8/iv/10,3r

As men may suffer hardships and injuries under the best Government from iniquity of witnesses or of Judges these ought to be patiently born. This / is a Sacrifice to the publick weal. Socrates Conduct Noble and worthy of the Prince of Philosophers.

Those who have power or have any share of the Legislature ought to be very watchfull to discover the diseases of the body politick and to apply timely remedies.

25

A Political Society cannot be justly constitute but by consent express or tacit. How far it is binding upon the posterity of those who first consented to it. A Government unjustly imposed may afterwards acquire Right by tacit consent.<sup>4</sup>

30

The great mischief arising from violent changes of Government shew that they ought not to be attempted without urgent Necessity.<sup>5</sup> A Political Body once constituted may be considered as one person.<sup>6</sup> Enter into Covenants & pledge the publick faith which ought to be sacred both towards forreign States and Subjects.

35

Succession to Crowns or other Magistracys must be determined either by the Laws or Custom. Both which imply tacit consent. Of the Active obedience due to the Supreme Power. Of the Passive Obedience due to the Supreme Power and the Doctrine of Non Resistance. The Opinion of Grotius. Filmer & Leslie and Atterbury. Sidney Locke Milton Hoadly.<sup>7</sup>

Apr 12

Apr 15

5 We have now considered the most important Rights of Men and the  
Obligations corresponding to them.<sup>8</sup> Not only those that are com-  
petent to the State of Natural Liberty but those also which arise  
from the Oeconomical and Political State. And I think it appears  
10 from the whole that notwithstanding the different Systems which  
have been advanced both in ancient and Modern times with regard  
to the Abstract Nature of Virtue and the Principles of moral  
Approbation, yet there has been very little difference among think-  
ing men with regard to that tenor of Life and Conduct which Men  
ought to hold, and in which real Worth and virtue consist. The  
15 Great Virtues of Prudence Temperance Fortitude and Justice are  
revered by Epicureans Platonists Peripateticks & Stoicks. They  
not only agree in paying homage to those venerable Names but  
they agree also in the Notions they affix to them. So that we may  
venture to affirm that there is not any other Science wherein men of  
20 thought and Reflexion in all Ages have so universally agreed as in  
what is right and laudable and what on the other hand is wrong &  
8/iv/10,3v blamable / in human Conduct. In mens Notions of Justice in par-  
ticular we may see such a correspondence in the laws of Different  
Nations and in the Sentiments of Poets Historians Orators and  
25 Moralists as may satisfy us that the rules of Justice & Equity have  
a real foundation in the nature of things as well as the laws of  
Nature which take place in the spheres. and that the former are  
more obvious to our Moral Faculty than the latter are to our  
Reason and Understanding. Ingenious and thinking Men have  
30 from the beginning of the World been inquisitive about the laws of  
the planetary Motions and of the other Phaenomena of the  
Material System, as well as about the dutys of men in their different  
Stations and relations yet after blundering about the former and  
groping in the dark for thousands of Years, we are at last in Europe  
35 within a century and a half to get in to the right tract and to dis-  
cover some light. But with regard to the other, if we examine the  
wise and thinking of all ages and in all parts of the Globe what is  
their notion of a just and a good man a good father a good citizen  
a good prince we shall find them all agreeing in one System.  
Confutius and Zoroaster, Indian Bramens European Druids and



the Incas of Peru as well as the more refined Greek and Roman  
 Philosophers heathens Mahometans and Christians had the same  
 notions of Virtue and of Justice. The points wherein men have  
 differed in their opinions with regard to what is good and what is ill  
 5 in human conduct are both few and of small moment when com-  
 pared with those wherein they agree. so universal a Consent of  
 Mankind with regard to the main points of right and wrong of  
 virtue and vice ought to satisfy the most sceptical not onely of the  
 reality of the distinction between the one and the other, but also  
 10 that the Almighty has taken care of the constitution of our Nature,  
 to make this distinction so apparent and obvious that it requires no  
 deep enquiry or laborious reasoning to discover it. That moral  
 Faculty or Conscience which God hath planted in every mans  
 breast distinguishes right conduct from wrong in most instances no  
 15 less immediately, no less clearly and certainly than the taste discerns  
 sweet from bitter. If you consult this inward Monitor in your calm  
 and serious moments, you can hardly judge wrong in any important  
 point of Duty. In all the fair train of Virtues there is {not} one  
 which is not immediately approved by our Moral faculty when it  
 20 has been a little strengthened by exercise, and when the noise of our  
 passions is hushed and its calm voice attended to. Can any of you  
 8/iv/10,4r hesitate a moment / whether he ought to approve the love of truth  
 the love of Virtue and the love of Mankind? Whether he ought to  
 approve a plan of life and conduct dictated by these noble princi-  
 25 ples and pursued with manly prudence and firmness. Whether he  
 ought to approve of that Magnanimity and Elevation of Mind  
 which sets a man above the fear of death, the scorn or the flattery  
 of fools the allurements {of} sensual pleasure and the pursuits of  
 avarice and ambition. & determines him to pursue the paths of  
 30 Wisdom and Virtue; trusting to God the care of his happiness,  
 while he concerns himself about what is his duty. Does not every  
 man immediately approve of Justice and Veracity and fidelity? Nay  
 does not every man perceive that these virtues which regard what  
 we call the perfect Rights of Mankind constitute but a very imper-  
 35 fect Character? they make a man innocent & harmless and that is  
 all. an attention to what we commonly call the imperfect rights  
 of Mankind constitutes the perfection of Virtue. Generosity  
 Compassion readiness to bear with the infirmities of others to  
 forgive injuries to stifle resentment and to overcome evil with good.

This is true goodness, which every man approves as a more noble & elevated pitch of virtue than meer Justice.

I shall onely further observe before I have done with this Subject that there are many minute points both of Jurisprudence and of  
 5 Casuistry which deserve not the attention of a wise and a good man. There is a minute Philosophy in this as well as in other Subjects of enquiry. The territories of Virtue and vice are often divided by a line which is not easily discerned. But why should any man be anxious to discern it in this case, unless it be that he wants  
 10 to go as near to the borders of vice as possible without passing the forbidden limit. This is not the temper of a good man he will keep at such a distance as makes it unnecessary [to] for him to define this limit very nicely when it is not obvious. When intricate and difficult cases occur which can seldom happen, after using the best help in his power, endeavouring to purge his mind of prejudices partiality  
 15 and passion, imploring sincerely the divine Aid. And then he may safely follow his best judgment, confident that as his own heart condemns him not he shall not be condemned by the righteous & equitable Judge of all. If he errs it is an invincible error which will not be imputed to him. The best of Men may err, nor is it the will of God that we should be altogether exempted from Error. But he who takes pains to be rightly informed and acts according to the light of his Conscience shall never be condemned. /

8/iv/10,4v It has been shewn that in the State of Natural Liberty every Man  
 25 has a certain Freedom & Independance, a Right to direct his own Actions so as not to injure others, and that he cannot justly be deprived of this his Natural Liberty without his consent or Fault. Now a Political Body is made up of such Men naturally free; but who have by consent given up a part of their Natural Liberty to the  
 30 State for the sake of common Utility. They have submitted to be governed by the Laws of their Country. To have their Rights judged & their controversies with their fellow Subjects determined in a legal Manner and not by violence or private Revenge. They have likewise engaged to bear their Share in the defence of the  
 35 Publick. And to tender its interest as they do their own. These are the Obligations naturally implied in a Mans being a Member of a State, & by coming under these Obligations, he is in return entitled to that protection in all his Rights and Privileges which the Laws afford, to defence against forreign enemies & a just redress by Law

for injuries done to him, in his Person his goods his family or his good Name.

5 From this it appears that the Subjects of a State have not all the Liberty which Men in the State of Nature have they having given up a Part of their natural Liberty to the State for a valuable consideration. But as that which they have parted with is given to the State, it is evident that the whole Political Body considered as one Moral Person, has all that Liberty and independance upon other States, which Men in the State of Nature have upon one Another.

10 As Men by becoming Citizens or Members of a State do not cease to be Men; so the Obligations of the Law of Nature which bound them as Men continue to bind them as Citizens. The Will of the State being the Result of the United Wills of the Citizens, is subject to the Laws of Nature & Bound to conform to them. And  
15 as there is all ways a Right corresponding to every obligation it will follow that States have Rights belonging to the Community of a Similar Nature with those which belong to individuals.<sup>9</sup>

# VIII. Duties to Others: States

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7/vii/21,1r

## Of the Law of Nations

Justinians Def. Quod communis Ratio inter omnes homines constituit. Lex Naturae quod Natura omnia Animantia Docuit.<sup>1</sup>

5 The Law of Nations is that by which the Conduct of States or Independent Political Societies ought to be governed.

A State Defined.<sup>2</sup> May justly be considered as a Moral Agent Having an Understanding, A Will, Active Power. A Conscience of Right and Wrong. Capable of Possessing Property of Contracting, plighting its Faith keeping or violating its engagements. Doing good to its Neighbours or injuring them. States would be the most dangerous and unjust Combinations if they were not under Law.

10 The Notion of some Minute Politicians that however men in private life are bound by the Laws of Justice and Equity yet it is impossible to govern States properly without sometimes transgressing the Rules of Justice. But as in private Life nothing is more contrary to true Wisdom than cunning and Deceits and the crafty man is often taken in his own Snare and falls into the pit which he dug for others. The same thing holds no less with regard to political Wisdom. The Reputation of Justice and integrity in the Administration of a Nation is of the highest Moment in its transactions with other Nations. On the contrary dark and crooked Politicks, always sink the credit of a Nation and make it suspected and hated.

15 Cic de Leg. Nihil est quod adhuc de Republica dictum putem, et quo possim longius progredi, nisi sit confirmatum, non modo falsum esse illud, sine injuria non posse, sed hoc verissimum, sine summa Justitia Rempublicam regi non posse.<sup>3</sup>

20 Cic de Leg Lib 2 § 8. Ad Divos adeunto caste. Pietatem abhibento. Opes amovento. Qui secus faxit Deus ipse Vindex erit. Separatim nemo habessit Deos neve novos: Sedne advenas, nisi publice adscitos privatim colunto.<sup>4</sup> /

7/viii/21,1v Every one who has any Idea of War; every one who reflects on its terrible Effects and the fatal Consequences it draws after it; will easily {see} that it ought not to be undertaken but upon the strongest Motives. Humanity is shocked when the Sovereign of a State, lavishes the blood of his most faithfull and bravest subjects, without the most pressing Necessity and exposes a Nation to the calamities of War when it might enjoy peace in honour and safety. And if to this inhuman disregard to the peace & happiness of his own People he adds injustice to those whom he attacks; what a complication of Guilt does he draw down upon his own head? He is answerable before God & his own Conscience for all the Evils he draws upon his people, & all the Evils he brings upon his enemies The blood Spilt the Cities pillaged the provinces ruined. The Widows & Fatherless his sword has made cry to heaven for vengeance, and will one day stand up in Judgment against him. He is accountable, as the first Cause, for all the disorders the Violence and the Crimes, which are the natural Consequences of the tumult and License of War. And must answer for these things before the tribunal of the Righteous Judge of all the Earth. Every State therefore in Order to preserve Peace & prevent War ought to deal justly by other States.<sup>5</sup>

# IX. Supplement to Duties to Ourselves

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7/vii/8,1r The Duty we owe to ourselves or the Duty of Selfgovernment may be not improperly comprehended under three of the Cardinal Virtues of the Ancients, to wit those of Prudence Temperance and Fortitude. It might no doubt admit of other Divisions and has by most authors been otherwise divided; but this Division seems to be as little liable to Objection as any other, & Antiquity has stamped an Authority upon those names, which intitles them to Respect.

## Of Prudence

10 From the Poverty of Language or from some other Cause it happens, that many of the Names we give to the Virtues have some ambiguity & particularly that they are sometimes used to signify a Quality of the Understanding or Contemplative Powers of the Mind, sometimes to signify a Quality of the Heart or of the Active Powers. Indeed it is hardly possible from the Nature of the thing that it should not be so; because, although Virtue is properly seated in the Heart; yet it necessarily supposes some Degree of Understanding and cannot possibly exist without it. And although there may be a great Degree of Understanding without virtue, yet there can be no Virtue without some Degree of human Understanding. Hence it happens that the Names of Particular Virtues are often given to that degree or that Quality of the Understanding which they include & without which they cannot Exist. This Observation is more applicable to the Name of Prudence than to that of almost any other Virtue, because it seems to borrow more from the Understanding than other Virtues do.

25 Another general Observation it is proper to make with regard to the Division of the Virtues. To wit. That we are not to expect such a Division of them as answers precisely to the Logical Rules of  
30

Division. Logicians reckon a Division faulty, when that which is contained in one branch of the Division, may also fall under another so as to belong to both. Therefore they lay it down as on(e) of the general Rules of Division that the Parts into which a thing is  
 5 Divided should be so distinct that everything belonging to the whole should belong to one of those Parts and to no other. / And  
 7/vii/8,1v this is, no doubt, a good Rule when it can be observed, but it may happen in some Cases that Divisions may be very proper and usefull in which this Rule is transgressed. As every Man has two Parents  
 10 and may justly be said to belong to the families both of Father & Mother so Virtuous Actions have often many Parents, so to speak, to whom they may properly be said to belong, & to which they may be referred. The Noble Behaviour of Scipio to his fair Captive was an Act of Justice, without doubt; but it was not the less an Act of  
 15 Magnanimity, of Temperance & even of Prudence.<sup>1</sup> This connexion and Alliance of the Virtues, by which they often mingle so sweetly together in producing one and the same Action has been Observed by Cicero. *Offic. Lib 1.*<sup>2</sup>

We must not think it strange if in every Division of the Virtues  
 20 we can frame, we find them encroaching as it were upon the Provinces of each other & mingling together in the production of one and the same Virtuous Action. This must often happen from the very Nature of things, nor is it to be accounted a Sign of an improper Division. In that Triumvirate of the Virtues of selfgov-  
 25 ernment we have named, it may be truly said that Temperance is Prudence that Magnanimity & Fortitude is Prudence they are Sister Virtues of the same Blood, differing in Form but yet having a great Resemblance. *Facies non omnibus una, nec diversa tamen, qualem decet esse Sororum.*<sup>3</sup>

To return to the Virtue of Prudence I understand by it the Habit  
 30 of determining properly what ends we ought to pursue and by what means they are to be pursued. Wisdom and Prudence are sometimes used as Words of the same Signification, & sometimes they are distinguished. When we distinguish them. Wisdom may be more  
 35 properly applied to the choice of our Ends & Prudence to that of the Means of Attaining them. /

7/v/5,5r Fortitude is a Virtue that supports the Mind under calamities and misfortunes, enables it to encounter Difficulties and fortifys it against all undue impressions of Fear. The Effect of Misfortunes

and Calamities in those who want this Virtue. The Effect of Fear. This Virtue may be acquired even by Savages.

5 A Good Conscience & the hope of future happiness the best foundation of Fortitude. This Virtue always had in the highest Esteem among Mankind. The Brave and the Magnanimous have always the highest Seat in the Temple of Honour. The Admiration we have of it is apt to Sanctify in our Esteem even bad actions that are attended with it. Hence the Glory of Conquest and the Rights it is supposed to give over the Conquered. Hence the point of  
10 honour in Men is accounted Courage. The passion for warlike Glory. The practice of Duelling.

We ought to beware that the admiration of brave Actions do not blind our judgements & hinder us from perceiving what is amiss in them.

15 Temperance and Fortitude both included in Self command. Necessary to every Man that pursues any End in Life. /

7/v/5,5v From the General Account we have given of Temperance it is evident that is Nature in General consists in Restraint. It is the bridle of the Mind by which whatever is excessive and too impetuous in our  
20 Motions is checked and tempered. There is no Natural Appetite or Passion of the Mind that is useless, far less noxious when properly regulated. As every part of the human body has its use and there is not a bone or a Muscle a gland or a ligament which does not contribute more or less to the perfection of the whole. The same thing may  
25 be said of the natural constitution and structure of the Mind. Every natural Appetite every Natural Affection and Passion has its use in the human Frame and the want of it would be a defect and of bad consequences in such Creatures as we are. The Virtue of Temperance does not therefore consist in eradicating our Appetites and Passions.  
30 This were it in our Power would onely be an effort to make ourselves other Creatures than God has seen fit to Make us. Our appetites and passions as far as they are a part of our Constitution are good and it is the bussiness of Temperance to indulge or restrain them according to the Rules which Reason prescribes, and so as that they may  
35 answer the intention for which they were given us by Nature. The Rules of Restraint or of Temperance are in general so obvious that we can seldom be in any doubt with regard to them.

The Appetites of hunger and thirst require such qualification as is necessary for the health & vigour of the body. Plain and simple



fare is in general best adapted to this purpose. When the body is in a sound State & properly exercised the periodical returns of Natural Appetites, are sufficient to direct us when and in what measure we ought to eat and drink. The natural appetite when neither vitiated  
 5 by bad habits, nor provoked by the refinements of Luxury, I conceive to be a better rule than either the prescriptions of Physicians or of Casuists. For as men have various habits of body the Rules that suite one May be very unsuitable to another. That is to be accounted intemperance in eating or drinking which is injurious to health,  
 10 which clouds the Understanding, or inflames the passions, which is too expensive for a mans fortune, consumes too much time or makes him less fit for any of the duties of Life than a stricter Regimen would. It is intemperance to hunt after refinements and delicacies in eating and drinking, these vitiate the Natural Taste, produce false  
 15 and unnatural Appetites, which are never to be satisfied.

Temperance with regard to the amorous Appetite.

The desires of Knowledge Power Riches Honour.

Passions of Resentment Party Zeal Emulation Revenge.

Mortification. a voluntary Restraint in things Lawfull may be  
 20 approved or disapproved according to the end and Measure of it.

# X. Natural Law and Natural Rights

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7/v/3,1r

## Jurisprudentia Naturalis<sup>1</sup>

Feb. 17

Lex vel latius vel Strictius Sumitur. Lex latius Sumpta est Norma secundum quam Operationes Entis cujusvis diriguntur vel dirigi debent.

5

Omnia Entia seu animata seu inanimata. Bruta pariter atq Rationalia habent suas Leges. Legum Entium Inanimatorum & Brutorum Exempla. Lex Physica seu Naturalis est norma Secundum quam Operationes Naturae Irrationalis actu diriguntur. Lex Moralis Norma secundum quam Actiones Entium Ratione praedictorum & perceptione Recti & honesti dirigi debent. Uti omnes Naturae Irrationales habent Leges suas Physicas ita omnis Natura Rationalis habet Leges Suas Morales ex Constitutione Naturae ejusdem derivatas.

10

15

Naturae Divinae leges. Angeliae. Humanae.

Leges Physicae locum habent non Solum in Naturis Irrationalibus verum etiam in Rationalibus. Exempla in Corporibus nostris in Anima Associatio Idearum & Passionum Instinctus Appetitus. Leges Morales solum in Entibus Ratione & perspicentia honesti & turpis peditis.

20

Leges Physicae semper Servantur nec unquam transgrediunt <ur> Leges Morales non item.

25

Omnis Scientia est vel Relationum Abstractarum quae eadem sunt sive Res Relatae existant sive non Existant atq haec Scientia Mathesis dici potest generalius sumpto Vocabulo, vel est rerum phenomenoon id est Qualitatum vel Operationum Actu Existentium; & dici potest Historia quae rursus est vel Naturalis vel Civilis. vel tertio versatur Scientia de Legibus ex Phaenomenis Eruendis. Ex Phaenomenis innotescunt Leges tum Physicae tum

Morales. Scientiae Artibus Subjiciuntur Artes vero praecipuae  
 Mechanica quae versatur circa operationes a proprietatibus omni  
 Corpori communibus pendentes Materiam quatenus est Mobilis  
 Iners impenetrabilis. Chemiam quae versatur Corpora in organi-  
 5 zata quidem sed virtutibus certis predita circa operationes quae  
 pendent a proprietatibus quibusdam corporibus inorganizatis com-  
 petentibus. Qualia Sunt Metalla Sales Aer Aqua Terra Oleum  
 Sulphur lumen &c Spiritus Essentiales seu rectores. 3 Vegetantium  
 10 Cultura. 4 Animalium Brutorum Cultura. 5 Gymnastiae Medicina  
 Cultura Animi. 6 Musica. 7 Poetica cujus partes sunt artes  
 Plasticae. 8 Logica. 9 Rhetorica. 10 Economica. 11 Politica. /

7/v/3,1v Sicut Galenus Philosophus pariter atq Medicus Summus  
 Humani Corporis partes in Similares & dissimilares Distribuit ita  
 Naturae omnis Corporis Nobis Notae partes sunt vel Similares  
 15 vel Dissimilares. Prioris generis Sunt Elementa et alia Corpora  
 maxime Simplicia. Dissimilares sunt Coniecta ex his quae sunt vel  
 Organizata vel Inorganizata.

Actiones lege Dirigendae sunt qui. nobis volentibus fiunt  
 Nolentibus non fiunt.

20

### {Natural Jurisprudence

{Feb. 17

{Law is understood in either a wider or a narrower sense.  
 25 Law understood in the wider sense is a norm in accordance with  
 which the workings of any entity are directed or ought to be  
 directed.

{All entities both animate and inanimate, brutes and rational  
 beings alike have their laws. Examples of the laws for inanimate  
 30 entities and animals. The physical or natural law is a norm in accor-  
 dance with which the workings of a nature which is irrational in its  
 activity are directed. The moral law is a norm in accordance with  
 which the actions of entities endowed with reason and the idea of  
 right and virtue ought to be directed. Just as all irrational natures  
 35 have their physical laws, so every rational nature has its moral laws,  
 which are derived from the constitution of that same nature.

{Laws of divine, angelic, human nature.

{Physical laws apply not only to irrational natures, but also to  
 rational ones. Examples in our bodies and, in the mind, the associ-

ation of ideas and passions; instincts; appetites. Moral laws apply only to entities endowed with reason and full understanding of virtue and vice.

{Physical laws are always observed and never broken; moral laws not so.

{Every science is either about abstract relations, which remain the same whether the things related exist or do not exist, and this science can be called mathematics, if the word is taken more generally; or it is about the qualities of things – i.e. about phenomena – or about the workings of existing things in action; and this can be called history which again is either natural or political. Or in the third place the science concerned with laws to be elicited from the phenomena. From the phenomena laws become known, which are either physical or moral. The sciences are comprehended under the arts; the particular arts are: Mechanics which is concerned with matter in so far as it is mobile, inert and impenetrable, that is with operations which are dependent upon the properties which are common to every body. Chemistry which is also concerned with bodies which are inorganic but endowed with certain qualities, i.e. with operations which depend upon properties belonging to certain inorganic bodies. Such are metals, salts, air, water, soil, oil, sulfur, light, etc. Essential or governing spirits. 3 Culture of plants. 4 Breeding of brute beasts. 5 Gymnastics; medicine; culture of the mind. 6 Music. 7 Poetics which includes the plastic arts. 8 Logic. 9 Rhetoric. 10 Economics. 11 Politics.

{As Galen, philosopher as well as excellent medical man, divided the parts of the human body into similar and dissimilar, so the parts of nature known to us in all bodies are either similar or dissimilar. Of the former sort are the elements and other most simple bodies. The dissimilar parts are put together of those which are either organic or inorganic.

{Actions to be directed by law are those which are done when we will and not done when we decline.}

The chief Inducements that lead Men at first to Unite under one Government or Political Society, are either their Defence against

common Enemies, who might be superior in Strength to individuals; but may be resisted & overcome by a great Number united under one Government; or secondly their protection against injuries from one another, which is most effectually provided for when all agree to refer their Differences to common Judges or Magistrates, who are empowered by the whole body to Judge between Man and Man; & who can enforce their sentences by the publick Authority to which every Man must submit.

In the first Periods of Civil Government Judges are chosen of those who have the highest Reputation for Wisdom & Integrity and they are left to determine causes between Man according to Equity without being tied down by laws. An Upright Judge although he had laws prescribed for him for regulating his Decisions, would be at no less {Pains} to discern in most cases what justice required. He would by degrees be led by his Reason & Conscience to frame to himself a body of Rules which would render his Decisions uniform in like cases and agreeably to the general Rules of Justice.

But as Judges may through the Corruption of human Nature be swayed by Interest or Favour or Enmity where their Power is unlimited. Therefore in all improved and well regulated Governments Laws have been enacted by those to whom the Supreme Power in the Society is committed. By such Laws the mutual Claims which the subjects may have one upon another are ascertained, the Crimes which {have} been most commonly committed are defined, a method of trying Men for such Crimes, is prescribed, & the punishment due to them, or the Reparation to the person injured, is determined. When such a body of Laws are framed in a Government, much less Power is left to the Judge, because he is bound to judge according to the Law, & every Man may beforehand know what actions are contrary to Law that he may avoid them; and what Reparation he may expect from the Judge for injuries done to him by others.

Laws that are thus made for the direction of Judges, will be framed according to the Notions of Justice & Equity, which the Lawgivers have had. They will allways be few & imperfect at first and gradually enlarged and explained / according as bad men invent new ways of being injurious to their Neighbours, or of eluding the laws already made.

If we compare the Laws that have been made by different Civilized Nations in different Ages & in Different Parts of the Globe, for protecting the Subjects from mutual Injuries and preserving their Rights we find a wonderful Agreement and Harmony. which demonstrates that all Men have the same Notions of Equity and Justice for the preservation of which Laws have been contrived.

It cannot be expected that the Laws of any Nation should at first be digested into a Systematical Order and Method. The Laws of a Nation are commonly the work of Ages, made as occasions call for them. and when they are multiplied to such a degree as to make the knowledge of them very difficult, it is then onely that men find it necessary to reduce them under certain Heads & Divisions into a regular Body and System. The Laws of the Jews given by God himself were not ranged in any nice Systematical Order nor indeed were they so bulky as to require it. Neither were the Laws of the twelve Tables very systematically digested. The first methodical System of Laws I know of was that which by Justinians Order was compiled from the Body of the Roman Laws after they were grown to an Immense Bulk, too great for the whole Study of a mans life. /

8/iv/4,1r March 19 1766<sup>3</sup>

The Rights and obligations of men grounded upon the laws of Nature do not require deep or subtile reasoning to discover them. Nor indeed to they admit of it. The principles of Justice and Humanity are intended by the Author of Nature to be the Rule of every mans Conduct towards his fellow man. And if they were not very obvious to mens Reason or Conscience in Ordinary cases they would not be fit to be a rule to all mankind. A man who has a real regard to Justice and humanity and has had his faculties moderately exercised in judging what they require, although he has never studied a system of Jurisprudence will in most cases see at one glance what is the right and what is the wrong in conduct. If in some cases he is at a loss to determine they are cases that rarely occur and comparatively of less importance in conduct. For who can possibly doubt whether it is an unjust thing to murder to maim or wound an innocent person that has done us no injury, to deprive him of this Liberty when he used it inoffensively, not to allow him to judge for himself in matters that concern his own

opinion or practice, to hinder him the free & innocent use of things which are no mans property, to rob him of the fruit of his honest labour and industry, to hurt his reputation by slander and calumny, or to impose upon him by lying and fraud. Does it  
 5 require any reasoning to prove that those things are unjust? that they are gross violations of right? No surely. Yet this is all that is meant by writers on Natural Jurisprudence when they enumerate the natural rights of men & reduce them to these heads that have been mentioned of a Right & to the integrity of our Limbs, to  
 10 Liberty, the Use of our private Judgement, to the Use of things common & to the good use of our Labour, to Character, & to fair dealing. Instead therefore of offering Reasons to support truths that are self-evident when considered in general I shall mention some Cases which may illustrate what is the right & the wrong  
 15 proof with regard to the preservation of our lives in circumstances that are more difficult. /

8/iv/4,1v The Case of Mr. Burnet in the East Indies.

Of two Exkimaux Savages on the coast of North America from Ellis voyage.<sup>4</sup>

20 Where there is a great inequality of the Persons and one must die for a good man one would dare to die.<sup>5</sup>

The two friends at Syracuse. Damon & Phintias. Pythagoreans.<sup>6</sup>

The Conduct of a General must of the two Extremes rather lean to temerity than excessive caution against personal Danger.<sup>7</sup>

25 Cases wherein a man may not beat the utmost pains or expense in his power to save his Life.<sup>8</sup>

Case of the Primitive Christians under persecution.<sup>9</sup>

Slight injuries to be generously passed over in many cases.<sup>10</sup> /

7/vii/1a,1r Of the different states of Men according to which their Rights are divided viz the State of Natural Liberty the Oeconomical State & the Political State.<sup>11</sup>

As the duty we owe to the Supreme Being results from the Natures of God & of Man, and from the Relation we stand in to him as our Creator Benefactor and Moral Governour and Judge,  
 35 So all the Duties we owe to Men result from the common Nature of Men and the Relations they stand in to one another, and the same thing may be said of the Rights; For wherever there is Duty and Obligation on one hand, there must be a corresponding Right perfect or imperfect on the other.<sup>12</sup> When we say that a Man ought

to do such an Action, that it is his Duty, that he is under a Moral  
Obligation to do it these are all Phrases of the same Import, & the  
meaning of them is precisely the Same. Every Action which is my  
Duty towards another Man or which I am under a Moral  
5 Obligation to perform towards him is either an Act of Justice  
strictly so called, and in that Case he has a perfect Right to demand  
the prestation of that Action, or it is an Act of Probity and  
Beneficence, & in that case he has an imperfect Right to expect it  
of me. So that in every Case where there is duty or moral  
10 Obligation on one hand to any Action respecting our fellow  
Creatures there is on the other hand a Right perfect or imperfect  
in the person or persons for whose benefits the Action is done. Now  
the Relations between Man and Man are some of them transient  
and of short Duration and often varying, others are more perma-  
15 nent and durable.<sup>13</sup> Of the first kind are the Relations between the  
Debtor & Creditor, between the Person that executes a  
Commission or trust & the person who employed him or gave him  
the commission, between the Speaker and the hearers, and many  
others. But these Relations being transient, & the Rights and  
20 Duties resulting from each of them being few, they are on that  
Ground less proper to be made the foundation of a General  
Division of the Rights of Mankind. It is a General Rule in Division  
that the Members of the Division ought not to be so many, but that  
the Mind may be able to comprehend them all as it were at one  
25 View. For this Reason Writers in Jurisprudence have chosen to  
divide[s] the Rights of Mankind according to the more permanent  
Relations which men may stand in to one another. And these  
Relations are general or Special.<sup>14</sup> The General Relations are these  
which every Man bears to every Man as an intelligent Moral Agent  
30 of the same Nature and Species with himself. The Special Relations  
are those which a Man bears to one or more individuals of  
Mankind but not to the whole Species. And the most remarkable  
& permanent relations of this kind are either Oeconomical or  
Political. The Oeconomical or Family Relations<sup>15</sup> are those that  
35 subsist between the different Members of the same Family, and  
they are three unequal to wit the Relation between husband &  
Wife, between Parent and Child & between Master & Servant. &  
two equal between children of the same family & between the  
Servants of the same Family. The Political Relations<sup>16</sup> are those



which Members of the Same Kingdom or Commonwealth have to each other, which are either that of fellow Subjects and Citizens or the Relation of Magistrate & Subject. /

7/vii/1a,lv Hitherto we have mentioned onely the Rights of Individuals, but  
 5 there are Rights also Competent to Communities or Political Bodies.<sup>17</sup> When a Number of Men Unite in one Body under one Government in order to carry on some common Interest or End, by their Joynt Understanding Will and Power. Such a Confederacy or Association is called a Community, & such a Community in many  
 10 Respects resemples a Person so much that it may very properly be considered as a Person. It has its Right and Obligations as a Community. For as a Community it has an Understanding a Will and Active Power. As a Community it may do good Offices or Ill to other communities or to individuals. It may be hurt or injured as a  
 15 communitie. It may enter into Engagements, & may either keep faith or break it. It may be said to have a publick Conscience as well as a publick Understanding Will and Power. Those who are entrusted with the Government of such a Community are under an obligation to act fairly and conscienciously in their publick  
 20 Capacity as well as in their private. And the Community having agreed to be guided by the Judgment and Conscience of their Rulers in their publick Affairs must take the disadvantages along with the advantages of this confederacy. What is well done by the Governing part brings Honour & Advantage to the Whole  
 25 Community. And on the contrary if the Governing part does injustice or injury the whole community must bear the Disgrace and be bound to make reparation. The Injury was perhaps in reality the deed onely of a few who act for the Community & are entrusted with the Government of it, but as this Injury is defended by the  
 30 Power of the Whole, so the reparation may be taken of the whole or any part; by those that are injured. The injured cannot distinguish the Guilty parts from the innocent when all is united in one body. And when those who are not the Authors of the Injury submit to be made the instruments of it they must take the consequences,  
 35 and be liable to reparation when the principal authors cannot be discovered or cannot be reached.<sup>18</sup>

The most considerable communities of Men are Nations, that is Kingdoms or Commonwealths who are united under one Government & who have no Superior on Earth. These are commonly

called States, or Political Bodies. The Relation which different States who have no Common Superior have to each other is very Similar to that of different Individuals who have no Common Superior. And therefore there must be a very great Analogy between the Rights of States with respect {to} each other, & the Rights of individuals who have no common Superior. Yet there are several good Reasons why the Rights of States or of Nations should be considered by themselves as a Particular Branch of Natural j urisprudence.<sup>19</sup> For first. Although we have observed that a State may be considered as a Moral Person in many / Respects, yet the Nature of a State and of an individual Moral Agent is in other Respects different, and this difference of nature must be the foundation of some difference with regard to the Rights that result from the Nature and Constitution of the Person. 2. The Political Person is a Human Work. The Political Union of a Community is framed by Men and may be dissolved by Men. The individuals of which it consists may be disjoined from it and lose their Relation to the Body politick others may acquire this Relation who had it not before. Hence there are many Questions of Right relating to the Formation and Dissolution of Political Bodies or States, many Questions relating to the Adopting new Members into the Political Union or excluding those that are members which cannot be considered in treating of the Rights of Individuals. 3. The Rights of a State with regard to the Persons and fortunes of its own Members; and Matters that belong peculiarly to this part of jurisprudence and fall not properly under consideration when we consider onely the Rights of Individuals. 4. The Grandest Operations of States, in Legislation in judicature in Revenue in Police in taking care of the Morals the Manners and Religion of its Members. As well as the great Operations of War of Treaties of Peace & Commerce & Alliance with other States, cannot be set in a just light while we consider onely the Rights of Individuals. For these Reasons the Public Rights Competent to political Bodies or Nations as such have justly been considered as a distinct and most important Branch of Natural Juris Prudence.

Having given this general View of the capital Branches of Natural Juris Prudence. I shall divide it into four Parts. In the first we treat of Rights and obligations of individuals & secondly of Communities or Nations. The Rights of individuals shall be divided into three heads first Those that result from the Nature of

Men and the common Relations which all mankind bear to each other as Men. 2 The Rights & obligations resulting from the relation a Man bears to a family of which he is a Member. & 3 The Rights and Obligations arising from his relation to that particular State of which he is a Member. That part of Natural Jurisprudence which treats of the first May be called Private Jurisprudence. That which treats of the second Oeconomical Jurisprudence and that which treats of the Third Political Jurisprudence. /

10  
7/vii/1a,2v

### Natural Jurisprudence

The Duty which we owe to other Men, and which is all included under the Virtues of Justice and Humanity, has been within 180 years past Handled at great Length and in a Systematical Form by many Eminent Authors. And has commonly obtained the Name of Natural Jurisprudence.

Authors upon this Subject: Grotius, Hobbes Selden Puffendorf. Barbyrack upon Grotius & Puffendorf. Carmichael upon Puffendorf. Locke. Hoadly. Hutcheson Burlamaqui Vattel. Coccej.<sup>20</sup>

20 Reasons for treating of the Imperfect Rights of Man in Jurisprudence.<sup>21</sup> Wherein the difference of these properly Consists. Not in this that the Perfect Rights are such whose observation is necessary to the being of Society. Nor 2 In this that the Perfect Rights may be vindicated by force. According to the first Perfect & imperfect Rights would differ in Degree not in Kind. /

7/vii/1c,2r It ought to be shewn how each of the three kinds of rights mentioned below is related to the moral faculty & how grounded upon it. Our Rights either respect things as their Object or they respect the Actions of others or our Own Actions.<sup>22</sup> Right(s) that Respect things as their Object are called Real Rights. A full Right in a thing implies<sup>23</sup> 1 That I may without transgression of the Law possess the thing and exclude others from the possession of it 2 That I may take any Use of it I please that is not contrary to the law of Nature nor hurtfull to my fellow creatures 3 That I may give it away or sell it upon any condition that is not contrary to the law of Nature or hurtfull to my fellow creatures. 4 That no other person without injury can interrupt or hinder me from this Exercise of my Right. A Partial Right to a thing implies some one branch or part of the full right in it.

2 Where a Right respects the Actions of Others, it implies an  
 Obligation upon the Other person to some Prestation or Action for  
 my Benefite or to forbear all such Actions as are to my Detriment.  
 A Man is never said to have a Right to any thing that he thinks hurt-  
 5 full to him. because a Right is always conceived to be some thing  
 beneficial & not hurtfull. We do not say that a Thief has a right to  
 be hanged, because it is not supposed that any man would chuse to  
 be hanged. So that the Act or Prestation of another which I have a  
 Right to must be something that tends to my benefite or which I  
 10 conceive tends to my benefite. Rights of this Kind are called  
 Personal Rights. It is onely our Personal Rights that are divided  
 into Perfect and imperfect. When another person is oblidged in  
 Justice to a certain Action or Prestation for my Benefit so as that he  
 injures me if he withholds it I have a perfect Right to that Action  
 15 or Prestation. But when his Obligation is not that of Justice but  
 Charity humanity Probity my Right is said to be imperfect.

3 The 3 Kind of Rights are those that respect my own Actions.  
 My Right to do such an Action implies that I may do it without  
 transgressing the Law or being obnoxious to censure And this  
 20 Right extends 1 To all Actions that I am obliged to do. 2 To the fore-  
 bearing all unlawfull actions but 3 Most properly to all actions that  
 are indifferent, which I may either do or omit without a trespass. We  
 may call this the Right of Liberty. The Rights of Liberty and  
 Property are all Perfect Rights becos the violation of them is an  
 25 Injury. As all Personal Right implys an obligation upon others That  
 obligation is either to do something for my Benefit or Not to do  
 something that tends to my Hurt. May not the first Kind be called  
 Special as the Obligation terminates on some particular person or  
 Persons. And the last General. May not Jurisprudence be referred  
 30 to the two Heads of Rights and Obligations. Under the first are  
 included Liberty & Property. & Obligations. to do or not to do. A  
 Part of a mans Liberty is to resent and Redress injuries or even to  
 shew a due Resentment of unkindness & disrespect. It is one of a  
 Mans Obligations to pay a due Regard to the Liberty & property of  
 35 Others.

A Mans Liberty and Property include what he may and may not  
 do His Obligations what he ought and ought Not to do.

Obligations that are indispensible Liberty that cannot be given  
 up make what are called inalienable Rights of Man.<sup>24</sup>

The Knowledge of a Mans Rights makes him sensible of his Dignity, but it is the Knowledge of his obligations that makes him sensible of his Duty. Our Rights shew what we may do but our Obligations point out what we ought to do.

5 It seems to be a good Reason for treating of Jurisprudence as consisting of Rights and Obligations rather than consisting of Rights onely or of Obligations onely because though it be in reality the same Science in all these three different ways of treating it, yet there are some cases where the Obligation is the  
10 Consequence of the Right not the Right of the Obligation. Thus the Obligation not to take away my Liberty or my Property is grounded upon my having a Right to such Liberty or such Property but it cannot here be said that my Right to such Liberty or Property is grounded upon the Obligations of others not to  
15 take it away. Therefore it is most proper to treat of Liberty or property as Rights; And when we consider them in this View The divisions and subdivisions of them will be most simple Natural & intelligible and it is enough to bring them in general and at the head of obligations.

20 On the other hand my Right to certain Prestations from others is grounded upon their Obligation to perform those prestations. But it cannot be said on the Contrary that a mans obligation to pay this debt or to keep his promise is grounded upon my Right to those prestations. The obligation is immediate and is easily understood  
25 without having recourse to the others Rights. Therefore all Acts and prestations which I am bound to are most naturally treated under the head of Obligations. /

7/vii/1c,2v 1770 March<sup>25</sup>

30

- 1 Rights may be Distinguished according to their Nature into Perfect Imperfect & External.
- 7 Private rights are div(id)ed According to their Foundation into Natural (General Absolute) Oeconomical & Political (Special Hypothetical).
- 35 6 According to their Subjects into Private Common and Publick.
- 3 According to their Objects into Real & Personal.
- 4 According to their Source into Natural Innate and Adventitious or acquired

- 5 The Last according to the Manner of Acquisition into original and derived.
- 2 According to their Mutability as they are separable from the person into alienable and unalienable.

5

These Distinctions of Rights are necessary to be understood 1  
Because they frequently Occur in Writers & Secondly Because the  
Divisions and Subdivisions of this Science are grounded upon  
them.

10

March 12

15

The Rights of individuals are either such as belong to them as Men,  
or such as belong to them as Members of a Family, or 3<sup>ly</sup> Such as  
belong to them as Citizens that is Members of a particular State.  
Writers on Jurisprudence conceive 3 Different States of Men corre-  
sponding to this Division of their Rights. The State of Natural  
Liberty or the State of Nature by some called Status Solutus.<sup>26</sup> 2  
The Oeconomical or Family State 3 The Political State. Puffendorf  
calls the Rights belonging to the first of these States Absolute  
Rights & those belonging to the two last Hypothetical.<sup>27</sup> The  
former do not suppose any thing but that the Person who is the  
Subject of them is {of} human Nature. The later Suppose moreover  
that he is a Member of a family or a Member of a Commonwealth.  
The three States I have mentioned must not be conceived to be  
exclusive of each other so as that a Man by being in one of these  
states is excluded from the Rights belonging to the others. It is  
evident that a Man by being subject to Government or a Member  
of the commonwealth does not cease to be a Member of a family,  
he may be both at the same time and enjoy the Rights competent to  
both, although some of his Oeconomical Rights may be limited by  
the laws of the State yet they are not annulled and the greater part  
of his Oeconomical Rights are not at all affected by his being a  
Member of the State. In like Manner, when a Man becomes a  
Member of a Family or of a State he continues to be a Man and the  
Rights competent to him as a Man continue with him unless in so  
far as they are limited by his Family or Political State has given  
them up to the Family Relation or to the Community.

25

30

35

Cic pro Milone cap 4 Lex non scripta sed nata, quod non  
didicimus, accepimus, legimus, verum e natura ipsa arripuimus,

hausimus, expressimus; ad quod non docti, sed facti, non instituti sed imbuti sumus.<sup>28</sup>

5 Having painted the Causes that led Authors in Modern times to reduce in to a large & complex System the Duty we owe to our fellow Men, under the Name of the Law of Nature or Natural Jurisprudence It is proper to point out the Utility of such a System. That it has been generally conceived of great Utility is very evident from the high Reputation which the first-rate Authors on this Subject have acquired the encouragement they have met with from  
10 princes & States and the Establishments of the Profession of the Laws of Nature & Nations in most of the States & Universities of Europe.<sup>29</sup> Its Utility appears 1 As it directs a Man in his Private Conduct. 2 As it may direct Legislators. 3 Judges & Interpreters of the Laws. 4 As it directs the Conduct of Independent Nations towards each other. /

15 7/vii/1b,1r As the Writers on Natural Juris Prudence have treated of the Duty we owe to our fellow Creatures by delineating in a Systematic Manner the Rights competent to Men by the Law of Nature, I have endeavoured to explain what is meant by the Law of Nature and  
20 what is meant by mens Rights grounded upon this Law. I have explained the most common Distinctions of Rights. Which with regard to their Nature are of three Kinds Liberty Property. or Real Rights and Personal Rights. The Personal are distinguished into perfect and imperfect to which some add External.

25 According to their Subject Rights are Private common or Publick. According {to} their Source into innate & adventitious, the Adventitious into Original and derived.

Our Property and Personal Rights are alienable, And some Parts of our Liberty, but there are other Parts inalienable.

30 Lastly Rights are divided according to the Relations on which they are grounded into Natural, oeconomical & Political. The first are called by Puffendorf Absolute the two last Hypothetical.

To Every Right in one Person there is an Obligation corresponding in some other person. So that the Right in one party and the  
7/vii/1b,1v Obligation upon the other / really mean one and the same thing.

Although there is a real Obligation on one party corresponding to every right in another yet it cannot be said that there is a real Right corresponding to every Obligation. 1 For not to speak of our Obligation to the duties of Self Government Obligations to

Generosity Beneficence have not rights corresponding to them. 2  
 There are other Obligations grounded upon some Error or wrong  
 Judgment in our selves or in others. As when a Man is believed to  
 be the lawfull proprietor of something which he has really stolen  
 5 When a Debt really payed is believed by the debtor to be still owing.  
 3 There are Cases where we are obliged to yield to an unreasonable  
 claim to avoid a greater evil when a Judge gives an unjust Sentence,  
 When a Nation unjustly attacked by war and unsuccessfull is  
 obliged to give up its just right to prevent worse consequences. In  
 10 these Cases there is an Obligation on one Side which does not con-  
 stitute a corresponding right on the Other.

From this it follows that the more compleat Knowledge of the  
 Rights of Men, may not imply a Compleat Knowledge of their  
 Obligations, and consequently that a perfect Delineation of Mens  
 15 Rights is not a perfect Delineation of the duty we owe to our fellow  
 Creatures. But to obviate this objection against treating of the duty  
 we owe to our fellow Creatures by dilinating the Rights of Men the  
 Writers of Jurisprudence have by a kind of Fictu Juris (as the  
 Lawiers call it) conceived a kind of Right or rather a shaddow of  
 20 Right answering to the Obligations we have now Mentioned. These  
 they have called imperfect Rights where the Obligation is not an  
 Obligation of Justice but of Benevolence & where the obligation on  
 one part is grounded upon Error, or upon the necessity of yielding  
 to an unreasonable claim to avoid a greater Evil. They have feigned  
 25 a Shaddow of Right in the other party which they call a external  
 Right. by these fictions of imperfect Rights and external Rights  
 Right & Obligation are made to correspond perfectly so as that  
 there is not onely a real Obligation corresponding to every Right,  
 but there is a Right perfect imperfect or external corresponding to  
 30 every Obligation. And a compleat delineation of Mens Rights  
 perfect imperfect and external is in reality a compleat Delineation  
 of the Obligations of Men or of the duty they owe to their fellow  
 creatures.

Some Writers of Natural Jurisprudence have been of the Opinion  
 35 that this Science ought to be confined to the perfect Rights of  
 Mankind & that the imperfect Rights should be alltogether left out.  
 But the authors of greatest Reputation Grotius Puffendorf  
 Barbeyrac Hutcheson have in their Systems comprehended both.<sup>30</sup>  
 And I apprehend with good Reason 1 Because it is very difficult to



ascertain the precise limit between the two. 2 Because a Man does not fullfill his duty by paying a regard to the perfect Rights of Mankind if he neglects the imperfect. /

7/vii/1b,2r But it may perhaps be more proper to treat of the imperfect  
5 Rights of Men & indeed of all their Personal Rights under the  
Notion of Obligations Because 1 In Personal Rights, the Right on  
one hand is grounded on the Obligation & cannot be conceived  
without, whereas in the Rights of Liberty and Property the corre-  
sponding obligation is rather grounded on the Right. 2 Because  
10 mens Rights point more immediately to their Dignity & their priv-  
iledges, but their Obligations point more immediately to their Duty.  
Our Rights shew what we May do but our Obligations shew what  
we ought to do.

# XI. Property

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7/vii/1c,1r

## Of Property. 1 Original<sup>1</sup>

We have shewn how the Property of things is acquired originally. To illustrate this Matter, We may conceive the goods and Accommodations wherewith the Globe of this Earth is stored by  
5 the bounty of heaven as an Entertainment provided by the Author of Nature for his Creatures who are the Guests. The Sea the Air and Earth The Hills and valies the rivers and Streams the Woods & Caves & corn the Bowels of the Earth Make one great Table furnished with plenty and variety not onely for Man the Noblest Guest  
10 but for all his fellow Animals that are created by the bounty of heaven to partake of the Entertainment but on account of the Inferiority of their Nature may be considered as Servants to Man and to be served after Man. Every man takes his place and is made welcome by the Master of the Feast to take what pleases him.  
15 Hitherto every thing is common. It cannot be said that this man has a right to be served out of this dish that Man out of that. Every man may be Served where he likes best, and is guilty of No ill manners by being so, provided he be not troublesom to others. It may well be presumed that it is the Will of the Entertainer that everyone of his  
20 Guests should be served according to their taste and Choise: But that no one should incommode another. When therefore I help my self out of the common Store This is occupation. If any man should pretend to take from me what I have thus helped my self to he injures me and is guilty of a lowness against me against the Master  
25 of the feast and against the Company. This is the invasion of My property.

Those who not onely serve themselves with discretion and good Manners but as far as they can accommodate those about them. And who even take more pleasure in serving others and making all  
30 about them cheerfull and happy than in Serving themselves. These surely shew the finest Spirit These must be the most acceptable

Guests to the Master of the Entertainment and to the Company. And these undoubtedly have more real Enjoyment then they who mind nothing but the gratifying of themselves.

5 Let every Man therefore in the Occupation of those things which God has given to the Children of Men, behave to every other Man as well bred men would behave to one another at such Entertainment. Then they may be assured that their Occupation is just {as} agreeable to the Will of God, as it will be approved by their own Conscience and the judgment of wise and Impartial Men.<sup>2</sup> /

7/vii/1c,2r But even the brute Animals who serve us at this entertainment must not be neglected. They must have their Entertainment and their Wages for the Service they do us. If the Almighty takes pleasure in communicating happiness to us who are infinitely below him Let us imitate his Benignity in communicating Happiness as far as we can to one another and even to those Animals that are below us.<sup>3</sup> /

7/vii/1c,1v Property Fatultas possedendi, Utendi, alios arcendi, alienandi.<sup>4</sup> The steps by which property is introduced. Hoarding of necessaries. providing Shelter, Arms, Cattle, Water Land.<sup>5</sup>

20 Naming an Heir. A Succession of Heirs.<sup>6</sup>

Justifying Reasons of Property.<sup>7</sup> 1 Man a provident and Sagacious Animal 2 The Will of God the Supreme Proprietor has given him this disposition and therefore the Deity must approve the exercise of it according to Reason. 3 Property put it in a Mans Power to do good to others as well as himself and may reasonably be sought for this End. By means of it we may be enabled to provide for those who are especially committed to our Care, to make proper Returns for good offices, to supply the innocent to reward Merit to encourage industry. And to promote the happiness of human Society.

30 4 The power of acquiring Property is a proper Encouragement to Industry.

Corol As Property is intended onely for the good and Convenience of the Proprietor or of others it cannot be justified any farther than it has this Tendency.<sup>8</sup>

35 Property is no Physical Quality in the thing nor any association between it and the Proprietor in the Imagination but a relation between the thing and the Actions of the Proprietor and of other moral Agents.<sup>9</sup> /

7/vii/11,1r Q Should we thank a Man for being just and honest.<sup>10</sup>

It were desirable that Justice and Honesty were so common as like Air and Water to bear no price. But when the Commodity is scarce the Value must rise in proportion.

5 The Rights may be divided according to their Nature into Perfect Imperfect & External. According to their Foundation they are Divided into Natural and Adventitious. The Adventitious are divided into Original & Derived.

10 Of the Adventitious Rights of Mankind which are original the most considerable is original Property. Of which we have already discoursed in several Lectures.<sup>11</sup>

15 On this Subject we have endeavoured to explain that State of Communion in which things necessary or convenient for the Life of Man are left by the Supreme Lord and proprietor of all. <sup>2</sup><sup>12</sup> I have endeavoured to Shew that it is agreeable to the will of God and to Reason that every Man should be supplied out of the Common Store house of Nature in such a Manner as most for the common Good. From this it follows that every man has a Right to appropriate to his own use from the common Store what is necessary to his present  
20 Subsistence and comfort and hurts no other person, & no man without injury can hinder him to do so. <sup>3</sup> Reason directs us not onely to supply present Wants but to provide against the future.<sup>13</sup> I have pointed out the various Reasons that justify the acquisition of permanent property by occupation. And to shew the limitations and Restrictions which Nature Points out in the Acquisition of  
25 Permanent Property.<sup>14</sup> Such Acquisitions as are subject to those limitations which the safety of others and the common good of Society require. <sup>4</sup> We have considered whether things once appropriated to a Sacred Use can ever afterwards be put to civil Use.<sup>15</sup> <sup>5</sup> We have considered in what ways things once occupied & appropriate may afterwards be devaluated & return to the Communion of Nature,<sup>16</sup> & how property may be acquired by prescription.<sup>17</sup> <sup>6</sup> We come in the last  
30 place to consider these things that are called accessions to Property.<sup>18</sup>

35

### Limitations of the Right of Property

1 As God has given the Earth to the Children of Men in Common & the Acquisition of Property in any thing that God has made is justified onely by Utility, and as the Utility of individuals ought to

yield to common Utility or to the Necessity even of individuals hence it is evident.

5 1<sup>19</sup> That there can be no property in that which common Utility requires to remain common. If a Man could occupy the Light of the Sun or the Air we breath. or the water we must drink such Occupation if possible would be invalid and Null. Because it is inconsistent with the common and Natural Rights of Mankind. The Ocean can never be the Property of any Man or of any Nation Because it is intended by Nature to facilitate the intercourse of Nations, & is sufficient for all nor can any good End be answered by its being appropriate it ought therefore to remain in the Communion of Nature.

15 2 There are some Cases where that which was Property may become Common.<sup>20</sup> 1 A Ship at Sea in the Scarcity of Provision, may divide what is aboard. May through over board a mans property to save the Ship.<sup>21</sup> 2 A City in a Siege or Famine May divide the Store of provision.<sup>22</sup> /

7/vii/11,1v 3 A Ship in Want of provision Meeting with another that has plenty and to spare.<sup>23</sup>

20 4 A Man in danger of perishing for hunger may take it even by force where he can. Proviso. In these cases as much Regard should be had to property as is consistent with the common Good.<sup>24</sup>

5 An Army Marching commands Provision and Carriages Grown to Encamp &c.<sup>25</sup>

25 6 A Town in danger of a Siege clears the Surrounding Ground destroys the Suburbs &c & deprives the Enemy of every Advantage.<sup>26</sup>

7 Monopolies that are oppressive ought to be prevented or punished.<sup>27</sup>

30 8 A Man or a Nation may be hindred from acquiring such an extent of Property as endangers the Safety and Liberty of others.<sup>28</sup>

9 Restraints may be laid upon the disposal of Property by will or by Entails.<sup>29</sup>

35 10 A Proprietor has no Right to destroy his Property when the common Good requires that should be preserved, not to keep up Mercatable Commodities when the common Good requires that they should be brought to Market.<sup>30</sup>

11 The State for its own Security and to preserve the Constitution may set Bounds to the Acquisition of Property by Agrarian Laws or other Means of that kind.<sup>31</sup>

Things Sacred. called by the Civilians Res nullius by the Canonists reckoned inalienable.<sup>32</sup>

12 In General as Property is introduced among Men for the Common Good it ought to be secure where it does not interfere with that end but when that is the Case private Property ought to yield to the Publick Good when there is a repugnancy between them. Individuals may be compelled in such cases to part with their Property if they are unwilling. but ought to be indemnified as far as possible.<sup>33</sup> The Equity of the British Legislature in passing private Bills for Roads Canals and others of that Kind.<sup>34</sup> In hearing those who think themselves aggrieved against the Bill. Spains Claim of all America by Occupation.<sup>35</sup>

Obligation corresponding to the Right of Property<sup>36</sup>

15 D Humes Notion of Property. That the Notion of it is artificial.<sup>37</sup>  
Sr Robert Filmer.

7/vii/13,1r Grotius and Puffendorf ground it upon a Tacit Compact.<sup>38</sup> /  
The Duty we owe to our Fellow Creatures is comprehended

20 under one General Name Justice, which is defined to be the rendering to everyone what is his due, or what is his Right.<sup>39</sup> Every Right of another infers an obligation upon us to act agreeably to it and not to violate it so that to know the Rights of others is the same thing as knowing our duty towards them.

Division of Rights into Perfect & imperfect Justice into commutative & Distributive. & the Obligations Corresponding. /

7/vii/11,2v The Perfect Rights of Men may be all sumed up in this that they have a perfect Right not to be injured by their fellow Creatures. Their Imperfect Rights. in this that they ought to {be} benefited by their fellow Creatures when it is in their power. A Perfect Right is that which it is no favour to yield but an Injury to withhold. An Imperfect Right is that which it is either a favour to bestow or at least no Injury to withhold.

30 Rights may be divided 3 Ways. According to their Origin Natural 2 Acquired 3 Adventitious. 2 According to their Nature Perfect. Imperfect External. 3 According to their Objects Real Personal. Acquired Rights are Original or derived.

35 Acquired Original Real Rights are got by Occupation. Acquired Rights are those which are consequent upon some deed of ours. Adventitious those that are consequent upon some Adventitious State as of a Master.

There is another Division of Rights into external & Internal for understanding which it is proper to observe. 1 That Every Right is either 1 To do something or exert some faculty in our power. Ex Gr to march through such a territory to turn the course of such a Rivulet to eat drink beget Children &c. 2 to possess and use such a thing. 3 To demand some Action or prestation of another.

To the first Kind corresponds an Obligation upon all other persons not to hind disturb or molest us in doing those actions which we have a Right to do. To the Second an Obligation not to hinder or interrupt our Use or possession of what we have a Right in. To the third an Obligation to perform the Action or Prestation we have Right to Demand.<sup>40</sup>

But altho' these several Rights always constitute the corresponding Obligations, so that the Right being supposed the corresponding Obligation must necessarily follow yet the Obligation may be real where there is onely a Shaddow or appearance of the Right without Reality. Thus one who has Stole a horse & is in possession of him where the theft is not known and it is believed he came lawfully by him he has no Right in Reality to the Horse yet he has such an Appearance of Right as obliges others not to disposses him. In like Manner An unjust Sentence of A Judge or Arbiter Or an Unjust Law may give {one} an External Right to what he has in reality no Right unto. A State unjustly invades another & being Successfull in the War obtains a Part of the Territory of the Injured State by a Peace which the Injured State is forced to make to avoid greater Evils. The Right here Acquired by such a Treaty is onely an External Right.<sup>41</sup> /

7/vii/13,1r Rights of Mankind must correspond to their Different States. of Man citizen father Husband &c.

The State of Man as a Man comprehends his being a Reasonable Creature endued with those powers and Faculties of Body & Mind that all Men have. The Rights Competent to him as such are called Natural Rights by authors. And this State abstracted from all others is called a State of Nature those Other States of Men as they are grounded upon some Act or deed of Men that adds some new Relation to their Natural State are called adventitious States & the Rights flowing from them Adventitious Rights.

The Natural Perfect[s] Rights of Men are either Personal or Real, perfect or imperfect. {1} A Right to life Members {2} A Right

to dispose of their Actions called Liberty 3 A right to judge for themselves in Matters of opinion & practice 4 A Right to use or to occupy these things that are common by Nature and capable of being occupied. 5 A right to Commerce traffick & Marriage & all other Contracts & engagements that do not violate any Right. 6 to our good Name. 6 A Right to fair dealing Candour and Truth in others that converse with us or communicate their Sentiments in the way of Testimony. Imperfect Right.

Description of that State of Community in which things are left by Nature called Negative Communion. Occupation of these gives property. The things we may occupy are either such 1 as are for present Use & Consumption or 2 such as are of a permanent Nature & are used without being consumed. The first must be occupied; but it may be Disputed whether the second may not be left in the Community of Nature or at least remain in a State of positive Communion see Plato. Utopia. Paraguay.<sup>42</sup> /

7/vii/13,1v Our Right I to these fruits or other inanimate things for meat drink or Cloathing which the Earth produces voluntarily. 2 To the labour & service of the inferior animals. 3 To use them for food.

Property in permanent things may be lawfully acquired. 1 Because Reason directs us not onely to supply present[s] wants but to provide against future. 2 Property serves to give exercise to many of the Noblest Social Virtues. Liberality friendship Natural Affection. As then we may reasonably desire the means of gratifying generous & noble Dispositions we may as reasonably desire Property. 3 Property makes us less dependent upon the good offices of our fellow creatures. which we all naturally desire to be. & less exposed to danger or Mischief by their ill offices. 4 As Reasonable Creatures we are capable of a wise & beneficent Administration of that Power which Property gives & this is one of the Noblest employments we are capable of. must Men be alwise Minors.<sup>43</sup> 5 The State of things requires Universal Diligence in Mankind in Order to their well being. And the Acquisition of Property seems to be the most powerfull spur to Dilligence & patience.

Requisites in things in capable of becoming property by Occupation 1 That the Subject be inexhaustible, incapable of Culture, need no Expence to preserve or Secure it. 2 That its becoming property hurts or endangers the Rights of others.



Whether things Sacred are incapable of becoming Property?  
Neg.<sup>44</sup>

Disputes about Occupation or about the first Occupation can hardly be determined by general Rules. What is for the common benefit of Mankind is the last Rule in these cases, next to that what has been commonly practiced & allowed among the wisest Nations.<sup>45</sup>

Of Dereliction & Prescription.<sup>46</sup>

Of Accessions. Nativitas alluvio Specificatio Commixtio Confusio Edificatio.<sup>47</sup> The entire Right of Property includes a Right to the fullest Use & To exclude others from any Use of the Goods in Property 3 A Right of alienating & transferring to others in Whole or in part.

15

### Of Derived Rights.<sup>48</sup>

Divided into Personal & Real. It is fit that there should be some outward Symbol of the transference of Real Rights. such as Delivery. Infertment Registration or the like.<sup>49</sup> Wherein they differ from Personal Rights.<sup>50</sup> Real. Derived Real Rights are either partial or full Property. 1 Partial The Species of Partial Property. Possession. Succession. in Entaille. Morgage or Pledge. & Servitudes.<sup>51</sup> 1 The Right of devising by Testaments<sup>52</sup>

25 2 of Succession to the intestate.<sup>53</sup> /

7/viii/13,2r 3 Donations<sup>54</sup>

4 Contracts.<sup>55</sup> Obligation to fair & upright Conduct in Contracts

1 from the immediate Perception of our moral Faculty

30 2 from the Necessity of Trust in human Society

3

5 The Obligations in the Use of Speech<sup>56</sup>

Oaths

Vows

35 6 Obligations quasi ex Contractu<sup>57</sup>

7 Obligations ex Delicto<sup>58</sup>

8 Obligations & Rights in Cases of Necessity. that is where one principle of Morals seems to Clash with another.<sup>59</sup>

Adventitious Rights in the State of Marriage

Parents & Children

Masters & Servants

Political Society

5 Of the Rights of War

## XII. Succession

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7/vii/12,1r

### **The Right of Succession by Entail<sup>1</sup>**

The second Kind of partial Property we mentioned is that of Succession.<sup>2</sup> Here it is evident that as far as a Man hath right to devise his estate after his Death to a series of Heirs, so far every Heir hath a Right to succeed in his turn and a Prior Heir or Successor although he has the possession and fruits of the Estate during his time has no right to alienate it to the prejudice of those who are appointed to Succeed him. On the other hand if the full property of an Estate does not imply a Right to convey it for ever to a Series of Successors named by the Proprietor it is evident that their Right of Succession can extend no farther than his right to devise his Estate to such a train of Successors.

The onely Question therefore that occurs upon this Right of Succession is how far by the Law of Nature a Man hath Right, not onely to name his immediate heir, but who is to be heir to the first heir, who to the second and so on to the end of the world, or at least untill all the persons whom he pleases to name to his Succession and all their lineal heirs fail? and How far he may limit the heirs named by him so as that none of them shall have the power to sell or alienate any part of the Estate or to encumber it with debt beyond such an Extent as he thinks fit to allow? It is proper to observe that an Estate settled in this Manner upon a Succession of Heirs, who have no power to sell or alienate but are bare live renters,<sup>3</sup> is called an entailed Estate the Deed by which such a Settlement of an Estate is made is called an Entail, and the several persons named to succeed in a certain Order are called Heirs of Entail. I borrow these terms from the Scotch Law because Scotland is now the onely part of the british Dominions where a Man can effectually entail his Estate in this Manner.<sup>4</sup> Having explained these terms It will be proper to give a brief view of the Origin and History of Entails before we consider the foundation of them in Equity and

the Law of Nature.

In the infancy of Civil Society Men have few wants but those of Nature which are easily supplied, and therefore in this period few think of hoarding Property and Riches to an immoderate Degree.

5 But after the use of Money is introduced, and the wants of Luxury and fancy are multiplied. After Riches come to give Men a superior rank and consideration among their fellow Citizens, the desire  
7/vii/12,1v of Riches / grows to an immoderate Degree and becomes the ruling Passion with a great part of Mankind. Men not onely desire to accumulate all the wealth they can in their Life time, but to raise a family after them that shall be distinguished among their fellow citizens for their wealth and Opulence, for many Generations; and to provide as far as possible against the Accidents that may defeat an Event they so much desire.<sup>5</sup>

15 It is obvious that a dissipated or spendthrift heir who has the full property may squander away the greatest Estate, and sink into obscurity a family that has long made a great figure. And the most obvious Method to prevent this is to put it out of his power.

# XIII. On Dissolution of Obligations and on Interpretation

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7/vii/25,1r

## In what ways obligations are loosed?<sup>1</sup>

- 1 By the performance of what we are bound to do, payment of debt &c.<sup>2</sup>
- 2 By Compensation. Where equal & contrary obligations destroy one another like positive and negative Quantities in Algebra.<sup>3</sup>
- 3 By Remission, or acceptation.<sup>4</sup>
- 4 By mutual Consent.<sup>5</sup>
- 5 By breach of Faith on one Side the other may be loosed.<sup>6</sup>
- 6 Assignment of our Right to another which the Civilians called Cessio, or transferring the obligation to another which the Civilians called delegatio. here the consent both of Debtor or Creditor must Concur.<sup>7</sup>
- 7 By Confusion of Debtor and Creditor.<sup>8</sup>
- 8 By Death.<sup>9</sup>

15

## Of Interpretation<sup>10</sup>

There is often occasion for interpretation in Treaties & Covenants & in Laws as when after the first Punic War an Article of the treaty of peace was that Neither Party should invade the Allies of the Other. A little after the City of Saguntum made an alliance with the Romans. The Carthaginians besieged it. Quere whether this was a breach of the Treaty.<sup>11</sup>

The Latins made a League with Tarquinius Superbus the last King of Rome after his Expulsion they made war upon Rome.<sup>12</sup> Q 1 Rule. Words to be taken in their usual Signification unless there be a necessity of interpreting them otherwise.<sup>13</sup> The Turks in a Capitulation of

a besieged town having capitulated that none of the Garrison should be capitally punished. cut off their hands & feet.<sup>14</sup>

2 That interpretation is to be preferred which is most reasonable. The Reason & End of a Law is to be considered, & that Interpretation to be followed which is most agreeable to these.<sup>15</sup> Our Saviours Example in Explaining the 4 Command.<sup>16</sup> The Sabbath was made for Man not Man for the Sabbath.<sup>17</sup> His interpretation of the Law of the Sabbath & of the Law of Tythes Restrictive, of the 6th Command Extensive.<sup>18</sup>

10 A Poor Man bequeathed to one of his Sons the Four Elements. A Book of that Title.<sup>19</sup> The Romans in A Peace with Antiochus agreed that he should give up to them the half of his Fleet. In the Execution they insisted that Every ship should be cut in two & they should have one half.<sup>20</sup>

15 The Laws of the 12 Tables made the Nearest relation of a Pupil his Tutor in Law, quia ubi Successionis Emolumentum est ibi et onus Tutelae esse debet, hence the Roman Lawiers conclud that where there was no Relation the Patron was to be Tutor.<sup>21</sup>

20 3 That interpretation which is most agreeable to the end of the transaction.<sup>22</sup>

4 A Humane Interpretation to be preferred to a rigorous one. Of things favourable and Odious.<sup>23</sup>

25 **Of the Collision of Laws**

- 1 A permissive Law yields to a preceptive
- 2 An Imperfect obligation yields to a perfect
- 3 An Act of Beneficence ought to yield {to} an act of Gratitude much more of Justice.<sup>24</sup>

30

# XIV. Oeconomical Jurisprudence

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7/vii/15,1r Private Jurisprudence, that is, the Rights and Obligations of  
Individuals is divided according to the different States in which men  
may be considered.<sup>1</sup> First they may be considered barely as Men, &  
the Rights and Obligations competent to Men as such have been  
5 already considered. Secondly they may be considered as Members  
of a Family. The Rights and Obligations competent to them in  
this view are now to be considered, and make what is called  
Oeconomical Jurisprudence.

10 The Relations that arise from the Family state are chiefly three  
That of Husband and Wife, that of Parents and Children & that of  
Master and Servants. These we shall consider in Order.

15 First we are to consider what Reason and the Law of Nature dic-  
tates with Regard to Marriage or the Relation between Man and  
Wife. And this will appear more evidently if we attend to the  
Oeconomy of Nature in the procreation of Animals in General.  
The intention & will of the Author of Nature may in some  
instances appear more evident from the Actions of the brute  
Animals than even from those of Men; because brute Animals  
20 having no other Guide but their instincts & Appetites they invari-  
ably follow these, and therefore act according to the Nature which  
God has given them & by the Course of their Actions shew the  
intention of their Maker. But Man has Reason & Conscience given  
him to be the Guides of his Conduct, together with Appetites and  
25 Passions similar to those of the Brutes, which ought to be subor-  
dinate to Reason and to yield to its dictates. He may therefore  
pervert his Nature and act the Brute while he ought to act the Man,  
submitting his Reason which ought to bear Sway according to the  
will and intention of his Maker to his Passions and Appetes. For  
30 this Reason we may say of every tribe of brute Animals that they  
live as their Maker intended they should live. But we cannot say so

of Man. His prerogative of Reason however valuable in itself is often abused and applied to purposes very different from those for which it was given.

5 Let us first therefore attend to the Oeconomy of Nature in brute  
Animals and the Means which the Divine Providence has contrived  
for preserving the Species in every Tribe while the individuals  
perish. It is evidently for this End that he hath made Animals Male  
and Female & given them the power and the Appetite of procreat-  
10 ing their kind, and with such a Care of their Young as is necessary  
to their preservation & Education. But as the kinds of Animals are  
7/vii/15,1v many and their manner of living various, / so they are no less  
various in their manner of procreating and educating their young.

Some Animals are Oviparous some are Viviparous. Of those that  
are Oviparous some there are whose eggs require no Incubation but  
15 are hatched meerly by the heat of the Air in a certain Season of the  
Year & when placed in a convenient Situation. Nor do the young of  
such need any other Care but to have their natural food within their  
Reach. This particularly is the case of all the butterfly kind of which  
the Species are almost innumerable. The progeny of all is first an  
20 egg, from which a caterpillar is hatched, which feeds on the leaves  
of some one plant or tree, & by successive transmutations becomes  
an Aurelia and at last a butterfly. Here we may observe that what  
Nature requires to the preservation of this kind of animals is that  
the eggs be laid in a proper Season of the Year, when the Warmth  
25 of the Air is sufficient to hatch them, & when Nature brings forth  
the leaves which serve for their Subsistence, that they be so placed  
as to be sheltered both from cold piercing winds and from the  
scorching Rays of the Sun; and the Parent is by instinct directed to  
deposit her eggs so as to answer all these purposes.

30 In other tribes of the Oviparous Kind the Eggs must be hatched  
by incubation. This is the Case of almost all Birds. And we see the  
Parents are directed to build a Nest of the most convenient form, in  
the most proper place and in a Certain Season of the Year, when the  
proper food of the Young is supplied by Nature in Plenty. But the  
35 Young when hatched are naked & unfledged, must have their food  
brought to them & put in their Mouth. All this is performed with  
the greatest industry & skill by the parents, untill the Young are able  
to shift for themselves: Then the Parents take no farther their Care  
of them & seem not to distinguish their own Offspring from others



of the {species}. The Conjunction of the Male & Female lasts while the Young have need of their Assistance & commonly no longer.

5 In all Quadrupeds where the raising of the Offspring requires the Care & labour of both Parents, Nature has given the  $\sigma\tau\omicron\rho\gamma\eta^2$  or parental Affection to both, & they continue to live together untill the offspring is reared.

10 In some Quadrupeds indeed particularly in the Cattle we tame the Care of the Mother alone seems sufficient. And there we so no care or Affection in the other Parent, nor any continued cohabitation of the Male & Female.

15 To all animals which are Male and Female Nature has given the Appetite of conjunction for procreation. And we may see from the few observations we have made, to which a great Number of the same kind might be added, that Nature has made proper provision for the preservation of every Species, by giving to the Parents those instincts & Affections and Arts that are necessary for that Purpose.

7/vii/15,2r The Marriage or Cohabitation of the Parents / continues for a longer or a shorter time, just as the rearing & education of the Offspring requires. The Wisdom of Nature appears conspicuous in giving to every species the instincts necessary for the continuation of the species nothing is wanting to this purpose Nothing is superfluous. And as this is the case with regard to the very lowest Orders of Animals, we may be assured that the Author of Nature has been no less carefull to provide proper means for the continuance of the human Species the noblest that inhabits the Earth. For this purpose Man has Instincts and Appetites given him similar to those of other Animals; and adapted to his particular manner of Life.

25 But besides these Animal Principles, he is endowed with Reason, by which he is capable of perceiving the Intention of his Maker in the several Principles he feels within him & of regulating his Conduct accordingly. We may therefore best discover what the Law of Nature dictates with regard to that Family Relation we are now considering by observing the Intention of Nature with regard to the Manner in which the Human Species is to be reared & educated. /

7/vii/17,1r First. That it is the intention of Nature that the care of both parents should be employed in maintaining their offspring. This is evident from the necessities of Children and their wants which it would be impossible for the mother alone to supply. In the ordinary course of generation it is evident that women moderately fruitfull

would have more children than their own labour would be able to maintain. We cannot therefore conceive that Nature has imposed a task upon them altogether disproportioned to their abilities, the consequences of which must be that the greater part of the human race must perish in their infancy for want of Subsistence. 2 Man of all Animals has the longest infancy, & his Education is a long Work. 3 We see that in many other Species of animals the male as well as the Female is employed in rearing the common offspring. To this the brute animals are directed by instinct where it is necessary.

Mankind have reason to discern the Necessity of it in the human Species, & the necessity of it for the preservation and wellbeing of the offspring lays them under an Obligation to this duty. 4 The  $\sigma\tau\omicron\rho\rho\eta$ <sup>3</sup> or parental Affection is common to both parents, in the human kind as well as in many other Species of Animals. And this is a certain and indisputable argument that nature intended that both parents should contribute their care for the maintenance and Education of their common offspring. If the Author of Nature had intended that the care of Children should be left altogether upon the Mother, to what purpose has the father this parental affection planted in his nature and interwoven into his constitution. There is no part of the human constitution superfluous and without any end. We may therefore certainly conclude on the one hand that if the maintenance and education of children had not been imposed by the Author of Nature upon fathers as well as mothers, that the father would naturally have been as indifferent about his own children as about the children of another. And on the Other hand from the parental Affection being common to both parents we may as certainly conclude that Nature intended that both Parents should exert this Natural Affection in the care of the common of spring. Now from this principle we may deduce this corollary that the propagation of Mankind ought to be under such an Oeconomy and Regulation, that Fathers may know whom they are to care for as their Offspring. Without this the Parental / Affection on the fathers part would be altogether frustrated and have no Exercise.

A Second corollary which Necessarily follows from the principle that we have laid down and demonstrated is that Women are under a strong natural Obligation to chastity so far as to ascertain the father of their offspring. It is impossible if this was not the case that Fathers could have any way wherby to distinguish their own

Children from those of other men, consequently there would be no Exercise of the Parental Affection on the Part of the Father.<sup>4</sup>

2 That Nature has aided this Obligation to Chastity in the fair Sex by a Sense of Honour, a Natural Modesty, and consciousness  
5 of Worth, which serves as a guard to their Virtue even where a sense of duty would be insufficient for that purpose. We might here appeal to the most profligate of our own Sex, who find in their Experience what assiduity and Courtship what professions of pure love and friendship, what vows of everlasting attachment and  
10 fidelity are necessary to seduce even the more credulous and unwary innocents of the Sex. How cruelly they conceive themselves injured and robbed of all their worth Value and Honour when they find themselves abandoned by the Man whom they considered as attached to them for life, and to whose Sollicitations no other consideration would have induced them to yield. Chastity has in all  
15 ages been considered as the point of honour with the fair Sex, and Experience shew that when they are able to overcome the Natural Modesty of the Sex they become abandoned to every vice. How can this be accounted for, since it must be acknowledged that the temptations to indulgences of this kind are as strong as any whatsoever? The onely reasonable account that can be given of it is this that to restrain the violence of Natural Appetite Nature has given the sex in general Such a powerfull Sense of Honour Decency & Modesty that when this barrier of their Virtue is broke down the whole  
25 Moral Character is laid open to the inroads of every vice. All Nations of the World have had a particular regard to this Virtue in the Sex and ever have annexed dishonour and infamy to the opposite Vice. All Nations says Montesquieu Liv 16 ch 12 have with one accord agreed, to annex Infamy to Incontinence in Women. This is the Voice of Nature to all Nations.<sup>5</sup> There was a Law among the Greeks that no whore should borrow her Name from any of their Sacred Games.<sup>6</sup> Infamy indeed seems to be so essential to this Vice in the Sex, that we will scarce allow the bitterest repentance to wipe it off. We are told by Valerius Maximus that among the Ancient  
30 Romans there was not an instance of a Divorce for 500 years yet the Romans in those Ages were a rude and Barbarous people remarkable onely for their military Virtues their love of their Country & the Simplicity of their Manners.<sup>7</sup> Chastity indeed makes a Most remarkable figure in the Roman History and gave Occasion to the

7/vii/18,1r most Considerable Revolutions of that State. The Romans Submitted with incredible Patience to the / Tyrannical Government of the Tarquins; untill a resentment of violated Chastity roused all at once that Spirit which a thousand other Acts of oppression could not awaken, and the Vengeance provoked by the Dishonour done to Lucretia, laid the foundation of that Glorious Commonwealth. When the Romans again fell under the oppression of the Decemvirs, and their Cruelty became insupportable; all their Sufferings could not force them to use the means of Redress, untill an attempt made upon the honour of a plebeian Maid, roused that noble indignation which a second time gave liberty to Rome. If this had been a common Injury Appius might have accomplished it with impunity as he had a thousand others. But that injury must surely have wounded the quickest and most sensible parts of the human frame which could make a fond father plunge his dagger in the bosom of his innocent and lovely young daughter, and could make all Rome take part in a quarrel in which their own grievances and oppressions could not engage them.<sup>8</sup>

20 These are sufficient documents of the natural Sentiments of Mankind with regard to the dignity and Importance of this Virtue of Chastity in the fair Sex.

3 It is agreeable to the Oeconomy of Nature that mankind should be propagated in Consequence of a lasting Attachment and League of Love and Fidelity between the Parents.

25 There is no part of the human constitution that appears more admirably contrived for very noble ends than the natural passion of Love between the Sexes. It may appear a light and trivial Subject to those who have never been accustomed to think of it as Philosophers. But is really a very noble Subject of Philosophical and moral Speculation.<sup>9</sup> It is evidently the nature of this passion to take its rise from some amiable qualities or of some worth merit and dignity that are conceived to be in the object of the Passion and of which we see as we suppose manifest indications in the features, mien and behaviour of the person. It is therefore invariably accompanied with a high degree of respect and Esteem, with a genuine & disinterested concern for the happiness of the person loved, an ardent desire of mutual Love a particular attachment. Every kind of Labour and peril is courted that demonstrates this attachment and merit a reciprocal Regard and attachment. It is no less evident

that it is impossible that two persons can at the same time be the objects of this passion nor can it be satisfied with a return that is common to others with itself. As it gives a preference to the beloved object above all others so it cannot be satisfied without a reciprocal Preference of the same Kind. In this / love between the Sexes is an affection of a quite distinct Nature from Friendship, which may be among three or more persons, without Jealousy or Rivalship. This Union of hearts and interests and affections which goes by the sacred Name of Friendship, is indeed included in Love but it includes something more. There is nothing in the nature of friendship to exclude a third party. But in Love from the very Nature of it there cannot possibly be more than two. A Preference or even an equal Regard in either party to a third person immediately and by the very constitution of human Nature excites another natural Passion that of Jealousy. A Passion which is indeed the offspring of Love but as tormenting as the other is agreeable. And it is evident that the torment of Jealousy arises from an apprehension of the highest injury from the person most highly respected & loved. Those who conceive that the sensual Appetite is the chief ingredient in this natural Passion between the Sexes, know nothing of its Nature nor ever felt its influence. This appetite is rather restrained and bridled by a Passion of a more Serious Nature, which fills and occupies the Mind with tender delicate and refined Sentiments. Love is indeed not a single and unmixed principle; it is compounded and made up of various ingredients. Esteem Sympathy Benevolence, in their highest degree enter into the Composition. But all of them modified in a peculiar manner; and what distinguishes it from all other Passions is the attachment & the Preference which is given to its Object beyond all others and the Ardent Desire of being the Object of a like Attachment and Preference in the person Beloved. Without this it cannot be Satisfied. It finds or conceives in its Object some Superlative Worth merit and Beauty; that engrosses the whole Mind, and the more it dwells upon this object the more it is moved to an Enthousiastick Admiration. The very language of Love, Like that of the more rapturous flights of poetry, shews a high degree of Enthousiasm, a kind of Inspiration. The mind is elevated above itself by being constantly filled with the Idea of an Object which is, or at least is conceived to be, of Superlative dignity and Beauty. The Natural Effect of this Passion in both Sexes

is to produce an Elevation of Mind a quickness of Discernment, a vigor of Resolution Generosity Courage and tenderness. It unites the Virtues of both Sexes, while each Sex cultivates the virtues that are most attractive of the Love of the other & imitates those virtues which it admires in the other. There is no greater Charm in the fair Sex than tenderness of affection Delicacy and Sensibility. And we shall find every thing in the colours features proportions voice and Motions of the Sex which we call beautifull to be natural Signs and Indications {of} these Qualities of Mind. A Man in Love naturally & insensibly falls into the Imitation {of} the Qualities he loves. On the other hand Manly Sense and Wisdom, firmness and Constancy of Resolution vigor of Mind, Courage Fortitude and Magnanimity. And the Qualities in Men which are most apt to attract the Love of the fair, and while they admire these Qualities in the Object of their Affection, they are inspired with a degree of them beyond what is commonly possessed by the Sex on other Occasions.

It is evidently the intention of Nature that Men should be directed by this natural Passion in the choice of a Mate<sup>10</sup> / not indeed blindly directed, but under the guidance of Prudence and Discretion. The blindness ascribed to Love is not peculiar to that Passion but common to it with many others. And in the Noblest Minds Reason has shewn its superiority over this Passion as well as over others. But as the intention of Nature is manifest in every other Passion which belongs to the human frame, it is no less so in this. Its tendency being evidently to unite one pair in an indissoluble friendship and Society for raising up an offspring. Which common offspring by the constitution of human Nature partakes a greater Share of the affection of both Parents in proportion as they have a greater affection and attachment to each other.

All intercourse between the Sexes, whether authorised by the Laws or not, which has nothing of this passion for its foundation, can hardly deserve any other Name than Mercenary prostitution, or mere Sensuality. But where the union between the Sexes is grounded upon the Natural Passion accompanied by Discretion and Virtue on both sides, it is thereby dignified & sanctified, it cherishes every virtue & tends equally to the felicity of the parties and of the offspring. Every duty and every obligation arising from the connubial State, is the natural issue of a mutual attachment of hearts.

It deserves our attention when we consider this passion in a philosophical light, that notwithstanding the general Agreement of Mankind with regard to those qualities of Body and Mind which are in themselves most amiable and most beautiful, yet the passion of Love is not excited solely by those qualities which in the general Estimation of Mankind are best entitled to it. There are but few in comparison who have not charms and attractions to find a lover. The unthinking may attribute this to the caprice and blindness of this passion without seeking any other Cause. But as this diversity of Taste in Love in different persons is plainly natural, although we cannot assign a physical Cause of it, it plainly appears to have a very happy effect. Without it both sexes behoved to be unhappy, and therefore it may justly be conceived to be the intention of Nature for wise and excellent purposes.

Upon the whole when we consider that by the Constitution of Nature the care of both Parents is necessary to rear and train up the human offspring, That both are endowed by Nature with the parental Affection, That the fair Sex is by Nature fortified by a peculiar Modesty and Reserve which teaches them to yield onely to an attachment of Love which they believe to be equally sincere and inviolable on both sides & to admit of no Rival. When we consider moreover the Nature of the Passion of Love between the Sexes, which can onely be between one Man and one Woman. All these things plainly point out that it is [not] the intention of Nature that the propagation of Mankind should be carried on not by a promiscuous intercourse of the Sexes, without any Order or Rule as in some Brute animals, Nor by pairing for a short time / as it is with other Animals whose offspring can receive all the training & Education they need or are capable off in a Season; but by a lasting Contract of mutual love friendship and aid between one Man & one Woman. The Natural Affection of Parents never ceases while their Children are in Life it descends to the third & fourth Generation, & to all the Subsequent Generations a Man can see.

The equality in Numbers between the Sexes strongly confirms this. In all the Places in Europe where Registers of Births have been Regularly kept it has been found that the numbers born of each Sex are nearly equal. The proportion observed in the course of Nature being that of 13 females to 14 males nearly. See Derham P.Th Book 4 ch 10.<sup>11</sup> This proportion so regularly observed has very justly been

urged as a mark of Design in the Government of the Universe. For chance never could produce any such Regularity in things that are under its influence. And as we have from this fact a plain intimation that it is the intention of Nature that the Number of Females should  
5 not be much less or greater than that of Males; the obvious consequence is that it is the intention of Nature, that one man should not have a Number of Wives. If there had been many Women produced in the ordinary Course of Nature for one man, this would undoubtedly have been an argument that Polygamy is according to the  
10 Intention of Nature. And the Argument is equally Strong for Monogamy when we find the Number of Each Sex allways kept so near equality. As this Fact is confirmed by all the Bills of Births that have been kept in every European Nation of Europe. So there appears nothing contrary in other Parts of the Globe that has any considerable Authority. The vast Reading of President Montesquieu furnishes him onely with two facts of this Kind. A Voyager to  
15 Bantam says that in that place there are ten Women to one Man. But this Montesquieu himself seems to think a traveller's story. The onely other Instance he gives is from Kempfers Acct of Japan who says that in a Numberment of the inhabitants of Mecaο there were found 18 000 Males & 22 000 Females.<sup>12</sup> It is plain that this is very consistent with what we find in Europe where though the Number of Males Born rather exceeds that of Females, yet in Most great towns there will be found more Females than Males. There are many  
20 obvious causes that may occasion (in great towns especially) such a small Superiority in the Number of Females, as was found in Mecaο, although the number born of Males should rather exceed that of Femals. Traffick Wars Intemperance migrations or of Strangers, & many other Causes may occasion such an inconsiderable variation of this Ballance between the Sexes as Kempfer  
25 Observes. / From all this it appears that in all Places of Europe where observations have been {made} with care, the Number of Males born in every Country is so nearly equal to the Number of Females that Nature appears to intend an equality of both Sexes which could never be the case if it were agreeable to the intention of Nature that one Man should have several wives or one woman several Husbands at the same time. And this proportion between Males and Females does not appear from any well attested account, to be broke through in other parts of the Globe.  
30  
7/vii/19,1r  
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These observations prove sufficiently that a lasting contract of Love & fidelity between one Man & one Woman; is the method of Propagating the human Race that is most agreeable to the Intentions of the Author of Nature and most conducive to the happiness of human Society. The Supreme Being shewed in a very remarkable Manner what was most agreeable to his will in this Matter, when at the first formation of the human Race he made one woman onely for one Man to be the parents of the Human Race.<sup>13</sup>

Polygamy however has been permitted among many Nations ancient and Modern among others even heathen Nations it has been forbid. Among the Romans Polygamy was never authorised. Plutarch tells us that Antony was the first among the Romans who had two wives at the same time. But this was afterwards expressly forbid by the Imperial Laws under the pain of Death. The Ancient Germans down to the time of Tacitus had onely one wife. So it was at first among the Athenians by the Laws of Cecrops, but afterwards their Laws allowed Polygamy.<sup>14</sup>

The Natural Consequence of Polygamy is Jealousy & Quarrels of Wives and of the children of different wives which tends to make the family State unhappy. and frequently produces the most dismal tragedies in families. To prevent these the Eastern Nations among whom Polygamy has been most prevalent, find it necessary to shut up their wives in a Seraglio under the care of Eunuchs, and to exercise the most despotick Government over them. By this barbarous and inhuman treatment of their Wives, all that beautifull Order / and Oeconomy which Nature points out for the family Society is entirely overturned.

The Idea of a happy Family, which Nature exhibits and which the Poets and orators have painted from Nature is that of one Husband & one Wife first united by the tender bond of Love which by degrees mellows into mutual Friendship and Confidence, and forms in a Manner one Person of two, continued in their common offspring.

Hail wedded Love! Mysterious law, true source  
Of human Offspring, sole Propriety  
In Paradise, of all things common else

\* \*

By thee

(Founded in Reason, loyal, just, and pure)  
 Relations dear, and all the Charities  
 Of Father, Son, and Brother, first were known  
 5 Perpetual fountain of domestick Sweets

\* \*

10 Here Love his golden shafts employes, here lights  
 His constant Lamp; and waves his purple wings  
 Reigns here & Revels, not in the bought Smile  
 Of harlots, loveless, joyless, unendeared.<sup>15</sup>

15 Xenophon in the fifth book of his Memorabilia commonly called  
 his Oeconomicks has given us an Account of a long conversation  
 of the Divine Socrates upon the Administration of a Family. That  
 truly wise Philosopher saw and admired the Wisdom of the Author  
 of Nature in adapting the tempers and talents of the Male and  
 Female Sex to the different departments of the family Society. He  
 20 has assigned them their different Provinces in the Management of  
 a happy family & in the Education of the common offspring, with  
 great Judgment and Beauty. I recommend to your perusal this 5th  
 book of the Memorabilia as a precious Piece of Socratick Morals  
 and Wisdom. Cicero thought it worth his while to translate it into  
 25 Latin and we have some large fragments of his translation still  
 remaining which deser(v)e to be perused.<sup>16</sup> /

7/vii/19,2r How far Marriages within the forbidden degrees are forbid by the  
 Law of Nature & whence their turpitude arises is a Question of  
 some Difficulty. And may be looked upon as one of the few points  
 30 of Jurisprudence, which is not obvious to the common Reason of  
 Mankind. It is a matter of Less consequence to us as these  
 Marriages are plainly forbid by the Christian Law to all Christians.  
 They are forbid by our Municipal Law in England Scotland &  
 Ireland, and they were always prohibited by the Civil & Canon  
 35 Law. & by the Municipal Laws of all Christian Countries. I shall  
 offer very briefly the reasons that have been urged to shew that those  
 prohi[hi]bitions are not meerly positive divine Institutions,  
 grounded onely upon the Authority of Revelation but that the  
 Marriages prohibited on Account of Consanguinity or affinity have

some natural Inherent Turpitude on Account of which they ought to be condemned.<sup>17</sup> /

7/vii/20,1r Apr 24 1768. The Domestick or Family Relations, from which the Rights and Obligations belonging to the family State do arise are three. That of Husband and Wife, That of Parent and Children & That of Master and Servants. The rights competent to these several Relations are discovered by a wise and Judicious observation of the State and Frame of human Nature, and the indications we may take from thence of the Intention of the Author of our Being.

10 With regard to the Relation of Marriage the long infancy of the human Race, the Education and training it requires, The Parental Affection being common to both Parents. The Natural Modesty found even in Savages. The Natural Passion of Love between the Sexes, with all the delicate feelings & Sentiments it produces. The  
 15 the passion of Jealousy itself. The equality of Males & Females, do all point out the Intention of Nature with regard to the manner in which the human Race ought to be continued and reared, and that a Contract for Life of Love & Fidelity, for the purpose of rearing a family is most suitable to the Law of Nature. A great many  
 20 things regarding Marriage & Divorce as well as the respective Rights of husbands and wives must be / left to be determined by the Laws of every particular State; Nature has for the most part put a Difference between the two Sexes with Regard both to the Strength of their Bodies and the Dispositions of their Minds. The  
 25 female part of the Species is commonly more delicate in their frame both of body and mind; they have a greater degree of Softness and Sensibility a greater inclination to Dress elegance & cleanliness & more, of Anxiousness & timidity to the males Nature has given greater strength of limbs, and hardness of  
 30 Constitution, more courage to encounter dangers, and greater magnanimity & constancy of Resolution. These different Characters which Nature has imprinted upon the Sexes, though not without Exception, point out the different offices in the family Society which most naturally fall under the department of each.  
 35 And the laws of all civilized Nations pay a regard to this difference of Character in the different Sexes. Nature certainly intended them as proper Counterparts to each other. And although the Virtues that belong to us as reasonable Creatures & moral Agents are in substance the same in both Sexes, yet they have in each Sex

as it were a different Form. So that the most amiable female Character, would appear contemptible and ridiculous in a Man; even to the fair Sex themselves; and on the other hand the most perfect male Character would in a Woman be unamiable & disgustfull. With such a wonderfull Propriety and Delicacy has Nature adjusted the Graces and Ornaments proper to each Sex, as if each were made onely for the sake of the other. Indeed the whole Family Society of Husband Wife and Children, is so admirably fitted for human Nature, and Human Nature uncorrupted by vicious habits so adapted for such a Society, that both must appear venerable to a wise and impartial observer, as contrived by the / Wisdom of the Supreme being to promote the Felicity & improvement of the human kind. Although as the Corruption of the best things is commonly worst, it needs not seem strange that these relations should often through the folly and corruption of men prove a Sourse of Vexation and trouble.

Marriage may be defined to be a Contract of Love & Fidelity between one Man & one woman, in order to promote each others Felicity and to rear up their common Offspring.

Polygamy I conceive cannot be said to be absolutely forbid in all cases by the Laws of Nature, otherwise it would not have been permitted among the Jews by God himself. Yet on the other hand it appears evidently more for the common good of human Society, that monogamy should be established. And where it is established by the civil authority there Polygamy may be forbid under the severest penalty. The Laws of Christianity absolutely forbid polygamy.<sup>18</sup>

The wiser heathens have condemned it. Euripides in *Andromache* ex *Persona* *Hermiones*.

Non etenim decet  
Unum imperare feminis geminis virum  
Contentus uno conjugis vivat toro  
Quicunque cupiet rite curatam domum<sup>19</sup>

Plautus in *Mercatore*

Nam Uxor contenta est, quae bona est, uno viro  
Qui minus vir una uxore contentus siet.<sup>20</sup>

Faecunda culpa secula, nuptias  
 Primum inquinavere & genus, & domos;  
 Hoc fonte derivata clades  
 In Patriam Populumque fluxit. Hor Lib 3. od 6 ver 17.<sup>21</sup>

5

1 of Fornication. Unnatural Passions.<sup>22</sup>

2 Of the Causes that render a Marriage Null.<sup>23</sup>

4 Incestuous Mixtures.<sup>24</sup>

10

The Passion of Love between the Sexes is a part of the Human Constitution, & is of chief consideration in Marriage which is really a kind of Prostitution where this Passion does not lead to it. In those who have been properly educated this passion is never found between Near Relations. Whether it is that there {is} some natural incompatibility between it and the natural Affections between Parents and Children and other near Relations, or whether by our Constitution the Passion of Love has another direction given it by the Author of our being. Why may not the Passion of Love have its natural Objects as well as the Parental & filial Affection? May not by our Constitution near Relations be no Natural Objects of this Passion as Males are not. Nor the Old & Decrepit of the other sex. If this is so may it not account for a Natural Abhorrence of Incest as of other unnatural Lusts.

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25

Is there not with regard to incestuous Mixtures a Moral Sense implanted in Man by the Author of his being which when Mankind extended to one family was not unfolded, but gradually sprang up as the race multiplied, & perhaps would vanish if the race was again reduced to one family. Perhaps this Moral Sense may be justly said to be implanted and arbitrary.

30

5 Divorce

6 Left Hand Marriages<sup>25</sup>

10 Duties and Rights of Husbands and Wives<sup>26</sup>

35

3 How far Consent of Parents is necessary in Marriage<sup>27</sup>

7 Much must be left to the Laws of each Country

8 The Christian Laws on this Subject agreeable to Reason

9 The Respect payed to Celibacy as a more Perfect kind of Life.<sup>28</sup>

See a fine fragment upon the Subject of the Natural Laws concerning Marriage from Cicero's Oeconomicks of Xenophon Lib 1.<sup>29</sup> /

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### **2<sup>30</sup> The Relation of Parents and children.**

The  $\sigma\tau\omicron\upsilon\upsilon\eta$ <sup>31</sup> points out the Duties on the Parents Side.

Not founded in Generation any more than in Nursing.<sup>32</sup>

Three periods in the Life of Children to be distinguished.<sup>33</sup>

10

1 While they are unfit to govern themselves.

They must then be guided by Parents as their Guardians appointed by Nature. The Parents right the same as that of the Guardian. May be transferred when important Ends are to be served by it. Duty of Parents in Provision and Education. Rights belong to both Parents. Children in this Age may have a Property, of which the parents are not the proprietors but the Guardians. Right to the Discipline and correction that is profitable for the Children and for the family. In this Period the Parent is considered as a Parent & as a Guardian, the child as a Child and as a Pupil.

15

20

2 When of Mature Age but not Foris familiarie.<sup>34</sup>

The Respect due to them as Parents particularly in Marrying by their Consent. The Right of Parents to their Service when they are poor. Right to Sell what? The Parent can give no more right than he has Right to punish. In this State the Parents are considered as Parents, & as heads of the family the children as children, and members of the family, & as indebted to the parents for the care trouble & Expence laid out upon them. The Parents are considered as Seniors grave & experienced, the children as young unexperienced & giddy.

25

30

35

3 When Foris familiarie

Here the Relation & children continues, & the debt upon the children. In all these different States we may easily discover the Parents duty by putting ourselves in the Situation of the Child, & that of

the child by putting ourselves in the state of the Parent. The patria Potestas among the Romans.<sup>35</sup>

5 Antiquae Romanorum Leges, respicientes tum ad eam quae a Natura est eminentiam, tum ad labores quos pro liberis parentes Sustinent, volentes praeterea liberos parentibus sine exceptione subjectos esse, credo etiam confisi naturali parentum amore et venundandi, si vellent liberos, et impune interficiendi {parentibus} jus dederunt. Epictet.<sup>36</sup>

10 Jus autem potestatis quod in Liberos habemus proprium est civium Romanorum nulli enim alij sunt homines, qui talem in liberos habeant potestatem. Institut Lib 1 Tit 9 § 2.<sup>37</sup>

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15 The Political Compact in the first Stages of Civil Government is onely among Masters of Families. They are properly the onely Citizens; their Wives Children & Servants, are rather the Goods and Chattels of the Head of the family than the Subjects of the State. The Master of the Family is answerable for their Conduct towards the State & towards the other Citizens. They are not under the  
20 Government of the State, but of the Head of the family. If he is guilty of injustice or Cruelty towards them. The State is not to blame. as when a Man uses his beast cruelly or Scolds his wife or Disciplines his children with too much Severity the State does not mind this. This seems to be the best Account of the Origin of the Patria Potestas & of Servitude in Ancient States. The Political  
25 Compact is gradually extended to Wives Children & Servants & then they become more the Subjects of the State & less the Subjects of the Pater familias<sup>38</sup> /

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### Of Masters & Servants<sup>39</sup>

35 The third family Relation is that of Masters and Servants. The natural Equality of Mankind as rational Beings & moral Agents of the same kind, endowed with like powers of body and mind, equally accountable for their actions to God the common parent of all, & equally bound to mutual good will and good offices. This natural Equality I say of which we have before spoke & shewn to be the foundation of certain common Rights and obligations which belong to them as Men, is not so perfect in all Respects but that it

admits of certain preeminencies & advantages which some men may have over others. Men are not equal in bodily Strength, nor in quickness of understanding, nor in wisdom prudence and courage. Far less are they equal in temperance industry Justice and good  
5 Conduct. Besides the difference in mens talents which is the work of Nature, the difference in their Virtues and good Conduct which is owing to themselves, when Property is introduced Fortune or the Providence of God often makes a great difference in mens Riches Power and Influence. One Man either by Industry, Skill in the man-  
10 agement of his affairs or by good Fortune becomes Rich and Opulent. Another man, by his own fault or perhaps without any fault by cross accidents to which all human things are Subject is reduced to want. Of all Animals Man is most capable of being usefull to Man. The Rich will find many occasions for the Service  
15 of the poor, and the poor will find their advantage in serving the Rich. Such Service therefore as is beneficial to both parties & injurious to neither must be perfectly agreeable to the laws of Nature.

A man who has a Natural Right to dispose of his own Actions and employ his Labour in providing for himself the conveniencies and Necessaries of Life without injury to others, may agree to  
20 labour for another, & under his direction on conditions that are reasonable and equitable. /

*7/vii/20,3v* A Contract of this kind by which a Man agrees to serve another upon reasonable terms for a longer or Shorter time or even for life,  
25 must be regulated by the same laws of Nature and of Equity as other Contracts are. This Contract unites the interests of Master and Servant. And neither of them can consistently with the nature of this Relation be indifferent to the concerns of the other. A just and humane Master will think himself bound not onely not to do  
30 any injury to his Servant himself but to protect him from the injuries of others, to exact no task or Service of him that is unreasonable or cruel, to allow him not onely the necessaries of Life but such comforts and conveniencies as are suited to his Station and do not tend to corrupt his manners or render him unfit for the duties  
35 of his Employment. And to make all reasonable allowances for the common infirmities of human Nature, which do not permit us to expect perfection in any Man, of any Station whatsoever.

The Authority of a Master intitles him to an inspection of the morals of his Servants. Their Virtue and integrity is the best Security



he can have of their discharging faithfully the duty of their Station. Their ill Example may be hurtfull in many respects to the family and reflect dishonour upon it. The Master who is bound to protect them from the injuries of others has the same tie to hinder them as far as lies in him from injuring and hurting themselves by bad conduct. Servants often stand in need of moral & religious instruction & counsell, & may be greatly benefited by it in their most important interests. The Authority of a Master intitles him to do this good office to his Servants, & even lays an obligation upon him to do it according to his Ability. Every Family is a little political Society wherein the Master of the Family is the Supreme Magistrate, & is in some degree accountable for the conduct of those under his Authority, & therefore that Authority ought to be employed to make them understand their duty and to engage them to the practice of it. The Supreme Magistrate in a State cannot with innocence be unconcerned or negligent with regard to the Morals of his Subjects neither can the Master of a Family with regard to the Morals of his Family. /

7/vii/20,4r Although the Divine Author of our Religion hath appointed a particular Order of Men for this very purpose of instructing others in their moral & religious Duties & stirring them up to the practice of them, and hath given them the Authority necessary for this purpose; it is not at all the intention of this institution to supersede the obligation of Parents and Masters to oversee the Morals of those under their Charge, but rather to supply their defects & to cooperate with them.

As Masters ought to use their best endeavours to promote real Worth and Probity among their Servants; so they ought to shew a just Esteem of these Qualities where they are to be found. In Moral Qualities the Servant may be equal to his Master or perhaps his Superior. And these are the Qualities that merit our Esteem in every Station of Life. Those who know how to Esteem them in Servants & to encourage them will be best Served & their Servants will be most happy.

In all cases Masters ought to exercise their Power over Servants with Humanity. A good man will be mercifull to his Beast. Much more to his Servant who is by Nature his equal & in the vicissitudes of Fortune may become his Master.

As all men are by Nature free Every just Servitude must be grounded either upon consent & Contract or Quasi Contract or

Delict.<sup>40</sup> The two first Grounds of Servitude suppose that there is to be an equality preserved as in all onerous Contracts, so that the Service done to the Master be compensated by the Benefites received by the Servant as the price of his Service. In order therefore to Judge how far Servitude grounded upon these foundations is just and agreeable to the Law of Nature. The value of a Servants Labour ought to be estimated & compared with the advantages he receives by it. If there be a manifest inequality between the two, the bargain is injurious to one party and the injured Party has a Right in this case as in all onerous Contracts to a Compensation.

The Labour of a Servant for Life is more than equivalent for his Maintenance.<sup>41</sup>

Though a Man should contract to serve another for Life upon equitable Conditions, he cannot validly make such a Contract for his Posterity.<sup>42</sup> /

Servants whether for Life or for a Term of Years must retain the unalienable Rights of men and of Reasonable Creatures.

Of the Right of Servitude founded on Delict, on Captivity, or Incapacity.<sup>43</sup> Notions of the Jews Romans and Greeks respecting Servitude. Domestick and Rural Slaves.<sup>44</sup>

The condition of Slaves more tollerable among rude Nations than the civilized.

## XV. Social Contract as Implied Contract

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2/II/10,1r The common definition of a Contract is That it is the Consent of two or more parties in some one thing, given with a view to constitute or to dissolve some obligation; this Definition seems to include all that is meant by a Contract when the word is taken in its utmost latitude.<sup>1</sup> But it is to be observed that the Consent which is essential in all Contracts may be expressed many different ways; either by a formal writing Signed sealed and delivered; or by the verbal declaration of the several parties; or by the actions of the parties; or even sometimes by their Silence, or by their doing nothing, when it may reasonably be presumed that they would not be silent or inactive if they did not consent. The meaning of Actions is in many cases as well understood as that of words or writing, and is no less binding upon honest Men. And the same thing may be said of Silence or of doing nothing.<sup>2</sup> When I hear a Sermon my Silence signifies nothing, it neither implies my assent to what the preacher affirms nor my consent to what he requires me to do. But on the other hand If I am called to a meeting of Electors of a Member of Parliament, where a Candidate is proposed by one and agreed to by others. Should it be at last moved that if any man has any Objection to the candidate mentioned he should speak, & that silence would be held for a Consent, here every honest man would conceive himself no less bound by his Silence than by his Consent expressed by words. A Dumb Man who can neither speak nor write may yet Contract or bring himself under Obligation either by natural Signs or by such artificial signs as he commonly uses to express his Consent. Thus I conceive it is evident that the consent of Parties which is essential to every real Contract may be expressed in a great variety of ways. By writing by words, by signs artificial or natural, by Silence or even by doing nothing; it is sufficient if the meaning of the sign whatever it be is under / stood by the parties.

2/II/10,1v

The terms of a Contract are sometimes most minutely expressed so as to remove every doubt as far as is possible with regard to the obligations brought upon the several parties by it; But the nature of human affairs will not always admit of this caution & precision. A

5     treaty of Peace or Commerce often makes a Volume, while the Capitulation of a town consists onely of a few lines. Nay in most contracts there is no necessity to mention the terms, They are implied in the very nature of the Transaction. Thus I send for a Taylor, I desire him to make me a suit of Cloaths of superiøre

10     Cloath of such a Colour; he takes my Measure makes a bow and walks off, under the same obligation as if by an Indenture stamped paper we had been mutually bound to each other, he to chuse the cloath according to his best skill to cut it according to the fashion and the rules of his Art to fit it to my size and shape to furnish and

15     make it up workman like & to charge a reasonable price, & I on the other hand to take it off his hands & to pay him for it. This is all implied in the order I gave him though not a tittle of it be expressed. A Farmer asks of his Neighbour farmer the Use of an Ox for a week which is readily granted. If he feeds the beast properly and works

20     him moderately & returns him at the time appointed, he fullfills his obligation, for this was the Use implied in the transaction. But if he slays the Ox, makes a feast and eats him, he is guilty of a breach of contract no less than if it had been extended in the most formal manner. I apply to a man who professes the healing Art. I tell him

25     that I labour under such an ailment, & desire his advice. He prescribes for me without any more ado. It is evident that he comes under an obligation to prescribe for me according to the best of his skill & I to pay him a reasonable fee though no such thing was expressed on the one hand or the other. The consent to this reciprocal obligation is implied in the Nature of his Profession my application to him & his prescription for my health. It is not solely The Physicians Oath taken at his inauguration that binds him to the faithfull discharge of the duty of a Physician; his taking upon him the Character virtually & implicitly binds him to this without Oath

30     or Promise. He violates the contract implied in his profession, when he does not prescribe faithfully / and honestly. The same thing may be said of every profession and of every office in human Society; with this difference onely that the more important the office is to the well being and happiness of the human kind, so much the more

35  
2/II/10,2r

sa(c)red are the Obligations to the duties of it. But every office &  
 every character has its obligations and every man who takes that  
 office or character upon him takes upon him its obligations at the  
 same time. He who claims the character of a man binds himself to  
 5 the duty of a Man, he who enlists in the Army binds himself to the  
 duty of a Soldier, & he who takes the office of a General binds  
 himself to do the duty of a General. It is so in every office in Society  
 from the lowest to the highest. If in some offices it is the Custom,  
 or enjoyed by Law to take an Oath de fidele administratione officij<sup>3</sup>  
 10 this custom, as common in Sovereigns as in any other office, brings  
 a man under no new obligation. It is onely intended, as oaths  
 usually are, to strengthen an obligation already contracted. The  
 taking the office implys the contract to do the duty of it, no less than  
 borrowing implys a contract to restore or repay at the time  
 15 appointed.

I conceive therefore that a King or Supreme Magistrate by taking  
 that Office upon him voluntarily (and no man is forced into it)  
 engages or contracts to do the duty of a king, that is to rule justly  
 and equitably & to preserve the rights & promote the good and hap-  
 20 piness of his people as far as lies in his power. where the Laws have  
 set limits to his power he is bound not to transgress those limits. If  
 the Commonwealth has committed to him the whole Power  
 Legislative executive & Judicial; he is not the less, but rather the  
 more sacredly bound to the right Exercise of it. As a General or  
 25 Admiral who is not limited by instructions but left to act according  
 to his Discretion is not by that discretionary Power under the less  
 obligation to use his best Skill & Diligence to answer the End of his  
 Commission.<sup>4</sup>

In the Simple and primitive Periods of Society when a Number  
 30 of families unite for common Protection and common Justice they  
 commonly chuse one Man of distinguished Virtue and Wisdom.  
 2/ii/10,2v They trust him with the whole care of the Government. / Their  
 giving him this Power and his accepting it, is a Contract perfectly  
 understood on both sides. While he uses his Power according to the  
 35 true meaning and intention of this Contract; they fight his battles,  
 they revere his Laws, they acquiesce in his Decisions; they reverence  
 him as the Father of his People and think his Glory his Splendor &  
 Renown to be their own. He is the most absolute Monarch upon  
 Earth, and his people at the same time the freest & the happiest

people. For this I will venture to affirm that a people may be free under the most absolute Government. They are free while they understand their Rights and have the power & the Will to vindicate them when atrociously violated. This was the case of the earliest kingly Governments, Kings were trusted with unlimited Power, and when they abused it, it was taken from them without Ceremony. This was the case of the Roman people under the Decemvirs. They were intrusted with unlimited Power for a certain purpose. The nature of their Institution implied that they were to govern the Roman people justly untill they had framed and established a body of Laws and then to resign.

This was the Original Contract implied in their Institution. The undue prorogation of their Power, & every act of Oppression and Tyranny they committed were violations of this Contract the Rape of Virginia crowned all & roused the Vengeance of that brave people.<sup>5</sup> They never had given up their Liberty, they had onely committed it to the keeping of Persons whom they esteemed worthy of that Trust. And when they proved unworthy the Roman people wanted neither judgement to understand nor the Power and Spirit to vindicate their just Rights. A People have lost their liberty onely when they are either brought to believe that they have no Right to resist oppression, or when they have not power to resist it. While they do not believe in the Divine Right of Kings to Govern wrong while they believe that their lives and Fortunes are onely deposited in the hands of the Magistrate for Safe Custody, not given away to serve his pleasure and Ambition, they are free whatever / the form of the Government may be; nothing but superior force can make them slaves. The Subjects of the great Mogul want nothing to make them free but to have their Minds enlightened and their Courage raised. The Mogul would then, notwithstanding the Absolute Nature of the Government, find himself bound by the Nature of his office and the Rights of his Subjects, and if he disregarded their Rights and Ruled tyrannically & oppressively he might justly be charged with breaking the Original Contract between him and his people. The Sum is this That every Supreme Magistrate, by taking that office, voluntarily becomes bound to certain prestations to his people; but this includes all that is essential to a Contract.

I know onely one way in which a Sovereign can plead freedom from this Contract, & that is if he has taken a protestation at his

entering upon this office that in his administration he is to have no  
 Regard to Justice or Mercy any farther than he finds them answer  
 his own Ends. If his people submit to him upon these terms, I think  
 he may be said to be under no Contract, nor can he be charged with  
 5 breaking the Contract however tyrannical his Government may be.  
 Rehoboam the Son of Solomon & Richard the second of England  
 thought proper to make professions of this kind; but the event that  
 followed in both their cases has discouraged other Kings from  
 protestations of this kind.<sup>6</sup> On the contrary we shall find few  
 10 instances in History of a King speaking to his people or to any  
 Representative body of them without confirming in express words  
 and in the most Sollemn Manner the Engagements which are  
 implied in the Nature of his Office. K Jas who was no enemy to the  
 prerogative of Kings, & who loved to instruct his People in sound  
 15 principles in his speech to his Parliament Ao 1609 tells them That  
 the King binds himself by a double Oath, to the Observation of the  
 fundamental laws of his Kingdom: Tacitly by being a King and so  
 20/11/10,3v bound to protect the People and the laws; & expressly / by his oath  
 at his Coronation; so as every just King is bound to observe that  
 20 Paction made to his People &c.<sup>7</sup> In our Constitution the Contract  
 between King and People is not onely solemnly made at his  
 Coronation but Solemnly renewed upon every Adress made to him  
 by either Branch of the Legislature. As in every such address they  
 promise to support his Kingly Power & Rights so he in his Answer  
 25 allways promises to make the Laws the Rule of his Government.

This is a clear explication of the Original Contract between King  
 and People and in this Sense I conceive it has always been under-  
 stood. The Convention of Estates at the Revolution found by a Vote  
 of both houses that King James had broke the Original Contract  
 30 between King and People.<sup>8</sup> This was one of the most sollemn and  
 important transactions that ever passed in the British Senate. And  
 we may reasonably think that every word used in a Vote that was to  
 draw such Consequences after it would be weighed. Mr Hume  
 however in an Essay upon the Original Contract, has employed his  
 35 Learning and Eloquence to shew that there is no such thing as a  
 Contract between King and People in these Ages, although he  
 acknowledges that there was such a Contract at the first Institution  
 of kingly Government.<sup>9</sup> The Sentiments which Mr Hume has on  
 many occasions expressed of the claims of the house of Stuart, & of

the Conduct of those who opposed their pretensions; make it less surprizing that he should oppose a principle upon which those who brough about the revolution justified their Conduct. If the Lords & Commons who found the throne to be vacant upon this ground among others that King James had broke the Original Contract between King and People acted upon chimerical Principles they are not to be justified and we ought either to condemn the Revolution altogether, or justify it upon different Principles. But if on the other hand this Notion of a Contract between King and People has a Meaning, and a meaning consistent with the Principles of Justice and Equity why should it be traduced as chimerical & Visionary by those who have no intention to throw a Reproach upon the Revolution.

When we speak of the Contract between King and People the Relation is supposed to subsist. It is supposed that he is really the King of such a People & that they are the People of such a King. I onely beg this as a postulation that no man is under a Necessity of being a King, that he takes this Character upon / himself voluntarily and may lay it down when he will.<sup>10</sup> It is of no consequence in the present Question in what way he acquired his Kingly Authority whether by Conquest or Hereditary Succession or Election, whether by force or fraud or fair Means, whether his people obey him willingly & freely or through Necessity; still this Relation implys in the very nature of it an obligation to those prestations towards his people which belong to the kingly office. And as the Relation must be voluntary upon his part he is obliged by entering into this Relation to those prestations. If therefore every obligation a Man voluntarily enters into is a Contract there must be a Contract between King & People. It is no less evident that this Contract may be broken or violated. The Relation between a King and People has been often compared to that between a husband and Wife & in this Respect they resemble each other that there is a contract necessarily implied in both. It is of no consequence how the Match was made up whether from mutual liking and inclination or by the authority of Parents, or even if it was begun by a Rape, as soon as the Relation is constituted the obligations necessarily follow. and the parties are bound by contract to each other.

If it should be asked when this Contract was made, the Answer was obvious, The Political Contract which Constitutes a State was



made when the State began to exist, & continues untill the State be dissolved, & this contract may continue firm under various Revolutions & Forms of Government. The contract between a Particular King or civil Magistrate & his People began when he began to be King or Magistrate & continues while he exerceises that office. When he violates the essential Obligations of a King which he came under by taking that Office he breaks the Contract.

Although the Obligation of a King to do the Duty of a King must necessarily commence from the time of his taking that Character upon him; so the Obligation of the people to subjection must commence from the time of their / taking the Character of his Subjects. But there are different degrees of Subjection to a Prince. A Stranger that lives in Brittain is Subject in a certain Degree to the King of Brittain & to the British Laws which regard aliens. But a native Britton is subject in a Different Degree. Even of British People on(e) Man may be under very different Obligations from another. A Privy counsellor or a Man who has taken the Oath of Allegiance may have different Obligations from a Man who barely acquiesces in the Government submitting to the Laws and paying his taxes without binding himself to defend the King & to Support his Tittle.

The Case of Subjects under a Usurped Government or conquered. A Title begun by Usurpation or Force may become valid as a Marriage begun by a Rape may be. Or a Treaty of Peace to which a People submit onely to avoid a greater Evil.

Remarks on D Humes Essay on the Original Contract.

The Divine Right the Same in Borgia or in Angria as in Elizabeth. Hume.<sup>11</sup> Strange that an Act of Mind supposed to be formed by every Man should be unknown to all.<sup>12</sup>

The Allegiance of a Man in a forreign Country still claimed by his Native Prince.<sup>13</sup> Moral Duties are either such as Men are impelled to by some natural propensity Or are performed from a Sense of Obligation when we consider the Necessities of Human Society. Justice & fidelity to promises as well as Allegiance belong to the last Class and it is in Vain to found Allegiance upon Promise.<sup>14</sup> No other Standard of Morals but General Opinion.<sup>15</sup>

In an Absolute Monarchy where the Throne is vacant it belongs to the first Occupant.<sup>16</sup>

Mr. Hume acknowledges that our Obligation to allegiance has the same foundation as our obligation to be faithful to our promises. Why are we bound to observe a Promise? Because there would be no living in Society without fidelity to promises. For the same Reason we are bound to submit to Government.<sup>17</sup> Mr. Hume affirms that in all Questions that respect Morals as well as in those that respect Criticism there is no other Standard but general opinion.

10 QUIBUS MODIS CONTRAHITUR OBLIGATIO.<sup>18</sup>

Ex Contractu, Quasi ex Contractu Ex Maleficio vel quasi ex Maleficio. Hence it appears that every Obligation which a man Contracts voluntarily is a Contract. Contract all obligations arising from Voluntary Actions

The Origin of Government  
 Quasi Contract the same with tacit Contract<sup>19</sup>  
 Government older than Contract  
 20 The force of Contracts small in rude Ages  
 The Question How one comes to be King  
 A Tacit Contract Revokeable  
 Contracts do not bind posterity  
 Kingly Government not the first  
 25 Some men formed to be Rulers some to be Slaves.

# XVI. Political Jurisprudence

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8/iv/9,1r

## Jurisprudence Part 3

1766 Apr 24

We come now to the third and last part of Natural Jurisprudence which treats of the Rights and Obligations arising from the Political State, or the State of Civil Government. By a Civil Government we understand the Union of a Nation or of {a} Great Number of Men under the same Laws and Government for the Sake of Common Utility. To the Body thus united the Romans gave the Name of Civitas or Res publica. Before we enter upon particulars in this part of Jurisprudence it is proper to distinguish it from the Science of Politicks, and this is the more necessary because most writers on Jurisprudence have confounded this part of Jurisprudence with the Science of Politicks. This is particularly the case with Dr Hutchison who employs some of the Chapters that follow entirely on Questions that belong to politicks and not to Morals. These therefore we shall entirely pass over leaving the Subjects treated in them to be considered in their proper place in Our System of Politicks.<sup>1</sup>

All Questions belonging to Jurisprudence are Questions concerning Right and wrong. In the last part of Jurisprudence particularly we enquire: What the duties of the Citizens are towards the State in general, towards the Magistrate or towards their fellow citizens. In this part of Jurisprudence therefore as well as in all the rest, the Rules of Right and wrong are determined by the judgment of our Moral Faculty. And those Moral Axioms which we spoke of in the General part of Ethicks are the foundation of all our Reasoning. Politicks is a quite different Science and built upon a different foundation. The intention of this Science is to shew from what Causes the Different Kinds of Civil Government Whether Despotick Monarchical Aristocratical Democratical take their Rise how they are preserved or Destroyed, What Effects they produce

with Regard to Liberty National Riches Commerc Learning  
 Morals & Religion. War Conquest and what Constitution of them  
 is best adapted to produce those Effects whether Good or Bad. We  
 do not therefore in Politicks any more than in Mathematicks or  
 5 in Physicks Enquire what is right or what is wrong either in the  
 Conducts of States or in that of Individuals. We enquire from what  
 causes Political Events do arise. And what Political Constitutions  
 are most adapted to produce certain Effects or promote certain  
 Ends. And in this Science we Reason not from Moral Axioms but  
 10 from Axioms of a quite Different Nature which we shall afterwards  
 Explain.<sup>2</sup> /

8/iv/9,1v Having thus distinguished that part of Jurisprudence which  
 treats of the Rights and Obligations belonging to the Political State  
 from the Science of Politicks, we proceed to the consideration of the  
 15 former. It is usual with those who have treated of this part of  
 Jurisprudence to begin it with pointing out the causes that induced  
 men at first not onely to unite in families, but to form those larger  
 Unions which we call States or Civil Governments.<sup>3</sup> Distinction  
 between Society & Political Union. Men in a State of Natural  
 20 Liberty have no Superior upon Earth. They are accountable for  
 their Conduct onely to God and their Own Consciences. They have  
 the Absolute disposal of their own Property as well as their Actions,  
 and are bound by no Law but by the Laws of Nature. Whereas every  
 Citizen or Member of a State is bound by the laws of that State as  
 25 well as by the Laws of Nature he subjects himself, his Property, his  
 Family, his Life itself to the Laws and to the Judicatures of the  
 State. /

8/iv/10,1r There can be no civil Government whatsoever which does not in  
 some degree abridge the liberty of those who live under it. Now the  
 30 Love of Liberty is so natural to mankind that there must be some  
 considerable inducement to engage them to give up their Natural  
 Liberty & to subject themselves to laws and taxes. and be bound to  
 that submission and allegiance which is due to the civil Powers.  
 There is nothing which men desire more earnestly than independ-  
 35 dence and it is not to be supposed that any man will subject himself  
 to the will of others and submit his actions to their controul  
 8/iv/9,1v without some urgent cause. / Now as the Love of Liberty is, and  
 justly ought to be very powerfull in the human kind, there ought  
 to be very powerfull Inducements to engage Men to give up their

natural Liberty and to submit to the yoke of Laws and civil Policy. What these inducements were or might have been is now to be examined.

5 But here two very different Questions present themselves which have not been sufficiently distinguished by writers on this Subject. The first is 1 What really and in Fact was and must have been the Origin of the Various States and Civil Governments that have been established. Or what reasons did actually induce those who first framed them to enter into this political Union. The second  
10 Question is What Might justly induce men sufficiently enlightened, and acquainted with the Effects that may be produced by Civil Government to enter into this State. We shall consider these Questions separately.<sup>4</sup>

8/v/10,1r To the first question. 1 Not necessity. / If we should suppose a  
15 ships crew to lose their master & mate upon a voyage. They will very naturally chuse a master and submit themselves and their ship to his direction because it is absolutely necessary to their preservation that they should be under some government. If they should be cast away upon some unknown Island or coast, and found it necessary  
20 for their common safety either against wild beasts, or savage inhabitants, to keep united they would still chuse a leader and submit to his command. But if they should be cast upon some desart Island where every man could provide for his own Subsistence independant of the rest; their political union would probably cease, and every man would chuse to live after his own way. Nor indeed does  
25 there seem to be any need for a political Union in such a case if all of them were wise and good and had plenty of Subsistance. Men may enjoy the pleasure of mutual conversation they may traffick with one another they may do mutual good offices or unite their  
30 strength and council upon occasion in order to promote any common good without being under any common political Government. And if they are just & human and peaceable and wise they may live happily together without any common superior. Thus in all ages many tribes have lived without laws and without  
35 Government. And thus most of the nations in North America live at this day, unless when they make war upon any of their Neighbours.

8/v/9,1v Nor can it be justly said that the worst political Government is preferable to the best state of Natural Liberty.<sup>5</sup> But The advantages

of mens uniting their Strengths & Council in any common End obvious. When a Number are engaged in some design there must be some Union in War there must be some Government and Subordination.

5       When a number of Men have any common Interest to pursue which requires the United Operation and force of all. Some one of them of distinguished Wisdom and Authority proposes some Scheme or System by which the common Interest may be served. The rest will easily be led into a Scheme that tends to the benefit of  
10       the whole.

In carrying on such a Design to propose there must be some Order and Subordination. Some to Direct & superintend others to execute. When the Business is urgent and the Interest of all Concerned they will readily settle some plan for the Execution of it. Instances a Ships  
15       Crew that have lost their officers. at Sea. Wrecked. A Tribe of independent families pasturing their Cattle in Common. Invaded by  
8/iv/9,2r       powerfull Neighbours. / Hunters Joyning in pursuit of their Game. Such Associations would last as long as the causes of them lasted.

Men finding the benefite of them and accustomed to the Subordination which they occasioned would more easily submit to it and continue this Union beyond the duration of those Events that  
20       Caused it. Those who were leaders in such associations would endeavour to find reasons and furnish Causes for its continuance spurred by the love of Honour and Power as well as that of Publick  
25       Good.

It is the Interest of those who Govern Societys to preserve Peace and to support Justice among the Members.

The Same Persons who conducted Societies in their grand Project at first made Judges of their Controversies and private Rights.

30       Why and in what cases Kingly Governments were abolished and Aristocratical or Democratical Substituted in their Place.

The beginning of Government resembles that of the human Body as it is described by Anatomists. The most essential & important parts appear first the others gradually and in course of time are  
35       brought to light.

2 The Reasons that ought to induce men Sufficiently enlightened to prefer the Political State to that of Natural Liberty.

1 The advantages that may be derived from it. Compare an American Savage with a European 1 As to Accommodations of

the Body, by the division of Labour. 2 The advancement of Knowledge. 3 In the Redress of private Injuries and the Security of Property. 4 Defence from foreign Enemies. 5 As it furnishes occasion for employing the most exalted powers & Capacities of the Mind. 5 For the Exercise of the most Enlarged Affections and Noblest Virtues.

Rousseau is a professed admirer of Robison Crusoe. Yet he prefers the Savage State to the civilized. There is not a book I know that paints more strongly or more justly the Advantage of the Civilized above the Savage. Robison owed all the Advantages he had over his Man Friday to this that he had the civilization of a common English Sailor, Friday was next to a Savage. From this Difference, the one not only retains his superiority as a Master but is revered almost as a God by the other.<sup>6</sup>

2 That Men should live in Political Society seems to be the intention of Nature. 1 Because it is most advantageous 2 Because Some Parts of the human constitution point that way.

1 We are fitted to live under Government. Foxes & Lions are not so. Sheep and Cattle & Some Species of Dogs.

1<sup>7</sup> The different Capacities of men, fit them to be parts of one great Whole.

2 The Bulk of Men tame and naturally disposed to follow a leader.

3 The qualities which produce this Submission and Respect in the Generality of men are to be found in a few & are Wisdom Valour Power, especially if transmitted through a long Race of Ancestors. The Stubborn Spirit of Independency of the Canadians, as well as the Servility of the Asiatics the Effect of Custom and Education.

4 The Love of ones Country a Natural Affection & can have no Exercise without a Political Union.

### Corollaries

1 We may see in what Sense Political Government is a Divine & in what Respects it is a human Institution a χριστος ανθρωπινη<sup>8</sup> /

8/iv/9,2v Cor 2 A good Form of Political Government is the greatest of all temporal Blessings to a Nation, & ought to be valued Accordingly. It is a very false Sentiment that Mr Pope expresses in these lines

For forms of Government let fools Contest  
 Whateer is best administred is best.<sup>9</sup>

5 A Bad form of Government will corrupt those who have the  
 Administration of it, & make them bad when otherwise they might  
 have been good. On the contrary a good form of Government is one  
 of the most effectual means of making both Governors and the  
 Governace good, or at least of making them act a good part, &  
 10 restraining them from actions that would be detrimental to the  
 publick.

Cor 3 The End of all Political Government is to preserve the  
 Rights and to promote the felicity of the Governed. The Prince who  
 considers his Subjects as the tools of his Ambition, and who con-  
 ceives that their Rights and their happiness may be Sacrificed to his  
 15 Glory is a Tyrant. These onely have the true Spirit of Government  
 who conceive of their exalted Station as a Publick Trust, in the  
 Execution whereof the common felicity of their Subjects ought to  
 be their first care. Cor 4 The Political Union between Governours  
 and Subjects, in what manner soever it might have begun or been  
 20 continued must have the Nature and force of an Onerous  
 Contract.<sup>10</sup> The Obligations are mutual. And as the Subjects are  
 bound to Respect and honour those who are set over them to obey  
 the Laws and to contribute their utmost endeavours to support  
 the government: So on the other hand those who are in the  
 25 Government whether Kings or Senators Representatives of the  
 people or Magistrates are under no less strict obligation in their  
 several Stations to make the best laws they can devise for the preser-  
 vation of Justice and for promoting the publick good, to execute  
 those laws strictly and impartially, & to take the most prudent and  
 30 Effectuall means to defend their people from forreign Ennemies.

Cor 5 That is the best Form of Government which is best adapted  
 to answer the end of Government. Cor 5 That which is the End of  
 Government, to wit the Good of the Body politick, must be the  
 measure of those Rights & obligations which arise from the politi-  
 35 cal Union. All human Actions that are morally good or morally ill,  
 and which of consequence we are obliged to do or to avoid, may be  
 reduced to two classes. 1 They are either such as are intrinsically and  
 essentially good or bad without regard to any end or any circum-  
 stance beyond the Action itself, Thus to love God to love mankind



to be fair and honest in our dealings are things in their own nature good and approvable and therefore in their own nature obligatory on the other hand, Malice Envy falsehood Calumny, are in their own nature Evil & have a moral Turpitude inseparably adhering to them / nor can any End whatsoever Justify them. Or 2 Morally good or ill Actions are such as are indifferent in themselves {and} have not any morall goodness or turpitude essentiall to them but are good or ill according to the End which they promote and for which they are performed. Thus to occupy and to use in property those things which God has given to Men in common is an action indifferent in its self, and so far as it injures no man, nor tends to the hurt of human Society we may lawfully and rightfully do it. But when the appropriating things is hurtfull to society they must be common and occupation cannot give a right to them. The end of Property being the common Good that must be the Measure of the Rights and Obligations that concern it. In eating or drinking or in the Gratification of any natural appetite, the End for which such Appetite was given us by Nature must be the Measure of what is Right or wrong. The Rights and obligations of the several Oeconomical Relations of Husbands & Wives of Parents and Children of Masters and Servants must be deduced from the ends for which those Several Relations are appointed by Nature or voluntarily entered into by Men. And as the Ends of those Relations are the foundation of the Rights and Obligations arising from them so they must be the Measure of those Rights and Obligations.

In like Manner Political Government & Administration being in itself neither intrinsically good nor Evil. The Good or Evil of it the Rights and obligations relating to it are to be deduced from the End of it and to be measured by that End.

The Right of Sovereigns to Respect & to Obedience in things that are lawfull and are not contrary to the Publick Good or to the Constitution. They are not to {be} obeyed in things unlawfull. The Behaviour of Orte Governour of Bayonne when he received the orders of Cha 9 at the Parisian Massacre, & of the Count de Tende, Charney & others.<sup>11</sup> Where the Supreme Power is not limited by the Constitution it is still limited to things that may lawfully be done or that have no inherent turpitude in them & to things that are not destructive to the Society. The deeds of a Monarch contrary to the constitution are void and null. The Rights of the Subjects to be

governed according to the Constitution to defend their Rights against a general & violent Oppression.

5 When Shadrach Meshach & Abed-nego whom Nebuchadnezzar had set over the affairs of the Province of Babylon were reprehended by that proud Monarch for not serving his Gods nor worshipping the Golden image he had set up & peremptorily ordered to do so for the future under the penalty of being cast into a burning fiery furnace. They nobly Answered Be it known unto thee O King We will not serve thy Gods nor worship the Golden Image thou hast set up.<sup>12</sup>

10 When the Rulers of the Jews strictly forbid the Apostles Peter & John to speak or teach any more in the Name of Jesus. The Apostles made this answer. Whether it be right to obey you rather than God Judge ye.<sup>13</sup> /

8/iv/9,3v The importance of Stating truly the Submission due to the Sovereign Power. To Princes and to the People, to mankind in General.

20 The Opinion of Ancient Nations upon this Subject, Greeks, Romans. How the Controversy came to be raised and carried on in England. The Opinion of Grotius & Puffendorf & Hobbes. Of the high flyers in England of Hooker Algernon Sidney Locke Hoadly. Contra Barclay Hobbes Filmer Leslie Atterbury.<sup>14</sup>

The Sole End of Government the Good of the Society.

25 The Supreme power in doing Hurt to the Society Acts without Authority, from God, Reason, or human Laws.

See Extracts from Vattel p. 25 & c.<sup>15</sup> Active Obedience due only in things lawfull.

30 Passive Obedience What? Due in many cases where our Rights are violated. Due wherever the publick good requires it. The Example of Socrates.

Where Resistance is necessary to save a Nation from tyranny it is not onely Lawfull but laudable & glorious.<sup>16</sup>

The Publick Safety the Supreme Law to Prince & People.

35 The Precepts of Scripture enjoyning Obedience are General Precepts which therefore admit of Exceptions.

They enjoyn Active Obedience no less than Passive

Forbid Resistance to Private Injuries no less than to those of Princes. The Qualification of this Doctrine. The Causes of Resistance ought to be great and Evident &c. All the certain and

probable Consequences of it duly weighed. The Evils arising from Resistance greater than those that arise from Suffering.

The Parental Authority not irresistible.<sup>17</sup>

5 This Doctrine does not encourage Rebellion, nor tend to disturb Government.

The Respect due to Government in speaking and writing. Abuse of the Liberty of the Press.

10 Grotius acknowledges that there are cases of extreme Necessity wherein it may be lawfull to resist the supreme Power. The case of David towards Saul and of the Maccabees he conceives as of this Nature.<sup>18</sup> And although he conceives that the Christian Institution binds its votaries more strongly to Submission to Government than the Law of Nature, yet he mentions seven Cases wherein he thinks resistance Lawfull even to Christians. And even Barclay the most strenuous assertor of the divine power of Kings agrees with him in several of these.<sup>19</sup> Puffendorf of the same Opinion.<sup>20</sup> Both seem to Give with one hand & give with the other. The Notion of kings deriving their Power immediately from God was says Bp Burnet at first advanced among protestants in opposition to the Popish Doctrine of Kings deriving their Power from the Pope or the Church, because it was commonly the Office of the Bishops to set the Crown upon their heads and to anoint them.<sup>21</sup>

25 No form of Government of Divine Authority. In what sense Kings derive their Power immediately from God.

The Safety Peace & Happiness of the Political Body the Supreme Law both to Rulers and Ruled.

Changes in a form of Government that hath been established & acquiesced in ought not to be made without very weighty Reasons.<sup>22</sup>

30 Every Good Man respects the Laws and Government of his Country, and this is one of the chief Securities of Government. /

# XVII. Rights and Duties of States

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8/iv/9,4r Political Jurisprudence Regards first The Mutual Rights and Obligations of the Supreme Power and the Subject. These are grounded upon the Nature and end of the Political Union. Secondly. The Rights of a Political Body or State both in Relation to other States and in Relation to individuals. This Second Part of Political Jurisprudence is that which {is} Properly called the Law of Nations as distinguished from the Law of Nature.<sup>1</sup>

See Addit Extracts from Vatel<sup>2</sup>

5 A Nation incorporated and united into one Political Body becomes by this Union and Incorporation a Moral Person. It has a publick Interest and good which it ought to pursue as every private man pursues his own private good. It has an Understanding and Will; it has Power even the United force of the whole Society under the direction of its Magistrates which force as it may produce great Effects either good or bad ought to be governd by Reason and Right & be subject to Law, for the same Reason as the power and force of Individuals. Nations may do the like Moral Actions as individuals; they may enter into contracts Covenants or treaties they may plight the Publick faith and Come under various moral Obligations. They may possess & enjoy Rights real and Personal and may transfer Rights to others.<sup>3</sup>

10 The Nation is made up of individuals each of whom is indispensibly obliged to regulate all his actions whether of a publick or private Nature according to the Laws of Nature. And therefore when thes individuals unite in one incorporate Body so as to have in a manner one Understanding one will one Active power, & thereby resemble one person this political Person must be a moral Person and partake of the Nature of the individuals of which it is made up. If it were not so, every Political Society would be indeed a Leviathan or Wild Beast under no Law or obligation and it would

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be for the common Interest of mankind to destroy all such Political Unions as leagues in Iniquity. Political Bodies therefore or States are under the Same Obligation to regard [the] each others Rights as individuals. And hence it follows that the Law of Nations is in reality a very exact Copy of the Law of Nature.<sup>4</sup> /

5  
7/vii/21,1r The Notion of some Minute Politicians that however men in private life are bound by the Laws of Justice and Equity yet it is impossible to govern States properly without sometimes transgressing the Rules of Justice. But as in private Life nothing is more  
10 contrary to true Wisdom than cunning and Deceits and the crafty man is often taken in his own Snare and falls into the pit which he dug for others. The same thing holds no less with regard to political Wisdom. The Reputation of Justice and integrity in the Administration of a Nation is of the highest Moment in its transactions with other Nations. On the contrary dark and crooked  
15 Politicks, always sink the credit of a Nation and make it suspected and hated.

Cic de Leg. Nihil est quod adhuc de Republica dictum putem, et quo possim longius progredi, nisi sit confirmatum, non modo  
20 falsum esse illud, sine injuria non posse, sed hoc verissimum, sine summa Justitia Rempubicam regi non posse.<sup>5</sup> /

8/iv/9,4r As therefore we Divided the Duty of Individuals into that which they Owe to God to themselves and to others we might divide in the same Manner the duty of Nations or States.<sup>6</sup> A State depends upon  
25 God no less than an individual and can prosper onely by his blessing and favour. National Blessings and National Calamities are dispensed by the Providence of God, as we have Reason to believe with a strict regard to their merit and demerit as a Nation. This is agreeable to all that we can judge of the moral Administration of the  
30 Supreme Being, it is confirmed by all that we know of the History of Nations and it is agreeable to the declarations of the Sacred Writings.

Therefore that Nations as Such Should Honour God, by stated Acts of Devotion & Piety should implore his Blessing upon their  
35 Councils, his aid and Succour in publick Dangers and that they should humble themselves under his mighty hand by Supplications Repentance & Reformation when they are punished by publick Calamities. This is the voice of Reason and Common Sense, And /  
8/iv/9,4v has been so in all Ages among Jews and Christians Heathens and

Mahometans. Nor can any man doubt of the Propriety of it who believes the World to be under the Administration of a Sovereign moral Governour. Good Morals in a Nation are the foundation of its Strength Courage Industry and publick Felicity. Virtue gives  
5 Power in an Individual it does so much more in an incorporate Body, For the Prudence temperance Fortitude Justice and humanity of the whole Body must be as it were the Sum or aggregate of those Virtue(s) in individuals. Therefore as I have had occasion before to shew that a Rational Piety and Devotion towards God is  
10 the most powerfull motive to Virtue.<sup>7</sup> It necessarily follows that a State neglects one of its most essential Interests if it neglects Religion and leaves that altogether out of its Consideration.

It is a part of the Religious duty of a Nation to make such provisions as are proper for the Instruction of their People in Just and  
15 Rational Sentiments of God and of Virtue, and for their having Persons qualified for theses purposes and Times and Places appointed by publick Authority for the ends of Publick Instruction and Publick Worship.

The way in Which all Nations and States almost without  
20 Exception have discharged this Part of their Duty is by establishing some publick form of Religion by Law. with proper provisions for its Ministers and Service.

Whether there ought to be an established Religion, or if a State may be well Governed without it of Pensilvania.<sup>8</sup> On[e] the one  
25 hand there are many things in Religion in which people are easily misled.<sup>9</sup>

There can be no form of Religion that has not its proper Articles of Belief as well as its Rites. If we should with the Athenians erect an Altar to the Unknown God,<sup>10</sup> the Rites by which we honour him  
30 and the Worship we pay to him must suppose some belief some Opinions concerning him. He that worships Jupiter or Bacchus must believe that there are Deities to whom those Names Belong. A Religion therefore without any Articles of Belief is a meer Chimera or rather a contradiction in Terms. There must necessarily be some  
35 belief or another either expressed or manifestly employed in the nature of its institutions. This ought the rather to be observed because some ingenious Authors have represented it as a piece of profound Wisdom in heathen Lawgivers, that though they established a form of Religion in their several Commonwealths yet this

Religion consisted wholly of Rites and Observations it had no Credenda or Articles of Faith so that any man whatever his opinion was might conform to it.<sup>11</sup> This is a vain Imagination equally contrary to Reason and to Fact. A Man who believed concerning Jupiter what the Priests and the Poets taught and what was employed in the established form of the Worship of that Deity might be a sincere and devout Worshiper. But the man who performed this worship while he believed all that was taught about Jupiter to be fable and Fiction must certainly be guilty of the grossest Hypocrisy or the most impious profanation of all Religion. The onely Reason why Christians could not joyn in heathen Worship was that they held such Opinions as were inconsistent with that Worship. /

7/vii/23,1r As it is evident therefore that there must be Articles of Belief in an established Religion either expressed or implied as well as Modes of Worship.

The Articles of Belief in an Established Religion ought not to be matters of doubtful disputation about which the best & wisest of the Subjects differ nor ought they to be matters of small importance to real Virtue and Piety. And all the Institutions of an established religion ought, as far as possible in a consistence with the End of that Establishment to be adapted {to} the main body of the Nation, even those who may differ in opinion from one another in many points. Were it possible to frame a Model of established Religion in which every good & pious Man in the Nation could joyn it were desirable. But this seems to be impossible. A Christian and a Heathen may joyn in some Acts of Religion. Thus Peter the Great Czar of Muscovy & the Emperor of China when they settled the boundaries of their Respective Empires & entered into a League they mutually Swore to the observation of it by The God that Made Heaven and Earth.<sup>12</sup> It appears plainly impossible however in consistence with the End of an established Religion that it should contain nothing wherein some even good and pious men may differ. The established Religion ought to undergo such alterations as may make it to correspond with the alterations of Opinion in the Generality of the Nation. Although such alterations ought not to be made rashly nor without mature deliberation, and discussion of the reasons upon which they are grounded.<sup>13</sup> So various, nay so absurd and capricious are often the opinions of Men, especially in more enlightened ages that a Legislator might almost as soon hope

to make one coat fit all his Subjects as one Religion. Therefore it is necessary in every State, that there be a Toleration for those whose sentiments do not allow them to joyn in the National Religion, while at the same time they may have no notions of Religion that are inconsistent with their being good Subjects and good members of the Society.

The History of Toleration

There may be Sects that are not tollerated: Suppose a Sect whose Religion obliged them to offer human Sacrifices.<sup>14</sup> Whether a state may punish impiety and disrespect to the established Religion. Whether it may inflict penalties for maintaining pernicious doctrines and Opinions? /

7/vii/23,1v Instances that Dominion is founded in Grace. That no obedience is due to Magistrates that are not of our Sect or Religion. Suicide. History of Persecution for Religious Opinions.

For resolving these Questions the following Principles may be of use. 1 A State may lay restraints upon Actions of Men that are hurtfull though not criminal. As upon Madmen persons infected with the Plague Fanaticks. History of the Flagellantes.<sup>15</sup>

2 A Crime implies a malus animus and nothing ought to be punished as a Crime where there is no Reason to conclude a malus animus.<sup>16</sup>

Whether the civil Power may punish Men for immoralities in Selfgovernment where no injury is done to our neighbour. Whatever impairs the Morals, enervates the mindes, or bodies of the Members of a State is hurtfull to the State and as every individual so every political Body has right and is obliged to use its endeavours to preserve all its Members in that Sound State which fits them for being most usefull to the Society.<sup>17</sup> The duty of a State to promote Industry Agriculture Arts and Science. To provide for the Necessities of the Poor. to Punish idleness Riot and Dissipation. To manage the Publick Revenue to provide Ships & Harbours and all the Implements of forreign Trade to drain Marches make highways Bridges Canals Fortresses. To polish the Manners as well as preserve the Morals of its Subjects. To maintain the Respect due to Magistrates Parents Seniors persons of Superior Rank.<sup>18</sup> Self Government in a State, relates either 1 to the Constitution which it ought to preserve & improve or 2 To the Subjects whom it ought to train and Govern, to provide for and to protect. For these ends a



State ought to know itself. its advantages and disadvantages, & to know its neighbour States.

To attend carefully to the Glory of the Nation.

5 The *Dominium Eminens* of the State over the Lives & Property of the Subjects.<sup>19</sup> /

7/vii/23,2r This belongs to the Self Government of states.

10 It may be proper however to observe more particularly the Nature of that Interest which the State has in the private Property of its Subjects whether moveable or immoveable. The State not only ought to defend the property of its Subjects against all who invade it, but has also a Right to Use it in as far as the publick Good Requires. When a Mans personal Service and even his life itself is  
15 [at the] due to his country when its Safety demands it, it would be very odd to imagine that his Country should not have right to demand a farthing of his Money without his Consent. In a State the good and Safety of the whole is the very End of the Political Union as we have often said, and therefore must be the supreme Law to which both the Life and the property of Individuals must submit /  
7/vii/23,2v as far as the Publick good Requires. This Power which the State has over the property of Individuals is called by Writers on the Law of Nations *Dominium Eminens*. It is by virtue of this eminent Dominion that a State may take the Estate of a Subject for some  
25 Use, as to build a fortress for the defence of the Country. Or may lay it under water to hinder the Approach of an Enemy. It is by virtue of this Eminent Dominion that when a town is like to be besieged by the enemy the Suburbs are burnt or levelled that they may not favour the enemys approach. By this same Right an Army  
30 demands the Use of horses and Wagons of the Subjects and their necessary Subsistence. By virtue of this Power the Parliament of great Britain lately authorized a Canal for an inland Navigation betwixt the forth and Clyde, which must take away part of the Property of many individuals nor is their consent required to this  
35 measure. The Same Parliament empowered the City of Glasgow to enlarge the new Church Yard & to build an Exchange behind the town house.<sup>20</sup>

There are two things necessary to justify such Exercise of the *Dominium eminens* over the Property of an Individual 1 That the

publik good require it 2 That the individual be indemnified for whatever property is taken from him to serve the Publick. Another Exercise of the Dominium Eminens is when the State Imposes taxes upon the Subject for the Service of the Publick.<sup>21</sup> The necessary  
 5 Expences of the Government must be raised one way or other and if there is not a fixed Revenue appropriate for that purpose the Subjects must raise what is necessary for the service of the State in War and Peace.

The Publick Service is a *Negotium utile gestum*<sup>22</sup> for every  
 10 Subject. Justice here Requires that the Subjects have no unnecessary burthens laid upon them. That the publick Money be frugally managed and that taxes be made as equal as possible. But there does not appear to me a Shaddow of Reason why the Consent of a Subject should be necessary to his bearing an equal Share of the  
 15 publick burdthen which the service of the State demands.

An Error of Mr Locke on this Subject Second Treatise concerning Government § 138.<sup>23</sup> Adopted by the Americans & Ld Chatam<sup>24</sup>

Taxes how far Benevolences in England.

The Right of private property in cases of Necessity yields to  
 20 common Utility even in the State of Nature, much more in political Society.<sup>25</sup> / As the Right of Property was gradually extended when men were more enlightned, & might justly be extended as far as is consistent with publick good. So the right of Civil Government has been graduall extended. At first reaching onely to heads of families, afterwards to all the members of the family. Laws of  
 25 Succession of Wills, of Prescription. Extension of the Rights of Empire agreeable to the law of Nations as far as consistent with the good of Mankind

Whether Territory acquired by occupation by the colonies of a  
 30 State comes under the Eminent Dominion of that State.

A.<sup>26</sup> The Laws of Colonization in ancient and in Modern times very Different. In Ancient Times a Colony commonly became a new State and resembled a Child that is *foris familiat*.<sup>27</sup> So that no other Connection remained between them but that of alliance and  
 35 Friendship, grounded upon the Relation that was between them. The Colonies conceived themselves obliged to regard the Honour & Interest of the State from which they sprung next to their own. to Respect it as their Parent & to take its part in Wars wherein it was engaged. The Mother Country on the Other hand owed a reciprocal

Aid and Protection to its Colonies, but the Colony was not subject to the Mother Country. It established a Form of Government for itself. & was to all intents an Independent State. In modern Times the manner of planting Colonies is quite different. A Colony planted abroad is still subject to the Mother Country they still enjoy all the Rights of Subjects of the State & therefore of course are Subject to the Legislature of the Mother Country. Those who reside in our Colonies in America are not Aliens as a french Man or a Duch Man is: They are intitled to all the Rights and privileges of British subjects. They may succeed to land in great Britain by Inheritance by Disposition or Sale or Testament as any Subject of Britain may. And in consequence of any Succession in Land may vote for members of Parliament or be members of Parliament as any other British Subject may be. The Necessary Consequence of this is that they should be subject to the Legislature of Great Brittain. /

7/vii/23,1v Constitution Protection Training Improvement of Arts & Sciences & in Virtue Riches Trade Defence.<sup>28</sup> /

7/vii/23,3v

### Self Government in a State

As every individual Person desires & ought to desire his own happiness and Perfection and Honour so likewise a State ought to take care of its own interest & Honour and to desire that its Condition may be the best the happiest & most honourable it can attain. Nay I think it may be fairly allowed that the Duty of self Preservation and Self Love in a State ought to {be} cherished more and indulged to a higher Degree than Self love in an individual. A Good Man loves his Neighbour as himself & can hardly be placed in any Situation of Life wherein he does not employ more of his time and thought and Labour for the benefit of others than for his own. Yet we cannot but acknowledge that a State ought to have more concern for its own happiness and improvement and bestow its Labour more for that End, than for the good of any other State whatsoever. A Man may Love his Friend as much as he loves himself. But we must allow that the first concern of every State ought to be for itself, that is for the happiness of its Subjects. It is right and Laudable that it should prefer the happy Condition of its own Subjects to the good of any other State. As every British Man would and ought to prefer the Interest and Glory of G Britain to that of France Spain or

Germany so this Patriotick Spirit which is commendable in every individual is no less so when it appears in the publick Councils and Government of the Nation, & we might very Justly blame those who are at the helm of publick affairs if they did not make the interest and Honour of the Nation their first and chief Object.<sup>29</sup>

States are less dependant on each other & less connected than individuals.<sup>30</sup> /

7/vii/23,1v

### Behaviour of States to other States

This as well as the Duties of individuals to each other may be Reduced to two heads Humanity & Justice.

The Duties of Humanity more Necessary in individuals than in States & therefore more practiced. Enlarge. But they are no less amiable and Honourable in States than in individuals. May be expressed by benefactions to the Distressed. Preserving peace and composing Differences among other States. Aiding the injured and oppressed. Q Elizabeth aided the Dutch & Henry 4.<sup>31</sup> Treating well the Subjects of forreign States granting Protection to the Persecuted. Hugonots in England. In Holland. Honouring and Rewarding Merit in Forreigners. Being forward to promote discoveries and improvements that may be usefull to Mankind in General. Q Eliz. Aiding the Dutch against the Spaniards, & Henry 4 against the League. The French Mensuration of the Earth. Europe concurring in observing the Transit of Venus.<sup>32</sup> /

7/vii/23,2r

The Parl. of England voting 100,000 for relief of the Sufferers by the Earthquake at Lisbon.<sup>33</sup> The project of a Perpetual Peace by Henry 4 and Q Eliz.<sup>34</sup> The protection given by O Cromwel to foreign Protestants. his Project of Uniting them in a Protestant League.<sup>35</sup> Premiums for Discovery of the Longitude.<sup>36</sup>

There may be a Generosity and Magnanimity in States that would give them a Distinction among other States no less Honourable & Glorious than those Virtues give to Individuals. Justice. If States ought to behave to each other with humanity & Generosity they are under a much Stricter Obligation to behave with Justice. The Rights of States as of Individuals are either Real or Personal. Real Rights are the Right they have to what belongs to them in Property. Their Land Territory with the Lakes Rivers bays and Seas belonging to it. Their Ships Fortresses and the Goods of

their Subjects. It is here to be observed that immoveable property in one State may be the property of the Subject of another State. Thus an English man may have an Estate in France. In this Case he must hold the Land of the Crown of France as it belongs to the Domain of France. It must be subject to the Laws of France nor can it be said to belong to the British State though it belongs to a British Subject. And the onely Right the British Government has is to see that its Subject be not wronged. But with regard to goods which the Subjects may have in forreign Countrys these the State as well as the private proprietor have a real right in.<sup>37</sup> Property in a State as well as in an individual may be original, that is it may be got by occupation or produced by the Labour and skill of the Subjects. Or it may be derived from a former proprietor by donation, Purchase, Testament or Succession. Equality of Nations.<sup>38</sup>

The Law of Nations regarding the Property of States whether original or derived is so much the Same with the Laws of Nature respecting the Property of Individuals that it is unnecessary to repeat what has been already said, in treating of the Laws of Nature.<sup>39</sup> /

War Defined Certatio per Vim.<sup>40</sup>

Distinguished into Private & Publick. The Publick 1 into Solemn & less Solemn 2 Into civil and forreign.<sup>41</sup>

Private War 1 in the State of Natural Liberty. 2 In the Political State how far allowable 1 In Defence of ones Life when unjustly assaulted. 2 In Defence of ones House when thieves attack it in the Night. Si nox furtum faxit, si im aliquis occisit, jure caesus esto 12 Tab.<sup>42</sup> Duels unjustifiable. Their Origin Progress. Attempts to discourage them unsuccessful In order to this Provision for a redress of those Injuries which are called affronts or insults. The Challenger to be degraded from the rank of a Gentleman. and rendered incable of publick office.<sup>43</sup>

Publick War made onely by those haveing sovereign Power, in the british Government by the King.<sup>44</sup>

#### OF THE IMPLEMENTS OF WAR<sup>45</sup>

The levy of Troops. The ancient way of enlisting Troops. Modern Way by enlisting volunteers. By pressing Men. Can Ecclesiasticks plead Exemption?<sup>46</sup> Pay of Troops Lodging. Hospitals Barracks & Encampments. Hospitals for invalids Hire of Forreign Troops. Is it

lawfull for a Man to engage as a Soldier in forreign Service? Yes. Enlisting in a forreign State, must require the consent of the State, & moreover that none be enlisted but volunteers. Military Oath & Mutiny Laws. Military Discipline introduced by the Swiss says  
 5 Matchiavel. Improved by the King of Prussia.<sup>47</sup> The Power of a General or Commander in Chief. His Engagements ultimate in the Operations of the War. in Capitulations giving Hostages &c But he has not tittle to end the War by a peace. Instance of the Roman Defeat at Caudae.<sup>48</sup>

10 Causes of War. Reasons. Motives. Pretexts<sup>49</sup>

War is Offensive or Defensive

Two things Required to justify the Agressor in a War. That it be just, & that it be Prudent.<sup>50</sup> When the injurious party offers just Reparation, & it is refused, the injured becomes an unjust agres-  
 15 sor.<sup>51</sup> The Prudential Motives to War belong to Politicks rather than Jurisprudence.<sup>52</sup> /

8/iv/8,1r May 2 1766

We have considered the Rights which the different Parts of a  
 20 Political body or State have with regard to one another, and began to enter upon the Rights that are competent to different States in their Intercourse with each other. These we observed are very much the same with the Rights which different individuals have with regard to each other in natural Liberty. A State once incorporated  
 25 resembles a Moral Agent, is capable of entering into Engagements and Contracts, and is under a Sacred obligation of fullfilling its Engagements and of behaving justly fairly and honestly with other States. It ought in the first place to attend to its own Safety and felicity, and as far as is consistent with that to act with humanity and  
 30 benevolence to other States to relieve the indigent to assist the weak to take part with the injured, and to be ready to reconcile differences and preserve peace and tranquillity among its neighbouring States.

States as well as individuals ought to be actuated not merely by  
 35 Selfish principles but also by benevolent ones towards other States, especially with those that are more near to it or more connected with it in trade and Commerce.

The Parliament of Great B acted a Noble part in voting 100,000 for the Sufferers in Lisbon when that Capital was reduced to rubbish by an Earthquake.<sup>53</sup>

There is a common interest of mankind that ought to be regarded by every State as well as the particular interest of its own Body. It were to be wished indeed that this disinterested regard to the common good of Mankind were more common in States, and that they had more enlarged views which might lead them to the noble ambition of being benefactors to the human kind. Some publick designs of this head that are imputed to Henry 4 of France and to Oliver Cromwell, will with impartial posterity raise the Glory of those heroes to a higher pitch than all their Victories. Vattel page 125.<sup>54</sup>

Plans and Prospects for the advancement of arts & Sciences very honourable to a State.

When one State receives injuries from another they are thought intollerable and of which no redress can be obtained by amicable disceptation or by the interposition of Mediators as such states have no common Superior these must in single cases have recourse to War. And every State has Right to defend it self from atrocious injuries and to seek the redress of them by force when all other methods fail.

1 Not to hurt other States by Encroaching upon their Territory. Obstructing their traffick injuring their Subjects. or Ambassadors. Exciting Seditions. Aiding their Enemies. Protecting Rebels or Atrocious Criminals

2 Keeping faith.<sup>55</sup>

3 Making Reparation for injuries done by the State or its Subjects.<sup>56</sup>

4 Removing just ground of Suspicion. when Given Means of terminating Differ.<sup>57</sup>

1 Amicable Disceptation.

2 Mediation of a third party.

3 Arbitration of a Judge.

Means of redressing injuries.<sup>58</sup>

1 Lex Talionis commended by some; often unjust and Barbarous.

2 Retortion.

3 Reprisals. Last war with France begun by Reprisals.<sup>59</sup>

Public Funds not Subject to Reprisals nor private debts. Ships at Sea the chief Subject. Permitted only to the State or Letters of Marque given by the State.<sup>60</sup>

5 A declaration of War sometimes lawfull when Reprisals would be unjust, before declaration.<sup>61</sup>

A war between two independent States is by Writers on Jurisprudence called *Bellum Solemne & Bellum publicum*.<sup>62</sup>

10 A State of War is far from dissolving all the obligations of States to one another. Tho they are Enemies they are Still human Creatures, and there is a right and a wrong in conduct towards enemies. The End of war is to defend our Rights to redress our wrongs. And War can give no license to any thing that is not conducive to the End of it. In Sollemn War both parties pretend to have Right on their Side, and although it is impossible that both can be in the Right, yet both may think themselves in the Right, and therefore each while it defends its own Right against its  
15 Enemy ought to treat that Enemy not as one who has laid aside all regard to Right but as one who injures them from prejudice and false Opinions of his Right. See Add. Extracts from Vattel B.<sup>63</sup>

20 The just Causes of War we have considered under private Jurisprudence for they are the same between individuals in natural Liberty & between States.<sup>64</sup> We have likewise considered the rules that ought to be observed in carrying on War.<sup>65</sup> The violation of  
25 faith given to an Enemy poisoned Weapons, cruelty to Captives.<sup>66</sup> The Duke of Cumberland's behaviour to a french Officer when wounded at Detingen.<sup>67</sup> Behaviour of a French advanced party t(o) some English a hunting.<sup>68</sup> Of the English to the French Prisoners in England in the last war.<sup>69</sup> /

8/iv/8,1v In a war between two States, a third State may where the injustice evidently appears on one Side espouse the Cause of the injured, as a third person may & ought to assist an innocent man when unjustly attacked. But when it does not appear in which Side the right lies, other States ought to observe a neutrality if they do  
35 not they make themselves parties in the war and may be accounted his Ennemies against whom they act.<sup>70</sup> It is not a breach of Neutrality to furnish troops to a State in consequence of treaties formerly made without any view to the War in which it is now engaged.<sup>71</sup> It is no breach of Neutrality to carry on commerce with



one of the parties at war.<sup>72</sup> The Case of Contraband Goods.<sup>73</sup> Moveables taken from an Enemy in War may be Bought by a Neutral state but Territory ought not until it is ceded by a treaty of peace.<sup>74</sup>

5 Capture of the trading Ships of a hostile Nation allowed. and making prisoners of the Crew. Striping or plundering the Men dishonourable. Captives not to be considered as Criminals but as men fighting in Defence {of} their Country.<sup>75</sup> Making inroads into an Enemies Country and laying it under Contribution, as well as  
10 Seizing every thing belonging to the State allowed.<sup>76</sup> Pillage not allowed.<sup>77</sup> Acts of hostility in a Neutral State not allowed. Nor marching armies thro' it without Leave.<sup>78</sup>

Ransoming of Captives. Cartel. Release upon Oath.<sup>79</sup>

15 Real Rights and Servitudes of a Neutral State upon a conquered territory not to be violated by the conqueror.<sup>80</sup> Precedency of Nations.<sup>81</sup> Honour of the Flag.

How far a State may give protection to the refugees of another State?<sup>82</sup>

20 Leagues & treaties not to be broke on the pretence of fear or force.<sup>83</sup>

The Rights of Ambassadors. A State is not obliged to permit an ambassador to reside with them, tho' it is commonly allowed. Their immunities & those of their Retinue.<sup>84</sup>

25 Of the dissolution of the political Union of a part of a State with the whole of the dissolution of a State.<sup>85</sup>

Laws of War with regard to the enemy while in Arms. To be killed or taken prisoners or put to flight.

Treatment of Prisoners, of the wounded.

30 Ships of the Enemy law full prize & the crew Captives. An army in an Enemies Country.

Behaviour to those who are not in Arms.

Women and Children.<sup>86</sup>

What Money or Magazines belong to the publick lawfull prize.<sup>87</sup>

35 Contributions sometimes raised. Hostages taken for their payment. Passage through a Neutral territory.

Hostilities in a Neutral territory.

Whether we may Use the Means of Poison or Assasination for taking away the life of our enemy.

Laws of War with regard to the Goods of the Enemy moveable and immoveable. Treaties between hostile Nations Made before the War. During the War.<sup>88</sup>

5 In a Conquered Province the Conquereor acquires only the Rights of the conquered.<sup>89</sup>

Real Rights belonging to a third State as well as the estates of individuals remain active.<sup>90</sup>

Civil War

10

a Tumult

a Sedition

an Insurrection.<sup>91</sup> /

7/vii/22,1r DEF. OF WAR. PRIVATE & PUBLICK ITS LAWFULLNESS

Private 1 in the State of Nat Liberty

2 in Political Society unlawfull Except in Self Defence

Duels Their History Origin. Reasons against them.

20

Public Wars Less Solemn against Pirates Robers Rebellious Subjects

Solemn. Between Sovereign States only.

25

IMPLEMENTS OF WAR

Levy of Troops. Hire of Ships or Troops. Lawfull to engage in foreign Service in a Just War.<sup>92</sup> Volunteers pressed Land Sea Men.<sup>93</sup>

None Exempted by the Law of Nations in Cases of Necessity.<sup>94</sup>

30

Enlisting in a forreign Country.

Power of a General or Governour of a fort.

35

Causes of War. Who are entitled to carry Arms.

A Ship or a Town may defend itself against a privateer.

Obligations of Allies. Neutral States.

Quibus modis solvitur Obligatio.<sup>95</sup>

- 1 Performance
- 2 Compensation
- 5 3 Remission or Acceptilation
- 4 Mutual Consent
- 5 Breach of Faith on one Side
- 6 Assignment
- 7 Confusion
- 10 8 Death /

3/11/5,1v Sept<sup>r</sup> 1766 Read The Laws of Nations; or Principles of the Law of Nature applied to the Conduct and affairs of Nations and Sovereigns by M de Vattel Translated from the French Lond 1760 Newbery & c 2 Vol 4<sup>o</sup> 1 Vol 254 pages 2<sup>d</sup> 170.<sup>96</sup>

15 In the Preface he endeavours to shew that the Law of Nature as it[s] respects the conduct of Independent States & Sovereigns to each other ought to be treated as a distinct Science from that Law of Nature which respects the conduct of Individuals to each other.

20 That the Baron de Wolfius was the first who had treated of the Law of Nations as a distinct Science. But his treatise on this Subject is dependent on all those which the Same Author has wrote on the law of Nature. In order to read and Understand it it is necessary to have studied sixteen or seventeen volumes in 4 to which preceeded it.<sup>97</sup>

25 Besides the Baron has wrote in a Geometrical form and Method which gives a dryness to his work. Our Author therefore has drawn from him what he thought best, & followed his own plan, & in several things differs from Wolfius in his Opinions.

30 PRELIMINARIES

A Nation is a body politick, united to gether to procure mutual safety and advantage by its Union. Such a Body by this Union becomes a Moral Person has its proper affairs and interests, its

35 Understanding and Will its Rights and obligations. Before the establishment of Political Societies men lived together in the state of Nature, free and independent of one another. This blessing of natural freedom men could not lose without their consent (or fault). But Citizens surrender a part of their priviledges to the state or

5 Sovereign in consideration of the Security and advantages they reap from the political Union. A state being made up of individuals who are subject to the Laws of Nature, their Union cannot free them from the obligation of observing those laws. The common will being the result of the Wills of the Citizens remains subject to the Laws of Nature and is obliged to respect them in all its proceedings. But as a state or civil Society is a subject very different from an individual of the human Race, in many cases it will have different obligations and rights. This makes it proper to consider the law of Nature respecting individuals, and the Law of Nations as distinct Sciences.<sup>98</sup>

10 There is a necessary Law of Nations to which all are necessarily subject which is grounded upon the principles of Right and wrong. By which lawfull Conventions & treaties between Nations are distinguished from those that are unlawful & innocent Customs from those that are barbarous and unjust. There is also a voluntary Law of Nations grounded upon Consent express or tacit between Nations, which binds onely those that have consented.<sup>99</sup> /

4/m/23c,2r 20 All states are by Nature free and independent of one another. Yet there may be several degrees of dependance which leave to a State its Sovereignty. It may engage in an unequal Alliance with a more powerfull State for protection it may pay tribute it may be feudatory. without losing its Sovereignty. Two states may have the same Prince & yet be each of them sovereign within itself. The king of Naples pays Homage to the Pope for his Kingdom.<sup>100</sup>

p 20

30 A king of France does not revenge the injuries of the Duke of Orleans. a wise Saying of Lewis 12.<sup>101</sup>

25

35 The kings of Danemark have formerly condescended by solemn treaties to refer to those of Sweden, the differences that might arise between them and their Senate. This the Kings of Sweden have also done with regard to those of Danemark. The Princes of Neufchatel established in 1406 the Canton of Bern the Judge and perpetual Arbitrator of their Disputes. Thus also according to the Spirit of the Helvetick Confederacy, the entire body takes Cognisance of the

troubles that arise in any of the confederated States, though each of them is truly sovereign and independent.<sup>102</sup>

5 Those Governours of places who refused to execute the barbarous orders of Cha 9 at the famous St Bartholomew Massacre have been universally praised and the Court did not dare to punish them at least openly. ‘Sire, {’} said the brave Orte, Governour of Bayonne, in his letter, {’} I have communicated your Majestys command to your faithfull inhabitants and warriors in the Garrison, and I have found there onely good citizens and brave  
10 Soldiers but not one hangman: Therefore both they and I most humbly beseech your Majesty to be pleased to employ our Arms & lives in things that are possible, however hazardous they may be, and we will exert our selves to the last drop of our blood. {’} The Count de Tende Charney and others replied to those who brought  
15 them the Orders of the Court, that they had too great a Respect for the King to believe that such Barbarous Orders came from him.<sup>103</sup>

33

20 No patrimonial States. All Sovereignty unalienable but by the consent of the people.<sup>104</sup>

125

25 Pope Benedict 14 being informed that several Dutch ships being at Civita Vecchia, dared not to put to sea for fear of some Algerine Corsairs cruising in those parts, immediately issued Orders that the frigates of the Ecclesiastical State should convey those ships out of danger; and his Nuncio at Brussels received instructions to signify to the Minister of the States General, that his holiness made it a law  
30 to himself to protect Commerce and perform the duties of humanity without minding any Difference of Religion.<sup>105</sup>

127

35 It is said that some Sarcastick Medals and dull Jests of the dutch against Lewis 14 were the chief cause of his Expedition in 1672 by which that Republick was brought to the brink of Ruin.<sup>106</sup> /

4/iii/23c,2v The Dutch by a treaty with the King of Ceylon have engrossed the Cinnamon trade yet whilst they keep their profits within just limits no nation has any cause of complaint.<sup>107</sup>

132

The States General of the United Provinces, when their Consul had been affronted and put under arrest by the Governour of Cadiz, complained of it to the Court of Madrid as a breach of the Law of Nations. And in the Year 1624 the Republick of Venice was near coming to a Rupture with Pope Urban 8th on account of an Insult done to the venetian Consul by the Governour of Ancona.<sup>108</sup>

133

At present Kings claim a Superiority of Rank over Republicks, but this pretension has no other Support but the Superiority of their Strength. Formerly the Roman Republick considered all Kings as far beneath them, but the Monarchies of Europe having onely weak Republicks among them, have distained to admit them to an equality. The Republick of Venice and that of the United Provinces have obtained the honours of Crowned heads, but their ambassadours give place to those of Kings.<sup>109</sup> When England had driven out her king, Cromwell would not suffer any abatement of the honours that had been paid to the crown or to the Nation, & maintained the English Ambassadours in the rank they had always possessed.<sup>110</sup>

In the partition of the Empire in the house of Charlemagne the eldest branch retaining the title of Emperor, the younger who had the Kingdom of France yielded to him in rank, the more easily as the Idea of the Majesty of the Roman empire was not Recent. His Successors followed what they found established and were imitated by the other kings of Europe.<sup>111</sup> Most of the other Kings of Europe have not agreed among themselves about their rank. The Popes by virtue of their Supremacy and the Emperors after the example of the Ancient Roman Emperors have both claimed the Power of creating Kings.<sup>112</sup>

The Czar Peter I complained in his manifesto against Sweden, for their not firing Canon on his Passage to Riga. He might have complained of this as a mark of the want of Respect; but to make it the cause of a War, was being extremely prodigal of human Blood.<sup>113</sup>

This performance is wrote with much spirit and good Sense & breaths a warm concern for the good of Mankind, a generous sense of Liberty and disdain of Slavish principles. The principles illustrated with many good Examples most of them taken from Modern times. /

## 3/11/5,2r ADDITIONS TO THE EXTRACTS FROM VATTELS LAW OF NATIONS

The translation I take to be a booksellers work and to be very indifferent. Take this instance in a passage of Hobbes de Cive wherein he gives as the Author thinks the first proper Definition of the Law of Nations. These words of Hobbes ‘Sed quia civitates semel institutae, induunt proprietates hominum personales’{} are thus rendred ‘But as States in some measure acquire personal Property.’{}<sup>114</sup>

Though Justinian and his Institutiones gives a very indistinct and faulty definition of the Law of Nature; and makes that to be the Jus Gentium which we call the Law of Nature. Institut Lib 1 Tit 2. § 1, 2. Quod naturalis Ratio inter omnes homines constituit, - id vocatur Ius Gentium. Yet the Romans had their Feclal Law which was that part of the Law of Nations which Related to War & Treaties.<sup>115</sup>

Grotius founds the Law of Nations on the common consent of Nations, and has not distinguished the Natural or necessary Law of Nations from the conventional or voluntary.<sup>116</sup>

The Law of Nations is chiefly the Law of Sovereigns of whom the most powerfull and despotick are not exempted from the Obligation of this Law. The maxim of some minute Politicians That a State cannot be governed happily without injustice is as contrary to true Wisdom as to Equity and Truth. The Authority of Cicero may ballance that of a thousand such little Politicians. ‘Nihil est quod adhuc de Republica putem dictum, et quo possim longius progredi, nisi sit confirmatum, non modo falsum esse istud, sine in juria non posse, sed hoc verissimum, sine summa Justitia Rem publicam regi non posse.’<sup>117</sup>

32

In All Christian States except Portugal, no Descendant of the Sovereign can succeed to the Throne unless he be born in Lawfull Marriage.<sup>118</sup>

Book 2 Chap 17 of the Interpretation of treaties to be read at leisure.<sup>119</sup>

Book 3 of War. It belongs onely to the Sovereign to Make War. All the Subjects bound to the defence of the Country. A Man may with the consent of his Sovereign engage in the Service of a forreign Prince as a Mercenary Soldier.<sup>120</sup>

Report made to the King of G. Britain by Sir G. Lee Dr Paul Sir Dudley Ryder & Mr Murray on occasion of the Prussian Vessels seized and declared good Prizes during the last War quoted as an excellent Piece on the Law of Nations.<sup>121</sup>

5 When Satisfaction for an Injury is offered by the Injurious party and the other refuses to accept it he becomes an unjust Aggressor, The Samnites had ravaged the Lands of the allies of Rome; when they became Sensible of their Error they offered full Reparation but all their Submissions could not appease the Romans on which  
10 Caius Pontius General of the Samnites observes *justum est Bellum quibus necessarium, et pia Arma quibus nulla nisi in armis relinquitur Spes.*<sup>122</sup>

Politeness in declarations of War, in the expressions used. Homers Heroes blamed.<sup>123</sup> In clauses annexed. In the Declaration of war  
15 against France 1744. are these Words. 'And whereas there are remaining in our kingdom divers of the Subjects of the french King, we do hereby declare our Royal Intention to be, that all the french Subjects who shall demean themselves dutifully toward us shall be safe in their persons & Effects.'<sup>124</sup> Distinction of Externall Lawfull and unlawfull  
20 War. The first is where causes may be and are pretended, & where each Party ought to be supposed to act *bona Fide.*<sup>125</sup>

Alliances Defensive, Offensive, Society in War, Subsidy. Auxiliary Troops.<sup>126</sup> What a Neutrality allows or requires.<sup>127</sup> Contraband Goods passage of Troops.<sup>128</sup>

25

#### THE RIGHTS OF WAR

The taking away the Life of an enemy after he has laid down his arms always unjust. Prisoners may be detained untill they be ransomed, or their parole taken not to fight / against the Captor during  
3/III/5,2v the War. Admiral Ansons behaviour to his prisoners when he took the *Accapulco Ship.*<sup>129</sup>

Poisoning and Assassinating unlawfull.<sup>130</sup>

D. of Cumberlands Behaviour at Dettingen to a French wounded  
35 Officer.<sup>131</sup>

Not firing at a General or Princes Tent. Sending Provisions to the Governour of a Beseiged Town.

Of Right to the Goods of the Enemy. Cartell between Louis 14 & the Confederates with regard to Contributions. *Partie Bleu.*<sup>132</sup>



Ravaging a Country hardly ever excusable. Destroying Vines & Olives base and unmanly. Destroying Temples Tombs and Publick Buildings Savage.<sup>133</sup>

5 In Solemn War both Parties consider themselves and are commonly to be considered by neutral States as engaged in Lawfull War. Hence Conquest gives an external Right even to the injurious.<sup>134</sup> Moveables belong to the conqueror so that another person may purchase them from him as soon as they are safe in his possession. Immoveables onely by the treaty of peace.<sup>135</sup> A State is not to  
10 meddle with the internal Government of another State and therefore may after a Revolution receive Ambassadors from or send them to the reigning Prince. Nor ought {it} any longer to own the expelled Prince as the Head of a State from which he is expelled.<sup>136</sup>

Ambassadors Envoys Residents Ministers.<sup>137</sup>  
15 The Privileges and Immunities of Ambassadors<sup>138</sup> their Wives Domesticks, Houses and Goods.<sup>139</sup> The Judge of Ambassadors.<sup>140</sup>

Just Causes of War.

An Act of the Superior Power. Offensive Defensive.<sup>141</sup>  
20 1 The Defence of the State, of its Subjects, Allies, of the oppressed, of Mankind.  
2 The obtaining what is due by a Just and perfect Right.  
3 The Reparation of Injuries done.  
4 The Safety of the State where there is just Reason to apprehend a  
25 hostile Disposition, & no Security can be other ways obtained.<sup>142</sup>

Unjust Reasons Avarice Ambition Desire of Conquest.<sup>143</sup>  
Means to be Used to prevent War.<sup>144</sup>  
30 Denunciation how far Necessary before War, or soon after, for Reputation. for warning to Neutrals.<sup>145</sup>

Those onely entitled to commit Acts of hostility who are commissioned by the State. either expressly or by their Office. Subjects, Allies, Friends to Justice, Soldiers of Fortune.<sup>146</sup>

35 War cannot be just on both sides. The Party who had justice at first on his Side may become the unjust Party by refusing just Reparation for wrongs done. Treaty of Neutrality.<sup>147</sup> Both parties may conceive that they are in the Right and Charity should lead us to think so as far as we can. The Consequences of this presumption in the Parties; in others. External Right.<sup>148</sup>

What is Lawfull in carrying on the War. Force & Stratagem. Poisoned Arms, Waters, Contraband Goods. Of the Behavior of an Army in an Enemies Country. Passage through a Neutral Country.

5 Of Contracts and other Social Intercourse during the War. Of the treatment of Captives. Of the Seizure of Ships belonging to a hostile Nation. Of Conquest. of Civil War. Of Treaties of Peace.

Of Ambassadors. Envoys Ministers Residents Consuls & their Priviledges & Precedency.<sup>149</sup> Should their Houses be an Asylum. Should they be allowed to traffick.<sup>150</sup> Voluntary Law of Nations on this Subject or Custom.<sup>151</sup>

10 Who have Rights to send Ambassadors. Of the Right of Punishment of foreigners.<sup>152</sup> Of the Right of Sepulture.<sup>153</sup>

Alienating a Part of the Body Politick.<sup>154</sup> And naturalizing.<sup>155</sup>

15 3 May 1770

When a State is dissolved. of Banishment.<sup>156</sup> When one ceases to be a Member of a State. When Ambassadors are discovered in conspiracies or plots against the State.<sup>157</sup> Where they reside.<sup>158</sup>



# Commentary

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KNUD HAAKONSSEN



## I. Introductory Lecture

1. It must be emphasised that this manuscript does not belong specifically with the Lectures and Papers on Practical Ethics. It is an introduction to Reid's course as a whole and is included here because it gives a clear idea of the place of practical ethics within that course (see the Introduction above, p. lxxviii). Reid's text here, pp. 3–8, is in substance reproduced in the preface to IP, pp. 11–15.
2. There are traces of the numeral 'I' in front of 'Our'. The list should have been completed with the mind of God and the minds of animals, as we see below.
3. Christian Wolff, *Psychologia empirica, methodo scientifica pertractata* and *Psychologia rationalis, methodo scientifica pertractata*. Reid is referring to the former; see IP, p. 188. Although unusual in the eighteenth century, the word 'psychology' was certainly available in English (see, e.g., David Hartley, *Observations on Man*, p. 354), and it is interesting that Reid turned to Wolff for it; Wolff was not well known in the English-speaking world.
4. Reid is referring to the first, and anonymous, edition of Edmund Burke's *Philosophical Enquiry into the Origin of our Ideas of the Sublime and Beautiful*. Reid was fond of the passage in question, as we see from a fragmentary manuscript, 4/II/3, where he says:

I shall confirm what I have said of the Importance of an accurate Enquiry into the Human Mind by the Authority of an ingenious writer who is not a man of meer Speculation, but one who makes a shining figure in the Political World, and thunders in the British Senate with uncommon Eloquence. I mean the Author of the Philosophical Enquiry into the Origin of our Ideas of the Sublime and Beautifull Mr Burke. 'The Variety of the Passions is great, and, in every branch of that Variety, worthy of an attentive Investigation. The more accurately we search into the Human Mind, the stronger traces we every where find of his Wisdom who made it. If a Discourse on the Use of the parts of the Body may be considered as an Hymn to the Creator; the Use of the Passions which are the Organs of the Mind, cannot be barren of Praise to him nor unproductive to ourselves of that noble and uncommon

Union of Science and Admiration which a Contemplation of the Works of infinite Wisdom alone can afford to a rational Mind; whilst referring to him whatever we find of Right, or Good, or Fair, in ourselves, discovering his Strength and Wisdom even in our Weakness and imperfection, honouring them where we discover them clearly, and adoring their profundity where we are lost in our Search, we may be inquisitive without impertinence, and elevated without Pride we may be admitted, if I dare to say so, into the counsels of the Almighty, by a consideration of his Works. This Elevation of Mind ought to be the principal end of all our Studies, which if they do not in some measure effect, they are of very little service to us.’

Reid quotes with a few minor inaccuracies from pp. 35–6, and he repeats the passage in IP, p. 15. For Reid’s notion of a ‘Structure of the Mind’, compare Butler’s idea of the ‘constitution’ of human nature in ‘The Nature of Virtue’ in Butler, *Sermons*, i–iii.

5. ‘I will find a way or make one.’ A similar passage in the preface to IP, p. 13, containing the same names, ends thus: ‘The motto which Lord Bacon prefixed to some of his writings was worthy of his genius, *Inveniam viam aut faciam*.’ Bacon does not seem to use this tag on any of his works. In works that Reid appreciated, the line occurs in Harrington’s *Oceana* (*Works*, p. 199). As S. B. Liljegren explains in his edition of *Oceana* (p. 282), the adage and its ascription to Cæsar are likely to have been invented post-antiquity.
6. In IP, p. 13, Shaftesbury is left out while Claude Buffier, Richard Price and Lord Kames are included.
7. Hume, *Treatise*, p. xv: ‘Tis evident, that all the sciences have a relation, greater or less, to human nature; and that however wide any of them may seem to run from it, they still return back by one passage or another.’
8. Locke, Epistle to the Reader, Essay, p. 7; quoted with near-accuracy.
9. See Plato, *Apology*, 21a ff.
10. Cicero, *De officiis*, I.ii (5): ‘The subject of this inquiry is the common property of all philosophers; for who would presume to call himself a philosopher, if he did not inculcate any lessons of duty?’
11. Cicero, *De officiis*, I.iii (7): ‘Every treatise on duty has two parts: one, dealing with the doctrine of the supreme good; the other, with the practical rules by which daily life in all its bearings may be regulated.’

12. In this and the following paragraphs, Reid outlines the field of study that is the subject of the present volume.
13. The lectures on *Politics* appear in *Reid on Society and Politics*; see also the Introduction above, pp xxxi–xxxii.

## II. Duties to God

1. Concerning the adoption by natural jurisprudence of the three Christian duties – to God, to ourselves, and to others – see the Introduction above, p. lvi. Reid’s discussion of the duty to God may be compared with Pufendorf, *Duty of Man*, I.4, and *Law of Nature*, II.3.xv and xxiv and II.4.ii–iii (esp. Barbeyrac’s notes); Hutcheson, *Short Introduction*, pp. 72–8, and *System*, I.168–220; Fordyce, *Elements*, Book II; Heineccius, *Universal Law*, I.86–95; and Turnbull’s Remarks, in *ibid.*, pp. 95–7; Turnbull, *Principles*, I.203–14; Clarke, *Discourse*, pp. 64–6; and Price, *Review*, pp. 138–48. The topos is in a sense natural religion’s equivalent to the three traditional ‘theological’ virtues of revealed religion – faith, hope and charity – and indeed one can discern echoes of this tripartite structure. See also, and not least, Cicero’s organisation of the Stoic doctrine of the gods in *De natura deorum*, book II.
2. Reid’s lectures on natural theology do not seem to have survived, but see Robert Jack’s and George Baird’s notes from Reid’s lectures.
3. Reid presumably uses the numeral 2 to indicate that he is now talking of the second duty to God in contrast to the ‘first Duty’ of the first sentence in the previous paragraph. Cf. Hutcheson’s formulation: ‘Piety consists of these two essential parts, first in just opinions and sentiments concerning God, and then in affections and worship suited to them’ (*Short Introduction*, p. 72; see also *System*, I.168). See also Pufendorf, *Duty of Man*, I.4.i, and *Law of Nature*, II.4.ii–iii, esp. Barbeyrac’s n. 5, where he refers to Cicero (*De legibus*, II.7), Epictetus (*Encheiridion*, ch. XXXVIII [Arrian’s summary of Epictetus, *Discourses*; see n. 10 below]), and Wollaston, *Religion of Nature Delineated*, and quotes Seneca:
 

The first way to worship the gods is to believe in the gods; the next to acknowledge their majesty, to acknowledge their goodness without which there is no majesty. Also, to know that they are supreme commanders in the universe, controlling all things by their power and acting as guardians of the



human race, even though they are sometimes unmindful of the individual. They neither give nor have evil; but they do chasten and restrain certain persons, and impose penalties, and sometimes punish by bestowing that which seems good outwardly. Would you win over the gods? Then be a good man. Whoever imitates them, is worshipping them sufficiently.  
*Epistulae Morales*, III.89–91.

4. See Hutcheson, *System*, I.210. ‘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.’ External worship again was commonly divided into private and public (cf. Hobbes, *De cive*, xv ff., and *Leviathan*, ch. xxxi, esp. p. 401; Pufendorf, *Duty of Man*, I.4.vi–vii; Hutcheson, *Short Introduction*, pp. 77–8; Fordyce, *Elements*, p. 117; and Heineccius, *Universal Law*, I.93–5).
5. Aratus of Soli (ca. 315–240/239 BCE), *Phaenomena*, ll. 4–5: ‘we all have need of Zeus. For we are also his offspring’, quoted by Saint Paul in the speech he supposedly made on Areopagus in Athens, in Acts 17:27–8: ‘Yet he is not far from each one of us, for, “In him we live and move and have our being”; as even some of your poets have said, “For we are indeed his offspring”.’ These lines of Aratus and Paul were naturally popular; for two pertinent examples, see Cudworth, *True Intellectual System*, 2: 194–7, and Cumberland, *Traité philosophique*, pp. 59–60.

In this context the brief minutes of Reid’s early Aberdeen philosophical club (see the Introduction above, p. xv) are of interest. The first entry, for 12 January 1736, has the heading ‘What Things in the Course of Nature we may reasonably ascribe to the continual influence & Operation of God or other active powerfull and Invisible beings under him’. It contains the following passage:

Concerning the Divine Government Whether the Creating of Moral Agents does not include a right to Govern them? They are Subject to a certain Law by their Natures. This is the Divine Law Which Must be Enforced by Rewards and Punishments. Every Being has a right to Exercise its faculties when none are harmed or prejudiced thereby. Exercise of the Moral Attributes of God Not hurtfull to Creatures but on the Contrary. Our Obligation to Obedience founded on our Natures and Dispositions. Difficulties in the Divine Government. Blessings of Some Kinds dispersed both to

Good and Bad – other Kinds Not. Necessity and Usefulness  
of General Laws. (6/1/17,1r)

6. The image is a common one, but in view of the tone and matter of these paragraphs (cf. n. 7 below) it inevitably recalls Adam Smith: ‘the author of nature has made man the immediate judge of mankind, and has, in this respect, as in many others, created him after his own image, and appointed him his vicegerent upon earth to superintend the behaviour of his brethren.’ TMS, note to III.2.xxxi, which reproduces the wording of the first edition, the one Reid used; cf. 3/1/26–7.
7. See Smith, ‘This inmate of the breast, this abstract man, the representative of mankind, and substitute of the Deity, whom nature has constituted the supreme judge of all their actions . . .’ (TMS, note to III.2.xxxi; cf. n. 6 above).
8. John 18:11.
9. Zeno (335–263 BCE), founder of the Stoic school in Athens. Reid’s principal sources for Zeno were undoubtedly Cicero, *De finibus*, book III, and Diogenes Laertius, *Lives*, book VII (for the ethics, see secs. 84–131). As was common in the eighteenth century, Reid’s understanding of Stoicism was influenced by his reading of later representatives of the school (see n. 10 below). His criticism of Stoicism in the present paragraph may be contrasted with that of Smith, TMS, VII.ii.1.15–47.
10. Though one hesitates to think that Reid would find anything of particular beauty, let alone ‘great Strength’, in the spurious Platonic dialogue *Alcibiades II*, this must be his reference (there is nothing of direct relevance in *Alcibiades I*). The first half of the passage that Reid quotes immediately below from Juvenal’s tenth *Satire* is an elegant expression of the main thought of this small, much later Platonic imitation – namely, that one should pray only for the good, leaving it to the wisdom of God to determine what that is. Furthermore, this idea, which has its most direct Socratic imprimatur from Xenophon, *Memorabilia*, I.3.2, is taken up in one of the passages from Arrian (*Encheiridion*, sec. 32), which Reid must have had in mind a few lines below. Sir William Hamilton also lends his authority to this reference in a note to a parallel passage in Reid’s AP, p. 583. Epictetus (*ca.* CE 55–135) wrote nothing himself, but his disciple Flavius Arrianus (dates uncertain) wrote down his *Discourses* in eight books, of which four survive. In these, three chapters are devoted directly to Providence (I.vi, I.xvi, and III.xvii), but there are also many other passages that would suit Reid’s purpose and that make use of the Greek word usually translated as ‘providence’

(*pronoia*) and its associated verb (*pronoēō*) and adjective (*pronoētikos*) – e.g. II.xiv.11: ‘the philosophers say that the first thing we must learn is this: That there is a God, and that He provides for the universe.’ Reid probably used George Stanhope’s English translation. Apart from preserving Epictetus’s *Discourses* for posterity, Arrian wrote a summary of them, an *Encheiridion*. Reid must here be thinking especially of secs. 17 and 31–2 (cf. n. 3 above and the Commentary below at p. 253 n. 2). The emperor Marcus Aurelius (CE 121–80) refers extensively to *pronoia* in his *Meditations* (e.g. II.3, IV.3(2), VI.10, VI.44, IX.28, XII.14).

The problems of a providential order in the universe pervade not only the classical Stoic texts but also the eighteenth-century treatment of them. A pertinent example is Hutcheson’s extensive notes to his and his colleague James Moor’s translation of Marcus Aurelius, which could be the text Reid used. Hutcheson and Moor also appended a translation of the ‘Summary of the Chief Maxims of the Stoic Philosophy’, which had been provided by Thomas Gataker in the standard seventeenth-century edition of the *Meditations*. The first section of this summary is entitled ‘Of God, Providence, and the Love of God’ and begins: ‘The Divine Providence takes care of human affairs; and not of the universe only, in general, but of each single man, and each single matter’ (*The Meditations of . . . Marcus Aurelius* [1742], pp. 296–7). In a number of places in the *Meditations* there are similar formulations that in the eighteenth century would be seen as interesting approaches to the distinction between a general providence and a special providence, the relationship between which so preoccupied the period and which is echoed in Reid’s discussion. Reid would have been familiar with Hume’s onslaught on the former in ‘Of a Particular Providence and of a Future State’ and on the latter in ‘Of Miracles’, secs. XI and X in the first *Enquiry*.

11. Juvenal, *Satire X*, ll. 346–53 and 356–62 (also quoted in AP, p. 583a). Compared with the text we use today, Reid’s quotation shows a few variations in punctuation; in l. 4, *Dii* should be *di*; in l. 10 there should be no *et*; and in the final line, *plumes* should be *pluma*. In English the sense is: ‘Is there nothing then for which men shall pray? If you ask my counsel, you will leave it to the gods themselves to provide what is good for us, and what will be serviceable for one state; for, in place of what is pleasing, they will give us what is best. Man is dearer to them than he is to himself. Impelled by strong and blind desire, we ask for wife and offspring; but the gods know of what sort the sons, of what sort the wife,

will be . . . you should pray for a sound mind in a sound body; for a stout heart that has no fear of death, and deems length of days the least of Nature's gifts; that can endure any kind of toil; that knows neither wrath nor desire, and thinks that the woes and hard labours of Hercules are better than the loves and the banquets and the down cushions of Sardanapalus.'

12. See Luke 22:44 (cf. Matt. 26:39) and Matt. 6:25, 32–3 (cf. Luke 12:22, 30–1).
13. Reid may be referring to Hume's swipe at 'the whole train of monkish virtues' in *Enquiry*, p. 270, and to Smith's elaboration of this in TMS, III.2.35.
14. Shaftesbury, *An Inquiry concerning Virtue or Merit* (first in an unauthorized edition by John Toland 1699, subsequently as Treatise IV in Shaftesbury's *Characteristics* [1711]); here *Characteristics*, p. 192. Price quotes the same words in a similar context in *Review of Morals*, p. 145n.
15. Shaftesbury, *The Moralists: A Philosophical Rhapsody* (first published in 1709, subsequently as Treatise V in *Characteristics*); here *Characteristics*, pp. 267–8. Reid does not begin the quotation exactly; he uses the contemporary convention of giving quotation marks at the end of each quoted line and rearranging the first few words for grammatical reasons. The quotation is verbatim from 'is not'.
16. The words 'vi, ditione' indicate that Reid himself had got the passage 'by heart', and in quoting from memory failed a little. It should be simply 'indicio' instead of these two words.
17. Cicero, *De legibus*, II.7. Ignoring variations in spelling and punctuation, I indicate Reid's deviations from Cicero's text by insertions in angle brackets. The sense is:

So in the very beginning we must persuade our citizens that the gods are the lords and rulers of all things, and that what is done, is done by their will and authority; that they are likewise great benefactors of man, observing the character of every individual, what he does, of what wrong he is guilty, and with what intentions and with what piety he fulfils his religious duties; and that they take note of the pious and the impious. For surely minds which are imbued with such ideas will not fail to form true and useful opinions. Indeed, what is more true than that no one ought to be so foolishly proud as to think that, though reason and intellect exist in himself, they do not exist in the heavens and the universe. . . . In truth, the

man that is not driven to gratitude by the orderly courses of the stars, the regular alternation of day and night, the gentle progress of the seasons, and the produce of the earth brought forth for our sustenance – how can such an one be accounted a man at all? And since all things that possess reason stand above those things which are without reason, and since it would be sacrilege to say that anything stands above universal Nature, we must admit that reason is inherent in Nature. Who will deny that such beliefs are useful when he remembers how often oaths are used to confirm agreements, how important to our well-being is the sanctity of treaties, how many persons are deterred from crime by the fear of divine punishment, and how sacred an association of citizens becomes when the immortal gods are made members of it, either as judges or as witnesses?

18. Reid is referring to the last few lines of Clarke's second Latin edition of Newton's *Opticks*, the only edition in which they occur. The full passage is as follows: 'Lex enim moralis ab origine gentibus universis erant septem illa Noachidarum praecepta: quorum praeceptorum primum erat, unum esse agnoscendum summum Dominum Deum, ejusque cultum non esse in alios transferendum. Etenim sine hoc principio nihil esset virtus aliud nisi merum nomen' (Newton, *Optice*, p. 415). This may be rendered as: 'For from the beginning the moral law for all people consisted of the seven precepts of Noah's sons. The first of these precepts was that one God is to be acknowledged as the supreme Lord and the worship of him is not to be transferred to others. For without this principle virtue would be nothing but a mere name.' The seven precepts of the Noachides are the commandments that the Talmud built upon God's universal covenant with Noah at the beginning of Genesis 9: 'Seven precepts were the sons of Noah commanded: social laws; to refrain from blasphemy; idolatry; adultery; bloodshed; robbery; and eating flesh cut from a living animal' (Babylonian Talmud. *Seder Nezikin*, vol. 3, Sanhedrin 56a [pp. 381–2]). A famous invocation of the *ius Noachidarum* as the essence of justice and the law of nature is John Selden's *De jure naturali et gentium*, which is organised according to the seven precepts (see Praefatio, p. 69, and I.x).
19. This is the end of the treatment of duties to God. The manuscript continues immediately with the next major topic, duties to ourselves.

### III. Duties to Ourselves: Prudence, Temperance, Fortitude

1. This paragraph is either a false start or, more probably, serves the following three purposes. First, it marks the transition from our duty to God to our duties to ourselves; secondly, it reminds Reid to introduce the distinction between the four cardinal virtues so that, thirdly, he can explain that he will deal here with only three of these – prudence, temperance and fortitude – because they constitute our duties to ourselves, while the fourth, justice, belongs to duties to others, that is, jurisprudence proper.

Concerning the combination of the concepts of virtue and duty and the significant consequences this had for the traditional use of the distinction between the four cardinal virtues, see the Introduction above, pp. xlvi ff. Reid is drawing upon a conceptual world with deep classical and Christian roots. In whatever way we are to understand the invocation in *Alcibiades I* (121E–122A) of a Zarathustran ancestry, it is clear that the distinction makes its effective entry into Western ethical thought with Socrates' repeated challenge to Protagoras in *Protagoras*, 329c ff. and 349b ff. The *loci classici* are *Republic*, IV.427e ff. and 441c ff. where the 'piety' of the *Protagoras* is finally excluded, as well as in *Laws*, I.631c ff. and XII.963a ff. Although Aristotle uses the fourfold division in his early works and in passing references (e.g. *Politics*, VII.i.1323a28–30 and 1323b33–6; and VII.xv.1334a18–34, which may, however, be early parts of the work), he goes well outside it in the *Nicomachean Ethics* (as well as in the *Rhetoric*, esp. I.9.1166a23 ff.), partly by adding a number of other virtues in book IV and partly by distinguishing between moral and intellectual virtue and thus giving wisdom a special and complicated role (in book VI). Undoubtedly of much more importance to Reid were his Roman sources, especially Cicero's *De officiis* (I.v ff.). Cf. *Tusculan Disputations*, II.xiii (31–2), III.viii (16–18) and III.xvii (36–7); *De finibus*, I.xiii–xvi (42–54) with II.xiv (45–8), xvi (51) and xix (60); V.xxi (58) and xxiii (65–7); *De inventione*, II.liii–liv (159–65); and *Rhetorica ad Herennium*, III. ii–iii (3–6), which in the eighteenth century was generally though not universally believed to be by Cicero. Reid would have known about the early Stoic division of virtue from Diogenes Laertius, *Lives*, VII.87 ff. (here esp. 92).

Although Reid saw the tetrad of virtues as Greco–Roman and the triad of duties as Christian (see AP, p. 642b), he was undoubtedly aware of the former's presence in the Christian tradition. Apart from the

interpretation of various passages of Scripture in the light of one or another of the four virtues, the basis for the Christian adaptation of the cardinal virtues is in fact apocryphal (Wis. of Sol. 8:7), while the use of the label is due to Ambrose, *De sacramentis*, III.2.9. Much more important, however, are Augustine's *De moribus ecclesiae catholicae*, II.15–16, and *City of God*, XIX.4; and the great systematisation by Thomas Aquinas, *Summa theologiae*, Ia 2ae 61 and IIa 2ae 47 ff.

For the distinction between the four virtues in Reid's immediate context, see Hutcheson, *Short Introduction*, pp. 65–8, 103–5; *System*, I.222–4 (cf. *Inquiry*, p. 126); and Smith, TMS, VII.ii.1.6–9. The whole of the following discussion should be compared with Reid, AP, pp. 580a–586a.

2. That is, like justice in the previous paragraph.
3. The immediate background to Reid's distinction between wisdom and prudence is probably Cicero's distinction between *sapientia* and *prudentia*, which he sees as the proper translation of the Greek *sophia* and *phronesis*; *De officiis*, I.xliii (153). See also Smith's distinction between 'superior' and 'inferior' prudence, TMS, VI.i.14 (this was added in the 6th edn. [1790] but is implicit in the earlier editions, e.g., VII.ii.2.12–13).
4. Matt. 25:14–30; cf. Luke 19:12–27.
5. The emperor in question was Domitian (CE 51–96, reigned 81–96), of whom Suetonius wrote: 'At the beginning of his reign he used to spend hours in seclusion every day, doing nothing but catch flies and stab them with a keenly sharpened stylus. Consequently when someone once asked whether anyone was in there with Caesar, Vibius Crisbus made the witty reply: "Not even a fly"' (*Lives of the Caesars*, XII.3).
6. See Reid's more extensive argument to the same effect at the beginning of his lectures on pneumatology (4/II/9).
7. For the contemporary debate about whether prudence is a moral virtue (or a duty) at all, see esp. Hutcheson, *Inquiry*, p. 126; *Short Introduction*, p. 65; and Smith's discussion, TMS, VII.ii.3 (cf. VII.ii.4.3–4) of Hutcheson, *Inquiry*, pp. 187–90, and *Illustrations*, pp. 299–300. Further, see Butler, 'Of the Nature of Virtue', in *Analogy of Religion*, pp. 333–4; and Price, *Review of Morals*, pp. 148–51, 193–5 and 283. Of special importance is Hume, *Treatise*, pp. 609–10, and *Enquiry*, pp. 318–20, because the context there is the question of the viability of a general distinction between moral virtues and 'natural abilities'. For Reid's later treatment of the specific problem here, see AP, pp. 584b–586a.

8. See Cicero, *De officiis*, II.iii (10).
9. For the preceding paragraph, see AP, p. 586b.
10. Reid should have written ἀρετή. Cf. Hume, *Enquiry*, pp. 254–5: ‘The martial temper of the Romans . . . had raised their esteem of courage so high, that, in their language, it was called *virtue*, by way of excellence and of distinction from all other moral qualities.’
11. Cf. Hume, *Treatise*, pp. 607–8: ‘The characters of Caesar and Cato, as drawn by Sallust, are both of them virtuous . . . but in a different way: Nor are the sentiments entirely the same which arise from them. The one produces love; the other esteem: The one is amiable; the other awful’ (cf. *Enquiry*, p. 316). See also Smith’s similar distinction in TMS, I.i.5.1, III.3.34 ff. and VII.ii.4.2–4 (cf. the later additions, VI.i.14–15 and VI.iii.12–13).
12. Sesostris (alias Rameses II) was a mythical Egyptian king (fourteenth century BCE) credited by Herodotus (*History*, II.102 ff.) with conquering, inter alia, the Scythians and Thracians. Tamerlane or Tamburlaine are the usual anglicised versions of Timur-i-Lenk, Timur the Lame, the great Tatar conqueror (1336–1405) and the subject of Marlowe’s play and Handel’s opera. The eighteenth century saw in him – along with Genghis Khan, Sesostris, Attila, and the like – the typical oriental despot; cf. Montesquieu, *Spirit of Laws*, XXIV.3; Smith, TMS, VI.iii.30, and LJ(A), iii.44–5, iv.40 and 52 ff.; Gibbon, *Decline and Fall*, ch. LXXV.
13. See Smith, TMS, V.2.9–16, VII.ii.1.28 and 34; Adam Ferguson, *Essay on the History of Civil Society*, e.g., pp. 44–8, 61, 146–7, 256–7, and esp. 81–96.

#### IV. Duties to Others: Justice

1. The idea that justice is somehow superior to the rest of virtue is particularly well known from the fourth book of Plato’s *Republic*, but Reid may be thinking more immediately of Aristotle’s famous distinction in the first two chapters of book V of *Nicomachean Ethics*, between general and particular justice, of which the former ‘is complete excellence in its fullest sense’ (1129b30–1), while the latter concerns equality between individuals (1131a10 ff.). As for the Latin *iustitia* Reid may well have had in mind Cicero’s exposition in *De finibus*, V.xxiii (65–6), as well as his suggestion in *De officiis*, III.vi (28), that justice ‘is the sovereign mistress and queen of all the virtues’,



which is explained at length in *ibid.*, I.xliiii–xlv (152–60). Reid is likely to have known Leibniz’s speculations about a general concept of justice, for he was acquainted with Leibniz’s metaphysics of law (especially the concept of the ‘city of God’) in *Système nouveau de la nature* and *Principes de la nature et de la grace*, which are referred to in IP, p. 190. The extent of his discussions of Leibniz (e.g., IP, pp. 187–93 and 339; AP, pp. 624–6; *Essay on Quantity*, pp. 718b–719a) indicates a wider knowledge of the Leibnizian *oeuvre*. Reid certainly knew the modern jurists’ occasional use of ‘justice’ in the loose sense in which it is identical with that which is right (*rectum*); see Grotius, *War and Peace*, I.1.ix, and Coccej’ extensive discussion of *ius laxius* in *Introductio*, II.

The Ciceronian background to the division of the whole of social duty into justice and humanity is *De officiis*, I.vii (20) and xiv (42) (*iustitia* vs. *beneficentia* or *benignitas* or *liberalitas*). This distinction pervades the moral philosophical context in which Reid is writing; see esp. Clarke, *Discourse*, pp. 67–76; Kames, *Essays*, pp. 71–5; Hume, *Treatise*, III.ii.1, and *Enquiry*, sec. III and appendix III; Smith, TMS, II.ii.1 (compare also Cumberland, *Laws of Nature*, p. 316). Cf. AP, pp. 643b–644a, and the Commentary below at p. 195 n. 19. There is a tendency to identify this distinction with the one Reid mentions in the following sentence between commutative and distributive justice (e.g. Smith, TMS, VII.ii.1.10) and an even more pervasive tendency to identify the distinctions between general and particular justice and between justice and benevolence with Grotius’s division of justice into *iustitia attributix* and *iustitia expletrix* (*War and Peace*, I.1.viii; cf. Coccej, *Introductio*, I.13.15), of which the latter is concerned with perfect rights and the former with imperfect rights. Grotius’s conversion of the classical language of virtues into the language of rights is again converted into the language of duties by Pufendorf, first in the *Elementa*, I.8.ii and v, subsequently in *Law of Nature*, I.7.vi–xvii (cf. *Duty of Man*, I.2.xiv), where his discussion of Grotius, *War and Peace*, I.1.viii, and Hobbes, *De cive*, III.5–6 (cf. *Leviathan*, ch. 15, esp. pp. 206–8) together with Barbeyrac’s notes (*Law of Nature*, I.7.vi–xvii and I.2.xii–xvi) were of seminal importance. In these converted forms the distinction was spread even further; see the Commentary below at pp. 196–7 n. 25. See also the Introduction, above, pp. lviii–lix.

2. This distinction goes back to Aristotle’s division of particular justice (see n. 1 just above) into distributive and corrective (or rectifying or

equalising) justice (*Nicomachean Ethics*, 1130b31–1131a1), though the currency of the two labels is due to Aquinas's reformulation of the distinction (*Summa theologiae*, IIa IIae, q. 61). Grotius's reworking of the Aristotelian distinction in terms of expletive and attributive justice (*War and Peace*, I.1.viii; cf. II.17.ii (2) and II.20.ii (1–2)) led to a flurry of re-examinations of Aristotle by the Grotius commentators and natural lawyers, and Reid would have had a fair knowledge of this from Pufendorf, *Law of Nature*, I.7.vi–xiii, and from Barbeyrac's annotations to both of these (cf. Heinrich Coccej's commentary to Grotius, *Grotius illustratus*, I: 84 ff.; and the Commentary below at p. 195, n. 19).

3. This has been observed by a good many authors – for example, Plato, *Republic*, I.351c–352c; Cicero, *De officiis*, II.xi (40); Locke, *Essay*, p. 66; Pufendorf, *Law of Nature*, III.4.ii and VIII.4.v; Heineccius, *Universal Law*, I.301–2; and Hume, *Enquiry*, p. 205. Barbeyrac in his annotation to the latter place in Pufendorf refers us to a pertinent tale in Heliodorus's wonderful *Aethiopian History*, book v, ch. 15 (i.e. p. 150). Contrast Augustine, *City of God*, IV.4: 'if justice is left out, what are kingdoms except great robber bands?' Cf. AP, p. 666a, and the Commentary below, at pp. 216–7 n. 71.
4. Horace, *Epistles*, I.ii.27: 'nos numerus sumus et fruges consumere nati' ('We are but ciphers, born to consume earth's fruits'). Reid's context forced him to change 'nati' into the singular.
5. Terence, *The Self-Tormentor* (*Heauton timorumenos*), act I, l. 77: 'Homo sum: humani nil a me alienum puto' ('I am a man, I hold that what affects another man affects me', usually rendered 'I hold nothing human foreign to me'). Quoted, e.g., in Cicero, *De legibus*, I.xii (33), and Seneca, *Epistulae*, XCV.53; cf. the following note.
6. Plato, letter IX, to Archytas of Tarentum (358a): 'You must . . . consider this fact too, that each of us is born not for himself alone. We are born partly for our country, partly for our parents, partly for our friends.' This is quoted loosely in Cicero, *De officiis*, I.vii (22), and both are quoted in Pufendorf, *Law of Nature*, III.3.i, where Seneca's quotation from Terence (see n. 5 above) is also quoted. Further, 'Mankind we ought from the heart to love . . . and not believe, we are born, and to live for ourselves alone . . .' ('Maxims of the Stoics', translated from Gataker's 'prefatory discourse to his excellent edition and commentary on Antoninus' in Hutcheson's and Moor's translation of Marcus Aurelius' *Meditations*, pp. 300–1).

## V. Duties to Others: Individuals in Private Jurisprudence

1. As explained in the Introduction, above, pp. xxxiii and lxxvii, Reid did not in his first year at Glasgow begin ‘practical Ethicks’ with lectures on our duties to God and to ourselves. This arrangement was achieved only during the following couple of years, and I have reconstructed it accordingly in the preceding two sections. In 1765 Reid ended the theoretical part of ethics on 28 February, as shown by the final few lines in MS. 8/iv/5,1v (not in this volume), and on the following day, 1 March, he began ‘Jurisprudence’, as shown on fol. 1v of the present manuscript. This leaves the first page of this manuscript unaccounted for. We must presume that Reid used it on that Thursday, 28 February as a brief transition to ‘practical Ethicks’, and although it systematically constitutes a return to duties to ourselves, I print it here with the rest of the manuscript in which it occurs in order not to interfere with Reid’s first Glasgow course in ‘practical Ethicks’, which the reader can now follow without interruption to its concluding section on the law of nations (see Section VIII, ‘Duties to Others: States’).
2. For Cicero’s usage, see, e.g., *De oratore*, I.xlv (200); xlvi (212).
3. *Jubere*, inf. of *jubeo*, perhaps a contraction of *ius habere*, to consider right, whence to order, decree, etc. *Fari*, inf. of *for*, to speak or say; the noun *fas* may derive from *for*, and its original meaning was dictates of religion or divine law, as opposed to *ius*, human law. *Fas* was thus often represented as a divine force (e.g., Seneca, *Hercules furens*, l. 658) or deified righteousness (e.g., Valerius Flaccus, *Argonautica*, I.790–4, and Livy, *From the Founding of the City*, I.xxxii.6); and Livy, *ibid.*, VIII.v.8, has the consul Titus Manlius exclaim, ‘Audi, Iuppiter, haec scelera . . . audite, Ius Fasque’ (‘Hear, Jupiter, these wicked words! Hear ye, Law and Right!’). It is a matter of dispute when such usage was employed to express a clear distinction between divine and human law, but it is clear in Isidorus’ etymological work from the early seventh century: ‘Fas lex divina est, ius lex humana’ (Isidorus, *Etymologiarum*, v.ii). This is quoted by, e.g., Aquinas, *Summa theologiae*, IIa IIae.57.i (3).
4. See n. 8 below.
5. See, e.g., Grotius, *War and Peace*, I.l.iv–v, and Pufendorf, *Law of Nature*, I.l.xix–xx, I.6.iii and III.5.i.
6. *Pandectae* is the Latinisation of the Greek word for ‘digest’. The two words are used interchangeably as the title of the great collection of

Roman civil law made by order of the emperor Justinian in CE 530 and codified in 533.

7. Conventionally, natural lawyers drew parallels between the juridical status of individuals and that of states, or between the law of nature and the law of nations. This is presumably what Reid was doing here, as he did in 7/viii/1,1v (see Section X of this book) and in AP, p. 645. See also Grotius, *War and Peace*, I.1.xiv; Hobbes, *De cive*, XIV.4, and *Leviathan*, p. 394; Pufendorf, *Law of Nature*, II.3.xxiii; Coccej, *Introductio*, IV.23 and 33–6; Heineccius, *Universal Law*, I.14–16, and Turnbull's quotation (ibid., p. 18) from Montesquieu's *Persian Letters*, nos. 94 and 95 (pp. 176–7); and Vattel, *Law of Nations*, esp. preface and preliminaries.
8. Reid is referring to the classical division of law: 'All the law that we observe pertains to persons, to things or to actions' (Justinian, *Institutes*, I.ii.12). This was generally followed by the natural lawyers: Grotius, *War and Peace*, I.1.v; Pufendorf, *Law of Nature*, I.1.xix; Coccej, *Introductio*, XII.51 and 104; Hutcheson, *Short Introduction*, p. 120, and *System*, I.253.
9. This is a central and difficult point in modern natural law, especially after Pufendorf. Reid takes it up again in AP, pp. 642a–644a and below, pp. 97 ff. (Section X). See Pufendorf, *Law of Nature*, III.5.i; Hutcheson, *Short Introduction*, pp. 121 and 139, and *System*, I.264: 'To each right there corresponds an obligation, perfect or imperfect, as the right is.' See also the Introduction, above, pp. lvi–lvii.
10. These are the so-called 'external rights'. See the Commentary below at p. 260 n. 41.
11. Reid had dealt with these topics in his ethics lectures in late January and early February, as we can see from 8/iii/3, esp. fol. 4r (not in this volume). Out of this grew the fully developed treatment in AP, pp. 586–99 (cf. pp. 670–9).
12. Reid had lectured on this topic only on 19 February (see 8/iii/3,8v), quoting in support Cicero, *De finibus*, II.xiv (45); see 8/iii/2,1r. For *honestas* as the general concept of moral rightness, and *turpitude* as its opposite, see also Cicero, *De inventione*, II.lii–liii (157–9) and *De officiis*, I.ii (4) and I.v (15). Cf. Reid's expansion on this in AP, pp. 587–9 and 651.
13. For the relationship between *ius* and *rectum*, see also Hutcheson, *Short Introduction*, pp. 118–20, and *System*, I.252–3. The following discussion eventually led to that in AP, pp. 643 ff.

14. See below, n. 25.
15. ‘Obnoxious’ in the sense of being liable or exposed to injury or punishment.
16. The lines from Juvenal’s thirteenth Satire are in fact ll. 192–8 (p. 260) and their sense is: ‘But why should you suppose that a man escapes punishment whose mind is ever kept in terror by the consciousness of an evil deed which lashes him with unheard blows, his own soul ever shaking over him the unseen whip of torture? It is a grievous punishment, more cruel far than any devised by the stern Caedicius or by Rhadamanthus, to carry in one’s breast by night and by day one’s own accusing witness’ (Juvenal, *Satires*, p. 261). Apart from variations in punctuation and spelling of names, the quotation is accurate. Caedicius is unknown, and Rhadamanthus, son of Zeus and Europa, was rewarded for an exemplary life with not dying – instead he went to Elysium as a judge (Plato, *Apology*, 41a; *Gorgias*, 523e; Virgil, *Aeneid*, VI.566, etc.).
17. See Grotius’s famous dictum in *War and Peace*, Prolegomena, sec. 11, that the laws of nature would apply ‘though we should even grant, what without the greatest Wickedness cannot be granted, that there is no God, or that he takes no Care of human Affairs’. This remained a fundamental dispute in modern natural law, especially after Pufendorf’s denial of it; see *Law of Nature*, II.3.xix, and the references in n. 22 below.
18. See Justinian, *Institutes*, I.ii, pr. and 1: ‘Jus naturale est, quod natura omnia animalia docuit’; and ‘quod vero naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque jus gentium, quasi quo jure omnes gentes utuntur’ (‘Natural law is that which nature instills in all animals’; and ‘but what natural reason has established among all men is observed equally by all nations and is designated *ius gentium* or the law of nations, being that which all nations obey’). Grotius, *War and Peace*, I.I.xiv (1): ‘Latius autem patens est jus gentium; id est quod gentium omnium aut multarum voluntate vim obligandi accepit’ (‘But the more extensive Right, is the Right of Nations, which derives its Authority from the Will of all, or at least of many, Nations’). Further, *War and Peace*, I.I.x (1): ‘Jus naturale est dictatum rectae rationis, indicans actui alicui, ex ejus convenientia aut disconvenientia cum ipsa natura rationali ac sociali, inesse moralem turpitudinem, aut necessitatem moralem’ (‘Natural Right is the Rule and Dictate of Right Reason, shewing the Moral Deformity or Moral

Necessity there is in any Act, according to its Suitableness or Unsuitableness to a reasonable Nature’).

19. The too wide concept of justice against which Reid here protests is not that of general righteousness or goodness, which we find in the subtitle to Plato’s *Republic* or in Aristotle’s idea of ‘general justice’ (*Nicomachean Ethics*, V.ii.10), but it does have some affinity with the Aristotelian concept of ‘particular justice’ – namely, the goodness-as-fairness one shows others (see the Commentary above at p. 189 n. 1). For further clarification we refer to the discussion of perfect and imperfect rights and duties below (see n. 25). It should be stressed, however, that the line Reid takes here – that the concept of justice should be taken in the narrow sense – easily misleads, for his considered view was clearly that there were no *sharp* distinctions on moral and epistemological grounds within the concepts of justice, right, and duty (see Section X, pp. 101–2, as well as AP, pp. 643b–644a). In this he contrasts sharply with Hume and Smith (see Hume, *Treatise*, III.2.iii, and *Enquiry*, secs. II–III, but esp. app. III; Smith, TMS, II.ii.1–3). Cf. Reid in AP, p. 657 and 611/9, fol. 2v. For examples of the effect of the debate about the concept of justice, see also Hutcheson, *Short Introduction*, I, ch. 3, and his subsequent organisation of the material in I, chs. 4–6, and II, chs. 2 and 4.
20. See the references in nn. 13 and 19.
21. The two first points may echo Hume’s discussion of property (*Treatise*, p. 527), though Reid in addition rejects the idea that rights are qualities of persons. This is likely to refer to Grotius’s definition of *ius* in *War and Peace*, I.1.iv–v, and to its repercussions in much subsequent natural law thought. See Pufendorf, *Law of Nature*, I.1.xix–xx (cf. his *Elementorum jurisprudentiae universalis*, I, def. 8); Hutcheson, *Short Introduction*, pp. 119–20, and *System*, I.253. Reid’s third point refers to his rejection of Hume’s theory of property.
22. Reid is here again (see n. 17 above) touching upon a central question in modern moral philosophy, which Grotius had ensured prominence in natural jurisprudence; see *War and Peace*, Prolegomena, sec. 11 and I.1.x, with Barbeyrac’s notes, esp. n. 3, pp. 9–11; Barbeyrac, ‘Historical and Critical Account of the Science of Morality’, secs. 6–11; Hobbes, *De cive*, III.33, IV.1, and XV.4–8; *Leviathan*, pp. 216–17 and 397–9; Pufendorf, *Law of Nature*, I.6, esp. x, and II.4, esp. iii–vii; *Duty of Man*, I.3.x–xi and I.4; Leibniz, ‘Opinion on the Principles of Pufendorf’, secs. iv–v; Carmichael’s supplementum I, secs. 10 and 19–20, and supplementum II, secs. 1, 3 and 5, in his edition of Pufendorf, *De officio*

- (translation in Carmichael, *Natural Rights*, pp. 24–5, 28, 46–8); Locke, *Essay*, II.28.8 (cf. II.21.49), with *Treatise*, I.52–4, and *Treatise*, II.6; Coccej, *Introductio*, pp. 3, 11 ff. and 240; Heineccius, *Universal Law*, I.6–12, 41–4, 60, and Turnbull's Remarks, *ibid.*, pp. 16–18 and 62–5; Hutcheson, *Short Introduction*, II, ch. 1, esp. p. 111, and *System*, I.264–7; Fordyce, *Elements*, pp. 29–40. In general, Reid's perception of the issue may also have been influenced by Cudworth's onslaught on Hobbes, that 'late pretender to politics', on 'divers modern theologers' (namely, Calvinists), and on Descartes – 'but an hypocritical Theist, or personated and disguised Atheist' (*True Intellectual System*, 2:532 ff., 577, and 3:498–516; *Eternal and Immutable Morality*, p. 528, and, in general, vol. 1, chs. 2–3). Similar arguments are developed in Clarke, Wollaston, Balguy, and Price. See also the Commentary above at pp. 182–3 n. 5.
23. These issues are closely connected with the previous one; see esp. Grotius, *War and Peace*, I.1, esp. x and xv; Pufendorf, *Law of Nature*, I.6.xvii–xviii (with Barbeyrac's nn. 5 and 6 on p. 73) and II.3.iv–v (cf. *Duty of Man*, I.2.ix); Cocceius, *Introductio*, pp. 241 ff.; Hutcheson, *Short Introduction*, pp. 115–17, and *System*, I.271–80.
  24. Private rights pertain to individuals, public rights to any social grouping, common rights to mankind as a whole. See Section X, pp. 98 and 100. See also Hutcheson, *Short Introduction*, p. 141, and *System*, I.284.
  25. The following discussion of the perfect and imperfect rights that pertain to all people equally in the state of nature is very close to Hutcheson, *Short Introduction*, pp. 139–46, and *System*, I.257–9 and 280–4. The 'different States' are the moral states man can be considered in – namely, the state of 'natural liberty' or one of the adventitious states, such as the family and civil society. These concepts of the moral states derive from Pufendorf, *Law of Nature*, II.2.i (cf. II.3.xxiv), and *Duty of Man*, II.1.ii. Reid deals at length with all three states in subsequent manuscripts (for the actual distinction, see Section X, pp. 98–100 and Section XI, p. 108). In the margin just below the date, 'Mar. 7', is added another topic that Reid has dealt with extemporaneously: 'What Rights are alienable.' This cuts across the natural rights, as the references to it in Section X (pp. 98, 99 and 100) show. I have removed it from the text because wherever it is put it would break the continuity. For the distinction between alienable and inalienable rights, see Hutcheson, *Inquiry*, pp. 261–2, *Short Introduction*, p. 124, and *System* I.261–2. The distinction between perfect and imperfect rights and perfect and

imperfect duties was of central importance to modern natural law. Reid discusses it in AP, pp. 643b–645b, and in Section X, pp. 96 and 101–2. While this has a terminological precursor in Cicero’s idea of *officium perfectum* (*De officiis*, I.iii (8); cf. *De finibus*, III.xviii (59)), the determining influence was Grotius’s division of *ius* as a moral quality of persons into perfect and less perfect rights, of which the former is a ‘faculty’, the latter an ‘aptitude’, and to which correspond two different kinds of justice; see n. 22 above, and *War and Peace*, I.I.iv–viii. This is later supplemented by Pufendorf’s corresponding distinction between perfect and imperfect duties; see the references in n. 19 above, and see Hutcheson, *Inquiry*, pp. 256–9, *Short Introduction*, pp. 122–3 and 141–5 and *System*, I.257–9 and 293–308; Heineccius, *Universal Law*, I, chs. 7–8, esp. pp. 123–4 and 154–5, with Turnbull’s *Remarks*, pp. 164–8. In summary, by Reid’s time, there were three common grounds for the distinction between perfect and imperfect rights and duties: (1) The infringement of perfect rights was injury and a breach of perfect duty, while the infringement of imperfect rights was merely the withholding of some good and the neglect of imperfect duty. (2) It was morally justifiable to enforce perfect rights and duties – in the state of nature through war, in civil society through the legal system – but not so the imperfect ones. (3) The observance of perfect rights and duties was necessary for the very existence of society, while the imperfect ones were an embellishment of society (cf. Aristotle’s distinction between *merely living* and *living well*: *Politics*, I.2.1252b30 and III.6.1278b20–30). A few lines earlier in the present text and again in Sections X and XI, pp. 100–1 and 108, and in AP, p. 644, Reid adds a third category: external rights. See the Commentary below at p. 260 n. 41 for an explanation of this topic.

26. Both the word for self-homicide and the debate about the act were renewed in early modern Europe (see Montaigne, *Essays*, II, ch. 3; Montesquieu, *Persian Letters*, nos. 76–7 (pp. 152–4); Voltaire, *Prix de la justice et de l’humanité*, art. v, ‘Du suicide’). The role of natural law theory in this debate is particularly interesting because, while it was constrained by the Christian insistence that suicide is a breach of the sixth commandment, it nevertheless conveyed to Protestant Europe the much more lenient attitude of Roman law and of Roman Stoicism. In Pufendorf, suicide is dealt with under ‘duties to ourselves’, namely as a question of whether we have a right to take our own life (*Law of Nature*, II.4.xvi–xix, and *Duty of Man*, I.5.xi; cf. Heineccius, *Universal Law*,



- I.100–2). Yet it clearly provides a transition to treating of our duties to others when it is asked whether any such duties imply a duty (or a right) to self-murder (Pufendorf, *Law of Nature* II.5–6 and I.5.xii ff., respectively). It is presumably because of this ambiguity and perhaps under the influence of Locke (see, e.g., *Treatise*, II.23 and 135) that Hutcheson and Reid dealt with the topic in connection with the fundamental right to life (cf. Hutcheson, *Short Introduction*, p. 142, and *System*, I.296–8). See also Hume’s essay ‘Of Suicide’ (1777) and Smith, TMS, VII.ii.1.24–37 (added in 1790). Reid returns to the issue at greater length in 8/iv/4 (printed here in Section X, p. 92).
27. Although Reid missed some words, his meaning is clear, namely that ‘that admirable rule of our Divine Teacher’ amounts to a ‘perfect Conformity to the Imperfect Rights of Man’ and thus by implication also to the perfect rights. He spells this out in AP 639a, saying that the rule of equality and mutuality in morals that is ‘the law and the prophets’, ‘comprehends every rule of justice without exception’.
28. See Hutcheson, *System*, I.306–7: ‘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 . . . 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 from them.’ Like Reid, he then goes on to gratitude (pp. 307–8) and, like Reid, he refers to Cicero, *De officiis*, I.xiv–xviii (42–61). All of this is matched by *Short Introduction*, pp. 145–6 and indeed by Pufendorf, *Law of Nature*, III.3.15, and *Duty of Man*, I.8.v. Reid quotes loosely from *De officiis*, I.xiv.42: ‘Videndum est enim, primum ne obsit benignitas et iis ipsis, quibus benigne videbitur fieri et ceteris, deinde ne maior benignitas sit quam facultates, tum ut pro dignitate cuique tribuatur.’ Cicero is listing the caution with which beneficence and liberality must be exercised: ‘We must, in the first place, see to it that our act of kindness shall not prove an injury either to the object of our beneficence or to others; in the second place, that it shall not be beyond our means; and finally, that it shall be proportioned to the worthiness of the recipient.’
29. In addition to the distinction between natural and adventitious states (see above, n. 25) it was common to distinguish between natural and adventitious duties and rights: Some of ‘those Duties which are to be practis’d by one Man towards another . . . proceed from that common Obligation which it hath pleas’d the Creator to lay upon all Men in

general; others take their Original from some certain Human Institutions, or some peculiar, adventitious or accidental State of Men. The first of these are always to be practis'd by every Man towards all Men; the latter obtain only among those who are in such peculiar Condition or State. Hence those may be called Absolute, and these Conditional duties' (Pufendorf, *Duty of Man*, I.6.i; cf. *Law of Nature*, I.I.vii and II.3.xxiv with Barbeyrac's notes). In Hutcheson this is translated into rights-language (*Short Introduction*, p. 141, and *System*, I.293; cf. Heineccius, *Universal Law*, I.124–5). The distinction has its ancestry in Grotius, *War and Peace*, I.I.x, sec. 4.

Following Pufendorf, *Law of Nature*, III.5.iv, and Hutcheson, *Short Introduction*, p. 147, and *System*, I.309, Reid adopts the traditional division of adventitious rights into real and personal (see Gaius, *Institutiones*, I.8; Justinian, *Institutes*, I.ii.12; *Digest*, I.v.1). In the *System*, Hutcheson says: 'Adventitious rights . . . 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.' It is to the latter that Reid then turns.

The first three points that follow refer to the earliest period when men were few and used the things of the natural world as they needed them and without cultivating or improving upon them. There was thus no division of labour, no scarcity and consequently no need for claiming as a right the things used. This and the changes that necessitated the institution of private property (Reid's point no. 4) are portrayed by Grotius, *War and Peace*, II.2.ii (who refers to the same passages of Genesis); Pufendorf, *Law of Nature*, IV.3 and IV.4.i–iv, and *Duty of Man*, I.12.i–ii. Cf. Hutcheson, *Short Introduction*, pp. 139–40 and 147–8, and *System*, I.280–4 and 309–16.

Following both Grotius, *War and Peace*, II.2.ii (5), and Pufendorf, *Law of Nature*, IV.4.iv, and *Duty of Man*, I.12.ii, most natural lawyers insisted that a contract was necessary to turn the original 'indefinite Right' or 'indefinite Dominion' (Pufendorf) into exclusive property rights. Following Locke, as he alleges, Barbeyrac strongly denies the necessity or possibility of such a contract and maintains that the institution and spread of property rights can be understood in terms of the gradual occupation of the natural world and that such occupation

consists in labour, as Locke understood it in the *Second Treatise*, ch. V (an idea that is not without ancestry in Pufendorf himself; see *Law of Nature*, IV.4.vi). See Barbeyrac's n. 2, pp. 366–7, and n. 2, p. 373, in Pufendorf, *Law of Nature*, and his note on p. 136 in *Duty of Man*. The combination of Pufendorf's concept of negative community with Locke's concept of labour to account for private property was taken over by Carmichael (n. 1 to Pufendorf, *De officio*, I.12.ii), and he is again followed closely by Hutcheson (*Short Introduction*, pp. 149–51 and 153–4, and *System*, I.319–29), who is led to conclude: 'Thus we need not have recourse to any old conventions or compacts, with Grotius and Pufendorf, in explaining the original of property' (*System*, I.331; likewise *Short Introduction*, p. 159). This dispute became particularly important with Hume's discussion of property (*Treatise*, III.2.ii–iv, and *Enquiry*, sec. III and app. III), and we learn about Reid's ideas on it in AP, V.5, esp. pp. 657–9, and in 7/vii/11, 7/vii/13, 7/vii/1b (all printed in this book in Section XI).

The division of real adventitious rights into original and derived also comes from Pufendorf, *Law of Nature*, III.5.iv, which is followed by Hutcheson, *Short Introduction*, p. 152, and *System*, I.324. In the former place, Hutcheson explains: 'Property is either original or derived. The original property arises from the first occupation of things formerly common. The derived is that which is transferred from the first Proprietors.' Cf. Heineccius, *Universal Law*, I.176.

30. Gen. 1:29–30: 'And God said, Behold, I have given you every herb bearing seed, which is upon the face of all the earth, and every tree, in which is the fruit of a tree yielding seed; to you it shall be for meat. And to every beast of the earth, and to every fowl of the air, and to every thing that creepeth upon the earth, wherein there is life, I have given every green herb for meat: and it was so.' The following reference is: Gen. 9:2–3: 'And the fear of you and the dread of you shall be upon every beast of the earth, and upon every fowl of the air, upon all that moveth upon the earth, and upon all the fishes of the sea; into your hand are they delivered. Every moving thing that liveth shall be meat for you; even as the green herb have I given you all things.'
31. Generally in modern natural law, negative communion (or community) was the (original, natural) state in which things did not belong to anyone but were open for division and occupation by anyone (see above, n. 29). In the Pufendorffian tradition, positive communion is exclusive, collective ownership by several people of things hitherto in negative

communion (Pufendorf, *Law of Nature*, IV.4.ii–iii, and *Duty of Man*, I.12.iii; cf. Hutcheson, *Short Introduction*, p. 159, and *System*, I.330–1). For thinkers such as Richard Cumberland and (in some interpretations) John Locke, theology demanded that positive communion was the condition in which the whole world was given to mankind, so that occupation could not give rise to exclusive rights in things but only to more or less temporary use-rights determined by a concern for the common good (Cumberland, *Laws of Nature*, pp. 64 ff.). Most of Locke's *First Treatise* is relevant, but see ch. IV, secs. 21ff. and *Second Treatise*, ch. V, sec. 25. These issues are dealt with at much greater length below in 7/vii/11, 7/vii/13 and 7/viii/1b (printed in Section XI).

*Res nullius* (lit. nobody's thing) is a concept derived from Roman law, which in general had a significant influence on the theory of property in modern natural law. The first title in book II of Justinian's *Institutes* 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) (*ibid.*, secs. 7–10). This topic acquired some jurisprudential (and confessional) significance when Grotius maintained that such things derive their special qualities only from positive law and that therefore they may be legitimate targets of conquest and destruction in war (*War and Peace*, III.5.ii), subject to the limitations of 'moderation' (III.12.vi–vii). The topic turns up in the manuscripts printed here in Section XI, pp. 106–7 and 110. In the latter place, Reid denies that 'sacred things' are incapable of becoming property, thus indicating his agreement with Hutcheson, that the opposite would be tantamount to subscribing to 'the mystery of consecration' within 'the Popish religion' (*System*, I.335; cf. *ibid.*, pp. 331–5, and *Short Introduction*, p. 159). *Res nullius* by human law are the things of the natural world before they are occupied by men (*Institutes*, II.i.11–18), and this concept could therefore be used in natural law to describe both the original negative community and what was subsequently left unoccupied.

32. Central to the dispute between the two traditions referred to in the previous note was the issue indicated here – whether exclusive property rights to things lasting beyond present use were defensible. The colour of Locke's answer in the crucial ch. V of the *Second Treatise* is controversial but was traditionally taken to be affirmative; Carmichael (n. 1 to

- Pufendorf, *De officio*, I.12.ii; translation in Carmichael, *Natural Rights*, pp. 92–6) and Hutcheson (*Short Introduction*, p. 156, and *System*, I.324–5 and 328–9) followed the same line, and Reid followed them, as we see from the extensive treatment of this topic in AP, p. 658, and the papers printed here in Section XI. In his late ‘Some Thoughts on the Utopian System’, Reid did, however, subject the whole matter to more searching discussion.
33. Presumably Reid has here discussed how previously owned things could be abandoned and return to negative community and thus be open for reoccupation by others. Usually this was dealt with as a preliminary to property right from prescription (see Section XI, pp. 105 and 110; Grotius, *War and Peace*, II.3.xix and the following ch. 4; Pufendorf, *Law of Nature*, IV.6.xii and IV.12.viii, and *Duty of Man*, I.12.vi and I.12.xii; Hutcheson, *Short Introduction*, pp. 159–60, and *System*, I.335–6).
  34. See Reid’s extensive discussion of Hume’s theory of property in AP, pp. 657b ff. In the extreme left-hand margin Reid has written, vertically, the following note: ‘This Comunity of things prior to occupation gave occasion to the poetical Fiction of a Golden Age. See Abstract.’ There is no indication of where this belongs or any entirely obvious place for it. It does, however, seem likely that Reid in his lecture on 11 March recapitulated some of the earlier material by discussing Hume’s theory of property and that he is here echoing Hume’s well-known passage ‘This poetical fiction of the golden age is, in some respects, of a piece with the philosophical fiction of the state of nature’ (*Enquiry*, p. 189, and cf. *Treatise*, p. 493). In that case the ‘Abstract’, which we otherwise cannot identify, may be one of the drafts that eventually became ch. 5 of essay V in AP and of which we have a specimen in 6/1/9, where Reid on fol. 2v (see his point no. 7) clearly refers to the passage in the *Enquiry* quoted above.
  35. As mentioned above in n. 31, this issue was raised in Roman law, whence it entered modern natural law and acquired the highest importance in the disputes of the sixteenth and seventeenth centuries as to whether the high seas could become the ‘private’ (exclusive) property of nations (the most famous protagonist against being (the young) Grotius in *Mare liberum* [1609], and for this proposition, John Selden in *Mare clausum* [1636]). The problem did, however, concern many other things, especially waters other than the high seas (coastal waters, bays, lakes, rivers), the air (meaning also space), sunlight, the wind, the earth as a whole,

wild animals in general, and so on. While it was relatively clear what it meant to claim exclusive property rights in particular parts, or individual specimens of some of these things, it was not clear how individuals or states could claim such rights in the whole or in the generality. The problem therefore forced natural lawyers to try to clarify the concept of property rights and especially to weigh the relative importance of 'physical' or 'natural criteria', such as controllability and limitability, and 'moral' criteria, such as our own needs and the needs of others (which for the contractarian theorists involved interpretation of the original agreement's intentions). See Grotius, *War and Peace*, II.2.iii and II.3.vii ff.; Pufendorf, *Law of Nature*, IV.5, and *Duty of Man*, I.12.iv; Hutcheson, *Short Introduction*, p. 158, and *System*, I.329–30; and Hume, *Treatise*, p. 495, and *Enquiry*, p. 184. As is evident from the following sentence, Reid has given the topic an extemporaneous elaboration and he returns to it elsewhere (see Section XI, pp. 106 and 109).

36. Perhaps 'to it', although the period before 'it' is quite distinct.
37. I read the three examples as follows. The first case exemplifies the hitherto unoccupied, which is equally open for acquisition to all so that nobody is harmed when it is taken. Such concern with the rights of colonisers was common in the natural law literature. The second case illustrates the harmful occupation of what has already been taken by others. The third is a case of occupation of that which was once occupied but had been abandoned and is thus again available to the occupier who comes first. This case was in fact famous and played a wider role in natural law. The story is told by Plutarch in *Quaestiones Graecae*, question 30, of the two spies representing the allied peoples of Andros and Chalcis who see that the city of Acanthos is deserted. The Chalcidian spy runs in order to claim Acanthos for his people, while the slower Andrian spy throws his spear and plants it in the city gate, on the basis of which he claims first occupancy of the deserted city for his people. The story is retold by both Grotius (*War and Peace*, II.8.vi) and Pufendorf (*Law of Nature*, IV.6.viii) when they discuss what counts as physical occupation of a thing, which for them is a necessary condition for first occupancy to establish a right. This indicates that Reid has used the examples as a transition to the following point in his lecture, where he makes it clear that he followed Barbeyrac and Hutcheson in denying this condition. Like Barbeyrac and Hutcheson, Reid thought that any clear demonstration of intention to occupy, not just the physical occupation, was enough to establish a property right through first

occupation. See Barbeyrac's n. 2 to Pufendorf, *Law of Nature*, IV.6.viii, and see also Hutcheson, *Short Introduction*, pp. 152–3, and *System*, I.318, 325–6 and 346. Grotius and Pufendorf did not mean to say that property right by first occupation was the same as physical occupation, but only that this was necessary to prove unequivocally the intention to occupy and who had it first. Nevertheless, Barbeyrac and Hutcheson take this opportunity to reject the 'confused imagination that property is some physical quality or relation produced by some action of men' (Hutcheson, *System*, I.318) and thus to stress the idea of property as a moral link, the solidity of which depends on the status of our moral ideas. In this they were followed by Reid; see Section XI in this book, p. 104. It is clear that this line of criticism also was aimed at Locke's famous theory in ch. V of the *Second Treatise* that 'whatsoever' a man 'hath mixed his Labour with' becomes his property (sec. 27). Also, Hume tells the story in his discussion of what counts as first occupancy (*Treatise*, pp. 507–8).

38. As mentioned in the previous note, property right by first occupation presupposes intention. However, property rights under positive ('civil') law may be conferred also on those incapable of having intentions, or relevant intentions, such as 'Infants and delirious Persons' (Pufendorf, *Law of Nature*, IV.4.xv; cf. Grotius, *War and Peace*, II.3.vi).
39. After property rights by first occupancy, people may come into further property rights when the occupied things are somehow added to. The jurisprudential problem is to find criteria for what should count as such accessions. In Roman law, *accessio* was a broad category containing a variety of cases (*Institutes*, II.i.19–38). Most of this became stable fare in modern natural law's treatment of property (Grotius, *War and Peace*, II.8.viii–xxi; Pufendorf, *Law of Nature*, IV.7, and *Duty of Man*, I.12.vii; S. Coccej, *Introductio*, pp. 311–21; Hutcheson, *Short Introduction*, pp. 160–2, and *System*, I.337–8; Heineccius, *Universal Law*, I.183–96; Hume, *Treatise*, p. 509 and the note pp. 509–13, and *Enquiry*, p. 310).

*Fructus*: Although there may be an implicit distinction in Justinian between *accessio* (II.i.20–34) and *fructus* (II.i.19 and 35–8), this is never made clear, and in natural law *fructus*, fruit, becomes more or less synonymous with accession: 'The Increments, Multiplication, and Profits of any kind of things are usually stiled Fruits' (Pufendorf, *Law of Nature*, IV.7.iii; similarly, Stair, *Institutions*, II.i.34).

*Alluvio*: the gradual deposit of soil by a river (Justinian, *Institutes*, II.i.20–4). These brief paragraphs provided a rich material on which

natural lawyers could test how much was fixed by natural law principles of property and how much had to be left for positive law. Relevant considerations included the following: Whether the river was the border between two states and, if so, on what principles the border had been fixed. Whether a river within a state was public or private property or outside the original division of land. If it was public, as was commonly held in natural law, how much the river encompassed – the flowing water or also the riverbed? In the latter case, an island formed in the river (*insula nata in flumine*) by deposit would be public. But what about floating islands? Did the banks and thus deposits on them form part of the riverbed? What difference did a sudden rather than a gradual, less perceptible transportation of soil from A to B make? Who should own deposits by a river when it left its usual channel – for example, through flooding? See Grotius, *War and Peace*, II.8.viii–xvii; Pufendorf, *Law of Nature*, IV.7.xi–xii; Hume, *Treatise*, p. 511n., and *Enquiry*, p. 310n. The following cases listed by Reid raise the questions, what is the principal thing and what is the accessory thing, and how do we distinguish one from the other?

*Adiunctio*, like most of these labels, is not used in Roman law but stems from the commentators. In natural law it is a vague concept that is not clearly distinguished from the other forms of accession. Thus in Heineccius, *Universal Law*, I.191, it is described as ‘when something belonging to another is added to our goods by inclusion, by soldering with lead, by nailing or iron-work, by writing, painting, &c.’ It is, however, likely that Reid is using the concept in a narrow sense for that which is separable from the principal thing without the destruction of either, but not without destroying the thing they make up together. The classical example (Justinian, *Institutes*, II.i.26) is the garment in which one man’s purple thread is woven into another’s coarser yarn (or one’s purple cloth is sewn up with another’s coarser cloth; Pufendorf, *Law of Nature*, IV.4.ix): is the coarse material accessory because of its lower value, or the purple because of its smaller volume? Cf. Grotius, *War and Peace*, II.8.xix.

*Inaedificatio*, building in or upon. Stemming from Justinian, *Institutes*, II.i.29–30, this label covers two clusters of cases: (1) A builds a house with B’s materials (a) in bad faith; (b) in good faith; (c) in good faith, but the materials have been delivered by C who stole them from B; (d) A is in de facto possession of the house. (2) A builds a house with his own materials on B’s land, with subdivisions similar to the



preceding. See Grotius, *War and Peace*, II.8.xxii; Pufendorf, *Law of Nature*, IV.7.vi; Heineccius, *Universal Law*, I.192–3.

*Scriptura*, a writing: If one man writes on another's paper, does the writing accede to the paper or the other way around? Justinian, *Institutes*, II.i.33, takes the former view; Pufendorf, *Law of Nature*, IV.7.vii, takes the latter. Cf. Grotius, *War and Peace*, II.8.xxi; Heineccius, *Universal Law*, I.193.

*Specificatio*, 'Under accession may be included specification, by which is understood a person's making a new species or subject, from materials belonging to another' (Erskine, *Institute of the Law of Scotland*, II.i.16). When A makes jewellery of B's gold, or bread of his corn, or a ship of his wood, does the form of the final product accede to the materials or the other way around? Does this depend on whether form and material can again be separated and the material returned to its original condition? Or on the relative value of the material and the thing formed? Or on the amount of work expended in forming the thing? Or will different cases require different principles? It is, of course, presupposed that joint ownership by A and B is excluded. See Justinian, *Institutes*, II.i.25; Grotius, *War and Peace*, II.8.xix; Pufendorf, *Law of Nature*, IV.7.x; Heineccius, *Universal Law*, I. 190–1.

Similar questions arise from cases where substances belonging to different owners are mixed but are readily separable, though the individual elements are not identifiable and assignable, such as heaps of corn or flocks of unmarked sheep of the same breed (*commixtio*), or where the mixed substances cannot be separated, such as two lots of wine (*confusio*). See Justinian, *Institutes*, II.i.27–8; Grotius, *War and Peace*, II.8.xix; Pufendorf, *Law of Nations*, IV.7.x; Heineccius, *Universal Law*, I.194.

The cases of *plantatio*, planting, and *satio*, sowing, by one man in another's field again raise similar questions, a crucial factor in planting being whether the plant has taken root. Justinian, *Institutes*, II.i.31–2; Grotius, *War and Peace*, II.8.xxii; Pufendorf, *Law of Nature*, IV.7.v; Heineccius, *Universal Law*, I.195.

In both Roman and natural law (as well as in Scots law) consideration of the agents' good or bad faith plays an important role in the treatment of all the cases falling under accession because this was crucial for the forms of legal action that could be taken in cases of conflict.

40. See Hutcheson, *System*, I.338–9, and *Short Introduction*, p. 162: 'Full property originally contains these several rights: first, that of retaining

possession, 2. and next, that of taking all manner of use. 3. that also of excluding others from any use; 4. and lastly, that of transferring to others as the proprietor pleases, either in whole or in part, absolutely, or under any lawful condition, or upon any event or contingency, and of granting any particular lawful use to others. But property is frequently limited by civil laws, and frequently by the deeds of some former proprietors.’

41. In this paragraph Reid refers to the standpoint, common to Grotius and Pufendorf, that once people live in civil society their right of occupancy is subject to regulation by positive law. Therefore, vacant land (including large accessions to land, as from rivers in flood), treasures in the ground, and wild life may in various degrees be made public property. See, e.g., Grotius, *War and Peace*, II.2.iv–v; Pufendorf, *Law of Nature*, IV.6.iii–vii; Hutcheson, *Short Introduction*, p. 162, and *System*, I.339. This point should not be confused with the sovereign’s *dominium eminens*, as the discussion of the distinction between *regalia maiora* and *regalia minora* shows. The former are the essential parts of sovereignty, and the latter are the less essential elements, which may be delegated and which traditionally included such things as those mentioned above; see Grotius, *War and Peace*, II.4.xiii, and especially Barbeyrac’s note to this. Grotius (II.3.xix) also makes the point that as far as land is concerned, this will often be held in a sort of positive community by the society because it has commonly been taken possession of by a people as a whole, so that private property is derivative from and dependent upon this. It is undoubtedly this point that led Reid to talk about the feudal law on excheat (today escheat) which was the lapsing of land to the Crown (or to the feudal lord) when the owner died intestate and without heirs (in Scotland sometimes in the wider sense including confiscation and forfeiture of real or personal property). The whole topic of the paragraph would have been closely tied to the final one, because what was barred from becoming private property through occupation could not be prescribed.
42. Prescription in its negative aspect is the extinction of a right through non-assertion of that right for some period of time. In its positive aspect it is the creation of a new right through de facto occupancy, use, and so on, for some period, of things to which somebody else’s right has been (or was being) extinguished in the former way. Deriving from Roman law’s notion of *usucapio* (Justinian, *Institutes*, II.vi), it was stock-in-trade in natural law: Grotius, *War and Peace*, II.4; Pufendorf, *Law of*

- Nature*, IV.12, and *Duty of Man*, I.12.xii; Hutcheson, *Short Introduction*, pp. 159–60 and *System*, I.335–6; Hume, *Treatise*, pp. 507–9.
43. See Hutcheson, *Short Introduction*, pp. 163–5, and *System*, I.340–3.
44. See Hutcheson, *System*, I.343–4: ‘Derived real rights are either some parts of the right of property transferred to another, and separate 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 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.’ Cf. *Short Introduction*, p. 165. Reid mentions the two first rights immediately below and the two last in 8/III/2,2r (below, pp. 52–3). It should be pointed out that the Hutchesonian systematics, which Reid follows, here deviates somewhat from Pufendorf’s. In *Law of Nature*, IV.8, Pufendorf treats rights of possession (v) and servitudes (vi–xii) between original and derived rights (cf. *Duty of Man*, I.12.viii), while pledge and mortgage are dealt with under the law of contract (V.10.xiii–xvi; cf. *Duty of Man*, I.15.xv), where it also makes a token reappearance in Hutcheson (*Short Introduction*, pp. 221–2, and *System*, II.77). For the general distinction between complete and partial property, see Grotius, *War and Peace*, I.1.v and II.3.ii; Pufendorf, *Law of Nature*, IV.4.ii and *Duty of Man*, I.12.ix.
45. In *Short Introduction*, pp. 166–8, Hutcheson gives six such rules; in *System*, I.344–9, the discussion is more elaborate. Hutcheson’s discussion derives from Pufendorf, *Law of Nature*, IV.8.v; cf. Grotius, *War and Peace*, II.10. The natural lawyers’ discussions of the legal effects of the de facto possession of another person’s property was a direct extension of Roman law’s treatment of it (Justinian, *Institutes*, II.vi; *Digest*, XLI.2). It was closely connected with the issue of prescription and the obligations arising from property (see Pufendorf, *Law of Nature*, IV.12–13, and *Duty of Man*, II.12.xii).
46. Hutcheson, *Short Introduction*, p. 168, and *System*, I.349–50. In view of his general interest in an agrarian law, Reid’s criticism of the law of entails in the following pages is hardly surprising. It is also not

surprising that he here goes far beyond Hutcheson's brief discussions, for the problem was topical in the 1760s (and undoubtedly of relevance for a number of Reid's young listeners). From 1764 the Faculty of Advocates in Edinburgh led a campaign against the Act Concerning Entails from 1685 (Acts of the Parliament of Scotland, viii, 477 (26); cf. N. T. Phillipson, 'Lawyers, landowners, and the civic leadership of post-Union Scotland', pp. 113–19). Reid was undoubtedly aware of this and of some of the literature surrounding it, such as Sir John Dalrymple's *Considerations on the Polity of Entails in a Nation* and *An Essay towards a General History of Feudal Property in Great Britain* (ch. 4), Lord Kames's *Historical Law-Tracts* (tract III, 'Property') and his well-publicized 'Considerations upon the State of Scotland with Respect to Entails', which he addressed to the Lord Chancellor in 1759. Reid and Kames were friends from 1762, they corresponded, Reid paid visits to Kames's country seat at Blair Drummond, and Reid read and commented on Kames's manuscripts. It is therefore impossible to imagine that Reid should have been unaware of Kames's criticism of entails, and it is worth noticing that of the tripartite criticism of entails which Reid presents below, the first two points – effects on the family and on the public – are identical with Kames's two general points in appendix 1, 'Scotch Entails Considered in Moral and Political Views', in his *Sketches of the History of Man*. Reid's third point, that entailing is a breach of the law of nature, is clearly stated by Kames too, though not as a third point. Although this work was not published until 1774, Kames had obviously been thinking about and working on it long before (see I. S. Ross, *Lord Kames and the Scotland of His Day*, pp. 333 ff.), and Reid was certainly privy to the genesis of the work, for he contributed a minor piece to it (an appendix on Aristotle's logic in book III, sketch 1, now in *Thomas Reid on Logic, Rhetoric and the Fine Arts*), which he may already have begun in 1767 (see Reid, Cor., p. 62). Similarly, Reid had hardly been unaware of the critical attitude toward entails taken by his predecessor Adam Smith (see LJ(A), i.160–ii.1 LJ(B), 166–9; cf. WN, III.ii.5–7) and by his young colleague, John Millar (see notes from Millar's 'Lectures on the Institutions of the Civil Law', dated Glasgow 1794, Edinburgh University Library MS. Dc. 2. 45–6 [2 vols.], 2:45–53). On this topic Millar would hardly have changed his tune in the intervening thirty years; cf. *Origin of Ranks*, pp. 232–5. Also, the recent work of historians would have impressed upon Reid the importance of entails: Robertson, *History of Scotland*, 1:20–1, and Hume, *History of England*, 3:302.

47. See the same point in Kames, 'Considerations', pp. 328–9. For some of the subsequent points concerning the public effects of entails, see *ibid.*, pp. 329–30.
48. See Kames, *Sketches*, 4:457: 'every prosperous trader will desert a country where he can find no land to purchase'.
49. Reid has rearranged his text (see the Textual Notes) so that it follows the same order as Hutcheson's *Short Introduction*, pp. 168–71, and *System*, I.350–2.
50. See Hutcheson, *Short Introduction*, pp. 168–9: 'For further security to creditors pledges and mortgages were introduced, or goods so subjected to the power of the creditor that, if the debt is not discharged at the time prefixed, the goods should become the property of the creditor.' Generally speaking, one could pledge moveables and mortgage real estate, as Hutcheson explains in *Institutio*, p. 173, and in *System*, I.350–1. Here he follows Pufendorf, *Law of Nature*, V.10.xvi, and *Duty of Man*, I.15.xv. Pufendorf's discussion is again built around the Roman law's treatment of *pignus* (approx. pledge) and *hypotheca* (approx. mortgage) in Justinian, *Institutes*, III.xiv.4 and IV.vi.7; *Digest*, XX. The subsequent points should be read in the light of the following references (Hutcheson, *Short Introduction*, pp. 169–70): 'The last class of real rights are servitudes that is "rights to some small use of the property of others"; which generally arise from contracts; or from this that in the transferring of property they have been reserved by the granter; or sometimes from civil laws. All servitudes are real rights, terminating upon some definite tenement. And yet with regard to the subject they belong to, and not the object they terminate upon, they are divided into real and personal. The personal are constituted in favour of some person, and expire along with him: the real are constituted for the advantage of some tenement, and belong to whatever person possesses it. An instance of the former is tenantry for life impeachable for waste' (cf. *System*, I.351). The distinction between personal and real servitudes is built upon Pufendorf (*Law of Nature*, IV.8.vi, and *Duty of Man*, I.12.viii), who again derives it from Roman law's distinction between predial and personal servitudes (*Institutes*, II.iii–iv, and *Digest*, VIII.l.i). In the final sentence quoted, Hutcheson in fact seems to amalgamate Roman law's *usufructus* and *usus*, which he mentions in his Latin text (*Institutio*, p. 174), where he also mentions the third of the classical personal servitudes, *habitatio* (*Institutes*, II.5.v), the right to the *usus* of a house for life. Reid presumably used the Latin version of Hutcheson's

textbook, as he, in contrast to the *Short Introduction*, goes on to specify ‘Life rent’. For the personal servitudes, see Pufendorf, *Law of Nature*, IV.8.vii–x, and *Duty of Man*, I.12.viii. Reid’s mention of the real servitudes is a précis of Hutcheson’s Latin version (*Institutio*, p. 174): ‘Reales sunt vel urbanae, vel rusticae. Urbanae sunt oneris ferendi, tigni immittendi, altius tollendi, aut non tollendi, luminum, prospectus, &c. Rustica, contra, spectant praedia, iter, actus, via, &c.’ This is not fully rendered in *Short Introduction*, but its sense is: ‘The real {servitudes} are either urban or rural. The urban ones are to support the burden {of the neighbour’s wall when two houses are attached}, to insert beams {into a neighbouring wall}, to build higher or, rather, not to build {above a certain height}, {to have unhindered} light {i.e. windows} {and} view.’ To this Reid adds ‘stillicidii’ {recipiendi} – that is, the servitude to receive dripping rain water from another’s house. He has probably taken this from Pufendorf, *De officio*, I.12.viii. The rest of Reid’s formulation does, however, agree with Hutcheson much more than with Pufendorf, let alone the *Institutes*, which deals with the same urban servitudes in II.iii.1–2. For a more extensive treatment, see Pufendorf, *Law of Nature*, IV.8.xi, where detailed references to the *Digest* are also given. As to the rural servitudes, Hutcheson is saying: ‘Rural lands, on the other hand, concern *iter* {the right of way to walk}, *actus* {the right of way to drive animals or vehicles}, *via* {the general right of passage including both *iter* and *actus*.’ The explanations in curly brackets derive from the *Institutes*’ treatment of rural servitudes in II.iii, pr.; cf. Hutcheson, *Short Introduction*, p. 170, and *System*, I.351; Pufendorf, *Law of Nature*, IV.8.xii, and *Duty of Man*, I.12.viii. *Usufructus*, *usus* and *habitatio* are dealt with in *Digest*, book VII; real servitudes are in book VIII. See also Grotius, *War and Peace*, III.2.ii; Cocceius, *Introductio*, pp. 93 and 333–5; Heineccius, *Universal Law*, I.213–14.

51. The following fourfold division is identical with that of Hutcheson, *Short Introduction*, p. 171, and *System*, I.352, and of Pufendorf, *Law of Nature*, IV.10.i, and implicitly *Duty of Man*, I.12.x and xiii–xv. Donation is not dealt with by Reid, while delict is discussed below, pp. 66–8.
52. Grotius, *De jure*, II.6.xiv: ‘Alienatio autem in mortis eventum, ante eam revocabilis, retento interim jure possidendi ac fruendi, est testamentum’, which in the English translation is rendered: ‘For a Will is the making over one’s Effects in Case of Death, ’till then to be reversed or altered at Pleasure; and in the mean Time reserving the whole Right of Possession and Enjoyment’ (*War and Peace*, II.6.xiv).

53. Pufendorf's objection, which he expresses in *Law of Nature*, IV.10.ii (quoting the same passage from Grotius), but not in *Duty of Man*, is that a testament cannot be called an alienation. An alienation presupposes an alienator and a willing receiver, but after the death that brings a testament into force there is no alienator, and before this death there is often no willing receiver, for intended heirs may be unaware of the testator's intention and their willingness is anyway irrelevant until after the testator's death. Further, in obvious contrast to an alienation, a testament has no effect on the property right of the testator as long as he is alive, as is shown by his right to alienate his property to others and to change his testament as he pleases. Accordingly, says Pufendorf, 'We shall express the Nature of a Testament more plainly and more agreeably to the sense of the Roman Lawyers, if we call it, A Declaration of our Will touching the Successors to our Goods, after our Decease, yet such as is mutable and revocable at our pleasure whilst we live, and which creates a Right in others to take place only when we are gone' (*Law of Nature*, IV.10.iii; cf. *Duty of Man*, I.12.xiii). The Roman lawyers' sense was expressed in the *Institutes*, I.x, pr., and the *Digest*, XXVIII.i.l. Quoting part of Pufendorf's definition with approval (*System*, I.354), Hutcheson protests against 'the metaphysical subtilities' of these very common disputes; see *Short Introduction*, p. 172, and *System*, I.354n., where he refers to Pufendorf, *Law of Nature*, IV.10.iii, and Barbeyrac's protest there, p. 419, n. 2.
54. As in the case of entails, Reid, in the following brief discussion of intestate succession, adopts the kind of historical approach that is so well known from such contemporaries as Kames, Smith and Millar, and there is in fact broad similarity between the following two paragraphs and Kames, *Historical Law-Tracts*, pp. 100 ff. At the same time the topic did have its firm place in the systematics of natural jurisprudence (see above, n. 51): Grotius, *War and Peace*, II.7.ii–xi; Pufendorf, *Law of Nature*, IV.11, and *Duty of Man*, I.12.x–xi; Hutcheson, *Short Introduction*, pp. 173–5, and *System*, I.355–7; Coccej, *Introductio ad Grotium illustratum*, pp. 313–28; Heineccius, *Universal Law*, I.222–30; cf. Justinian, *Institutes*, III.i (and following titles). Reid would here have found the general points that in natural law the basis for intestate succession was a presumption about the deceased's 'natural' intention concerning his estate, that is, what this ought to be. It would be natural that the deceased's offspring should have the benefit of his property, otherwise those nearest to him in the family, at least to the level of basic

maintenance and that beyond this positive law had to determine. Further, he would have found that positive law actually did much more, and often in contravention of natural law. Some, like Grotius and Heineccius, take the obligation to maintain offspring to be merely imperfect, and the right to intestate succession is for them accordingly imperfect. Pufendorf takes the same rights and obligations to be perfect as far as children who are ‘unable to maintain themselves’ are concerned (Pufendorf, *Law of Nature*, IV.11.iv). This brings in a distinction between the ages of children, which Barbeyrac emphasises in making the same point (see n. 1 to Grotius, *War and Peace*, II.7.iv) and which was of great importance in Reid’s later discussion of the jurisprudential status of the family. Hutcheson, finally, takes the middle line that ‘God and nature, by making these ties of blood bonds also of love and goodwill, seems to have given our children and kinsmen if not a perfect claim or right, yet at least one very near to perfect’ to the property of their parents or relatives (*Short Introduction*, p. 173). Hutcheson’s denial of a sharp distinction between perfect and imperfect rights should be kept in mind here.

55. *Foris familiare*: outside the family – that is, who has left the family (traditionally lawyers used the old ablative in this connection, thus perhaps facilitating the anglicisation ‘to forisfamiliare’ of the medieval ‘forisfamiliare’). See the Commentary below at p. 241 n. 8.
56. See *Digest*, XXVIII.ii.11, and, perhaps of more direct relevance, Coccej, *Introductio ad Grotium illustratum*, pp. 322–3, and Kames, *Historical Law-Tracts*, pp. 109–10: ‘originally there was not such a thing as succession in the sense we now give that term. Children came in place of their parents: But this was not properly a succession; it was a continuation of possession, founded upon their own title of property. And while the relation of property continued so slight as it was originally, it was perhaps thought sufficient that children *in familia* only should enjoy this privilege.’ Similarly, *ibid.*, pp. 100–1.
57. See Grotius, *War and Peace*, II.7.viii.
58. See Grotius, *War and Peace*, II.7.i: ‘There are some of the Civil Laws {concerning “derivative Acquisition, or Alienation”} that are plainly unjust; as those by which all shipwrecked Goods are confiscated.’ The same point is made with the same example by Pufendorf in *Law of Nature*, IV.13.iv. Reid’s use of ‘succession’ in the present context is obviously very wide, and like Pufendorf he has undoubtedly been addressing the general problem of when it is not legitimate according to the



- Law of Nature* to take over another's property right, whatever the positive law says. Cf. Pufendorf, *Duty of Man*, I.13.
59. See AP, p. 663, and below, Section XV, p. 136. The topic for the second half of Reid's lecture on Tuesday, 19 March 1765 was exceptionally fertile for him. The end-product was his considerations 'Of the Nature and Obligation of a Contract' (AP, V.6), which form a cornerstone in his criticism of Hume's theory of justice. En route to this we have some significant drafts (2/II/14 and 7/VII/2–6 in part, not in this volume). Furthermore, Reid used his thoughts about the nature of contracts to interpret the foundation for civil society in an important paper (2/II/10), which I print in Section XV. Folios 1r–2r of that manuscript throw much light on the present manuscript. The soil had been well prepared for Reid, because contract had been of central concern to all the natural lawyers, who again drew on a rich classical material. Reid himself does not indicate any direct concern with Roman law on this topic, and the reader is therefore referred to the detailed citations in the passages of Grotius, Pufendorf and Coccej, referred to below. However, it should be pointed out that Reid does not take up the classical distinction between pacts and contracts, thus apparently accepting Hutcheson's point in *Short Introduction*, pp. 177–8, that according to the law of nature there is no such distinction, a point also made by Barbeyrac (n. 2, p. 473 of Pufendorf, *Law of Nature*). But for Pufendorf's discussion of the distinction both in Hobbes (*De cive*, II.9) and in Roman law, see *Law of Nature*, V.2.i–iv.
60. The distinctions in the two first paragraphs should be seen against the background of Grotius's distinction between (1) 'a bare Assertion, signifying what we intend hereafter, in the Mind we are now in' (*War and Peace*, II.11.ii); (2) 'The second Manner, when the Will determines itself for the Time to come, is by giving some positive Token, that sufficiently declares the Necessity of its Perseverance. And this may be called an imperfect Promise, which . . . obliges either absolutely or conditionally; but yet gives no Right, properly so called, to him to whom it is made' (*ibid.*, II.11.iii); (3) 'A third Degree is, when to this Determination we add a sufficient Declaration of our Will to confer on another a real Right of demanding the Performance of our Promise. And this is a compleat Promise' (*ibid.*, II.11.iv). Reid may have been aware of the entry into Scottish legal thought of these distinctions in Stair, *Institutions*, I.10.i–vi, and would certainly have been influenced by their substantial repetition in Pufendorf, *Law of Nature*, III.5.v–vii (cf. *Duty*

- of *Man*, I.9.vi–vii), Hutcheson, *Short Introduction*, pp. 179–80, and *System*, II.5–6 (cf. Coccej, *Introductio*, p. 102). Heineccius denies the distinction between perfect and imperfect (or incomplete) promises, *Universal Law*, I.302–3. See further Hume, *Treatise*, III.2.v, and *Enquiry*, pp. 199–200, and Reid’s criticism in AP, pp. 666a–670b.
61. See AP, p. 665b; Grotius, *War and Peace*, II.11.v; Pufendorf, *Law of Nature*, III.6.iii–v, and *Duty of Man*, I.9.x–xi; Hutcheson, *Short Introduction*, pp. 180–2, and *System*, II.8–12; Coccej, *Introductio*, p. 370; Heineccius, *Universal Law*, I.305.
62. See Grotius, *War and Peace*, III.11.vi; Pufendorf, *Law of Nature*, III.6.vi (cf. v.3.ix), and *Duty of Man*, I.9.xii; Hutcheson, *Short Introduction*, pp. 182–3, and *System*, II.14–15; Coccej, *Introductio*, pp. 103 and 367; Heineccius, *Universal Law*, I.306.
63. See Pufendorf, *Law of Nature*, III.6.vii (and V.3.ii–iii); Hutcheson, *Short Introduction*, p. 183, and *System*, II.15; Coccej, *Introductio*, p. 367.
64. See Grotius, *War and Peace*, II.4.iii, II.11.xi, and II.16.i; Pufendorf, *Law of Nature*, III.6.ii and xvi, and *Duty of Man*, I.9.ix; Hutcheson, *Short Introduction*, pp. 184–5, and *System*, II.6; Heineccius, *Universal Law*, I.304–5; Coccej, *Introductio*, p. 361. Concerning this and the following point, see also the next lecture on obligations in the use of speech and, concerning ‘mental Reservation’, see further Pufendorf, *Law of Nature*, IV.1.xiv, and *Duty of Man*, I.10.x; Hutcheson, *System*, II.37–8 (‘The crime of equivocation and mental reservations’).
65. See Grotius, *War and Peace*, II.11.vii and xx; Pufendorf, *Law of Nature*, III.6.ix–xiii, and *Duty of Man*, I.9.xv; Hutcheson, *Short Introduction*, pp. 187–91, and *System*, II.16–23; Heineccius, *Universal Law*, I.307–8; Coccej, *Introductio*, pp. 103 and 368. The topic was generally divided into two: the fear that the other party to a contract will not fulfil his or her part, and the fear of unpleasant repercussions if one does not enter into some contract. The problem is, does either kind of fear invalidate the contract? Reid’s formulation indicates that he has concentrated on the second kind of fear.
66. See Grotius, *War and Peace*, II.13.xiv–xvi, III.19 and III.23.ii; Pufendorf, *Law of Nature*, III.6.ix–xiii; Hutcheson, *Short Introduction*, p. 188, and *System*, II.17–18: ‘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. . . . 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 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.’ Cf. *Short Introduction*, p. 188. Further, Coccej, *Introductio*, p. 371.
67. See Grotius, *War and Peace*, II.11.viii–ix; Pufendorf, *Law of Nature*, III.7.vi–xi, and *Duty of Man*, I.9.xviii; Hutcheson, *Short Introduction*, pp. 191–3, and *System*, II.24–6; Heineccius, *Universal Law*, I.308–11; Coccej, *Introductio*, pp. 371–2. The basic point is this: ‘To make a Promise or Pact truly Obligatory, it is . . . Requisite, that we have a Moral Power of performing the thing agreed upon. And if the thing be unlawful, and we consequently want this Power, we cannot tie ourselves by any such Engagement’ (Pufendorf, *Law of Nature*, III.7.vi).
68. See Grotius, *War and Peace*, II.11.i; Pufendorf, *Law of Nature*, III.5.x; Hutcheson, *Short Introduction*, p. 192.
69. Echoing Hutcheson, *System*, II.15, Reid here probably recapitulated some of the points made the previous day.
70. Cicero, *De officiis*, I.23: ‘Fundamentum autem est iustitiae fides, id est dictorum conventorumque constantia et veritas’ (‘The foundation of justice, moreover, is good faith – that is, truth and fidelity to promises and agreements’). The word I have transcribed as ‘pactorumq’ is nearly impossible to decipher and might be ‘factoring’, which in Scotland referred to the appointment by a landholder or proprietor of an agent or steward to manage an estate (see below p. 56, for its use). However, apart from the unlikelihood that Reid would mix an English word into a standard Latin quotation, this would seem to be far too special and indeed parochial a concept to weave into such a general thought, whereas ‘pactorum’ would be a very obvious near-synonym for a lecturer quoting in a hurry and maybe from memory; certainly ‘pactum’ was constantly used in Reid’s sources. The Cicero passage is quoted by Grotius, *War and Peace*, II.11.i (5); Pufendorf, *Law of Nature*, III.5.ix; and Coccej, *Introductio*, p. 360.
71. See Cicero, *De officiis*, II.xi (40); Plato, *Republic*, I.351c ff.; Heliodorus, *An Aethiopian History*, p. 150. The passage in Cicero is quoted by

Pufendorf, *Law of Nature*, III.4.ii, and by Heineccius, *Universal Law*, I.301–2, while Heliodorus is referred to by Barbeyrac in Pufendorf, *Law of Nature*, VIII.4.v, where there is an extensive discussion of the point. See the Commentary above at p. 191 n. 3.

72. Horace, *Odes*, I.xxiv: ‘cui Pudor et Justitiae soror, incorrupta Fides, nudaque Veritas, quando ullum invenient parem?’ (‘When shall Honour, and Justice’s sister, Loyalty unshaken, and candid Truth e’er find a peer to him?’) The passage is quoted, in part, in the present context by Grotius, *War and Peace*, II.11.i (5) and by Coccej, *Introductio*, p. 360.
73. See Grotius, *War and Peace*, II.11.xiv–xv; Pufendorf, *Law of Nature* III.6.xv, and *Duty of Man*, I.9.xvi; Hutcheson, *Short Introduction*, p. 185, and *System*, II.12–13: ‘To the validity of contracts mutual consent is necessary; and that even in donations, as well as other translations of rights . . . 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 until 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. . . . All this is very intelligible if we remember that property is not a physical quality. . . . If property were a physical quality, it must indeed have a present subject.’ See further, Heineccius, *Universal Law*, I.308, and Coccej, *Introductio*, p. 104.
74. Reid is here giving the kernel of his argument for an irreducible active power in man, and the present passage is clearly an antecedent of the final version in AP, p. 517b.
75. This passage shows that Reid already in 1765 had Hume’s theory of justice firmly in view when developing his own. See above, p. 214 n. 59.
76. See AP, p. 666b; Hutcheson, *Short Introduction*, pp. 177–9, and *System*, II.1–3.
77. In the Golden Age the goddess of justice, Astraea, daughter of Zeus and Themis, lived among men, but when humanity had slumped through the silver age to the ‘age of hard iron’, ‘all evil burst forth into this age of baser vein’: ‘Piety lay vanquished, and the maiden Astraea, last of the immortals, abandoned the blood-soaked earth’ (Ovid, *Metamorphoses*, I.127–8 and 149–50). Reid would also have known the

similar passages in Juvenal, *Satire VI*, 19–20, and (pseudo) Seneca, *Octavia*, 423–5, and Seneca, *Thyestes*, 857.

78. This was a standard topic in Reid's natural law sources, but in Reid it assumes a much more central role by its connection with his general theory of language, which must be seen in the light of contemporary discussions of language, not least that of Condillac, *An Essay on the Origin of Human Knowledge*, rather than in the light of the natural lawyers' simpler contractualist views. As indicated in subsequent notes, the following two lectures are closely linked to the signal contribution to language-theory that we find scattered through Reid's published works. At the end of the two lectures (see below, n. 88) Reid does, however, take up parts of the traditional natural law treatment of the duties in speech.
79. See Hutcheson, *Illustrations*, pp. 253–74. In a brief, undated note, Reid made a different beginning on the present topic. It is on fol. 1r of four otherwise blank quarto pages in 7/vii/14:

In treating of Speech we shall first consider the Obligations to Veracity. 2 The other Duties and Obligations that relate to Speech. 1 Veracity what? There is the same Difficulty in defining accurately a Declaration testimony or affirmation as in defining a Promise or Contract. It is a social Act of the Mind and Supposes a Social Intercourse with intelligent & moral Agents.

80. On natural and artificial language, see Reid's discussions in *Inquiry into the Human Mind*, pp. 50–3, 58–61, 190–202, and in AP, pp. 664–5; cf. also 4/ii/5,2v and 7/v/1,12r.
81. See the theory of the 'social operations of the mind' developed in IP, pp. 68–70, and AP, pp. 663–5, and the theory of contract in 2/ii/10, Section XV below.
82. See *Inquiry*, p. 52.
83. Concerning the comparison of human and animal language, see further *Inquiry*, p. 51, and AP, p. 665b.
84. Wild Peter from Hanover (Hameln) was one of the most famous cases of a human being supposed to have grown up in isolation from other humans. The story was that he had been abandoned in the Hanoverian forests and was found at the presumed age of thirteen in 1724, living like an animal. He became particularly well known in Britain, as Swift relates: 'This night I saw the wild Boy, whose arrivall here hath been the subject of half our Talk this fortnight. He is in the Keeping of

Dr. Arthbutnnot (*sic*), but the King and Court were so entertained with him, that the Princess could not get him till now' (Swift to Thomas Tickell, London, 16 April 1726, in Swift, *Correspondence*, 3:128; cf. *Gentleman's Magazine*, 21 [1751]: 522). Reid is likely to have known of this case from Rousseau, *Discours sur l'origine de l'inegalité*, p. 94, and from Linné, *Systema naturae*, I.20. As for other cases, Rousseau (*Discours*, pp. 94–6; cf. p. 110) would have provided him with four, and Linné (*Systema naturae*) with six, some of them the same and one of them perhaps also known to Reid from Condillac, *Essay*, p. 88. There were further contemporary (esp. French) discussions of such cases.

85. See *Inquiry*, pp. 51–2 and 190–1; IP, pp. 484–7; AP, p. 664b.
86. Reid had in fact treated the last point more fully in *Inquiry*, pp. 194–5 (cf. AP, pp. 665a and 666a, and letter to James Gregory, Cor., p. 191). The numeral 2 presumably indicates that Reid now goes on to the second of the four sources of our obligations in speech mentioned at the beginning of the lecture, 'The immediate Judgment of our Moral Powers'.
87. See, e.g., AP, pp. 666a–b.
88. Reid here returns to the beaten track of the jurisprudential system. His distinction between two kinds of deception corresponds to Grotius's distinction between negative and positive fraud (*War and Peace*, III.1.vii–viii), which is adopted and to some extent adapted by Hutcheson, *Short Introduction*, pp. 196–8, and *System*, II.29–32. Pufendorf prefers to put the distinction as one between an 'Untruth' (*falsiloquium*) and a 'Lye' (*mendacium*); see *Law of Nature*, IV.1.ix. Reid's discussion should be related to the extensive treatment of deception in Grotius, *War and Peace*, III.1.vi–xx; Pufendorf, *Law of Nature*, IV.1.vii–xxi, and *Duty of Man*, I.10.iv–ix; Hutcheson, *Short Introduction*, pp. 198–201, and *System*, II.32–8. As Sissela Bok (*Lying*, p. 39) explains:

The final way {after mental reservation} to avoid Augustine's across-the-board prohibition of all lies seeks to argue that not all intentionally false statements ought to count as lies from a moral point of view. This view found powerful expression in Grotius. He argued that a falsehood is a lie in the strict sense of the word only if it conflicts with a right of the person to whom it is addressed. A robber, for instance, has no right to the information he tries to extort; to speak falsely to him is therefore not to lie in the strict sense of the word. The right in question is that of liberty of judgement, which is implied in all

speech; but it can be lost if the listener has evil intentions; or not yet acquired, as in the case of children; or else freely given up, as when two persons agree to deceive one another. . . .

Grotius helped to bring back into the discourse on lying the notion, common in antiquity but so nearly snuffed out by St. Augustine, that falsehood is at times justifiable.

This perspective should be kept in mind in the following.

89. See Grotius, *War and Peace*, III.1.xvii–xix; Pufendorf, *Law of Nature*, IV.1.xix, and *Duty of Man*, I.10.ix; Hutcheson, *Short Introduction*, p. 199, and *System*, II.33–4.
90. John 1:45–51.
91. See Pufendorf, *Law of Nature*, IV.2.xx and V.13.ix; Hutcheson, *System*, II.37.
92. I venture the following hypothetical identification of the questions of which Reid reminded himself with these five marginal points. ‘Reproof’ is to be taken in the now obsolete sense of ‘disproof’ or ‘refutation’, and Reid has here taken up the problem raised by Pufendorf (*Law of Nature*, IV.1.xx) whether a guilty person can legitimately deny his guilt in a (human) court of law. Thence he goes on to consider the use of the testimony of the accused and, more generally, the moral status of judicial self-defence (e.g., Pufendorf, *ibid.*). ‘Caution to a third person’ may refer to the deterrent effect of punishment, which Pufendorf mentions in passing, but it may also belong to ‘What is publick’, which again is to be related to the following few lines of the main text. Here Reid in general terms follows Hutcheson, *System*, II.38–40, in giving a list of duties and vices in conversation, and ‘What is publick’ refers to the following point raised by Hutcheson (*ibid.*, pp. 40–1) – namely, that we must carefully consider whether the faults of others are such that the maximum moral gain will be derived from making them public or from keeping them secret and, instead of telling the magistrate, give private ‘caution to a third person’.
93. See Hutcheson, *System*, II.42–3: ‘Under this head of the use of speech comes likewise in the old logical and moral debate between the Cynicks and the other sects of antient philosophy, about obscenity. 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. 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. . . . 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. . . . 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 there is no obscenity. Other words may import an immoderate keenness for such pleasures, a dissoluteness of mind. . . . These are the obscenities of conversation.’

94. All Reid’s main natural law sources devoted a separate chapter to oaths and vows: Grotius, *War and Peace*, II.13; Pufendorf, *Law of Nature*, IV.2, and *Duty of Man*, I.11; Hutcheson, *Short Introduction*, II, ch. 11, and *System*, II, ch. 11; Coccej, *Introductio*, pp. 108–9 and 388–91. The principal Roman law background is *Digest*, XII.2, but much more important is Cicero’s discussion of oaths in *De officiis*, book III. Grotius (II.13.i (3)) quotes Cicero’s definition of an oath, and Reid follows him. The definitions in all the other sources clearly echo this passage: Pufendorf, *Law of Nature*, IV.2.ii, and *Duty of Man*, I.11.i; Hutcheson, *Short Introduction*, p. 203: ‘an oath is “a religious act in which for confirmation of something doubtful, we invoke God as witness and avenger, if we swerve from truth”’ (a virtual quotation of Pufendorf). Cf. *System*, II.44, and Coccej, *Introductio*, pp. 108 and 388. Reid says nothing about vows in these notes, but we may take a clue from Hutcheson’s definition: ‘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”’ (*System*, II.50; cf. *Short Introduction*, pp. 207–8). This derives from Pufendorf, *Law of Nature*, III.6.xv and IV.2.viii; cf. Grotius, *War and Peace*, II.13.xv (2).
95. Cicero, *De officiis*, III.xxix (104): ‘an oath is an assurance backed by religious sanctity; and a solemn promise given, as before God as one’s witness, is to be sacredly kept’.
96. Cicero, *De officiis*, III.xxxi (111): ‘Nullum enim vinculum ad astringendam fidem iure iurando maiores artius esse voluerunt’ (‘For our ancestors were of the opinion that no bond was more effective in



guaranteeing good faith than an oath'). This quotation is also brought by Grotius, *War and Peace*, II.13.i (1). In Grotius's Latin text Cicero's word order is changed in exactly the same way as here by Reid, while in Barbeyrac's French translation, where the quotation is preserved in Latin, Barbeyrac corrected it.

97. See Hutcheson, *Short Introduction*, p. 204: 'To swear about trifling matters, or without any cause, is very impious; as it plainly tends to abate that awful reverence which all good men should constantly maintain toward God; and is a plain indication of contempt. Where perjuries in serious matters grow frequent in any state, the magistrates or legislators are generally chargeable with much of the guilt, if they either frequently exact oaths without necessity in smaller matters, or when the oaths give no security in the point in view; when the engagement designed may either be impracticable, or appear to the persons concerned to be unlawful; or if oaths are required where there are great temptations to perjury, with hopes of impunity from men.' Hutcheson's illustration of oaths that give no security is 'engagements by oath to adhere to certain schemes of religion . . . or to a government' (cf. *System*, II.44–6). Above 'lawfully onely' Reid has written 'Quakers' and thus reminded himself to point out that the Quakers rejected oaths altogether because they took Matt. 5:33–7 strictly. See Grotius, *War and Peace*, II.13.xxi, and Coccej, *Introductio*, p. 389.
98. The natural lawyers insisted that the core of an oath was the invocation of divine vengeance even when the oath did not mention God directly. Further, they saw sufficient common ground between all religions on this point to allow that the swearing of an oath was binding irrespective of the person's religion. Grotius, *War and Peace*, II.13.x–xii; Pufendorf, *Law of Nature*, IV.2.iii–iv, and *Duty of Man*, I.11.iii–iv; Hutcheson, *Short Introduction*, pp. 204–5, and *System*, II.46; Coccej, *Introductio*, p. 389. See Reid's manuscript printed in this book at p. 156. It should be pointed out that English law had recently been changed along the general lines of the natural lawyers. In the important case of *Omichund v. Barker* (1744), 1 Atkyns 21, Lord Hardwicke accepted the argument of the solicitor-general, Sir William Murray (later Lord Mansfield), that an oath could be taken by and evidence thus admitted from anyone who believed in divine retribution in some form, even a 'heathen' (Omichund was a Hindu); cf. James Oldham, *The Mansfield Manuscripts and the Growth of English Law in the Eighteenth Century*, II, ch. 14, esp. p. 863.

99. See Hutcheson, *Short Introduction*, p. 205: 'As in covenants, so in oaths, he is justly deemed to have sworn . . . who professing an intention of swearing makes such signs as ordinarily signify to others that one swears. Altho' an oath and a promise, or an assertion, may often be expressed by one and the same grammatical sentence; yet the act of swearing is plainly a distinct one from that of promising or asserting; as it consists in the invocation of God to avenge if we violate our faith.' See also *System*, II.46–7; Pufendorf, *Law of Nature*, IV.2.v; Grotius, *War and Peace*, II.13.iii; Coccej, *Introductio*, p. 108.
100. The general division of oaths was into those regarding the past or the present, called assertory (or affirmative), and those regarding the future, the promissory (or obligatory) oaths. See Grotius, *War and Peace*, II.13.xxi; Pufendorf, *Law of Nature*, IV.2.xviii, and *Duty of Man*, I.11.x; Hutcheson, *Short Introduction*, pp. 206–7, and *System*, II.48; Coccej, *Introductio*, p. 389. 'Beside the general division of oaths into promissory 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 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 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' (Hutcheson, *System*, II.48–9; cf. *Short Introduction*, pp. 206–7). Hutcheson builds on Pufendorf (*Law of Nature*, IV.2.xviii–xxii, and *Duty of Man*, I.11.x), and Pufendorf's starting point is *Digest*, XII.2 (cf. *Institutes*, IV.xiii.4). See also Coccej, *Introductio*, p. 453.
101. See Pufendorf, *Law of Nature*, IV.2.xxiii; Hutcheson, *Short Introduction*, p. 207, and *System*, II.49–50.
102. This was the opinion of Pufendorf, *Law of Nature*, IV.2.vi, and *Duty of Man*, I.11.vi; and Hutcheson, *Short Introduction*, p. 205, and *System*, II.47 (who asserts the same about vows; see *Short Introduction*, p. 208, and *System*, II.52). Grotius had, however, been of another opinion; in Barbeyrac's summary: 'Grotius . . . supposes on the contrary, that every Oath by which we engage our selves to do or not to do any thing to another, contains a double Promise; the one respecting the person that took the Oath, and the other the God by whom we swear; and that one

of these Promises may oblige, though the other does not' (n. 2, p. 341, in Pufendorf, *Law of Nature*). The reference is to Grotius, *War and Peace*, II.13.xiv. This gave rise to an interesting dispute, the essence of which is in Barbeyrac's notes to these two passages in Grotius and Pufendorf.

103. Grotius, *War and Peace*, II.13.vi; Pufendorf, *Law of Nature*, IV.2.ix, and *Duty of Man*, I.11.vi; Hutcheson, *Short Introduction*, p. 206, and *System*, II.47–8; Coccej, *Introductio*, pp. 108 and 390.
104. Both in respect to the systematic location of this topic within the law of contract and in respect to its tripartite division (the nature of value, the measure of value, and the nature of money), Reid follows Hutcheson (*Short Introduction*, pp. 209–13; *System*, II.53–64), who again follows Pufendorf (*Law of Nature*, V.1; *Duty of Man*, I.14) and Carmichael's notes to Pufendorf (*De officio*, pp. 247–54; Carmichael, *Natural Rights*, 106–7), while Pufendorf's own discussion has reference to Grotius's rudimentary treatment of value and money in *War and Peace*, II.12.xiv and xvii. Heineccius, *Universal Law*, I.252–9, also follows this pattern.
105. The distinction between value in use and value in exchange was repeatedly stated in ancient and medieval authors, but Reid seems to be mainly in line with Pufendorf, *Law of Nature*, V.1.vi and esp. Hutcheson, *Short Introduction*, pp. 209–10, and *System*, II.53–5. This topic is elaborated in a brief note in another manuscript (7/vii/6,1r), which I print here:

1769 Mar 26 Exchanges have always been and must be where there is Society. To make Exchanges Equitably Things must be valued & estimated. In a Solitary State things may have a greater or less Value but have not properly a price for a price supposes Exchange. In a Solitary State we value things which we have in property according as they are necessary usefull or agreeable to ourselves. In Society we consider how far they may be usefull or agreeable to others, with whom we may Exchange them. Things that cannot be appreciate 1 Such Ether Sun Moon as come not into property nor can be subjects of Commerce 1 Things Common 2 Things Sacred. 2 Things for which there can be no Competition either first because of no Value to any man or Secondly because they are inexhaustible and in every mans power to obtain. Or thirdly Where they are onely conveyed as appendages to other things. Such as a Wholesom Air fine prospect.

The manuscript as a whole consists of two folios, of which fol. 1r and fol. 2r carry text in the form of scattered notes apparently written at different times. The first note is printed here, above. Beneath a horizontal line follow two notes in two of Reid's different styles of handwriting, the first referring mainly to Hume's theory of justice, the second referring to Reid's distinction between solitary and social acts of the mind. Both are closely related to the now disjointed manuscript made up of 7/vii/2, 3 and 5, which together with 2/ii/14 constitute a draft of the chapter on contract in AP (pp. 663–70). These manuscripts are not in this volume. The final note in the present manuscript is printed below in n. 109.

The threefold distinction that Reid makes in the manuscript (7/vii/6,1r) just quoted in this note – the distinction between 'necessary usefull or agreeable', which is so important for the development of the idea of marginal utility – is also formulated in the English translation of Pufendorf (*Law of Nature*, V.1.iii); it is less clear in the Latin original. In the same manuscript, the following points ('Things that cannot be appreciate', including the examples and the spelling 'Wholesom') derive from Pufendorf, *Law of Nature*, V.1.v, and *Duty of Man*, I.14.iii, where 'Things Common' are 'the Air, the Sky, the heavenly Bodies, and the vast Ocean' and 'Things Sacred' are religious places and offices. By things 'of no Value to any man' are meant things of no value to any *other* man because they are not transferable, Pufendorf's example being personal freedom. Things inexhaustible are light and shade, wind and air, etc. But though these things are not subject to price, they can yet be associated with things that are subject to price so that they influence the latter's price (a block of land with 'Wholesom Air' and a 'fine prospect').

106. Reid's general dissatisfaction with what he saw as the traditional lack of a clear distinction between normative and technico-explanatory concerns (see above, pp. 14–16, in his Introductory Lecture) leads him to a partial break with the systematic position that modern natural law, following Roman law, allocated to economics within the law of contract. See also the Textual Notes at 61/35.
107. See Gen. 25:29–34.
108. Reid's attempt to combine a traditional subjective analysis of the concept of value with a labour concept of the measure of value should be compared with Adam Smith's famous and controversial attempt in the same direction: WN, I.iv.13 and I.v–vii; contrast LJ(A), vi.7–16 and 58–126; LJ(B), 205–9 and 223–44.

109. Before going on to the notes on contracts, it should be mentioned that in the 1765 course a small item is missing here from the general Pufendorffian agenda. After dealing with ‘Price’ and with ‘Contracts in General, that presuppose the Price of Things’ (*Law of Nature*, V.1–2; cf. *Duty of Man*, I.14 and 15.i–ii), Pufendorf devoted a chapter (in *Duty of Man* a couple of sections: I.15.vi–vii) to ‘the Equality that ought to be observed in Chargeable (onerous) Contracts’ before going on to the detailed chapters on beneficent and onerous contracts (topics that Reid deals with immediately below). Among Reid’s undated manuscripts there is a brief note (7/vii/6,2r) which shows that at some stage he paid attention to this topic, and I print the note here:

In all onerous Contracts there is an equality to be observed. And where this equality is violated the Suffering party is in justice entitled to redress. We must determine this equality according to the natural or reasonable price of things. When a Man taking advantage of my ignorance Simplicity or Necessity takes 10£ from me for what is not worth above 1£ Altho’ I consented to the bargain yet I am really injured, and he is under an obligation to redress the Injury. My consent was given from the perswasion that the bargain was equitable, and as soon as I know that I have been imposed upon, I am immediately conscious of the injury done me.

The note has a clear resemblance to *Law of Nature*, V.3.i, and *Duty of Man*, I.15.vi. For a description of the full manuscript in which the note appears, see above, n. 105.

110. Having dealt with contracts in general and with the theoretical issues arising out of this, Reid turns in the following three lectures to the specific forms of contract. In this he follows Hutcheson and Pufendorf very closely, as we shall see. The division between the first two lectures follows the basic distinction between beneficent and onerous contracts: ‘Contracts are either beneficent, where a gratuitous favour is professedly done on one side; or onerous, where men profess to give mutually equal values’ (Hutcheson, *System*, II.64; cf. *Short Introduction*, p. 214). This is based on Pufendorf, *Law of Nature*, V.2.viii, and *Duty of Man*, I.15.ii; and on Grotius, *War and Peace*, II.12.ii. Grotius, *ibid.*, sec. v, and Pufendorf, *Law of Nature*, V.2.x, added a group of contracts that are ‘mixed’. The modern natural lawyers thus classified contracts according to the people on whom they imposed an obligation. By contrast, Roman law classified contracts according to the way in which they

arose: ‘there are real, verbal, literal and consensual contracts’ (*Institutes*, III.xiii.2). This leads to significant differences in presentation. To take just one example, *mandatum* as a consensual contract is presented together with contracts of sale, letting, and hiring and partnership; while the natural lawyers grouped it with what for Roman law were real contracts – *mutuum*, *commodatum* and *depositum*. Despite this, the natural law treatment of each of the contracts owes a great deal to Roman law.

‘The *mandatum* is when “one contracts to manage the business of another without reward”’ (Hutcheson, *System*, II.64). See also Hutcheson, *Short Introduction*, p. 214; Pufendorf, *Law of Nature*, V.4.i–v, and *Duty of Man*, I.15.iii; Grotius, *War and Peace*, II.12.ii; Coccej, *Introductio*, pp. 383–4; Heineccius, *Universal Law*, I.267–9; *Digest*, XVII.1; *Institutes*, III.xxvi.

111. ‘*Commodation* is “the loan for use without any price or hire, where the same individual goods are to be returned.” . . . When the same individual 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 gratuitum*, or the gratuitous loan for consumption’ (Hutcheson, *System*, II.65–6). See also *Short Introduction*, p. 215; Pufendorf, *Law of Nature*, V.4.vi, and *Duty of Man*, I.15.iv; Grotius, *War and Peace*, II.12.ii; Coccej, *Introductio*, pp. 377–8; Heineccius, *Universal Law*, I.265; *Digest*, XII.1, and *Institutes*, III.xiv, pr. (*mutuum*) and *Digest*, XIII.6, and *Institutes*, III.xiv.2 (*commodatum*). These references refer to the respective authors’ discussions of *mutuum* in general – that is, both *mutuum gratuitum* and *onerosum*. True to the basic distinction between beneficent and onerous contracts, Reid deals with *mutuum onerosum* in the following lecture. Both kinds of *mutua* are loans for use of consumable goods, including money; the difference between them is that *mutuum onerosum* is a loan carrying interest.
112. ‘The *depositum* is a branch of the *mandatum*, where the business committed and undertaken is the safe custody of goods”’ (Hutcheson, *System*, II.68). See also *Short Introduction*, p. 216; Pufendorf, *Law of Nature*, V.4.vii, and *Duty of Man*, I.15.v; Grotius, *War and Peace*, II.12.ii; Coccej, *Introductio*, p. 378; Heineccius, *Universal Law*, I.265–6; *Digest*, XVI.3, and *Institutes*, III.xiv.3.
113. *Permutatio* is ‘Barter, or the exchanging goods of equal values; which differs from mutual donation in this, that in donations there is no

obligation to equality' (Hutcheson, *System*, II.69). See also *Short Introduction*, p. 217; Pufendorf, *Law of Nature*, V.5.i, and *Duty of Man*, I.15.viii; Grotius, *War and Peace*, II.12.iii (3–4); Coccej, *Introductio*, pp. 386–8; Heineccius, *Universal Law*, I.260–3; *Digest*, XIX.4 (and *Institutes*, III.xxiii.2). In Roman law this belonged to the innominate contracts – contracts falling outside the classical categories of verbal, written, real and consensual contracts.

114. *Emptio* and *venditio* are:

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 . . . and the goods delivered, as the property is completely transferred, no subsequent sale . . . 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. . . . 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. (Hutcheson, *System*, II.69; cf. *Short Introduction*, pp. 217–18)

For a fuller discussion, see Pufendorf, *Law of Nature*, V.5.ii–vi, and cf. *Duty of Man*, I.15.ix, See also Grotius, *War and Peace*, II.12.iii (4–5), xv, and xxvi; Coccej, *Introductio*, pp. 379–82; Heineccius, *Universal Law*, I.270–8; *Digest*, XVIII.1–7 and XIX.1; *Institutes*, III.xxiii.

115. Apparently at a later date Reid wrote 'Monopolies Engrossing' above the whole paragraph. He is undoubtedly following Pufendorf, who in *Law of Nature*, V.5.vii, completes his treatment of buying and selling by dealing with monopolies, making, inter alia, the following point: 'Monopolies, as such, imply that others too would sell the same did not one Man ingross the whole Trade to himself. And therefore, he who alone brings a Commodity from a Foreign Country, cannot be said to set up a Monopoly, provided he does not hinder others from importing the same.' The word 'ingross' is used in a similar way to characterise true monopolies in the English translation of Grotius, *War and Peace*, II.12.xvi; cf. Reid's text, p. 106.

116. *Locatio* and *conductio*: ‘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 immoveable”’ (Hutcheson, *System*, II.70). ‘Setting’ is Scots for ‘letting’. Cf. *Short Introduction*, pp. 218–19; Pufendorf, *Law of Nature*, V.6, and *Duty of Man*, I.15.x; Grotius, *War and Peace*, II.12.iii (4–5) and xviii–xix; Coccej, *Introductio*, pp. 382–3; Heineccius, *Universal Law*, I.278–80; *Digest*, XIX.2; *Institutes*, III.xxiv.
117. *Mutuum onerosum*: ‘In loan for consumption at a set price or interest, the lender claims not the same individual (goods), but equal quantities, and the price for the loan’ (Hutcheson, *System*, II.71; cf. *Short Introduction*, pp. 219–20). For the rest of the sources for *mutuum* and the distinction between *mutuum gratuitum* and *onerosum*, see above, n. 111.
118. In Reid’s day ‘usury’, like the Latin *usura*, still did not necessarily connote more than either the loan of money on interest or the interest thus gained. All Reid’s natural law sources discussed the justifiability of this practice, agreeing that it was not against the *Law of Nature* and that God’s prohibition of it (e.g., Exod. 22:25; Lev. 25:36–7; Deut. 23:19–20) was meant as a positive law for the Jews only. (Grotius, however, wavered on this – see n. 10 on pp. 307–8 of *War and Peace* – and Luke 6:34–5 required some special pleading: see Barbeyrac’s n. 1 on p. 515 of Pufendorf, *Law of Nature*). Cf. Hutcheson, *Short Introduction*, pp. 219–20, and *System*, II.71–4; Pufendorf, *Law of Nature*, V.7.viii–xii, and *Duty of Man*, I.15.xi; Grotius, *War and Peace*, II.12.xx; Coccej, *Introductio*, pp. 351–2; Heineccius, *Universal Law*, I.283–5.
119. Society here means partnership: ‘In the contracts of partnership, which are of very different sorts, the terms of agreement determine the rights and obligations of the partners’ (Hutcheson, *System*, II.74; cf. *Short Introduction*, p. 220; Pufendorf, *Law of Nature*, V.8, and *Duty of Man*, I.15.xii; Grotius, *War and Peace*, II.12.iv and xxiv–xxvi; Coccej, *Introductio*, pp. 107–8 and 384; Heineccius, *Universal Law*, I.291–4; *Digest*, XVII.2; *Institutes*, III.xxv).
120. ‘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. . . . Private lotteries, wagering, and contracts of gaming, produce no good to the publick. . . . Upon some publick exigence no doubt money may be prudently raised by this way of lottery’ (Hutcheson, *System*, II.74–5; cf. *ibid.*, pp. 76–7, and *Short Introduction*, pp. 220–1; Pufendorf, *Law of Nature*, V.9.i–vii, and *Duty of Man*, I.15.xiii; Coccej, *Introductio*, p. 371).



Insurance: ‘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 made up when they happen. Such are the insurances against the dangers at sea, or those from fire’ (Hutcheson, *System*, II.75; cf. Pufendorf, *Law of Nature*, V.9.viii, and *Duty of Man*, I.15.xiii).

121. By annuities in this context Reid undoubtedly meant the same as Hutcheson (see the first quotation in the previous note) and Pufendorf, *Law of Nature*, V.10.v: ‘I receive Money upon Condition to pay such a certain Man, so much Interest as long as he lives, provided that after his Death, the Principal be my own.’ Pufendorf reckons this among the so-called accessory or additional contracts, which do not concern us here, and in connection with these Barbeyrac refers us back to an associated phenomenon which explains what Reid meant by ‘reversions’ (see Barbeyrac’s note at *ibid.*). Pufendorf: ‘Sometimes . . . either the Laws of the Land, or the Parties themselves grant one another the Liberty of breaking off the Bargain, which is done several ways; for sometimes a Clause is added, that upon Tender of the Price at any time, or by such a certain Day, the Buyer shall be obliged to restore the Goods to the Seller, or his Heirs’ (*Law of Nature*, V.5.iv). This is further explained by Barbeyrac in a note to this passage: ‘*Retractus, seu pactum de Retrovendendo*, as the Lawyers speak, and our Author says, *Retractus* comes of the Word *retrahere*, which according to the Roman Lawyers signifies, to resume, what has been alienated (*Digest*, I.8.ix.1). The Custom of Redeeming a Thing sold, allowed by the Law, is called a Legal Retracting, but that which is done by the Agreement of Parties is a Conventional Retracting.’ The actual term ‘reversion’ may have been known to Reid from Scots law: ‘An heritable right is said to be redeemable when it contains a right of reversion, or return, in favour of the person from whom the right flows. Reversions are either legal, which arise from the law itself, as in adjudications, which law declares to be redeemable within a certain term after their date; or conventional, which are constituted by the agreement of parties, as in wadsets, rights of annual rent, and rights in security’ (Erskine, *Principles of the Law of Scotland*, II.viii.1; cf. Stair, *Institutions of the Law of Scotland*, II.x.1–4, and Kames, *Historical Law-Tracts*, pp. 46 ff.). It should be noticed that Stair also treats of reversions in the same general context as Reid here – namely, in *Institutions*, I, title xiv: ‘Permutation and Sale, or Emption and Vendition’ (sec. 4).
122. After discussing the various forms of contract, Pufendorf devoted a chapter to the ways in which obligations are dissolved and one to

interpretation (*Law of Nature*, V.11–12, and *Duty of Man*, I.16–17). The latter topic is similarly placed in Grotius (*War and Peace*, II.16), while elements of the former are in *ibid.*, III.19.xiv–xix. In Hutcheson, *Short Introduction*, the two topics are huddled together in a brief chapter right at the end of ‘private jurisprudence’ and immediately before ‘Oeconomicks’ (II.17, pp. 248–53), while the corresponding chapter in the *System* (II.18, pp. 141–7) is devoted to the nature and necessity of judicial arbitration and relegates interpretation to ‘the art of criticism’ (p. 147) – an interesting reflection of the fact that the natural lawyers in dealing with this topic drew heavily on the rhetorical tradition. In Reid’s notes dated 1765 there is nothing on the dissolution of obligation, and interpretation is mentioned here only before quasi-contract. We do, however, have a brief treatment of the former topic and a more substantial one of the latter in an undated manuscript, 7/vii/25, which is printed below in Section XIII.

If we attend to Pufendorf’s introductory remarks about interpretation and remember Reid’s discussion of the obligation to promises and contracts (see above, pp. 54 ff.), we will see how Pufendorf’s treatment of interpretation could lead on to quasi-contract:

since in all Obligations certain Signs are made use of, to express the Minds of the Parties, and the Laws and Heads of the Contract; and since these Signs may sometimes be taken in different Senses, ’tis highly necessary to have some Rule to find out that which is true and genuine. . . . If then we consider for what End Obligations are made, we shall find that every Man is bound to that which he intended, when he enter’d into the Obligation. It is here suppos’d that he enter’d into it freely and of his own accord . . . ; in this Sense is that of Cicero to be taken; ‘In Obligations Regard is to be had not so much to the Expression as to the Intent of the Party’. (*Law of Nature*, V.12.i–ii, quoting *De officiis*, I.xiii (40))

The rest of *Law of Nature*, V.12, is devoted to a detailed discussion of the rules of interpretation that might achieve this goal, and some of these are discussed by Reid in 7/vii/25 (printed below in Section XIII). Cf. *Duty of Man*, I. 17; Grotius, *War and Peace*, II.16; Hutcheson, *Short Introduction*, pp. 251–2, and *System*, II.147; Coccej, *Introductio*, pp. 109–10 and 394–7; Vattel, *Law of Nations*, II.17.

123. A consequence of the interpretation in contractual terms of the central social institutions – language, property and money, domestic relations,

civil society, and government – was an increased attention to the very concept of a contract, and one of the beneficiaries of this was the Roman law concept of quasi-contract. In Grotius and Pufendorf the terminology is not very firm, but the substance is there; see *War and Peace*, II.10 (cf. II.4.iv–v; III.1.viii and III.24.i), *Law of Nature*, IV.13, and *Duty of Man*, I.13. However, in Reid’s later natural law sources we do see the need for a sharper delineation of the topic, including its label; see Carmichael, supplementum IV, ‘De Quasi Contractibus’, in Pufendorf, *De officio*, pp. 264–8 (Carmichael, *Natural Rights*, pp. 112–17), which was the foundation for Hutcheson’s discussion, (*Short Introduction*, pp. 223–7 and *System*, II.77–86; further Coccej, *Introductio*, pp. 117–18, 343–4 and 417–22). (Development of the topic of quasi-contract was obviously in the air; see, e.g., also C. Wolff, *Institutiones juris naturae et gentium*, II.14.) Most significant perhaps is that Hutcheson explicitly, though briefly, uses the concept of quasi-contract in connection with the relationship between parents and children and to interpret the continuing force of the political contract beyond the original contractors; see *Short Introduction*, pp. 270 and 287; *System*, II.197–8 and 231; and cf. Wolff, *Institutiones*, II.1.1.836. It was undoubtedly attention to this which made Reid’s speculations about the relationship between contract, tacit contract and implied contract so fertile, as we see in 2/II/10, printed below in Section XV. See the Commentary above at p. 214 n. 59.

Hutcheson (*System*, II.77–8) explains:

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 unlawful; when the actions are lawful, the Civilians to avoid multiplying the sources of obligation . . . call them *obligationes quasi ex contractu ortae*: 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. . . . When the action is unlawful, these are the rights arising from injury, of which in the following chapter.

(Reid’s two following lectures parallel Hutcheson, *ibid.*) Hutcheson further insists that obligations from quasi-contracts ‘are quite different from those of tacit conventions, as in tacit conventions we truly conclude consent from some action; but in those ’tis plainly feigned, tho’

we know there was no consent, as the matter itself is equitable' (*Short Introduction*, p. 223). For the Roman law background to the division of the sources of obligation, see *Digest*, XLIV.vii.1, pr, and *Institutes*, III.xiii.2; and for quasi-contract, *Institutes*, III.xxvii (for the *Digest*, see subsequent notes).

124. Obligations *quasi ex contractu* are, so to speak, symmetrical in that they fall partly upon those who somehow benefit from what is another's (whether goods or services), partly upon those who benefit from the handling of what is theirs by others. Thus the person who is *bona fide* (without fraud, etc.) in possession of somebody else's property has certain obligations to the real owner of this property, depending on the circumstances. Contrariwise, the owner of something may have a variety of obligations to him who has taken care of his property: *negotium utile gestum* means '{somebody else's} business usefully managed {for him}', for instance, in his absence. Reid's note 'In absense' may also have referred to the situation where the *bona fide* possessor of another's property no longer holds this property. A host of such obligations, including *negotium utile gestum*, are discussed in all the sources mentioned in the previous note. See further *Digest*, III.v; 'De negotiis gestis'.
125. See Hutcheson, *System*, II.80: 'one is obliged {quasi ex contractu} to indemnify his tutors and curators in all their prudent management of his affairs' (cf. *Short Introduction*, p. 224, and the earlier discussion, *ibid.*, p. 182, and *System*, II.10–11). As for people of a disturbed mind, Reid was probably following Pufendorf, *Law of Nature*, III.6.iii in making the point that those who are only temporarily without the full use of their reason will regain their moral responsibilities, such as property, once they return to normality. Similarly, they may assume obligations incurred *quasi ex contractu* during the leave of their reason – for example, from the care by others of themselves and their property. The point should thus be contrasted with the one made above, p. 54, concerning the need for full reasoning power in explicit contracts. As for Reid's opinion of the permanently insane, we can only guess; according to Pufendorf, 'if the Madness be judg'd Incurable the Person is in all Legal and Moral Consideration to be accounted Dead' (*Law of Nature* III.6.iii). For the extensive Roman law background concerning guardianship of all kinds, see *Institutes*, I.xiii–xxvi, and *Digest*, XXVI.
126. In general, children were not considered by the natural lawyers to incur obligations *quasi ex contractu* through the benefit of their parents' support, education and general guardianship, except 'if a parent is in

great straits, or if any child has some other way {than from the parents} obtained a plentiful fortune' (Hutcheson, *Short Introduction*, p. 225; cf. *System*, II.80). See also the lectures on oeconomical jurisprudence printed in Sections VI and Section XIV of this volume. The situation was considered rather different if one undertook the upbringing of somebody else's child: if the child was destitute and no one else could or would pay, Hutcheson considered it legitimate to charge the child itself once it had reached maturity. At the same time, he was at pains to stress that slavery could not be justified this way. Reid's mention of the 'purchase of Slaves' is a reference to Hutcheson's further point that, although in some cases the purchasers of slaves saved their lives, this could not be taken to establish a quasi-contractual obligation on the slaves to remain such in perpetuity but only to pay the purchaser's expenses with the accepted amount of interest – normally, of course, through their labour. See Hutcheson, *System*, II.81–5, and *Short Introduction*, pp. 225–6; see also Pufendorf, *Law of Nature*, VI.2.ix and VI.3.iv, and *Duty of Man*, II.3.x and xii, and II.4.ii–iii; Grotius, *War and Peace*, II.7.v (1) and II.5.xxx.

127. Like Grotius and Pufendorf, Reid took *Digest*, XIV.ii ('De lege Rhodia de jactu') into his explanation of obligations *quasi ex contractu*. The essence of the law 'about throwing' (*de jactu*) items overboard from a ship in difficulties at sea in order to save the ship and any remaining goods is that losses thus incurred should be shared by all the consignors and the captain. In the absence of any evidence that this was ever made part of contracts about sea-freight, the natural lawyers interpreted it as a quasi-contractual obligation. See Grotius, *War and Peace*, II.10.ix (2), and Pufendorf, *Law of Nature*, IV.13.xiii. Reid also refers indirectly to the Rhodian law in 7/vi/11 (printed in Section XI below, p. 106).
128. Reid, like Hutcheson (*Short Introduction*, II, ch. xv; *System*, II, ch. xv) and Smith (LJ(A), ii.88 ff.; LJ(B), 181 ff.), follows Grotius (*War and Peace*, II, ch. xvii) and Justinian (*Institutes*, IV.i) in dealing with delict in extension of contract, that is, as a question of the sources of rights, while Pufendorf deals with it as a question of the duties imposed by natural law and by positive law (*Law of Nature*, III.1 and VIII.3; *Duty of Man*, I.6 and II.13). Heineccius follows the Pufendorfan arrangement (*Universal Law*, I, ch. vii, and II, ch. viii). Reid's subsequent points should be read in light of these references.
129. 'Loss/harm caused either by ignorance or in order to serve our own advantage.' It is difficult to be entirely certain about Reid's intentions

here and hence about the proper translation of ‘damnum’ in this untraced quotation (which may, of course, be from memory). ‘Damnum datum’ puts in mind the Lex Aquilia (cf. Justinian, *Institutes*, IV.iii), which dealt with damage, as well intentional as negligent, to property, and ‘loss’ would therefore seem the proper translation. However, while the Lex Aquilia undoubtedly is in the background, especially as it by early modern time had been developed into the civil law’s general theory of civil wrongs, the context here seems to make it plain that Reid was not talking just about damage to property but also about harm or injury in general. Like Titius, Hutcheson and Smith, he divided this into *culpa*, negligence, and *dolus*, intent to harm, as we see in the following lines; cf. Titius, Observation 164, p. 230 in Pufendorf, *De officio*; Hutcheson, *Short Introduction*, p. 228, and *System*, II.86; Smith, LJ(A), i.23 and ii.88, and LJ(B), 181. While the elusive quotation thus may stem from a commentary on the Lex Aquilia, its language was (as so often) generalised when adopted into natural law (see the following note), and in the case of *damnum* this had excellent parentage: it was due to Grotius himself (*De Jure*, II.17.ii).

130. The neat division of *culpa* into three degrees of severity had become common by the late seventeenth century; see, e.g., Titius, Observation 164, p. 230, in Pufendorf, *De officio*; cf. Barbeyrac’s n. 3 to Grotius, *War and Peace*, II.17.ii. It was mainly employed in the law of contract, as we see in Erskine, *Principles*, III.i.8, but it was being transferred to natural law for a much more general use. This process is particularly clear in Smith’s lectures, where the tripartite division was first introduced when he considered the question ‘To what degree of diligence the contractors shall be bound’ (LJ(A), ii.78), while only a few pages later he applies it to *delict* in general:

Negligence or culpa may . . . be considered . . . as being of 3 sorts. Either the negligence is so great as that no man could have been guilty of the like in his own affairs, tho this man has been in those of another, in which case the delinquency is said to arise from culpa lata; or 2dly, it is called culpa levis, where the delinquent has been guilty of no greater negligence in the affairs of an other than he is in his own, being generally a man who was not very attentive to his affairs; or lastly, from culpa levissima, where the negligence or culpa is no more than the most attentive man might have been guilty of. (LJ(A), ii.88–9)

It was in this general sense that Smith discussed the tripartite division of *culpa* in TMS, II.iii.2.8–10, which may have been in Reid's mind in writing the present notes.

131. See Hutcheson, *Short Introduction*, p. 231, and *System*, II.90.
132. See Cicero, *Letters to His Friends*, V.iv.2: 'Tu tuas inimicitias ut reipublicae donares, te vicisti' ('You have won a victory over yourself so far as to lay aside certain private enmities of your own in the interests of the state').
133. See Smith, TMS, V.2.9. The following modification of this picture of savages may well owe something to Reid's reading of Henry Ellis's *Voyage to Hudson Bay*, pp. 189 ff., a passage that he uses in 8/iv/4 (see the Commentary below at pp. 248–9 n. 4).
134. 'Nobody harms (or provokes) me unpunished.' This, the motto of the Order of the Thistle, first appeared in Scots coinage, together with a crowned thistle, on the 'Thistle' dollar in 1579 and thereafter on a variety of coins during the reign of James VI and up until the Union of 1707 (private correspondence from Gordon Donaldson). Since Reid would hardly rate James VI on a par with an Indian chieftain (see below), we may hazard the guess that he transferred the (supposed) distant origins of the Order of the Thistle in 'a barbarous age' to the coinage.
135. This and the subsequent discussion must be seen in the light of the treatment of resentment and anger in Shaftesbury, 'An Inquiry Concerning Virtue and Merit' II.2.ii, *Characteristics*, 218–20; Butler, *Sermons*, VIII–IX, pp. 91–117; Smith, TMS, I.ii.3; II.i.1–5; II.ii.1.1–4; II.ii.2, and II.iii.1; Kames, *Historical Law-Tracts*, tract I, 'Criminal Law', and *Elements of Criticism*, I:83–7 and 186–90; as well as in Reid's later discussion in AP, pp. 568a–570b, where from a starting-point in Butler and Kames, he develops a sharp distinction between resentment as an impulse and as a rational principle of action.
136. Juvenal, *Satire XIII*, 180–7 and 189–92:
 

'O! but vengeance is good, sweeter than life itself.' Yes; so say the ignorant, whose passionate hearts you may see ablaze at the slightest cause, sometimes for no cause at all; any occasion, indeed, however small it be, suffices for their wrath. But so will not Chrysippus say, or the gentle Thales, or the old man who dwelt near sweet Hymettus, who would have given to his accuser no drop of the hemlock-draught which was administered to him in that cruel bondage. . . . For vengeance

is always the delight of a little, weak, and petty mind; of which you may straightaway draw proof from this – that no one so rejoices in vengeance as a woman.

137. Contrast AP, p. 568a.
138. The focus of Grotius's second book of *War and Peace* is the discussion of the causes of war, within which he places his chapter on delict. Hutcheson and Reid follow him (see above, n. 128) to the extent that within their discussion of delict they deal with the causes of war (Hutcheson, *Short Introduction*, pp. 231–7, and *System*, II.92–7). The main treatment of this topic is, however, reserved for the lectures on the law of nations, in keeping with the basic Pufendorfian system which Reid, like Hutcheson, is following. See Section XVII, pp. 162 ff.
139. Since the only justifiable use of violence (private or public war) is to redress the infringement of perfect rights when no other means is available, and because other means normally are available when duels are resorted to and duels are virtually never able to redress the wrongs they are aimed at anyway, 'such duels as are often practised among us . . . cannot be justified either in natural liberty or civil society' (Hutcheson, *Short Introduction*, pp. 237–8; cf. *System*, II.97–101, and Pufendorf, *Law of Nature*, II.5.ix and xii, and *Duty of Man*, I.5.xx).

## VI. Duties to Others: Individuals in Oeconomical Jurisprudence

1. These rights and duties ('oeconomical jurisprudence') are dealt with in 'Book II' of the following: Grotius, *War and Peace* (ch. 5); Pufendorf, *Duty of Man* (chs. 2–4); Heineccius, *Universal Law* (chs. 2–5); and Fordyce, *Elements* (sec. iii, chs. 1–3).
2. Reid's 'Account of the Oeconomy of Nature', which in general agrees with his natural law sources, is significantly expanded in the manuscripts printed below in Section XIV. His treatment of marriage should be seen against the background of Grotius, *War and Peace*, II.5.viii–xvi; Pufendorf, *Law of Nature*, VI.1, and *Duty of Man*, II.2; Carmichael's extensive notes in Pufendorf, *De officio*, pp. 323–36 (Carmichael, *Natural Rights*, pp. 128–33); Hutcheson, *Short Introduction*, pp. 255–66, and *System*, II.149–87; Heineccius, *Universal Law*, II.23–43; Coccej, *Introductio*, pp. 260–2 and 271–83; Fordyce, *Elements*, pp. 81–5; Montesquieu, *Spirit of Laws*, XXIII.1–10 and XXVI.13; Hume, 'Of Polygamy and Divorce', 'Of Love and Marriage',



and cf. *Treatise*, p. 486, and *Enquiry*, pp. 206–8. The main Roman law background is *Institutes*, I.10, and *Digest*, XXIII.2. Reid returned to the ‘passion of Love between the Sexes in the human kind’ (see the following paragraph in the text) in AP, pp. 563b–564a.

3. Concerning polygamy, see below, pp. 125–6 and 129 in Section XIV. Cf. Grotius, *War and Peace*, II.5.ix; Pufendorf, *Law of Nature*, VI.1.xv–xviii, and *Duty of Man*, II.2.v; Hutcheson, *Short Introduction*, p. 260, and *System*, II.160–1; Heineccius, *Universal Law*, II.31–4; Coccej, *Introductio*, pp. 48, 51, 74 and 275; Fordyce, *Elements*, p. 85; Montesquieu, *Spirit of Laws*, XVI.2–11; Hume, ‘Of Polygamy and Divorce’, pp. 232–6.

Concerning divorce, see Grotius, *War and Peace*, II.5.ix and I.1.17; Pufendorf, *Law of Nature*, VI.1.xx–xxiv, and *Duty of Man*, II.2.vi; Hutcheson, *Short Introduction*, pp. 261 and 265–6, and *System*, II.161–3 and 175–83; Heineccius, *Universal Law*, II.41–2; Coccej, *Introductio*, pp. 48 and 282; Montesquieu, *Spirit of Laws*, XVI.15–16; Hume, ‘Of Polygamy and Divorce’, pp. 236–9. According to the student Robert Jack, Reid in 1776 followed Pufendorf, *Law of Nature*, VI.1.xxiv, in drawing arguments from Milton’s *Doctrine and Discipline of Divorces* to extend the legitimate grounds of divorce beyond mere adultery (Jack, ‘Reid’s Lectures’, p. 592). Concerning prohibited degrees, see below, p. 127; Grotius, *War and Peace*, II.5.xii–xiv; Pufendorf, *Law of Nature*, VI.1.xxvii, xxxii–xxxv, and *Duty of Man*, II.2.viii; Hutcheson, *Short Introduction*, pp. 264–5 and *System*, II.170–5; Heineccius, *Universal Law*, II.34–6; Coccej, *Introductio*, pp. 276–82; Montesquieu, *Spirit of Laws*, XXVI.14.

4. The general background to this topic and its systematic position is found in Grotius, *War and Peace*, II.5.i–vii; Pufendorf, *Law of Nature*, VI.2, and *Duty of Man*, II.3; Hutcheson, *Short Introduction*, pp. 267–71, and *System*, II.187–99; Heineccius, *Universal Law*, II.44–62; Coccej, *Introductio*, pp. 73–4, 262–9 and 270–1; Fordyce, *Elements*, pp. 79–80 and 86–8. See also the references to Hobbes, Filmer and Locke in the next note. The present text should be read together with 7/vii/20,2v (below, pp. 131–2).
5. Like Pufendorf, Hutcheson and Heineccius, Reid contrasts his position with that of Hobbes and Filmer and formulates it with reference to the conceptual framework of Grotius (see the following sentence). Grotius’s bald statement ‘By Generation, Parents . . . acquire a Right over their Children’ (*War and Peace*, II.5.i), was sorely in need of

explanation, for the physical process of ‘Generation’ did not warrant Grotius’s treatment of the relationship between parents and children as a moral one, as evidenced by his choice of vocabulary and in his theory of how this relationship is subject to change as the moral faculty develops in children (ibid., ii–vi). Cf. Filmer’s criticism, *Patriarcha*, p. 72, and *Observations Concerning the Originall of Government*, pp. 268–9; also Carmichael’s comment in Pufendorf, *De officio*, pp. 337–8 (Carmichael, *Natural Rights*, pp. 134–7). Hobbes suggested (or was commonly taken to suggest) that parental authority was a matter of power (*De cive*, ch. 9; *Leviathan*, ch. 20), but this scarcely seemed a properly moral notion that could explain, for instance, the continuance of authority beyond a child’s actual dependence upon its parents. By contrast, Filmer maintained that ‘Every man that is born, is so far from being free-born, that by his very birth he becomes a subject to him that begets him’ (*Directions for Obedience to Government*, p. 232). By this he meant, or was widely taken to mean (among others, by Locke, *First Treatise*, 52), that the child belonged to the father because it was the father’s work and was thus a link in a chain of workmanship and ownership instituted by God at the creation. This raised a number of theological and philosophical problems, most of which were formulated by Locke in the *Two Treatises*; these were then taken up by the natural lawyers and form the direct background to Reid’s lecture. First, if life, and not just biological generation, was transferred from man to man, the dependence of man on God seemed more remote (cf. Locke, *First Treatise*, 52 ff.). Secondly, such a doctrine smacked too much of materialism and hence, at that time, of improper necessitarianism (cf. Wollaston, *Religion of Nature*, pp. 88–91). Thirdly, if children were the work and property of their fathers, inequality and paternalism were woven into the fabric of the world. See, by contrast, Hutcheson, *Short Introduction*, p. 268: ‘Both the bodies and souls of children are formed by the divine power, that they may, as they grow up, arrive at the same condition of life, and an equality of right with ourselves, tho’ for some time they must be governed by the wisdom of others.’ If individual human life (generally, the soul: ‘the soul, the principal part, is {God’s} own immediate workmanship’; Hutcheson, *System*, II.191) comes directly from God, it is open not only to argue for Calvinist necessitarianism but also to break with Calvinism by arguing for the divine institution of man’s free moral power and for man’s equality in this endowment. Hence the notions of guidance by precepts (e.g., laws of nature), of error and of education. Accordingly,

we find that Pufendorf (*Law of Nature*, VI.2.iv) sees generation as no more than a special ‘occasion’ for exercising our basic natural law duty of sociability by morally educating children to become agents under the same natural law. This natural law duty to educate confers a right to the necessary means thereto – that is, a right to power (i.e. authority) over one’s children. See Pufendorf, *Law of Nature*, VI.2.iv and vi, and *Duty of Man*, II.3.iv and xi; Hutcheson, *Short Introduction*, pp. 267–8, and *System*, II.187–9 and 191–3; Heineccius, *Universal Law*, II.44–6. See also Wollaston, *Religion of Nature*, pp. 159–62. It should also be pointed out that the idea of the child as a moral agent *in spe* leads to the suggestion that parental authority rests on the tacit consent of the children (Pufendorf, *Law of Nature*, VI.2.iv, and *Duty of Man*, II.3.ii; and cf. Hobbes, *Leviathan*, p. 253, and Heineccius, *Universal Law*, II.45–6) or on a quasi-contract (Hutcheson, *Short Introduction*, p. 270; *System*, II.197–8). While Reid does not take this up here, it provides a parallel of the first importance to his discussion of implied contract in 2/II/10 (printed in Section XV below), for it presents *in nuce* the whole problem of the contractual versus the natural law foundation for social relations. Finally, it should be mentioned that, in his 1776 lectures, Reid said that ‘we should only consider Parents as the means appointed by God . . . to take care of their Children’ (Jack, ‘Reid’s Lectures’, p. 596).

6. This was, first, a question of duration, as indicated by the following point, and it was dealt with in terms of the different periods in a child’s life. This is detailed in 7/vii/20,2v (pp. 131–2 below). Secondly, it was a question of extent and method, especially whether the parents could impose death or use cruel punishment, whether they could dispose of the child by exposition or by sale into slavery, to what extent they were obliged to recognise the child as a moral agent under natural law (the equivalent of legal personality under positive law), especially whether a minor could have (though of course not exercise) property rights, and whether children needed parental consent to marry. Finally, there was the question whether parental authority and duty could wholly or in part be taken over by others, such as adoptive parents, guardians, and tutors. For discussion of some or all of these points, which are alluded to in the following lines and further dealt with in pp. 131–2, below, see Grotius, *War and Peace*, II.5.ii–vii and x, and II.20.vii; Pufendorf, *Law of Nature*, VI.2.vi–xiv, and *Duty of Man*, II.3.iv–viii and x; Hutcheson, *Short Introduction*, pp. 267–8, and *System*, II.189–90, 192–4, and 196–8; Heineccius, *Universal Law*, II.47–50 and 62.

7. See Grotius, *War and Peace*, II.5.i; Pufendorf, *Law of Nature*, VI.2.ii–v, and *Duty of Man*, II.3.iii; Hutcheson, *Short Introduction*, p. 268, and *System*, II.190–1; Heineccius, *Universal Law*, II.46.
8. Forisfamiliate (from Latin, *foris*, outside, etc., and *familia*, family, household, etc.), to emancipate, common in Scots law. See Stair, *Institutes*, I.5.13:

As to the father's power to keep his children within his family, and to apply their work for his use . . . 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 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.

(Cf. *ibid.*, III.8.45, Erskine, *Principles*, I.7.36, and above, p. 213 n. 55).

9. The context for Reid's treatment of this topic here and in 7/vii/20,3r–4v, printed below, pp. 132–5 (which should be read with the present manuscript), is provided by Grotius, *War and Peace*, II.5.xxvi–xxxii; Hobbes, *De cive*, ch. VIII, and *Leviathan*, ch. XX; Pufendorf, *Law of Nature*, VI.3, and *Duty of Man*, II.4; Locke, *Treatise*, II, ch. 4; Heineccius, *Universal Law*, II.63–73; Coccej, *Introductio*, pp. 255–7; Fordyce, *Elements*, pp. 88–90; Hutcheson, *Short Introduction*, pp. 272–8, and *System*, II.199–212; and Montesquieu, *Spirit of Laws*, book XV. Cf. the slightly later (1771) discussion in Millar, *Ranks*, ch. 6. Further references are in n. 10, below, and in the Commentary below at pp. 275–6 nn. 39–42. Roman law discussions of this topic are numerous, and many of the references are in Grotius and Pufendorf; the starting point, however, is the *Institutes*, I.3, and the *Digest*, I. 5.iii ff.
10. This paragraph and its important elaboration in 7/vii/20,3r–4v (printed below in Section XIV) is to be seen not only in the light of, for

example, Locke's or Montesquieu's well-known criticism of slavery (see references in n. 9), but is to be connected with Carmichael's development of some Lockean ideas and Hutcheson's borrowing of these. The starting-point is that man is created in God's image. From the notion of creation follows (see Locke, *Treatise*, II.23) that man is God's property and that consequently no human being can own a man, whether himself or another, as property unless by special dispensation from God; consequently, not only is it morally impossible to hold someone in servitude (implying full property right), but it is similarly impossible to give or sell oneself into such servitude. Presupposed in the notion of man as God's creation is further that all men are equal in this regard; the latest born is as much God's work as Adam. Being created in God's image, man is created to love God both directly and indirectly through love of his creation. The purpose of such love is the creation of happiness – for Carmichael this is restricted to human beings, for Hutcheson it goes further (see the Commentary below at pp. 254–5 n. 3) – which is the basic precept of natural law. As in all such 'consequentialist' theories, efficiency is an important consideration, and because men in general are best at looking after their own happiness, the total happiness of creation is best served by each person having a natural right to take care of himself and a natural duty to respect the equal rights of others. Consequently, nobody is created without such equal rights. By the same token, people have the natural right to look after their happiness by putting themselves into any kind of service that does not imply an actual property-relationship – a point that Reid takes up below, p. 133. See Carmichael, supplementum I, secs. 1–10 and 19–20; supplementum II, secs. 6–17; and notes on pp. 354–8 in Pufendorf, *De officio* (Carmichael, *Natural Rights*, pp. 21–5, 28, 48–52 and 138–45).

11. Nearly all the sources mentioned above in n. 9 deal with the introduction and subsequent development of slavery. Reid may here have been thinking more specifically of the effects of slavery on the size of the population, a point that was particularly hotly disputed after Hume's and Robert Wallace's discussion; see Hume, 'Of the Populousness of Ancient Nations', *Essays*, 1:381–443, and Wallace, *A Dissertation on the Numbers of Mankind in Ancient and Modern Times*, Appendix.
12. Reid was probably referring to the most widely debated 'pretence' – that prisoners of war could justifiably be enslaved in lieu of being killed; he

did so in 1776 (Jack, 'Reid's Lectures', pp. 605–7). Cf. Grotius, *War and Peace*, III.14 and 20; Hobbes, *De cive*, VIII.i–v, and *Leviathan*, pp. 251–7; Pufendorf, *Law of Nature*, VI.3.v–vii, and *Duty of Man*, II.4.i and iv; Locke, *Treatise*, II.24 and 85; Hutcheson, *Short Introduction*, pp. 274–8, and *System*, II.203–9; Heineccius, *Universal Law*, II.65–6.

13. See Hume, *History of England*, 1:190: 'There were two kinds of slaves among the Anglo-Saxons; household slaves, after the manner of the ancients, and praedial or rustic, after the manner of the Germans. These latter resembled the serfs, which are at present to be met with in Poland, Denmark, and some parts of Germany.'
14. *Adscriptitii glebae* (those ascribed, i.e. joined to the land): 'Husbandmen, who belonged to the Lands given them. . . . Men in that State went with the Lands which they cultivated; for the Proprietor might alienate them when he alienated his Lands. But their State was not so hard as that of Slaves.' Barbeyrac, n. 4 to Grotius, *War and Peace*, II.5.xxx. In Roman law these were a proper form of slaves; in medieval English law they eventually became identical with villeins; in Scotland a category very like them still existed:

Colliers, coal-bearers, and salters, and other persons necessary to the collieries and salt-works, as they are particularly described, 1661, c. 56, are, like the *adscriptitii glebae* of the Roman law, tied down to perpetual service at the works to which they had once entered. Upon a sale of the works the right of their service is transferred to the new proprietor. (Erskine, *Principles*, I.7.39)

## VII. Duties to Others: Individuals in Political Jurisprudence

1. Reid's subsequent discussion of the origins of political society should be seen in the light of Hutcheson, *Short Introduction*, pp. 279–84, and *System*, II.212–25; cf. Pufendorf, *Duty of Man*, II.5, and *Law of Nature*, VII.1.
2. The preceding reflections on political government are closely connected with Reid's introductory lectures on *Politics* proper, which he engaged on the following week. The ideas of despotic government, which are clearly inspired by his close study of Montesquieu, were elaborated on the following Wednesday, 17 April, as we see from 4/III/5 (in *Reid on Society and Politics*, eds. K. Haakonssen and P. Wood).

3. In this and the preceding paragraph, Reid encompassed what his predecessor Adam Smith had specified in his lectures as ‘the principle of authority’ in government (as distinguished from ‘the principle of public or generall utility’): ‘Several things tend to give one an authority over others. 1st, superiority of age and of wisdom which is generally its concomitant. 2dly, superior strength of body . . . 3d, superior fortune also gives a certain authority . . . , and 4thly, the effect is the same of superior antiquity when everything else is alike; an old family excites no such jealousy as an upstart does’ (LJ(A), V.129; cf. LJ(B), 12, and TMS, I.iii.2). The idea reaches its final elaboration in WN, Vi.b.4–8. Very similar views were held by Reid’s young colleague John Millar; see, e.g., his *Ranks*, ch. III. See also Montesquieu, *Spirit of Laws*, pp. 276–7: ‘Amongst such (primitive) nations. . . the old men, who remember things past, have great authority; they cannot there be distinguished by wealth, but by wisdom and valor.’
4. The central issues mentioned in this paragraph are discussed at length in Sections XV and XVI in this volume.
5. For Reid’s final reflections on this, see his ‘Some Thoughts on the Utopian System’, in *Reid on Society and Politics*.
6. This is one of the central points in the treatment of international law within the systems of natural jurisprudence; see the following section and Section XVII.
7. These topics are spelled out in 8/iv/9, where Reid on fol. 3v (p. 151 in this volume) gives a more extensive list of references that includes all the names here except Milton. See the Commentary at pp. 290 ff. n. 14 for a discussion.
8. In the subsequent pages (up to p. 79, line 23), Reid rounds off his lectures on the jurisprudence of the individual, considered ‘privately’, ‘oeconomically’ and ‘politically’, by developing the well-known theme of the universal obviousness of morals. See the Introductory Lecture, above, pp. 10–12.
9. The two final paragraphs of this manuscript seem to be intended to provide a transition from the jurisprudence of individuals to that of states. There is, however, no manuscript extant, dated 1765, which deals with the law of nations. Circumstantial evidence also makes it clear that Reid can have dealt only very briefly with this topic: the present lecture is dated 15 April, and the next surviving and dated lecture of 17 April shows that meanwhile (i.e. on Tuesday, 16 April) Reid had already made a good start to his course on politics (see

4/III/5,1r in the lectures on politics). Among the undated manuscripts there is, however, one that Reid could have added to the end of his lecture on Monday, 15 April and that gives the kind of general survey to be expected of a lecturer pressed for time. There is, furthermore, some evidence that this manuscript may date from 1765. When Reid rewrote his lectures on political jurisprudence in the following year, he used material from 1765; see the Textual Notes, below, at 72/10. Therefore, when in the same manuscript (8/IV/9) he arrives at the topic of the law of nations and there makes an insertion sign followed by the words ‘The Notion of see N’, and when in an undated manuscript (7/VII/21,1r), headed ‘Of the *Law of Nations*’, we find a passage marked ‘N’ in the margin, beginning ‘The Notion of’ and fitting the context perfectly, it seems entirely possible that this represents what Reid had to say about international law at the end of his lecture on Monday morning, 15 April 1765. One circumstance tells against this suggestion, though not decisively. Manuscript 7/VII/21 shows fairly clear signs of being influenced by Reid’s study of Vattel’s *Law of Nations*, but his first preserved reading notes from Vattel (3/II/5), which I print in Section XVII, are dated ‘Sept 1766’. While there is no reason to suppose that Reid had not looked at Vattel before then (the English edition in question was published in 1759), it does make the inclusion of 7/VII/21 here as part of Reid’s 1765 course hypothetical: it may have been produced half a year later as a first draft for the following academic session. See the Textual Notes below at 81/13 and 154/6–21.

### VIII. Duties to Others: States

1. The first sentence is a bowdlerised excerpt from Justinian’s definition of the law of nations (*Institutes*, I.ii.1): ‘quod . . . naturalis ratio inter omnes homines constituit, id apud omnes populos peraeque custoditur vocaturque *ius gentium*’ (‘What natural reason has established among all men is observed equally by all nations and is designated *ius gentium* or the law of nations’). The second sentence is Justinian’s (Gaius’s) famous and troublesome wide definition of natural law, which properly reads: ‘Ius naturale est quod natura omnia animalia docuit’ (‘Natural law is that which nature instils in all animals’; *Institutes*, I.ii, pr.). Both are quoted by Vattel, *Law of Nations*, preface, p. iv, and there is little doubt that Reid used these two quotations as key words for a brief



instruction (after Vattel's preface) in one of the central disputes in modern natural law – namely, whether the law of nations is a matter of established conventions or whether it is, or is derived from, the law of nature. The former was commonly seen as Grotius's standpoint (*War and Peace*, Prolegomena, 41, and I.l.xiv), the latter as descended from Hobbes, *De cive*, XIV.4, via Pufendorf, *Law of Nature*, II.3.xxiii, and Wolff, *Jus gentium*, praefatio and prolegomena, sec. 3, to Vattel. Within the latter line of argument fell the further problem of whether the law of nations was identical with the law of nature or whether the precepts of the latter needed fundamental change, since 'A state or civil society is a subject very different from an individual of the human race' (Vattel, *ibid.*, I. preliminaries, sec. 6). Vattel saw the latter as Wolff's great improvement over Pufendorf and Hobbes, and as the object of his highly successful popularising efforts. On this issue Reid did not express himself clearly.

2. The view of the state as a corporate moral personality, which is sketched in this paragraph, is obviously to be seen in the light of Hobbes, Locke and Pufendorf, but it would seem that Vattel's preliminaries to *Law of Nations* is the most immediate inspiration.
3. This quotation is not from Cicero's *De legibus*, as Reid indicates. It is one of the few fragments of Cicero's *De re publica* that were known to the world – mainly through patristic quotations – prior to Cardinal Mai's find of a major fragment in 1819. The fragment quoted here is identical to Vattel's quotation in *Law of Nations*, p. xiv (except for two minor variations) and it corresponds to II.xliv (70) of *De re publica* as we now know it; Reid quotes it again in his notes from Vattel, p. 172, below, and also pp. 141 and 154. It translates: 'I would hold for nothing what has been said about the state so far, as I cannot make any progress, unless it is established, not only that it is false that the state cannot be governed without injustice (*injuria*), but that it is quite certain that it cannot be governed without the strictest justice.'
4. Cicero, *De legibus*, II.viii (19): 'They shall approach the gods in purity, bringing piety, and leaving riches behind. Whoever shall do otherwise, God Himself will deal out punishment to him. No one shall have gods to himself, either new gods or alien gods, unless recognized by the State. Privately they shall worship {those gods whose worship they have duly received from their ancestors}.' It is not clear why Reid breaks off the quotation in mid-sentence nor, indeed, why he quotes Cicero's first few laws for his commonwealth at all.

5. Concerning the morality of war, Reid has more to say in 7/vii/23,4v, 8/iv/8 and 7/vii/22 (printed below in Section XVII).

### IX. Supplement to Duties to Ourselves

1. There is no end to the tales of Scipionic nobility, but the ‘fair Captive’ would seem to identify Reid’s reference as the following episode during the capture of New Carthage in Spain in 210 BCE by the Romans under Publius Cornelius Scipio (234–183 BCE), afterward Scipio Africanus (major):

It was at this time that some young Romans came across a girl of surpassing bloom and beauty, and being aware that Scipio was fond of women brought her to him and introduced her, saying that they wished to make a present of the damsel to him. He was overcome and astonished by her beauty, but he told them that had he been in a private position, no present would have been more welcome to him, but as he was the General it would be the least welcome of any, giving them to understand, I suppose, by this answer that sometimes, during seasons of repose and leisure in our life, such things afford young men most delightful enjoyment and entertainment, but that in times of activity they are most prejudicial to the body and the mind alike of those who indulge in them. So he expressed his gratitude to the young men, but called the girl’s father and delivering her over to him at once bade him give her in marriage to whomever of the citizens he preferred. The self-restraint and moderation he displayed on this occasion secured him the warm approbation of his troops. (*The Histories of Polybius*, X.19.3–7)

2. *De officiis*, I.v (15): ‘Although these four {virtues} are connected and interwoven, still it is in each one considered singly that certain definite kinds of moral duties have their origin.’ At the end of the book (chs. xliii–xliv (152–61)) he argues that the duties arising from the four virtues may well be in conflict and that they can be ranked in importance. It was common Stoic teaching that the virtues are intertwined; cf. Cicero, *Tusculan Disputations*, II.xiv (32–3) and III.viii (17), and Diogenes Laertius, *Lives*, VII.125–6.
3. Ovid, *Metamorphoses*, II.13–15: ‘They have not all the same appearance, and yet not altogether different; as it should be with sisters.’

## X. Natural Law and Natural Rights

1. This Latin manuscript has the appearance of being a précis of the beginning of a book, but it has not been possible to identify Reid's source. It is impossible to tell in which year it was written on 'Feb. 17', though my intuition is that it is comparatively late. Reid used the same piece of paper to write a brief abstract of Archibald Campbell's *Enquiry into the Original of Moral Virtue* from 1733 but this piece is equally impossible to date. The ideas expressed in the present manuscript were exceedingly common, and in the absence of the crucial information about Reid's reference, any commentary would be so general that it would be of little use. Therefore, the manuscript is presented along with my fairly literal translation in the hope that someone else may be able to provide the decisive information. This may give us an additional source for Reid's knowledge of natural jurisprudence.
2. The reflections in this manuscript are quite general and might belong to the beginning of the lectures on jurisprudence or to the beginning of the subsection of the course dealing with political jurisprudence. Only Reid's heading for the text points in the direction of the former and determines inclusion in this section.
3. In his second year at Glasgow, Reid apparently decided to go into more detail than in 1765 concerning the implications of perfect rights and especially the right to life (see the Commentary above at p. 198 n. 26). The manuscript should be read in the context of the natural lawyers' debate about an individual's rights over his own life in cases of self-defence and situations of need (Grotius, *War and Peace*, II.1; Pufendorf, *Law of Nature*, II.5–6, and *Duty of Man*, I.5; Heineccius, *Universal Law*, I.100–2 and 110–20, with Turnbull's Remarks, pp. 120–2). The topic also had importance for the relationship between natural law and God's revealed law – 'The Christian Religion commands that we should lay down our Lives one for another; but who will pretend to say, that we are obliged to this by the Law of Nature' (Grotius, *War and Peace*, I.2.vi (2)) – upon which Barbeyrac comments (n. 2 at *ibid.*): 'This Instance is not altogether just. The Law of Nature, rightly understood, requires us in certain Cases to sacrifice our Lives for others, when a considerable Advantage may result from such an Action to the Publick.'
4. While the case of Mr Burnet has not been traced, the reference here is Henry Ellis, *Voyage to Hudson's Bay*, pp. 189–91:

When {the Esquimaux Indians} are sober, they are very courteous, and compassionate, and that as well to those who are absolute strangers, as their own Family; and their Affection for their Children is singularly great. An extraordinary Instance of this happened lately at York-Fort: Two small Canoes, passing Hayes's River, when they got to the middle of it, one of them . . . sunk, in which was an Indian, his Wife and Child: The other Canoe being small, and incapable of receiving more than one of the Parents, and the Child, produced a very extraordinary Contest between the Man and his Wife, not but that both of them were willing to devote themselves to save the other, but the Difficulty lay in Determining which would be the greatest Loss to the Child. The Man used many Arguments to prove it more reasonable, that he should be drowned, than the Woman. But she alleged on the contrary, it was more for the Advantage of the Child, that she should perish, because he, as a Man, was better able to hunt; and, consequently, to provide for it. . . . {T}hey took leave in the Water; the Woman quitting the Canoe was drowned, and the Man with the Child got safe a-shore.

5. See Pufendorf, *Duty of Man*, I.5.xi: 'the lawful Governour has Power to lay an Injunction on any private Man . . . not to decline by Flight such Danger of losing his Life. Nay further, he may of his own Accord provoke such Danger, provided . . . by thus Adventuring he has Hopes to save the Lives of others, and those others are such as are worthy so dear a Purchase. For it would be silly for any Man to engage his Life together with another to no purpose; or for a Person of Value to die for the Preservation of a guilty Rascal.' See also Pufendorf, *Law of Nature*, II.5.xiv, and Grotius, *War and Peace*, II.1.viii–ix.
6. Cicero, *De officiis*, III.x (45): 'They say that Damon and Phintias, of the Pythagorean school, enjoyed such ideally perfect friendship, that when the tyrant Dionysius had appointed a day for the execution of one of them, and the one who had been condemned to death requested a few days' respite for the purpose of putting his loved ones in the care of friends, the other became surety for his appearance, with the understanding that if his friend did not return, he himself should be put to death. And when the friend returned on the day appointed, the tyrant in admiration for their faithfulness begged that they would enrol him as a third partner in their friendship' (also in *Tusculan Disputations*, V.xii (63)).

7. See Grotius, *War and Peace*, II.1.v, n. 1: ‘Phrynicus, General of the Athenians, said he ought not to be blamed, if, finding his Life in Danger, he did all in his Power to avoid being destroyed by his Enemies. Thucydides, Lib. VIII’ – to which Barbeyrac rightly objects, ‘That General’s Case was not one of those mentioned by our Author; as appears from consulting the Historian, in the Place here quoted.’ Reid probably did so consult and found, more or less, the point he is making (Thucydides, *History of the Peloponnesian War*, VIII.27).
8. See Heineccius, *Universal Law*, I.116: ‘it is a more difficult question . . . whether he does contrary to his duty, who being in the direful necessity above mentioned {the need to have an amputation to survive}, chooses rather to die than to bear pain, to which he feels himself unequal; especially when it is not certain what may be the event of the amputation, seeing not fewer who have undergone the torment with great constancy have perished than have been saved.’ Cf. *ibid.*, p. 101, and Pufendorf, *Law of Nature*, II.6.iii.
9. See Heineccius, *Universal Law*, I.110: ‘The Martyrs were in the case of extreme necessity, being obliged to renounce Christ, or to undergo the most violent tortures.’ See also Barbeyrac’s n. 2 to Grotius, *War and Peace*, I.2.vi (2) (the reference to the martyrs is made explicit in the Latin version).
10. See Pufendorf, *Law of Nature*, II.5.xii: ‘Tis another famous Question, Whether the Danger of receiving a Box of the Ear, or some such ignominious though slight Injury, will excuse the killing of a Man in our own Defence.’ The fame of the question may be gauged from Grotius, *War and Peace*, II.1.x; Pufendorf, *Duty of Man*, I.5.xiv, and from Barbeyrac’s notes in these three places. The question became famous because it illustrated a crucial feature of the Grotian notion of expiative justice – namely, that it did not involve any element of proportionality, especially equality (as here between the injury done and the protection or punishment sought) – and further because it showed the relationship between natural law and positive law, divine as well as human: the latter could narrow the scope of the former, for instance, as here by prescribing some particular relationship between injury and reaction. Common prudence points the same way (Pufendorf, *Law of Nature*, II.5.iii, and *Duty of Man*, I.5.xiv), and this may have been Reid’s point here.
11. See the Commentary above at pp. 196–7 n. 25.
12. See the Commentary above at p. 193 n. 9.

13. The latter is a defining characteristic of the moral states. In this formulation, Reid appears to be echoing Hutcheson, *System*, I.280; cf. *Short Introduction*, p. 139.
14. See Pufendorf, *Law of Nature*, II.2.i.
15. See, in general, Grotius, *War and Peace*, II.5.i–xvi and xxvi–xxxii; Pufendorf, *Law of Nature*, book VI, and *Duty of Man*, II.2–4; Heineccius, *Universal Law*, II, chs. 2–5; Hutcheson, *Short Introduction*, book III, chs. 1–3, and *System*, book III, chs. 1–3. For Reid’s extensive treatment of this topic, see Reid’s MS. 8/iv/7,4r–4v (‘Oeconomical Jurisprudence’, printed above, pp. 69–71) and Reid’s manuscripts in Section XIV of this book.
16. See, in general, Grotius, *War and Peace*, II.5.xvii–xxv; Pufendorf, *Law of Nature*, VII and VIII.1–5, and *Duty of Man*, II.5–15; Heineccius, *Universal Law*, II, chs. 6–10; Hutcheson, *Short Introduction*, book III, chs. 4–5, and *System*, book III, chs. 4–9. See Reid’s MS 8/iv/10,1r–4v (‘Political Jurisprudence’, printed above, pp. 72–80), and Reid’s manuscripts in Section XVI of this book.
17. See above, p. 193 n. 7 and Reid’s MS. 7/vii/21,1r–1v (above, pp. 81–2). See also Reid’s manuscripts in Section XVII of this book.
18. See Grotius, *War and Peace*, III.2 and III.20.viii (esp. n. 1); Pufendorf, *Law of Nature*, VIII.6.xiii and n. 1, and *Duty of Man*, II.16.x.
19. Reid is here taking up a debate started by Grotius, *War and Peace*, I.1.xiv, and picked up by, among many, Pufendorf, *Law of Nature*, II.3.xxiii, Barbeyrac in his notes to those two, and (of special importance for Reid) Vattel’s preface and preliminaries to *Law of Nations*.
20. Like most Protestant thinkers, Reid took Grotius to be the founder of modern natural law (see AP, p. 645a) and the ‘180 years past’ mentioned above was meant to indicate Grotius’s birth in 1583. The work by Selden most commonly used by natural lawyers, apart from *Mare clausum*, was *De iure naturali et gentium iuxta disciplinam Ebraeorum* (1640). Barbeyrac ‘upon Grotius and Puffendorf’ refers to Barbeyrac’s annotated editions; the same applies to Carmichael. Concerning the remaining references, see the Bibliographic Index and the Introduction above, pp. lxxviii ff.
21. In discussing the grounds for distinguishing between perfect and imperfect rights (see the references in the Commentary above at pp. 196–7 n. 25), the natural lawyers saw themselves as considering the extent of the concept of justice and thus the scope of the discipline of jurisprudence (see references in the Commentary above at p. 195 n.

- 19). The political implications are evident from the two central points Reid briefly makes here and elaborates on in 7/vii/1b below at n. 30, and in AP, p. 645b. He is following Carmichael, notes to Pufendorf, *De officio* I.2.xiv–xv (pp. 47–50; Carmichael, *Natural Rights*, pp. 44–5), and Hutcheson, *Short Introduction*, pp. 122–3, and *System*, I.262–3.
22. For this and the following sentence, see the Commentary above at p. 193 n. 8.
23. The following is a paraphrase of Hutcheson; see the Commentary above at pp. 206–7 n. 40.
24. See the references in the Commentary above at pp. 196–7 n. 25.
25. The numbering of the following points has clearly been added later in order to indicate a revised order of presentation. All seven distinctions have been explained in the Commentary above at pp. 196–7 and 198–200 nn. 24, 25 and 29.
26. The free or unfettered state. See Hutcheson, *Institutio*, p. 144: ‘Status est . . . vel solutus et liber . . . vel adventitious.’
27. Pufendorf, *Duty of Man*, I.6.i (cf. II.1.ii), and *Law of Nature* II.3.xxiv. Pufendorf does not, however, identify hypothetical duties, and hence rights, with those arising from familial and civil life. This tendency is due to commentators such as Barbeyrac (note on p. 89 in *Duty of Man*), whereas Pufendorf uses the general definition that hypothetical duties ‘take their Original from some certain Human Institutions, or some peculiar, adventitious or accidental State of Men’ (*Duty of Man*, I.6.i).
28. Grammatical and quotational rigour would have led Reid to write ‘quam’ instead of ‘quod’ on both occasions. Otherwise he quotes accurately from Cicero, *Pro T. Annio Milone Oratio*, IV (10), the sense of which is, in N. H. Watt’s free translation: ‘a law which {is} a law not of the statute-book, but of nature; a law which we possess not by instruction, tradition, or reading, but which we have caught, imbibed, and sucked in at Nature’s own breast; a law which comes to us not by education but by constitution, not by training but by intuition.’
29. The first professorship in the law of nature and nations is commonly ascribed to Pufendorf and the University of Heidelberg (1660). It was in fact a personal chair in international law and philology that Pufendorf later remembered as being ‘Juris Naturalis & Gentium’ (preface to *De jure*). At any rate, Reid is correct that the profession mushroomed very quickly in Protestant Europe. As for his assessment of the utility of the new discipline, see AP, p. 645.

30. Here Reid may be criticising Adam Smith. Although Smith did not discuss perfect and imperfect rights in the *Theory of Moral Sentiments* (his only published book at the time of Reid's lectures), he did explicitly confine natural jurisprudence to justice, and justice to commutative justice, that negative virtue which we already know as particular or expletive justice, the 'justice strictly taken' which protects perfect rights. See the Commentary above at p. 195 n. 19, and TMS, VII.iv.7–15 and II.ii.1–2. In addition, it is possible that Reid had access to some account of his predecessor's lectures on jurisprudence, such as the ones we have from the hands of students, according to one of which Smith made the point very directly: 'The common way in which we understand the word right, is the same as what we have called a perfect right, and is that which relates to commutative justice. Imperfect rights, again, refer to distributive justice. The former are the rights which we are to consider, the latter not belonging properly to jurisprudence, but rather to a system of moralls as they do not fall under the jurisdiction of the laws' (LJ(A), i.15). When Reid says that Grotius, Pufendorf, Barbeyrac and Hutcheson 'in their systems comprehended both' perfect and imperfect rights, he is therefore in effect saying that these writers did not admit a sharp distinction between jurisprudence and 'a system of moralls' on the epistemological and moral grounds that led Smith to this distinction. The two points that follow are then meant to indicate Reid's rebuttal of exactly these grounds, the first the epistemological point that there is no sharp distinction between our perception of justice and of other parts of morality, the second the moral point that man's duty comprehends both rights of justice and imperfect rights. Concerning the four natural lawyers, see the Commentary above at pp. 195 and 196–7 nn. 19 and 25.

## XI. Property

1. Although no relevant section '2' is preserved, it is clear that it would concern 'derived' property, which is dealt with in 7/vii/13 (p. 110 of this book); see also the titles of Hutcheson's chs. 6 and 7 in book II of *Short Introduction* and chs. 7 and 8 in book II of *System*.
2. Reid has developed this analogy in the present context from the similar analogy in Epictetus's *Morals*, ch. 21, and especially Simplicius's commentary on this chapter. Many years earlier Reid had made an 'Abstract of Epictetus *Morals*' chapter by chapter, the entry for ch. 21 being:



‘Behave yourself in the Affairs of Life as at an Entertainment dont Snatch at what is sent to another but wait patiently till it comes to your turn to be served; what is given you receive with Modestie, & Refuse & Disdain Delicacies’ (3/II/4,1v). See also Cicero, *De natura deorum*, II.xi–xiv (153–62). This abstract seems to have been made before September 1750, the date of a brief note on Xenophon, which follows (*ibid.*, 2r) and the ink of which appears newer. I believe that Reid used George Stanhope’s translation of Epictetus and Simplicius. Ch. 21 in this and other older editions corresponds to ch. 15 in the modern editions of Arrian’s arrangement of Epictetus. Concerning the principles illustrated by the analogy, see Reid’s manuscript 8/IV/1,4r–v (above, pp. 46–7) and AP, pp. 657b–659a. Concerning Epictetus, see also the Commentary above at pp. 181 and 183–4 nn. 3 and 10.

3. The use of inanimate nature by animals, human and non-human, was in general not considered a moral problem by modern natural lawyers. Man’s use of non-human animals for work, for produce such as milk, eggs and wool, and especially for food, was an entirely different matter. The natural lawyers were well aware of the objections against this, which philosophers since antiquity and of various religions had raised. They did not want to answer such objections by referring to God’s gift to Adam (Gen. 1:28) – which was anyway inconclusive as far as the consumption of flesh was concerned (see Gen. 1:29) – or to God’s dispensation to Noah (Gen. 9:3). For Pufendorf, as for most other natural lawyers, this would be tantamount to relying on revealed religion, and the overriding ambition of modern natural jurisprudence was precisely to be independent of revelation (as opposed to natural religion). Pufendorf’s answer is that the non-human animals are not part of the sociability that is the basic injunction of natural law because they are incapable of being party to relations of obligation (*Law of Nature*, II.3.ii–iii; cf. Grotius, *War and Peace*, Prolegomena, secs. 6–7, and I.1.xi, and *The Truth of the Christian Religion*, I.7). The only moral (as opposed to prudential) limitations on the use of animals thus arise from respect for God as the Creator and from our relations with other humans (*Law of Nature*, IV.3). This is significantly changed in Hutcheson, who (following Carmichael) maintains that the basic command of natural law is the maximisation of happiness in God’s creation. From this he draws the conclusion, which Carmichael did not (n. 1 to Pufendorf, *De officio*, I.12.i; Carmichael, *Natural Rights*, pp. 91–2), that non-human animals also have rights – namely, rights to

happiness. At the same time, however, Hutcheson does operate with the idea that there are qualitative differences between the happiness of which humans and animals are capable and that the former in cases of direct conflict takes precedence over the latter. Nevertheless, the rights of animals must be a tempering reality, for although they are incapable of realising that they have such rights and of pressing their claims, this does not absolve humans as moral agents from recognising them; in this there is no difference between animals and human infants (Hutcheson, *System*, I.309–16; cf. *Short Introduction*, pp. 147–9). Hutcheson is thus giving meaning to Ulpian’s famous broad definition of natural law, so often criticised by natural lawyers: ‘Natural law is that which nature instals in all animals. For this law is not peculiar to humankind but is shared by all animals’ Justinian, *Institutes*, I.ii., pr., and *Digest*, I.1.3). At the same time he anticipates the well-known argument of Soame Jenyns, *Disquisitions on Several Subjects*, ‘On Cruelty to Inferior Animals’, pp. 12–26. Simultaneously with Hutcheson, the Danish philosopher Friederik Christian Eilschov used the Wolffian version of hedonism to develop the most elaborate and original eighteenth-century argument for a moral community of man and animals under natural law; *Philosophiske Skrifter* and *Philosophiske Breve*.

4. That is, ‘the ability to possess, to use, to exclude others, to alienate’. See Hutcheson, *Institutio*, p. 167: ‘Plenum igitur Dominium continent haec quatuor. (1) Jus rei possidendae. (2) Jus omnem ejus usum capiendi. (3) Jus alios ab eo arcendi. (4) Jus, prout domino libuerit, eam transferendi.’
5. This was probably Reid’s clue to make the point that even in the absence of population pressure and the deepening of the division of labour that was its consequence, men became property-owners. See Hutcheson, *Short Introduction*, pp. 149–50, and *System*, I.319–20.
6. Reid has apparently jumped the gun and foreshadowed the subject of succession, especially entail. See Reid’s manuscripts printed here, pp. 49 ff. and Section XII in this book.
7. On the following four points, see also Hutcheson, *Short Introduction*, pp. 149–51, and *System*, I.317–24. See also Reid, p. 109 below, and AP, pp. 658a–659a. For a questioning of this justification of property, see ‘Some Thoughts on the Utopian System’, in *Reid on Society and Politics*.
8. For an elaboration of the corollary, see below, pp. 105–7; cf. also Hutcheson, *Short Introduction*, pp. 156–8, and *System*, I.326–8.

9. See the Commentary above, pp. 203–4 n. 37.
10. An opening question is often a sign that a manuscript was prepared as a paper for either the Aberdeen Philosophical Society or the Glasgow Literary Society. In the present case, however, Reid broke off after the following two sentences and used the rest of the manuscript to sketch lecture material. This is evident both from the content and from the change of pen and handwriting.
11. It may be a snippet from one of these lectures that has come down to us as MS. 8/iv/6, a single folio containing eight lines of text, which I print here:

March 20 1769

Among the Adventitious Rights of Mankind, that of Property bears a very considerable Rank. And what Civilians call a Real Right as distinguished from a personal is nothing else but Property of one kind or another. We have therefore endeavored to show how the Property of things is originally acquired by Occupation. We have endeavored to explain that state of negative Communion in which things usefull to human Life are placed by the Author of Nature.

12. Reid has not indicated how much of the preceding counts as point number 1. The material is in general known from the previous manuscripts; see also the following, 7/vii/13.
13. See AP, p. 658, and the Commentary above at pp. 201–2 n. 32.
14. The most substantial surviving treatment of this is immediately below in the present manuscript.
15. See the Commentary above at pp. 200–1 n. 31.
16. See the Commentary above at p. 202 n. 33.
17. See the Commentary above at pp. 202 and 207–8 nn. 33 and 42.
18. Instead of following this intention, Reid apparently found it necessary to elaborate on ‘Limitations to the Right of Property’. Concerning accession, see the Commentary above at pp. 204 ff. n. 39.
19. For this paragraph, see the Commentary above at pp. 202–3 n. 35.
20. Reid is here taking up a contested point in modern natural law’s theory of property. Grotius (*War and Peace*, II.2.vi) had maintained that the original contract about property (cf. the Commentary above at pp. 198 ff. n. 29) had been entered into with the proviso that in cases of extreme need the property rights of individuals would be inoperative, because the original use-right of all to the natural world in such situations would overrule private rights. Against this, Pufendorf (*Law of Nature*,

- II.6.v–vi) held that the original contract about property granted those in extreme need an imperfect right to assistance which they were justified in pressing against those who were able to relieve their distress, and indeed that in civil society this might well be backed by law. A third line is taken by Locke, according to whom natural law imposes a duty to preserve the creation of God (*Second Treatise*, ch. II.6) which implies a natural duty to charity (*First Treatise*, ch. IV.42). Hutcheson, finally, resolves the problem on purely utilitarian grounds (*Short Introduction*, pp. 241–6, and *System*, II.117–40). Reid may also have drawn on Vattel, *Law of Nations*, II.ix. See the Commentary below at pp. 300 ff. nn. 19 ff.
21. The first case stems from the *Digest*, XIV, title ii: ‘II De lege Rhodia de iactu, 2’, and it occurs in Grotius, *War and Peace*, II.2.vi (3), and is referred to in Pufendorf, *Law of Nature*, II.6.vii. The second case is in the elder Seneca, *The Controversiae*, IV.4 (*Declamations*, I:447), from which Grotius gets it (*War and Peace*, II.2.vi, n. 5). It occurs further in the *Digest*, XIV, title ii: ‘II De lege Rhodia de iactu, I’, and in Justinian, *Institutes*, II.i.48, from the former of which Pufendorf quotes it (*Law of Nature*, II.6.viii). It is alluded to by Hutcheson in *Short Introduction*, p. 244, and *System*, II.126. See also Coccejij, *Introductio*, p. 421, and the Commentary above at p. 234 n. 127.
  22. See Pufendorf, *Law of Nature*, II.6.v, Barbeyrac’s n. 3, and VIII.5.vii; Hume, *Enquiry*, p. 186; Hutcheson, *System*, II.125.
  23. Not traced.
  24. See Pufendorf, *Law of Nature*, II.6.ii, v and vii.
  25. See Grotius, *War and Peace*, II.2.X and xiii, and III.17.iii (1).
  26. See Pufendorf, *Law of Nature*, VIII.5.vii.
  27. See Grotius, *War and Peace*, II.2.xxiv, and II.12.xvi; Pufendorf, *Law of Nature*, V.5.vii.
  28. According to Pufendorf, the acquisition of property is always so limited by the law of nature that each one ‘only possesses himself out of the common Store of what is sufficient for his private Service, but not so as to destroy the whole Fund, and so prevent a Stock for future Uses’ (*Duty of Man*, I.12.ii; cf. *Law of Nature*, IV.4.v, and concerning individual and collective colonisation, cf. I.12.vi and IV.6.iii, respectively). The contract about property was meant to regulate and, as it were, codify this. When Barbeyrac, Carmichael and Hutcheson rejected the idea of a property contract in favour of Locke’s notion of labour, they also adopted the Lockean idea that property was limited to what one

- could use through one's labour, provided 'there is enough, and as good left in common for others' (*Second Treatise*, V.27), though their concept of community was negative. Reid is here echoing Hutcheson's formulation of this point in *Short Introduction*, pp. 156–8, and *System*, I.326–8. On Barbeyrac, Carmichael, and the context of the present problem, see the Commentary above at pp. 198–200 and 203–4 nn. 29 and 37.
29. Concerning wills, see Grotius, *War and Peace*, II.6.xiv; Pufendorf, *Law of Nature*, IV.10.iv–vi and IV.11.xviii, and *Duty of Man*, I.12.xiii; Hutcheson, *Short Introduction*, pp. 172–3, and *System*, I.352–3. Concerning entails, see Hutcheson, *Short Introduction*, p. 168, and *System*, I.350. Entails are dealt with at length in Reid's manuscript above at pp. 49 ff. (see also the Commentary at pp. 208–9 n. 46); the topic of testaments is touched upon, p. 53.
  30. See Grotius, *War and Peace*, II.2.xi and xix; Pufendorf, *Law of Nature*, II.6.vii; Hutcheson, *Short Introduction*, pp. 246–7.
  31. See Hutcheson, *System*, I.327: 'as . . . 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, 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.' The classical notion of an agrarian law, as adapted by James Harrington, played a significant role in Reid's political thought, as will be seen in his lectures on *Politics*, where he rejects the idea in 4/III/6 (in *Reid on Society and Politics*).
  32. See the Commentary above at pp. 200–1 n. 31. See also Grotius, *War and Peace*, III.12.vi–vii, and Pufendorf, *Law of Nature*, VIII.6.vii (esp. Barbeyrac's note) and VIII.6.xix.
  33. Reid here follows Grotius, *War and Peace*, I.1.vi, I.3.vi, II.14.vii–viii, III.19.vii, and III.20.vii–viii; Pufendorf, *Law of Nature*, VIII.5.vii; and Hutcheson, *Short Introduction*, p. 290 (cf. *ibid.*, p. 246), and *System*, II.236–7 (cf. *ibid.*, pp. 124–5) in seeing the state's *dominium eminens* as a right to overrule private property. On compensation, see also *War and Peace*, II.2.ix, and n. 1; *Law of Nature*, II.6.vi; *Short Introduction*, pp. 245–6, and *System*, II.124. See also the Commentary at p. 207 n. 41 and at pp. 300 ff. nn. 19 ff.
  34. According to P. D. G. Thomas, *The House of Commons in the Eighteenth Century*, pp. 45–6, in the eighteenth century 'the great mass of legislation was personal and local in scope, largely consisting of enclosure bills, turnpike and canal bills, and naturalization bills', but

Parliament had reached 'a clear procedural distinction between such private business and public legislation: and the old rule that all legislation had to be initiated by petition still applied to private bills'. Concerning petitions in general, see *ibid.*, pp. 17–20 and 57–9. See also the Commentary below at pp. 300–1 n. 20.

35. Smith makes the same point in WN, IV.vii.b.9. See also Vattel, *Law of Nations*, I.18.208:

But it is questioned whether a nation may thus appropriate to itself, by merely taking possession of a country, which it does not really occupy, and in this manner reserve to itself much more than it is able to people or cultivate. It is not difficult to determine, that such a pretension would be absolutely contrary to the *Law of Nature*, and opposite to the views of nature, who appointing all the earth to supply the wants of man in general, gave to no nation the right of appropriating to itself a country but for the use it makes of it, and not to hinder others from improving it.

36. See the Commentary above at p. 193 n. 9 for the general point about the correlation between right and obligation. For the particular case of property, see Grotius, *War and Peace*, II.10; Pufendorf, *Law of Nature*, IV.13, and *Duty of Man*, I.13; Hutcheson, *System*, I.339.
37. See AP, pp. 657b–662a.
38. Hutcheson, *System*, I.331: 'we need not have recourse to any old conventions or compacts, with Grotius and Pufendorf, in explaining the original of property: nor to any decree or grant of our first parents with Filmer.' See also *Short Introduction*, p. 159, and, concerning Grotius and Pufendorf, see the Commentary above at pp. 198–200 n. 29 and at pp. 256–7 nn. 20 and 28. Sir Robert Filmer rejected Grotius's theory of the original negative community and the consequent idea of a contractual basis for private property, for 'if propriety be brought in by a human law (as Grotius teacheth), then the moral law depends upon the will of man. There could be no law against adultery or theft, if women and all things were common' (*Patriarcha*, p. 65). Further, such a doctrine implies that all people are equal moral judges who carry rights and this implication is the bane of civil society (*ibid.*, ch. IX). The truth, as revealed in Genesis, however, is that there never was any negative community, because God granted the whole world as private, exclusive property to Adam and all private properties stem from this original one by way of inheritance or alienation. This is the doctrine that Locke

- savages in the *First Treatise*, here esp. ch. IV; cf. Barbeyrac's general agreement at n. 1 on p. 366 of Pufendorf, *Law of Nature*.
39. Reid is here echoing the classical formulations that everyone dealing with justice had used. See Cicero, *De finibus*, V.xxiii (65); *De officiis*, I.v (15); and *De legibus*, I.vi (19), but first of all Ulpian as rendered in *Digest*, I.i.10, pr. and in the *Institutes* I.1, pr.
  40. See the Commentary above at p. 193 n. 8, and AP, p. 643b.
  41. Here and on p. 101 and at AP, p. 644, Reid extends the notion of external rights to include claims that are not only immoral but also without proper legal force. Behind this lies a shift in the criterion of externality, best picked up by attending to the obligations. For Hutcheson the externality of an obligation is purely a matter of the obliged person's perception of the immorality of the right being claimed, and the foundation of the obligation is simply prudential (see *System*, I.260). Consequently, illegal acts are excluded because they are not prudent. For Reid the externality of an obligation is a question not of perception but of the actual immorality of the corresponding rights-claim, and the basis for such obligation may be either prudential or a genuine though misguided sense of duty. Reid makes sure to obliterate the reminder of Hobbes's distinction between obligation in *foro externo* and in *foro interno* that Hutcheson inevitably provides. Cf. *De cive*, III.27, and *Leviathan*, p. 215. The reader may also want to see this topic in the light of Pufendorf's distinction between intrinsic and extrinsic obligation (*Law of Nature*, I.6.vi–xii, and the preface to *Duty of Man*; cf. Heineccius, *Universal Law*, I.4–5).
  42. This possibility occupied Reid a good deal; see the Commentary above at pp. 201–2 n. 32. When he took it up again, in his late 'Some Thoughts on the Utopian System' (in *Reid on Society and Politics*), it was exactly in the context of a discussion of Sir Thomas More's *Utopia*. In the present context he is likely to be writing with Hutcheson, *System*, I.323, in mind and perhaps in sight: 'The inconveniences arising from property, which Plato and Sir Thomas More endeavour to avoid by the schemes of community, 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 pleasure, by a censorial power, and proper laws about education, testaments, and succession.' As for 'Paraguay', it is a reference to the Jesuits' experiments with communes in that country. This obviously interested Reid, and we find him returning to it in his lectures on politics.

43. See Hutcheson, *System*, I.323: '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 preceding discussion (*ibid.*, 317–23) covers the same ground as Reid's five points here and is followed immediately by the passage quoted just above in n. 42. Cf. *Short Introduction*, pp. 149–51, and the Commentary above at p. 255 n. 7.
44. See the Commentary above at pp. 200–1 n. 31.
45. See Hutcheson, *Short Introduction*, pp. 153–5, and *System*, I.325–6.
46. See the Commentary above at pp. 202 and 207–8 nn. 33 and 42.
47. *Nativitas*, birth, refers to the principle of accession that 'the young born of animals which are subject to your power become yours' (Justinian, *Institutes*, II.i.19). This is discussed in Grotius, *War and Peace*, II.8.xviii; Pufendorf, *Law of Nature*, IV.7.iv; Heineccius, *Universal Law*, I.185; Coccej, *Introductio*, p. 311; and is referred to in Hutcheson, *Short Introduction*, p. 160, and *System*, I.337–8 (in a note on the latter page, Hutcheson gives exactly the same list as Reid does here). The rest of the list is explained in the Commentary above at pp. 204 ff. n. 39.
48. See the Commentary above at p. 200 n. 29 and Hutcheson, *Short Introduction*, p. 163: 'The derived rights are either real or personal. The materials whence all real rights arise is our property. Personal rights are founded on our natural liberty, or right of acting as we choose, and of managing our own affairs. When any part of these original rights is transferred to another, then a personal right is constituted.' See also *System*, I.340.
49. This is a précis of Hutcheson, *System*, I.342–3, using the same keywords.
50. Hutcheson, *System*, I.341: 'the advantage of the personal obligation to the debtor is this, that he is still master of all his goods, and 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 specifically 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.' See also *Short Introduction*, pp. 164–5.



51. Concerning the distinction between partial and full property and the fourfold division of the former, see Reid's manuscript at pp. 49 ff.; cf. also Reid's manuscript printed here as Section XII concerning entails.
52. See Reid's manuscript above at p. 53.
53. See Reid's manuscript above at p. 53.
54. The natural law topic of donation provides systematic completeness – namely, as a contrast to contractual transfer of property: 'By the deed of the proprietor among the living, property is transferred either gratuitously in donations; or for valuable consideration in commerce' (Hutcheson, *Short Introduction*, p. 171; see also Hutcheson, *System*, I.352; Pufendorf, *Law of Nature*, IV.9.i–ii (cf. IV.10.ix), and *Duty of Man*, I.12.xiv).
55. See Reid's manuscript above at pp. 54–5 and 65.
56. See Reid's manuscript above at pp. 55–8.
57. See Reid's manuscript above at p. 65 and the manuscript printed in this book as Section XV.
58. See Reid's manuscript above at pp. 66 ff.
59. See Grotius, *War and Peace*, II.2.vi–vii (and ff.); Pufendorf, *Law of Nature*, II.6, and *Duty of Man*, I.5.xxv–xxxii; Hutcheson, *Short Introduction*, book II, ch. 16, and *System*, book II, ch. 17; Heineccius, *Universal Law*, I.110–20, and Turnbull's Remarks, *ibid.*, pp. 120–2. Reid follows Hutcheson in placing this topic after delict.

## XII. Succession

1. This manuscript should be read in conjunction with the discussion of entails in the 1765 course (printed above, pp. 49–52). See also the Commentary at pp. 208–9 n. 46.
2. By 'succession' Reid here means 'succession in entail', because the other forms of succession give complete property. The reference is to the fourfold division of the partial real derived rights into (1) possession, (2) succession in entails, (3) pledge and mortgage, (4) servitudes. See the Commentary above at p. 208 n. 44 and p. 211 n. 51. Concerning the circumstances of and possible sources for Reid's discussion of entails, see above, pp. 208–9 n. 46.
3. According to Kames, a man who entails his estate does reduce his heirs 'to the state of mere liferenters' (*Sketches*, 4:450–1).
4. Concerning the gradual undermining of entails in England, Reid would probably have been enlightened by Dalrymple, *General History of*

*Feudal Property in Great Britain*, pp. 157–60 (cf. Kames, *Sketches*, 4:450). Concerning the introduction of entails into Scotland and its eventual entry into the statute book with the Act Concerning Entails of 1685, see Dalrymple, *General History*, pp. 161–7; Kames, *Essays upon Several Subjects concerning British Antiquities*, essay I; *Historical Law-Tracts*, pp. 132 ff., and *Sketches*, 4:450–1.

5. The points made in this paragraph agree substantially with Kames, *Sketches*, 4:447–9.

### XIII. On Dissolution of Obligations and on Interpretation

1. Concerning the systematic place of this topic, see the Commentary above at pp. 230–1 n. 122. Reid's eight points correspond closely to Pufendorf, *Law of Nature*, V.11, and *Duty of Man*, I.16; to Hutcheson, *Short Introduction*, pp. 248–9; to Heineccius, *Universal Law*, I.314–22; and to Coccej, *Introductio*, pp. 345–50, although the final three points are in a slightly different order here, and there are a few points more in Pufendorf, Heineccius and Coccej. The general Roman law basis is in *Institutes*, III.xxix; for the *Digest*, see the following notes. For the likely origin of Reid's discussion, see the Commentary below at pp. 315–16 n. 95.
2. Pufendorf, *Law of Nature*, V.11.i–iv and *Duty of Man*, I.16.i; Hutcheson, *Short Introduction*, p. 248; Heineccius, *Universal Law*, I.315–16; Coccej, *Introductio*, p. 345; *Digest*, XLVI.iii.
3. Grotius, *War and Peace*, III. 19.xv–xvi; Pufendorf, *Law of Nature*, V.11.v–vi, and *Duty of Man*, I.16.ii; Hutcheson, *Short Introduction*, pp. 248–9; Grotius, *War and Peace*, II.7.ii, and III.19.xv–xviii; Heineccius, *Universal Law*, I.316–17; Coccej, *Introductio*, pp. 348–9. The topic is dealt with in a variety of places in the *Digest*, and it is difficult to compare Roman law and natural law directly here; see, however, *Digest*, XV1.11.1, for a definition.
4. Pufendorf, *Law of Nature*, V.11.vii: 'The Obligation ceases also when the Creditor, or he who has a Title to it, forgives it. . . . This Release is performed either expressly or tacitly; to the former belongs what the Roman Law calls *Acceptilatio*, an Acquittance or Discharge, by which the Person acknowledged himself to have receiv'd what indeed he had not.' See also *Duty of Man*, I.16.iii; Hutcheson, *Short Introduction*, p. 249; Heineccius, *Universal Law*, I.317–18; Coccej, *Introductio*, pp. 345–6. Pufendorf is referring to *Institutes*, III.xxix.l. Concerning *acceptilatio*, see also Grotius, *War and Peace*, II.4.iv (2), and *Digest*, XLVI.iv.

5. Pufendorf, *Duty of Man*, I.16.iv: ‘Those Obligations are likewise sometimes dissolved, which imply some Performance on both Sides, by a mutual Breaking off before any Thing on either Side be done in the Contract.’ See also *Law of Nature*, V.11.viii; Hutcheson, *Short Introduction*, p. 249; Heineccius, *Universal Law*, I.318–19; Coccej, *Introductio*, p. 346; *Institutes*, III.xxix.4.
6. Pufendorf, *Law of Nature*, V.11.ix, and *Duty of Man*, I.16.v; Hutcheson, *Short Introduction*, p. 249; Grotius, *War and Peace*, II.15.xv, and III.19.xiv; Heineccius, *Universal Law*, I.319; Coccej, *Introductio*, pp. 347–8.
7. Reid is here stretching the use of the words *cessio* (surrendering) and *delegatio* (delegation) to make a distinction that is indistinct in both Pufendorf and Hutcheson. Take the case where B owes money to A and C owes money to B, and either B himself or a court (acting perhaps at A’s instigation) ‘substitutes’ the latter debt to him for the debt he has to A. By this transaction B’s right against C is renounced and C’s obligation to B is thus dissolved: this Reid calls *cessio*. At the same time B’s obligation to A is discharged by being delegated to C: this he calls *delegatio*. There does not seem to be any basis in Roman law for this technical use of *cessio*, though there is a good foundation for the substance of the matter (*Digest*, III.v.38, XLVI.iii.53 and 72 (3); and *Institutes*, III.xxix, pr.). In the *Institutio*, pp. 256 and 257, Hutcheson merely hints at such a distinction, and Reid’s attention has probably been drawn to it either by Carmichael’s somewhat clearer discussion in n. 1 to Pufendorf, *De officio*, I.16.ix (Carmichael, *Natural Rights*, p. 121), or by Heineccius, who after explaining delegation basically as above says, ‘There is a great difference between delegation and cession, by which a creditor transfers an action against his debtor to another, without his debtor’s knowledge, and against his will’ (*Universal Law*, I.322). Pufendorf himself hints at the distinction but makes it one between two aspects of *delegatio*:

By Delegation a Man substitutes his Debtor to his Creditor to make Payment for him; or I make over to my Creditor the Debt another owes me: And here the Creditor’s Consent is necessary, but not the Consent of the third Debtor, whom, in this Case, I can make over unknown to him, and against his Will: For ’tis the same thing to whom a Man pays, but not the same from whom he is to demand a Debt. (*Law of Nature*, V.11.xiii; cf. *Duty of Man*, I.16.viii, [in the Latin text, I.16.ix]; Hutcheson, *Short Introduction*, p. 249; Coccej, *Introductio*, p. 346)

It is possible that Reid's adoption of a technical use of *cessio* arises from confusion with – or perhaps association with – the concept of *cessio bonorum*, a debtor's voluntary surrender of property for sale before a court in part settlement of his debt (*Digest*, XLII.iii; cf. *Institutes*, III.xii). This, however, did not constitute dissolution of the obligation as such, and Coccej, *Introductio*, p. 350, insists that this was in any case a Roman law invention without hold in natural law.

8. Pufendorf, *Law of Nature*, V.11.xiv: 'There is no need to say much of Confusion; for since the same Man cannot be his own Creditor and Debtor, it follows, if a Man becomes Heir to his Debtor, his Action ceases, not finding an Object to exert it self upon.' See also Coccej, *Introductio*, p. 348; *Digest*, XVIII.iV.2 (18), and XLVI.iii.107.
9. Hutcheson, *Short Introduction*, p. 249: 'death takes away such {obligations} as only respected the persons, and were not designed to subsist to the heirs of the creditor, or affect the heirs of the debtor' (cf. Pufendorf, *Law of Nature*, V.11.xii, and *Duty of Man*, I.16.ix [in the Latin text, I.16.viii]; Heineccius, *Universal Law*, I.320). In the *Digest* the topic is dispersed on the various relevant obligations.
10. Concerning the systematic position and the general background to this topic, see the Commentary above at pp. 230–1 n. 122.
11. Grotius, *War and Peace*, II.16.xii (1): 'Tis a remarkable Question, whether by Allies are meant those only who are so at the making of the League, or they also which come in afterwards; as in that League made between the Romans and Carthaginians after the Sicilian War {i.e., the first Punic war 264–241 BCE}, where it was agreed, "That the Allies of the one should not be molested by the other".' Grotius is quoting Polybius, *Histories*, III.27 (3); this and the following chapters in Polybius, plus Livy, *From the Founding of the City*, XXI.19, give the material for this example which is used also by Pufendorf, *Law of Nature*, VIII.9.x, and Vattel, *Law of Nations*, II.17.309.
12. Reid is here referring to the dramatic events recounted in Livy, *From the Founding of the City*, I.52 and 60, and at the beginning of book II. Some related examples are referred to in Grotius, *War and Peace*, II.16.xvi–xvii. The point of the example must be gauged from a traditional distinction made in natural law:

Another celebrated Distinction of Leagues is that which divides them into real and personal. The latter are such as are made with the Prince, purely with Relation to his Person, and expire with him. The former are such as are made with the

Kingdom and Commonwealth, rather than the Prince or Government; and these outlive the Ministry and the Government it self under which they were first made. (Pufendorf, *Law of Nature*, VIII.9.vi; similarly *Duty of Man*, II.17.vii, and Grotius, *War and Peace*, II.16.xvi)

Both Pufendorf and Grotius claim some foundation in *Digest*, II.xiv.7 (8).

13. See Grotius, *War and Peace*, II.16.ii; Pufendorf, *Law of Nature*, V.12.iii; Vattel, *Law of Nations*, II.17.271. Further, *Digest*, L.xvii.34 and 114.
14. In Pufendorf, *Law of Nature*, V.12.iii, and Vattel, *Law of Nations*, II.17.273, the garrison of Sebastia is buried alive, while in other cases a man has his head saved only to be cut in two at the waist.
15. See Grotius, *War and Peace*, II.16.viii; Pufendorf, *Law of Nature*, V.12.x; *Duty of Man*, I.17.vii; Vattel, *Law of Nations*, II.17.287.
16. Matt. 12:1–13 and Mark 2:23–8 and 3:1–5.
17. Mark 2:27.
18. The distinction between restrictive and extensive interpretation is to be gathered from Grotius, *War and Peace*, II.16.ix; Pufendorf, *Law of Nature*, V.12.xi; *Duty of Man*, I.17.ix; and Vattel, *Law of Nations*, II.17.290: ‘When the sufficient and sole motive of a provision, whether of a law or of a promise, is perfectly certain and well understood, the provision is extended to cases to which the same motive is applicable, although they are not comprised in the meaning of the terms. This is what is called extensive interpretation.’ And *ibid.*, sec. 292: ‘restrictive interpretation . . . is the contrary of extensive interpretation . . . if a case should arise which can not at all be brought under the motive of the law or promise, the case should be excepted from its application, although if the meaning of the terms be alone regarded, the case would fall under the provisions of the law or promise.’ Thus, a literal interpretation of the concept of working on the Sabbath might exclude the care for human needs, but a restrictive interpretation in accordance with the intention of the fourth commandment (such as keeping the Sabbath holy for God) would not; see Matthew and Mark as referred to above in n. 16. For the ‘Law of Tythes’, see Matt. 10:10 and 23:23 and Luke 11:42. For the extensive interpretation of the sixth commandment, see Matt. 5:21–6.
19. Reid’s reference here is obscure. It could be John Rastell’s *Four Elements*, but I find this unlikely, and anyway, it does not seem to assist in identifying the puzzling tale.

20. The story of Quintus Fabius Labeo's destruction of Antiochus the Great's fleet in 188 BCE is told by Valerius Maximus, *Factorum et dictorum memorabilium*, VII.3.iv, and (without the presently relevant finesse) in Livy, *From the Founding of the City*, XXXVIII.39; it is repeated in Grotius, *War and Peace*, II.16.v; Pufendorf, *Law of Nature*, V.12.vii; and Vattel, *Law of Nations*, II.15.233.
21. Reid's intention here is less than clear, but on the basis of the references, which are clear enough, the following interpretation may be tentatively offered. The central point is that the concept of 'Nearest relation' or *cognatus* is ambiguous and in need of interpretation: '*Cognati* in the Roman Law is spoken generally of all the collateral Kindred, but more particularly *Cognati* are the collateral Kindred on the Mother's Side, and *Agnati* of the Father's Side. See {Justinian's} *Institut.*, Lib I. Tit. 15. *De Legitima Agnatorum tutela*, 1' (Barbeyrac, n. 4 to Pufendorf, *Law of Nature*, V.12.xi; also briefly referred to in Grotius, *War and Peace*, II.16.ix). On this Reid must have elaborated as follows. According to the *Institutes*, I.15, pr., 'Those for whom no tutor has been appointed by will have their agnates as tutor under the law of the XII Tables.' The justifying clause, which Reid quotes in Latin, means 'because, where there is the benefit of succession, there also . . . should be the burden of guardianship'. Although this stems from *Institutes*, I.17, which deals with the guardianship by patrons over freedmen, it is not inappropriate because it really applied in general to *tutela*. It is anyway to this topic in title 17 that Reid's final clause relates, his point being that Roman law stretched the concept of 'Nearest relation' to cover even the relationship between a patron and his freedman's children:
- For, by the very fact that the {XII} Tables ordained that, if freedmen or freedwomen should have died intestate, their estate should go to their patron or his children, the lawyers of old believed it to be the intention of the law that guardianship should also go to them, because it directs those agnates whom it would summon to succession also to be tutors and because, where there is the benefit of succession, there also, in general, should be the burden of guardianship. (*Institutes*, I.17; cf. Montesquieu, *Spirit of Laws*, XIX.24)
- (By 'Pupil' was meant the person under guardianship, i.e. a ward.)
22. See above, n. 15, and *Digest*, XLV.i.41, pr., and 80; L.xvii.67.
23. See Grotius, *War and Peace*, II.16.x: 'We must also observe, that of Things promised some are favourable, others odious, and others of a

mixt or middle Nature. The favourable are those that carry in them an Equality, and respect the common Advantage, which the farther it extends, the greater is the Favour of the Promise, as in those that make for Peace, the Favour is greater than in them that make for War; and a defensive War has more Favour allowed than one undertaken upon any other Motive. Others are odious, such as those that lay the Charge and Burden on one Party only, or on one more than another.' On this basis Grotius develops a number of rules of interpretation in the subsequent paragraphs. All this is rehearsed in Pufendorf, *Law of Nature*, V.12.xii ff., and *Duty of Man*, I.17.ix ff. The distinction became controversial and was widely discussed. Among Reid's natural law sources, Barbeyrac flatly rejected it for its 'Want of Solidity and Usefulness' (see his extensive notes to Grotius and Pufendorf, at the places cited above in this note), while Carmichael and Vattel defended it (notes to Pufendorf, *De officio*, I.17.ix ff., esp. pp. 298–9, and *Law of Nations*, II.17.300 ff.; cf. Carmichael, *Natural Rights*, pp. 121–3).

24. Grotius put forward six rules to dispel the collision of laws (*War and Peace*, II.16.xxix), Pufendorf put forth eleven and eight respectively (*Law of Nature*, V.12.xxiii, *Duty of Man*, I.17.xiii), Vattel ten (*Law of Nations*, II.17.311–21). Reid's first rule, which is put first in all four sources referred to here, is justified by Pufendorf in these words: 'For a Permission includes a Liberty, but a Command carries along with it a Necessity of Acting' (*Law of Nature*, V.12.xxiii [I]). Barbeyrac and Carmichael discussed whether the rule was valid without considering the generality or particularity of the permissive and preceptive laws in collision (Barbeyrac, n. 2 to Grotius, *War and Peace*, II.16.xxix; Carmichael, notes to Pufendorf, *De officio*, I.17.xiii [pp. 304–5]). Reid's second rule corresponds to Pufendorf's seventh (in both books) and Vattel's seventh and more or less to Grotius's fourth. The final rule is the equivalent of Pufendorf's eighth (in both books). The references in Grotius and Pufendorf concerning these rules reveal an important connection with the rhetorical tradition.

#### XIV. Oeconomical Jurisprudence

1. This and the subsequent manuscripts in Section XIV provide an elaboration of the treatment of 'oeconomical jurisprudence' in the 1765 course and should be read in conjunction with MS. 8/iv/7,4r–v (printed above, pp. 69–71) and the Commentary thereto at pp. 237–43.

2. A sporadically used term; see, e.g., Plutarch, *Moralia*, 1100d. It was used not only for parental love but also for children's love of parents, as is curiously reflected in Cicero's invocation of it in *Letters to Atticus*, x.8.
3. See n. 2 just above.
4. This point and the concern with chastity (especially women's) were common; see the references in the Commentary above at pp. 237–8 n. 2.
5. Reid seems to provide his own translation of the first sentence of *Spirit of Laws*, XVI.12.
6. Reid seems to have enjoyed one of the books of Athenaeus's *Deipnosophists*, which he would hardly have recommended to his students. At 587c we read:
 

Nemeas the flute-girl is mentioned by Hypereides in the Speech against Patrocles. Concerning her one may rightly wonder how the Athenians permitted the whore to be so called, since the name she had assumed was that of a highly-revered festival; for the adoption of such names as these had been forbidden, not only to women practising prostitution, but also to other women of the slave class, as Polemon declares in his work *On the Acropolis*.
7. The story of Carvilius Ruga's repudiation of his wife is told by, among others, Valerius Maximus, *Factorum et dictorum memorabilium*, II.1.iv, and retold by Grotius, *War and Peace*, II.5.ix; Pufendorf, *Law of Nature*, VI.1.xxi; and Montesquieu, *Spirit of Laws*, XVI.16. Cf. Montaigne, *Essays*, II.15 (p. 338).
8. According to 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 BCE). The second episode Reid is referring to is the suspension of the constitution in 451 BCE, when ten men (*decem viri*) of the patricians were given absolute power in order to carry through a major codificatory-cum-legislative project, the result of which, after a renewal of the *decem viri* for 450 BCE, was the Twelve Tables. The *decem viri* were suspected of tyrannical intentions, some of the provisions of the new code were anti-plebeian, and the political proposals of the *decem viri*, although perhaps originally intended as compromises between patricians and plebeians, were seen as hostile to the latter (especially the proposal to abolish the *tribuni*



*plebis*). 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 BCE published the Twelve Tables.

Especially as told by Livy, *From the Founding of the City*, I.57–60 and III.44 ff., these episodes in Roman history assumed the greatest symbolic importance not only for the Roman republican tradition but also for its renewal in modern political thought, and the idea that personal virtue, liberty and proper (self-)government are intimately connected was crucial for Reid, as is seen in his lectures on *Politics*. As milestones on their way to Reid, we may refer here to the deployment of these Roman stories in Machiavelli, *Discourses on the First Ten Books of Titus Livy*, I.3–4, 40 ff. and 57 and III.2, 5 and 26; Harrington, *Oceana*, pp. 268–72 (etc.), and *A Discourse upon this Saying*, p. 741; Montesquieu, *Spirit of Laws*, VI.7, XI.12–15, XII.21 (etc.), and *Les Causes de la grandeur des Romains, et de leur decadence*, ch. 1.

9. See AP, p. 563b.
10. See AP, p. 563b.
11. See Pufendorf, *Law of Nature*, VI.1.xviii, p. 576, Barbeyrac's n. 2: 'Mr. Derham, in his *Physico-Theologia*, Lib. IV, Ch. X. endeavours to prove Polygamy unlawful for this Reason; "that there are more Males born than Females"'. Barbeyrac objects to the reasoning here, and it would seem that Reid has had this in mind in the following. The reference is William Derham, *Physico-Theology*, pp. 175–8; the specific figures and their application against polygamy are in Derham's n. 8. Reid's own robust proposal for a population policy is set out in 2/II/17 in the lectures on politics.
12. See *Spirit of Laws*, XVI.4; Montesquieu does not quite express the sort of scepticism mentioned by Reid. Montesquieu's reference is Engelbert Kaempfer, *Histoire*, I:308. Kaempfer and Montesquieu were, however, not concerned with 'Mecao' (maybe Reid was thinking of Macao), but with Meaco; and the numbers in question were 182,070 and 223,572 (in Kaempfer). Reid may well have been directly acquainted with Kaempfer's well-known work, which had already received at least a couple of English translations, from one of which it was made French.

13. Reid elaborates on the divine institution of marriage in a fragmentary manuscript (6/v/34, 1v) added here:

When God made Man and furnished this world with a variety of Creatures for his Use he thought it not good that he should be left alone, but made Woman as a help meet for him and commanded that a Man should leave his father and Mother and cleave unto his Wife, Marriage therefore being the institution of God himself and that in the State of innocence is justly declared by an inspired writer to be honourable in all.

The ends of this Institution being the mutual Comfort & happiness of both parties the regular propagation of the human Race & the right Education of Children it is abundantly evident that those who stand in this Relation ought to cultivate the most tender affection towards each other, to do their utmost to promote each other good both temporal & spiritual and if God bless them with Children to unite their Care and endeavours to train them up in the Nurture and admonition of the Lord & in such a Manner as may make them usefull members of Society. The different departments of Husband and Wife in this natural Society, are pointed out in the Constitution of the different Sexes. To the one Sex Nature has given more hardiness and Robustness of Constitution for toil & labour more Courage for Defence and greater steadines and constancy of Resolution for the Government of a Family. To the other more tenderness & delicacy fitted to domestick Oeconomy and Order, and for the nursing and training of children in their tender Years.

This manuscript consists of three folios. Folio 1, recto, is nearly full of notes on ‘Measures. 1 Space 2 Duration 3 Number’, while the verso side carries the lines of text printed here. The rest of the manuscript is blank. At the end of the first paragraph, Reid indicated that ‘by an inspired writer’ should be transposed from the end of the sentence to its present position. The ‘inspired writer’ is probably the unknown author of the New Testament letter to the Hebrews (see Heb. 13:4); to Reid the author would be known from the Authorised Version as Paul.

14. These historical reflections are clearly under the influence of Grotius, *War and Peace*, II.5.ix, and Pufendorf, *Law of Nature*, VI.1.xvi–xviii. The reference in Plutarch is *Lives*, IX.iv (p. 339) (‘Comparison of Demetrius and Antony’), Antony’s two simultaneous wives being

Octavia and Cleopatra (if he did marry the latter). The imperial law is *Codex*, V.5.ii (cf. *Digest*, III.2.i), and the penal clause is *Codex*, IX.9.xviii (it does not specify the death penalty, but the previous law concerning adultery does); these are both referred to by Pufendorf, *Law of Nature*, VI.1.xvi. As for Tacitus, see *Germania*, 18, quoted by both Grotius (*War and Peace*, II.5.ix, and by Pufendorf, *Law of Nature*, VI.1.xvi). The point about the Athenians and Cecrops (according to legend, the first king of Athens) is out of Athenaeus, *The Deipnosophists*, XIII.555d, while the Athenians' supposed later polygamy is exemplified by Socrates as represented in Diogenes Laertius, *Lives*, II.26 (p. 157), and Gellius, *Attic Nights*, XV.20.6. Cf. Reid's MS. 7/vii/20,2r (printed here, p. 129).

15. Milton, *Paradise Lost*, IV, lines 750–2, 754–7, 760 and 763–6.
16. Reid's fondness for the *Oeconomicus* was long-standing; he took notes from it in September 1750, as we see from 3/ii/4,2r (see the Introduction above, pp. xviii, xxi, xxii–xxiii). Heineccius was equally keen on the Xenophontian work (see *Universal Law*, II.78 and 79). We do not know which edition of the fragments of Cicero's translation of the *Oeconomicus* Reid was using. They were included in various collections. In the 1653 edition used here there are eleven fragments, which take up four small octavo pages.
17. For the comprehensive discussion of these topics in Reid's sources, see the references in the Commentary above at p. 238 n.3.
18. For the points in this paragraph, see the references in n. 14 above as well as above, p. 238 n. 3.
19. Euripides, *Andromache*, lines 177–80:
 

Bring not such things midst us! We count it shame  
That o'er two wives one man hold wedlock's reins;  
But to one lawful love men turn their eyes,  
Content – all such as look for peace in the home.

In his Latin text, Grotius quotes the same passage in the same Latin translation using the same introductory phrase ('Euripides. . . Hermiones'); see *De jure belli*, II.5.ix, note n.

20. Plautus, *Mercator*, IV.6, lines 824–5:

Now a wife, a good wife, is content with just  
her husband; why should a husband be less  
content with just his wife?

Quoted by Grotius, *De jure belli*, II.5.ix, note n., and by Barbeyrac, n. 4 to Pufendorf, *Law of Nature*, VI.1.xix.

21. Horace, *Odes*, III.6, lines 17–20: ‘Teeming with sin, our times have sullied first the marriage-bed, our offspring, and our homes; sprung from this source, disaster’s stream has overflowed the folk and fatherland’ (quoted by Pufendorf, *Law of Nature*, VI.1.v).
22. See Pufendorf, *Law of Nature*, VI.1.iv, and Hutcheson, *System*, II.155.
23. The ‘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’ (Hutcheson, *System*, II.166–7), were traditionally divided into the ‘natural’ (or ‘physical’) and the ‘moral’. The former were physical and mental illnesses and deficiencies, including too high or too low age. The latter were prior marital obligations or the ‘incestuous mixtures’ Reid refers to below. When Reid in the following paragraphs suggests that the abhorrence at incest is natural, it may be seen against the background of this distinction between the moral and the natural and, more especially, against Hume’s treatment of it. See Pufendorf, *Law of Nature*, VI.1.xxv, and *Duty of Man*, II.2.vii; Hutcheson, *Short Introduction*, pp. 262–3, and *System*, II.166–9. Furthermore, Reid’s suggestion about the natural abhorrence at incest may refer to Hutcheson’s (and others’) idea that it may derive from ‘some *positive* divine law in the earlier ages of the world’ (*Short Introduction*, p. 264, my emphasis; cf. *System*, II.170–2), an idea that must again be seen against the background of the discussion of what is prohibited by natural law and what by divine positive law in Grotius, *War and Peace*, II.5.xii–xiv, and Pufendorf, *Law of Nature*, VII.1.xxix–xxxv; cf. Reid’s point no. 8 below.
24. See the Commentary above at p. 238 n. 3.
25. See Grotius, *War and Peace*, II.5.xv: ‘there is a Sort of Concubinage, which is indeed a real and valid Marriage, tho’ it may not have some of those Effects that are peculiar to the Civil Right, or perhaps, may lose some natural Effects by an Obstruction from the Civil Law.’ It is presumably the latter that Reid is referring to in his subsequent point no. 7. Cf. Pufendorf, *Law of Nature*, VI.1.xxxvi; Hutcheson, *Short Introduction*, p. 262n., and *System*, II.162–3; Heineccius, *Universal Law*, II.42–3, where Turnbull’s note (p. 43) explains left-hand marriage in terms of ‘Morgengabe’ (morning present) marriage. Robert Jack’s report of Reid’s definition in 1776 of left-hand marriage is very wide – namely, simply as a second marriage (Jack, ‘Reid’s Lectures’, p. 593).
26. See Grotius, *War and Peace*, II.5.viii; Pufendorf, *Law of Nature*, VI.1.x–xiii, and *Duty of Man*, II.2.X; Hutcheson, *Short Introduction*, p. 266, and *System*, II.183–4; Heineccius, *Universal Law*, II.36–41.

27. See Grotius, *War and Peace*, II.5.x; Pufendorf, *Law of Nature*, VI.2.xiv, and *Duty of Man*, II.3.viii.
28. Here Reid was probably discussing the traditional topic whether man has a natural duty to marry; see Pufendorf, *Law of Nature*, VI.1.iii, vi–vii, and *Duty of Man*, II.2.iii; Hutcheson, *Short Introduction*, p. 259, and *System*, II.156; Heineccius, *Universal Law*, II.29–30.
29. This fragment, which in fact appears to be only a paraphrase, stems from Columella's *De re rustica*, preface to book XII (Cicero's editors erroneously say book XII, ch. 1). Cicero, *Fragmenta*, pp. 34–5, and Columella, *On Agriculture*, XII, preface:
- Xenophon . . . in the book . . . *Economicus*, declared that the married state was instituted by nature so that man might enter what was not only the most pleasant but also the most profitable partnership in life. For in the first place, as Cicero also says {in his translation}, man and woman were associated to prevent the human race from perishing in the passage of time; and, secondly, in order that, as a result of the same association, mortals might be provided with help and likewise defence in their old age.
30. Although Reid has not given any '1' to precede this '2', it is clear that topic no. 1 in oeconomical jurisprudence is the marriage relation dealt with above. For the present topic, see the Commentary above at pp. 238–41. nn. 4–8.
31. See the Commentary above at p. 269 n. 2.
32. See the Commentary above at pp. 238–40 and 241–2 nn. 5 and 10, and below, p. 276 n. 42. 'Nursing' may here be meant in the physical sense; cf. Hutcheson, *System*, II.191–2: 'children cannot be deemed accessions or fruits going along with the property of their parents bodies. . . . 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.'
33. For this tripartite division in natural law, see Grotius, *War and Peace*, II.5.ii, and Pufendorf, *Law of Nature*, VI.2.vii. It is presupposed in Pufendorf, *Duty of Man*, II.3.vi; Hutcheson, *System*, II.193–4; Heineccius, *Universal Law*, II.48.
34. See the Commentary above at p. 213 n. 55 and p. 241 n. 8.
35. See Grotius, *War and Peace*, II.5.vii; Pufendorf, *Law of Nature*, VI.2.xi; Hutcheson, *System*, II.192.

36. 'The antient Roman Laws having a Regard both to that Superiority which Nature gives to Parents, and to the Pains and Labour their Children cost them, and also willing that Children should be altogether subject to them; at the same Time, I presume, depending upon that Affection which Nature inspires Parents with, have indulged to Parents the Liberty (ius), if they please, either of selling or killing their Children with Impunity' (Simplicius, *Commentarius in Epicteti Enchiridion*, ch. XXXVII, p. 321, in the Schweighauser edition; Grotius was using the 1611 edition by D. Heinsius). This is quoted in the original Greek followed by a Latin translation in Grotius, *De jure belli*, II.5.vii, and Reid follows the latter. The English translation here is that presented in Grotius, *War and Peace*. In Stanhope's translation it is pp. 246–7.
37. Justinian, *Institutes*, I.ix.2: 'The power that we have in respect of our children is particular to Roman citizens: for there are no other men who have such power over their issue.' This passage is quoted in part in Grotius, *War and Peace*, II.5.vii, and in Pufendorf, *Law of Nature*, VI.2.xi (and, incidentally, in Stair, *Institutes*, I.5.13; cf. the Commentary above at p. 241 n. 8).
38. Just as the family or household society was thought of as composed of the three 'simple' societies (of husband and wife, of parents and children, and of master and servant; see the detailed analysis in Heineccius, *Universal Law*, II.73–80), so civil society was held to be composed of several families. Like Pufendorf (*Law of Nature*, VI.2.x–xi, and *Duty of Man*, II.3.vii) and to a lesser degree Grotius (*War and Peace*, II.6.xiii), Reid uses the present context to draw up the relationship between familial and civil societies. Behind this, of course, lies Aristotle's distinction between perfect and imperfect societies in book I, chs. 1–2, of the *Politics*. See Grotius, *War and Peace*, I.1.xiv; and Pufendorf, *Law of Nature*, VII.2.XX; Locke, *Treatises*, II.2; and for a brisk Harringtonian analysis, see Turnbull's Remarks in Heineccius, *Universal Law*, II.80–4.
39. The general references for and background to this topic were given in the Commentary above at pp. 241–2 nn. 9–10. Implicit in Reid's argument in the first paragraph below is a criticism of the general Aristotelian idea of natural inequality (cf. Aristotle, *Politics*, I.3, and Pufendorf's criticism thereof, *Law of Nature*, III.2.viii and VI.3.ii).
40. See Grotius, *War and Peace*, II.5.i: 'We have a Right, not only over Things, but over Persons too, and this Right is originally derived from Generation, from Consent, from some Crime.' Having rejected

- ‘Generation’ and having followed Carmichael and Hutcheson in refining ‘Consent’ (cf. Section XV), Reid naturally comes to this scheme. The subsequent contractual interpretation of the service-relation is close to that of Hutcheson, *Short Introduction*, p. 272, and *System*, II.199–200.
41. In connection with his implicit denial of the Roman idea that the child of a slave is by the law of nations (not so clearly by Roman civil law) like an accession or an usufruct born to be a slave too, Grotius raises the problem that such a child will nevertheless be bound to serve its mother’s owner in order to recompense him for its maintenance, if it ever can (*War and Peace*, II.5.xxix). Pufendorf maintains, however, that apart from being a legitimate accession or usufruct, such a child will never be able to ‘much exceed the Value of his Maintenance’ (*Duty of Man*, II.4.vi, and *Law of Nature*, VI.3.ix). This argument for ‘natural’ slavery is strongly denied by Carmichael and, following him, Hutcheson and here Reid (Carmichael, n. 3 in Pufendorf, *De officio*, p. 359 (Carmichael, *Natural Rights*, p. 143), cf. *ibid.*, supplement IV.7 (Carmichael, *Natural Rights*, pp. 115–16); Hutcheson, *Short Introduction*, p. 272, and *System*, II.200). The theory of man’s surplus productivity as an argument for free labour thus enters Scottish thought as an argument against slavery.
  42. Reid here reflects the most crucial of Carmichael’s arguments against Pufendorf in the dispute about natural slavery. Pufendorf had justified the idea that the child of a slave is also a slave ‘by this Maxim, That whosoever is Proprietor of the Body, is also Proprietor of whatsoever is the Product thereof’ (*Duty of Man*, II.4.vi). (For a similar argument, though based on the explicit idea of the child as an accession, see Heineccius, *Universal Law*, II.66.) Apart from exploiting Pufendorf’s vagueness and the complexity of the civil law in this question to deny that a slave child is a usufruct (Justinian, *Institutes*, II.i.37), Carmichael makes this point: ‘I add that since the soul, the nobler part of man, is not derived from the parents, it is fitting {*aequum*} that it should draw the more ignoble part to itself’ (Carmichael, n. 1 in Pufendorf, *De officio*, p. 358; translation in Carmichael, *Natural Rights*, p. 143). As one might expect of a man from a Calvinist background, Carmichael here suspects that, true to his Lutheran origins, Pufendorf is basing his standpoint on a traducianist view of the origins of individual human life. While his suspicion may well be wrong, it highlights the importance to Carmichael, and to Hutcheson and Reid, of the creationist line of argument, which was sketched above in the Commentary at pp. 238–40 and 241–2 nn. 5 and 10 (cf. also p. 274

- n. 32), according to which each individual is equally God's work. For Hutcheson, see *Short Introduction*, p. 277, and *System*, II.210, and for some uncharacteristically lame responses to Carmichael, see Barbeyrac's nn. 2–4 to Pufendorf, *Law of Nature*, p. 617.
43. Concerning delict, see Grotius, *War and Peace*, II.5.xxxii; Hutcheson, *Short Introduction*, pp. 273–74, and *System*, II.201–2. Concerning captivity, see the Commentary above at pp. 242–3 n. 12. 'Incapacity' probably refers to moral incapacity. Like Hutcheson, *System*, II.202, Reid thought that incurable immorality warranted public slavery (see Reid's manuscript 'Some Thoughts on the Utopian System', in *Reid on Society and Politics*).
44. See the Commentary above at p. 243 n. 13.

### XV. Social Contract as Implied Contract

1. See AP, p. 663a–b: 'the definition of {Pactum} in the Civil Law, and borrowed from Ulpian, is, *Duorum pluriumve in idem placitum consensus*. Titius, a modern Civilian, has endeavoured to make this definition more complete, by adding the words, *obligationis licite constituendae vel tollendae causa datus*. With this addition, the definition is, that a Contract is the consent of two or more persons in the same thing, given with the intention of constituting or dissolving lawfully some obligation.' The references here are *Digest*, II.xiv.1 (2) and Titius, Observation 198, pp. 261–2, in Pufendorf, *De officio*. Titius is, however, apparently quoting Ulpian after the *Digest*, IV.xii.3, which excludes the words 'in idem placitum', while both Carmichael and Hutcheson quote the fuller formulation and Carmichael renders Titius's addition as well (Carmichael, n. 1, pp. 161–2, in his edition of Pufendorf, *De officio*; and Hutcheson, *Philosophiae moralis Institutio compendiaria*, p. 182). Cf. Pufendorf, *Law of Nature*, III.6.xv, and Barbeyrac's notes.
2. For the wide concept of signs used here, see Grotius, *War and Peace*, II.4.iii–iv, III.1.viii, and III.24.i–ii (cf. also the distinction between perfect and imperfect promises explained in the Commentary above at pp. 214–15 n. 60); Pufendorf, *Law of Nature*, III.6.xvi, and *Duty of Man*, I.9.ix. Concerning silence as a sign of consent, see Grotius, *War and Peace*, II.4.v, and Pufendorf, *Law of Nature*, III.6.ii. Reid's examples in the sequel are akin to those of Pufendorf, *Law of Nature*, III.6.iii.
3. That is, 'about the faithful discharge of the office'.
4. In this manuscript, some of the most original elements of Reid's philosophy of mind meet with his theory of language and interpretation



(see the Commentary above at pp. 218 ff. nn. 78–93; and pp. 265 ff. nn. 10 ff.; and the Introduction, pp. lxxvii ff.) with the general theory of contract (see above, pp. 214 ff., nn. 59 ff.) and, more especially, with his ideas on implied contract and social contract (see pp. 230–4 nn. 122–7; and pp. 285 ff. nn. 4 ff.). In order to unravel the context of Reid's discussion in the opening pages of the manuscript, it will be necessary to enter into interpretation of Reid himself further than is generally the case in this commentary.

Behind Reid's idea of language here and elsewhere lies his important distinction between 'solitary' and 'social' acts of mind (see IP, pp. 68–70, and AP, pp. 663b–666b). The central point is that, in contrast to the solitary, the social acts of the mind presuppose the existence and (in some sense) presence of another mind or other minds. Social acts are necessarily communicative and thus a matter of signs, while solitary acts may or may not be expressed. Examples of the latter are seeing, hearing, remembering, judging, reasoning, deliberating, deciding, while examples of the former are questioning, testifying, commanding, promising, contracting, and the like. For mental acts to be social, there must be a community of signs so that mutual understanding is possible, and nature has in fact provided such a community of signs. First, body language is highly communicative, not only among humans but also in rudimentary form among animals, and indeed between humans and animals. 'But there are two operations of the social kind, of which the brute animals seem to be altogether incapable. They can neither plight their veracity by testimony, nor their fidelity by any engagement or promise' (AP p. 665b).

This parallel between veracity and fidelity is a good indication of the character of Reid's theory. Contrary to the first impression one might form, Reid's idea of social acts of the mind is not a theory of language-game in the modern sense. Just as a descriptive account, whose veracity we may testify to, refers to some objective feature of the world, so 'engagements', whose obligation we may pledge fidelity to, refer to something objective. Or rather, such engagements, though established by us through the use of some sign or other, have objective features, such as obligatoriness, which are immediately perceived by all – which is the same as saying that the signs that establish engagements constitute a language universally natural and objective to humanity. This is the point in the opening pages of the present manuscript, and it gives us the clue to some of Reid's background here – namely, Wollaston, Hutcheson and Hume.

In his *Illustrations upon the Moral Sense*, Hutcheson has a lengthy discussion of Wollaston that begins: ‘Mr. Woolaston {in his *Religion of Nature Delineated*} has introduced a new Explication of moral Virtue, viz. Significancy of Truth in Actions, supposing that in every Action there is some Significancy, like to that which Moralists and Civilians speak of in their Tacit Conventions, and Quasi Contractus!’ (p. 253). After a number of criticisms, many of which anticipate Hume (*Treatise*, III.i.1 and note therein on pp. 461–2), Hutcheson ends the section thus: ‘It may perhaps not seem improper on this occasion to observe, that in the Quasi Contractus, the Civilians do not imagine any Act of the Mind of the Person obliged to be really signified, but by a sort of  *fictio juris*  supposing it, order him to act as if he had contracted, even when they know that he had contrary Intension. In the Tacit Conventions, ’tis not a Judgment which is signified, but an Act of the Will transferring Right, in which there is no Relation to Truth or Falsehood of itself. The Non-performance of Covenants is made penal, not because of their signifying Falshoods, as if this were the Crime in them: But it is necessary, in order to preserve Commerce in any Society, to make effectual all Declarations of Consent to transfer Rights by any usual Signs, otherwise there could be no Certainty in Mens Transactions’ (*Illustrations*, pp. 273–4). Leaving aside for the moment (see n. 9 below) the distinction between implied contract and tacit contract, Hutcheson’s discussion of Wollaston along with the well-known one by Hume, referred to above, should make it clear that what Reid wanted to avoid was the idea that the virtue of fidelity is (like) the truth value of propositions (actions), but without making it dependent upon something that he saw as external to the action, such as utility. This was achieved by the idea that the action (of promising, etc.) immediately establishes a moral fact of universal validity that can be understood by our moral powers. In this sense the roles of human life or man’s offices, as he calls them in this deeply Ciceronian discussion, are objective moral facts established quasi ex contractu through the non-referential and non-relativistic system of signs called the social acts of the mind.

5. See the explanation in the Commentary above at pp. 269–70 n. 8.
6. For Rehoboam, see 1 Kings 12:12–19. This was a commonly cited case in Reid’s favourite political writers (see Machiavelli, *Discourses*, I.19.2; Harrington, *Oceana*, p. 236; *Pian Piano*, pp. 379–80; *Prerogative of Popular Government*, pp. 450 and 476). Richard II was a similarly common *bête noire* in the historiography utilised in the ideology of

eighteenth-century Country opposition. See, e.g., Bolingbroke, *Remarks on the History of England*, p. 329: ‘Richard the second . . . had a brutality and a good opinion of himself. . . . Hence came those famous and foolish sayings of this prince . . . which gave his people timely warning what they had to expect from him. Of his commons he said, “that slaves they were, and slaves they should be”’.

7. King James I and VI, ‘A Speech to the Lords and Commons of the Parliament at White-Hall’, *Workes*, pp. 530–1:

in the first originall of Kings, whereof some had their beginning by Conquest, and some by election of the people, their wills at that time served for Law; Yet how soone Kingdomes began to be settled in ciuiliti and policie, then did Kings set downe their minds by Lawes, which are properly made by the King onely; but at the rogation of the people, the Kings grant being obtained thereunto. And so the King became to be *Lex loquens*, after a sort, binding himselfe by a double oath to the obseruasion of the fundamentall Lawes of his kingdome: Tacitly, as by being a King, and so bound to protect aswell the people, as the Lawes of his Kingdome; And Expresly, by his oath at his Coronation: So as euery iust King in a settled Kingdome is bound to obserue that paction made to his people by his Lawes, in framing his gouernment agreeable thereunto, according to that paction which God made with Noe after the deluge.

8. We do not know whence Reid got his information about the proceedings of Parliament, but in this case he could have taken it from numerous sources since the implications of the wording of this resolution had been a central point in the political debate for decades after it was passed. A typical source would be an anonymous pamphlet, *The Revolution Vindicated* (probably by Bishop Burnet), printed in *State Tracts*, vol. 3, p. 715:

On the 28th of January the Commons pass’d the following Vote: ‘That King James II. having endeavour’d to subvert the Constitution of this Kingdom, by breaking the Original Contract between King and People; and by the Advice of Jesuits and other wicked Persons having violated the Fundamental Laws, and having withdrawn himself out of this Kingdom, hath abdicated the Government, and that the Throne is thereby vacant.’ This Vote occasion’d several

Conferences between the two Houses, which ended at last in the Lords assenting on the 6th of February to the Vote as it is here.

9. Hume's concession is in 'Of the Original Contract', *Essays*, 2:445. It should be remarked, however, that in the last, posthumous revision of his *Essays* Hume added a paragraph (*ibid.*, 2:445–6) heavily qualifying the concession and that he had previously in the essay on the 'Origin of Government' (1774) already avoided a contractarian account of the institution of government. This is relevant to any speculation about the likely date of Reid's composition of the present manuscript. Reid's use of the idea of an implied contract as basis for civil society is a late high point in the peculiar Scots debate about the original contract that Carmichael had started when he tried to use Locke's idea of consent to rebut Titius's and Barbeyrac's criticism of the historicity of this contract (see the Commentary below at pp. 285 ff. n. 4). It was Carmichael's assertion (and Hutcheson's after him) that allegiance to government was derived from a historically real original contract, which gave Hume's well-known criticism a polemical point it would hardly have had if it had been aimed simply at Locke. The central point in Hume's argument was that the contractual origins of civil society, if it had such origins, were irrelevant to the question of what justifies subsequent allegiance. This did not, however, affect the argument that Hutcheson put briefly and in passing, namely that the continuation of allegiance beyond the original contract is to be understood as a quasi-contractual relationship (*Short Introduction*, pp. 286–7, and *System*, II.228–31). It is precisely this argument that Reid is spelling out in the present manuscript, but at the same time he makes it perfectly clear, as appears below, that the question of historical origins is entirely irrelevant to the justification of government. The paternity of a given set of civil relations does not justify them; only the discharging of the offices they establish does – in any period of human history (see above).

While Hume did not explicitly attack Hutcheson's idea of quasi-contract as the foundation for continued allegiance, he did criticize something that was apparently very similar, namely, the more common idea of tacit consent:

Should it be said, that, by living under the dominion of a prince, which one might leave, every individual has given a tacit consent to his authority, and promised him obedience; it may be answered, that such an implied consent can only have

place, where a man imagines, that the matter depends on his choice. But where he thinks (as all mankind do who are born under established governments) that by his birth he owes allegiance to a certain prince or certain form of government; it would be absurd to infer a consent or choice, which he expressly, in this case, renounces and disclaims. Can we seriously say, that a poor peasant or artizan has a free choice to leave his country, when he knows no foreign language or manners, and lives from day to day, by the small wages which he acquires? We may as well assert, that a man, by remaining in a vessel, freely consents to the dominion of the master; though he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her. ('Of the Original Contract', p. 451)

While this criticism may have force against tacit consent, it does not hit the notion of implied contract so well, and it seems likely that one of Reid's primary targets in spelling out this notion was to show the inadequacy of Hume's criticism. First, Reid emphasises that the relationship is symmetrical: there are duties and rights on both sides. Secondly, he points out that at least one side in the political 'contract' – the ruler – has a very high degree of freedom in the assumption of his office. Thirdly, he maintains that collectively the governed have a high degree of freedom. Finally, he suggests below that allegiance is a matter of degree that depends on how much is contracted for in the 'contract', so that while Hume's peasant has few rights he also has few duties.

If this interpretation of Reid is correct, it helps us to single out the wider context in which we must read him, for it seems to make it clear that implied contract as used here is essentially different from tacit consent. Hume's criticism of the latter presupposes that obligation arises when the will of the obligee is signalled, even if only tacitly. By contrast, in the tradition upon which Reid is drawing, the hallmark of an implied contract is that the will of the contracting parties is irrelevant to the establishment of an obligation. Based upon a fund of Roman law (see the Commentary above at pp. 231–4 nn. 123–7), this point was made by Titius, Observations 205 and 206, pp. 268–9, in his Pufendorf, *De officio*; by Barbeyrac, n. 1, p. 274, of Pufendorf, *Law of Nature* (and cf. n. 7, p. 454, and n. 1, p. 600); by Carmichael, supplement IV.2, pp. 278–9, in his Pufendorf, *De officio* (Carmichael, *Natural Rights*, p. 113); and by Hutcheson, *Short Introduction*, p. 287, and

*System*, II.228 (cf. *Illustrations*, p. 273, quoted in n. 4 above). Barbeyrac puts it particularly well:

A tacit Consent properly arises from certain Things, which appear done, or omitted on Purpose; but yet, of themselves, do not imply directly an Approbation of the Thing that is doing. The Circumstances then may be reasonably supposed to explain the Will of him, who knowing them, also knows the Consequences which those concern'd may draw from them. But there is another Sort of Consent, which the Roman Lawyers, or their Interpreters, call'd sometimes tacit, or presumptive, tho' it be purely imaginary, as they own'd themselves. This is when a Person doth not think, nor, indeed, can think, of the Engagement he enters into, because he is ignorant on what it is founded; yet he is still supposed to acquiesce in it, because we presume, that if he knew the Thing, either he would, or should, consent to it, according to the Maxims of natural Equity; or, because the Laws, on Account of the publick Good, take it for granted, that every Man is bound to fulfil his Engagements. (Barbeyrac, n. 1, p. 274, in Pufendorf, *Law of Nature*)

When this is transposed from the juridical to the political, we have Reid's idea of the relationship between rulers and ruled. This is not (or at least not commonly) a relationship established and justified by signalling a will to be bound in this particular way; it flows from our obligation to accept all the consequences, even unknown ones, that are implied by some of the various roles, or offices, that constitute our lives as moral beings. Consequently, the relevant moral freedom is not that of consenting or not, in isolation, but rather that of choosing between alternative roles or offices with their more or less known but (as they arise) knowable duties (cf. n. 4 above).

10. Written vertically in the left-hand margin and without any obvious anchor in the text is one of Reid's favorite quotations from Cicero, *De re publica*, II.xliv (70): 'Nihil est quod adhuc de Republica putem dictum, et quo possim longius progredi, nisi sit confirmatum, non modo falsum esse illud, sine injuria non posse, sed hoc verissimum, sine summa Justitia Rempublicam regi non posse.' See note 3, p. 246 above.
11. See Hume, 'Of the Original Contract', *Essays*, 2:444. As for Angria, see Defoe, *A General History of the Pyrates*, p. 124:

Angria is a famous Indian Pyrate, of considerable Strength and Territories, that gives continual Disturbance to the European (and especially the English) Trade: His chief Hold is Callaba, not many Leagues from Bombay, and has one Island in Sight of that Port, whereby he gains frequent Opportunities of annoying the Company. It would not be so insuperable a Difficulty to suppress him, if the Shallowness of the Water did not prevent Ships of War coming nigh: And a better Art he has, of bribing the Mogul's Ministers for Protection, when he finds an Enemy too powerful.

This pirate dynasty thrived until Tulagee Angria was finally defeated in 1756.

12. Speaking of people's supposed consent to government, Hume says (*Essays*, 2:447):

It is strange, that an act of the mind, which every individual is supposed to have formed, and after he came to the use of reason too, otherwise it could have no authority; that this act, I say, should be so much unknown to all of them, that, over the face of the whole earth, there scarcely remain any traces or memory of it.

13. Hume, *Essays*, 2:452.  
 14. Hume, *Essays*, 2:454–5.  
 15. Hume, *Essays*, 2:460.  
 16. Hume, *Essays*, 2:459.  
 17. Hume, *Essays*, 2:455–6.  
 18. It appears that some of the following points were issues for discussion rather than statements of Reid's opinion. The sense is: The ways in which obligation is contracted – from contract, from quasi-contract, from delict, or from quasi-delict. This is the fourfold division of obligations according to their origin as stated in Justinian, *Institutes*, III.xiii.2, and presupposed by the natural lawyers, who, however, hardly use the fourth. The first sentence appears to echo the 'title' that immediately follows in the *Institutes*: 'Quibus modis re contrahitur obligatio' ('The ways in which a real obligation is contracted'), real obligations being one of the four subdivisions of contractual obligations. Of the four *modi* mentioned by Reid, we have met with all except quasi-delict. This is dealt with in the *Institutes*, IV.v, and explained by Barbeyrac in n. 8 to Grotius, *War and Peace*, II.1.ii (1), where the four *modi* are also stated. Says Barbeyrac: 'Roman Lawyers by {quasi maleficio} understood certain

Trespasses, in Consequence of which the Person is obliged to Indemnification, tho' it was not committed with a bad Intention, or even was committed by another, without the least Concurrence of the Defendant.'

19. If Reid had said 'tacit consent' and if he had been stating his opinion and not, perhaps, points for discussion, this would contradict the interpretation offered in n. 9 above.

## XVI. Political Jurisprudence

1. Presumably Reid found his brief treatment of political jurisprudence in 1765 unsatisfactory, which is understandable (see Section VII of this book), and decided to rewrite this part of the course for the following year. In the process his distinction between political jurisprudence and 'the Science of Politicks' had firmed to a basic organisational principle that led him to his most significant deviation from the Pufendorfan – Hutchesonian systematics (but see also, on his rearrangement of the topic of price and value, the Commentary at p. 225 n. 106). In his lectures in 1776, Reid explained how he had been led to this central distinction: 'the only two who have distinguished them (i.e. political jurisprudence and the science of politics) have been Matchiavel & Harrington who seem to have understood it better than some {any?} other' (Jack, 'Reid's Lectures', p. 611). It is therefore not surprising to see Reid associate himself with aspects of that distinctive mode of neo-classical republicanism which had developed in Britain, especially since 1688.
2. See the lectures on politics, esp. 4/III/3.
3. See Grotius, *War and Peace*, I.3.viii; Hobbes, *De cive*, ch. v, and *Leviathan*, ch. XVII; Pufendorf, *Law of Nature*, VII.1, and *Duty of Man*, II.5; Locke, *Second Treatise*, ch. 8; Hutcheson, *Short Introduction*, pp. 279–84, and *System*, II.212–25; Heineccius, *Universal Law*, II.85–91, and Turnbull's Remarks, *ibid.*, pp. 109–19, which include a Harringtonian analysis of the topic (pp. 112 ff.).
4. The distinction between the *quid facti* and the *quid iuris* of government was not exactly a novelty, and in Reid's immediate sources it was stated explicitly by, for example, Heineccius, *Universal Law*, II.91, Turnbull's Remarks, *ibid.*, pp. 110–11, and Hutcheson, *System*, II.224–5: 'we are inquiring into the just and wise motives to enter into civil polity, and the ways it can be justly constituted; and not into points of history about



facts.’ The context for Reid’s discussion of this issue is complicated, and only a few pointers can be offered here. While justification by history was still prevalent in the political debate in Britain, it would have been abundantly clear to a man of Reid’s intellect and political inclination that this was at least a two-edged sword or, by the time of his lectures, a game at which two or more could play. Despite innumerable rescue attempts, the general idea of the immemorial and justifying antiquity of the British constitution, and especially of the Parliament, as a charter of liberty could well be seen by someone like Reid to have been significantly weakened or at least shaken by a succession of historical inquiries from, say, Robert Brady’s *Introduction to the Old English History* (1684) and *Complete History of England*, vol. 1 (1685), to Hume’s recent *History of England*. Similarly and of more direct importance, it was exactly the difficulty of finding a historical justification for the settlement of the crown on William III and for the Hanoverian succession that had made the post-1688 debate so extraordinarily vigorous, and Reid would have had fresh in his mind Hume’s well-known argument that, while the Revolution settlement was hardly justifiable in 1688–89, it had become so retrospectively, so to speak.

Hence it may well have concerned sympathetic Scottish spectators that the English Whigs often failed to distinguish between the idea of an ancient, free constitution and that of an original contract, using them more or less interchangeably. In consequence, the logic of the contractual argument seemed to be not fully appreciated – witness the fact that the English defence of the Revolution did not always find much use for Locke’s abstract idea of the original contract. In Scotland, on the other hand, a keener and continuing interest in natural law carried with it a preoccupation with the contractual ideas of Locke and others. This complicates Reid’s situation in an interesting way. Two of Pufendorf’s editors – Titius and, following him, Barbeyrac – had 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.vii–viii, and *Duty of Man*, II.6.vii–ix). Against this they maintained that civil society was a slow growth from small beginnings and that it was entered into from a variety of motives (Titius, Observations 547 and 550, esp. pp. 530–2 and 534, in his edition of Pufendorf, *De officio*; Barbeyrac, n. 2 to Pufendorf, *Law of Nature*,

VII.I.vii, pp. 625–7). This criticism is rejected by Carmichael, who argues that Pufendorf's theory does not require that men actually entered civil society by means of a contract but only that once men are in civil society the basis for their membership is contractual, whatever the vicissitudes of history that brought them there. Further, the presupposition of a contract in this sense is necessary, albeit not inevitably in the precise form specified by Pufendorf. For one thing, the 'historical' examples of adoption into a social combination by violence – alleged by Titius and Barbeyrac – 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, however, is the moral necessity – namely, that God via the law of nature has commanded that contracts be entered into in order to realise the ends of natural law. This implies that any overlordship not based on contract is not over men as moral beings, beings under natural law. In short, if civil society is based on contract, it is perpetual and unbreakable because it exists by divine authority. The alternative seems to be that civil society is dependent on the continuity of government, especially an unbroken succession of monarchs, and that consequently 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' (*Second Treatise*, sec. 220).

For Carmichael, Hutcheson and Reid this line of argument is undoubtedly also a translation into contractual terms of the well-known (for them 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 in its original English form 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 and well summed up by

Thomas Long: ‘The Ordinance of Government is from God and Nature, but the species of it, whether by one or more, is from Men; and the Rule for Administration, is by mutual Agreement of the Governor, and those that are govern’d’ (*A Resolution of Certain Queries concerning Submission to the Present Government*, p. 443; cf. Hoadly, *Original and Institution of Civil Government*, pp. 144–5). At the same time, the contractual translation of this ensured that the people, as a body of 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, and it is clear that he did so because he was beginning to see 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.viii and VII.1.vii, see also Carmichael’s notes to Pufendorf, *De officio*, II.5.vii and II.6.ix and xiv; Carmichael, *Natural Rights*, pp. 146–53, 155–6). The tendency of this argument was to make the question of origins irrelevant to justification, and this was precisely Reid’s starting point, but to make this effective he had to interpret the contractual basis for civil society in the quasi-contractual terms that we find in his important paper 2/II/10, printed in this book in Section XV. He was also driven in this direction by the need to counter a more recent argument critical of contract theories: Hume’s attempt to found government on its socio-psychological ‘origins’. This leads to the final feature of Reid’s position to be mentioned here, a point that of necessity is interpretative of Reid. As a moral realist, for whom moral relations were objective features of the world exhibited in action, Reid could never have had any real use for historical justifications; whatever its origins, government was justified if it did the objectively right thing. This dictated the form his ‘contract’ theory had to take, as we see in MS. 2/II/10.

5. See Hutcheson, *System*, II.218.
6. Reid is undoubtedly thinking of Rousseau’s repeated use of Defoe’s novel in *Émile*, especially book III (see, e.g., pp. 455–60), but see also *Contrat social*, I.2 (p. 354); the contrast is primarily with *L’Origine de l’inégalité*. Reid refers to the events that inspired Defoe in 4/I/30 (not in this volume).

7. The following four points are specifications of the previous ‘1 We are fitted . . .’.
8. *χτισις*: ordinance; *ανθρωπινη*: human. Reid’s Greek hand is somewhat shaky, and the transcription rendered here would be conjectural if made in isolation. The context does, however, suggest a biblical reference, and this is confirmed by Robert Jack’s notes from Reid’s corresponding lecture in 1776:

we shall deduce some corrolaries first we may see whether {government} is a divine or human ordinance in the sacred scriptures it is called *χτισις ανθρωπου* & also *χτισις θεου* surely the particular government the particular form of government is a human Institution, but the Institution itself seems to be of divine origin. (Jack, ‘Reid’s Lectures’, p. 627)

The Greek may be bad, but the passage makes it plain that Reid’s point is in fact borrowed. Take Carmichael (n. 1, pp. 383–4, in Pufendorf, *De officio*): ‘Imperium Civile Auctori Deo recte tribuitur, etiam dum ab Hominibus immediate constituitur; estque simul, ut uni atque alteri Apostolo nuncupatur, *τη του θεου διαταγη* (Epist. ad Rom. XIII.2) & *Ανθρωπινη χτισις* (I. Pet. II.13)’ (‘Civil government is rightly ascribed to the authorship of God, even while it is constituted directly by men. As has been declared by two of the apostles, government is “the ordinance of God” (Epistle to the Romans, 13:2), and it is also a “human creation” (I Peter 2:13).’ Carmichael, *Natural Rights*, p. 155). The same point is made with the same biblical references in Grotius, *War and Peace*, I.4.vii (cf. Locke, *First Treatise*, see. 6), and in this form it was constantly repeated in much of the English literature referred to in n. 14 below. Romans 13 was the most popular biblical justification for absolute submission, and consequently Whigs, republicans, and so forth had to counter it by reinterpretation and by citation of other biblical texts. Reid does the latter in the two quotations below at nn. 12 and 13, and we get the tone of the former from an interesting and typical anonymous Scottish tract that was included in the well-known *Collection of State Tracts*: ‘But because the 13th of the Romans enjoining Obedience and Submission to the higher Powers, and forbidding Resistance, is so violently urg’d, I shall briefly consider it. And, 1. some, upon very good Grounds, think that the Apostle here by Power understands it in the Abstract, that Magistracy or Government is of Divine Appointment; but in the Concrete, as it relates to the Person or Persons vested with this Power, it is of Humane Extract, and therefore call’d by

the Apostle Peter the Ordinance of Man, which implies the Consent of the People to be necessary in bestowing of it upon one or more; as the Consent of the Persons who enter into a married State is that which determines the Bargain, tho it is certain that Marriage is as well an Ordinance of God as Magistracy, and it is evident the Greek text warrants this Sense and Explanation' (*A Vindication of the Proceedings of the Convention of the Estates in Scotland*, p. 453).

9. Pope, *An Essay on Man*, epistle III, ll. 304–5.
10. This is the theme of 2/II/10 (Section XV of this book); see also n. 4 above. Concerning onerous contracts in general, see the Commentary at pp. 226 ff. nn. 109 ff.
11. These examples derive from Vattel; see Reid's notes on Vattel in the manuscript, pp. 169–70, and see the Commentary at p. 316 n. 103.
12. Dan. 3:18.
13. Acts 4:18–19.
14. The context of Reid's discussion in these pages of authority, submission and resistance in political society is rich and complex, as indicated by the list of names given here, to which should be added that of Milton, which was included in the corresponding list for the previous year (see Reid's manuscript above at p. 76). Judging from Robert Jack's notes of 1776, the 'Opinion of the Ancient Nations' here simply provided some conventional wisdom out of Livy, especially: 'the ancients have made this distinction between these two. Civil Liberty is according to them a government of laws, Tyranny a government of men' (Jack, 'Reid's Lectures', p. 645). Disregarding the symbolic constant presence of Socrates (as immediately below), Reid begins the story with Grotius, Hobbes and Pufendorf, as indicated in this text. The logic of a contractual basis for political authority implies that there are mutual rights and obligations between governors and governed and consequently that either party may be wronged or injured by the other. Grotius and Pufendorf sought to avoid the potentially radical applications of this in a variety of ways. First, it is emphasised, especially by Grotius, that the contract establishing political authority simply makes it unrightful to resist this authority; the content of the contract is exactly to this purpose. This is, however, a theoretically ambiguous standpoint, for while it takes away the right of the governed to exercise the rights established by the original contract, it does not take away these rights themselves, and especially not the right to be governed by a proper political authority. If the ruler therefore no longer plays his role but becomes an

enemy, a tyrant, or the like, then there is an ultimate right to resist. This may, however, be whittled down by reference to the demands of Christian ethics (as we shall see below) and, as in Pufendorf, by the argument that because public affairs are so complex, the governed commonly do not have sufficient knowledge to see whether they are being wronged under the terms of the contract, and that in any case the point of the contract is to establish a governor to know on their behalf. See Grotius, *War and Peace*, I.4; Pufendorf, *Law of Nature*, VII.8, and *Duty of Man*, II.9.iv.

Hobbes tried to avoid these problems by denying that the concept of injury had any application for a governor's actions toward his subjects, because while the foundation of government was contractual it did not involve the ruler as a party to the contract. Consequently, although there might be de facto resistance, there could be no right of resistance (*De cive*, VII.7, 9, 12 and 14; *Leviathan*, ch. 18, pp. 228–32). The term 'high flyer' has been put to many uses. Reid was hardly referring to loose women, but was he, as had been common, referring to 'high church' men and Tories or, in view of the names immediately following, was he referring to the Puritans in the English revolution, thus helping turn the phrase into a (Scottish) label for evangelicals? In the latter case, the passage may have served the same function as Reid's reference to Milton in the previous year. For Reid, Milton had undoubtedly flown too high by defending the Puritans' execution of Charles I, an action hitherto unheard of in any age, as Carmichael said, and perpetrated by a *furiosa Factio* 'which had previously oppressed the state itself with armed violence' (Carmichael, n. 1, p. 408, in Pufendorf, *De officio*, II.9.iv; Carmichael, *Natural Rights*, p. 168. The natural lawyers generally upheld a distinction between resisting the civil magistrate and killing his person.) That apart, Milton could undoubtedly be adapted to support Reid's political line as sketched in the following. We do not know to which of Milton's relevant works Reid was referring, but it is a safe guess that he would be well acquainted at least with *The Tenure of Kings and Magistrates*, *Eikonoklastes* and *A Defence of the People of England*. Each of the two opposing groups that follow in the text constitutes a motley assembly that had been pressed into service together by the ideological debate in Britain since the Revolution. Richard Hooker was closely associated with Locke because of the latter's frequent use of Hooker in the *Second Treatise*, a book that may have had more impact in Scotland than in England. Hooker did, however, have a much wider appeal because of his formulation of the central idea of the

Anglican view of church government as of civil government (see n. 4 above). For the present context, see especially Hooker, *Of the Laws of Ecclesiastical Polity*, book 1, pp. 185–98, and book VIII, pp. 390–405. Algernon Sidney, the republican martyr, inspired as he was by Machiavelli and espousing the view that the proper basis for civil government was in effect an aristocracy of virtue, must have been particularly congenial to Reid. The whole of book III of the *Discourses concerning Government*, following upon a close rebuttal of Filmer, must for Reid have been a classical text on the issues raised here (esp. secs. 1, 10, 12, 20, 36). While Locke's role in the English post-Revolution debate may have been a limited one, he was always significant for Scottish thinkers because of their close adherence to the natural law framework and especially their concern with the exact requirements of a contractual basis for civil society (as indicated in n. 4 above). In the present context, see especially *First Treatise*, secs. 104–5, 109–11 and 120 ff., and *Second Treatise*, ch. XVIII.

Bishop Benjamin Hoadly was one of the most effective and influential Whig Anglican polemicists during the first two decades of the eighteenth century, and many of Reid's subsequent formulations have a Hoadlian tone. Amid a host of pamphlets and published sermons, Hoadly's main work was *The Original and Institution of Civil Government*, of which the first chapter is a fierce attack on Filmer and patriarchalism, while the second presents his theoretical basis as a Hooker-inspired contractualism. Hoadly's criticism of Filmer was savaged by the non-juror Charles Leslie in *The Finishing Stroke*, which was one of the high points in a barrage of anti-Locke and anti-Whig Filmerian polemics, first published in Leslie's weekly the *Rehearsal* and subsequently as tracts. A different attack on Whig principles came from Bishop Francis Atterbury, a High Tory divine who published a large number of sermons and tracts setting out a theory of the providential appointment of every government and criticising all forms of contract-based and rights-based resistance theory. In a famous sermon in 1709 he used Rom. 13:1 in a way that was typical of all those of his persuasion to press the idea of passive obedience; this was answered by Hoadly in a tract added to his *Original and Institution of Civil Government* (see Atterbury, 'Omnis Anima Potestatibus sublimioribus subdita sit', *Sermons and Discourses*, 2:309–75). Reid may also have known Atterbury's *Voice of the People No Voice of God*, an answer to the anonymous and popular *Vox populi vox Dei*.

‘Barclay’ is in fact written above ‘Hoadly’, undoubtedly because there was no other space, ‘Leslie Atterbury’ being written above ‘Hobbes Filmer’, where Barclay’s name properly belongs. William Barclay, a Scots jurist writing in France, was well known for his defence of absolutism in his *De regno et regali potestate, adversus Buchananum, Brutum, Boucherium, et reliquos Monarchomachos* (1600) and for his attack on papal pretences to authority over temporal government in the posthumous *De potestate Papae: an, et quatenus, in reges et principes seculares jus et imperium habeat* (1609); see n. 19 below.

15. These extracts are in Reid’s MS. 4/III/23c,2r, printed below, pp. 169–70.
16. See one of Hoadly’s early attempts to defuse Rom. 13: 1 as a support for the doctrine of passive obedience: ‘tho’ {the ruler’s} Authority in carrying forward the End of his Power cannot be resisted without the highest Guilt; yet his Authority in acting contrary to that End may be oppos’d without the shadow of a Crime; nay, with Honour and Glory’ (‘A Sermon Preached before the . . . Lord-Mayor’, p. 15).
17. In criticising patriarchalism, the usual argument was that civil government could not be assimilated with parental authority, but even if it could it would not serve the protagonists of absolute submission, because parental authority was not unlimited and irresistible. See, e.g., Hoadly, *Original and Institution of Civil Government*, pp. 15–35.
18. See Grotius, *War and Peace*, I.4.vii (drawing on 1 Macc. 2:34–41 and 1 Sam. 22:2–23:18):

A more difficult Question is, whether the Law of Non-resistance obliges us in the most extreme and inevitable Danger. For some of the Laws of God, however general they be, seem to admit of tacit Exceptions in Cases of extreme Necessity; for so it was determined by the Jewish Doctors concerning the Law of their Sabbath in the Time of the Maccabees; whence arose the famous Saying, ‘The Danger of Life drives away the Sabbath.’

. . . .

I dare not condemn indifferently all private Persons, or a small Part of the People, who finding themselves reduced to the last Extremity, have made use of the only Remedy left them, in such a Manner as they have not neglected in the mean Time



to take care, as far as they were able, of the publick Good. For David, who. . . was so famed for living exactly according to Law, did yet entertain about him, first four hundred, and afterwards more, armed Men; and to what End did he so, unless for the Defence of his own Person, in Case he should be attacked? But we must also observe, that David did not do this till he was assured by Jonathan, and many other infallible Proofs, that Saul really sought his Life.

19. Having argued (*War and Peace*, I.4.vii) that according to Christian ethics ‘those who are invested with the sovereign Power, cannot lawfully be resisted’, Grotius goes on to state seven rules of exemption (*ibid.*, viii–xiv):

First . . . Those Princes who depend on the People . . . if they offend against the Laws, and the State, may not only be resisted by Force; but if it be necessary, may be punished by Death . . . Secondly, If a King . . . has abdicated his Government, or manifestly abandoned it; after that Time, we may do the same to him, as to any private Man. . . . Thirdly, If a King alienates his Kingdom; or renders it dependent on any other Power, he forfeits the Crown, according to Barclay. {Grotius qualifies this} . . . Fourthly, The same Barclay observes, that if a King shall, like an Enemy, design the utter Destruction of the whole Body of his People, he loses his Kingdom; which I grant. . . . Fifthly, If a Kingdom be forfeited, either for Felony against him of whom it is a Fief, or {in breach of the conditions for conferring the sovereignty}, then also a King becomes a private Person. Sixthly, If a King should have but one Part of the sovereign Power, and the Senate or People the other, if such a King shall invade that Part which is not his own, he may justly be resisted, because he is not Sovereign in that Respect. . . . Seventhly, If in the conferring of the Crown, it be expressly stipulated, that in some certain Cases the King may be resisted; even though that Clause does not imply any Division of the Sovereignty, yet certainly some Part of natural Liberty is reserved to the People, and exempted from the Power of the King.

A little earlier (see. viii) we find: ‘Barclay, the stoutest {*fortissimus*} Assertor of Regal Power, does thus far allow that the People, or a

considerable part of them, have a Right to defend themselves against their King, when he becomes excessively cruel; tho' otherwise, that Author considers the King as above the whole Body of the People.' The relevant passage in Barclay is quoted at length by Locke, *Second Treatise*, sec. 232, who frequently refers to Barclay, and as his editor says, between Grotius and Locke it has become conventional to see Barclay as the typical absolutist who makes concessions to the idea of resistance (Locke, *Two Treatises*, p. 443n.) The relevant references in Barclay are *De regno et regali potestate*, III.8 and 16.

20. Pufendorf, *Law of Nature*, VII.8.vii.
21. While the general idea is to be found repeatedly in Burnet's extensive *oeuvre*, especially the *History of the Reformation in England*, I have not found a formulation resembling the present one.
22. This is further developed in 1794 in the first five pages of Reid's paper on the Utopian System (in *Reid on Society and Politics*), where Reid considers the situation of Britain in the aftermath of the French Revolution.

## XVII. Rights and Duties of States

1. Reid generally followed the Pufendorfan taxonomy and reserved the label 'political jurisprudence' for the political relations of the individual, but here he makes it cover both individual and collective political relations. This is undoubtedly due to the influence of Vattel's pursuance of the analogy between the individual and the state. It is important to notice that the second part of what is here called political jurisprudence is made identical with the law of nations. The latter is thus a much wider concept than we might expect because it covers relations not only between states but also between the state and the individual. This too is in accordance with Vattel.
2. Reid is referring to 3/II/5,2r (printed in this volume, pp. 172 ff.), the second, third and fourth paragraphs of which are marked 'A'.
3. This paragraph is built upon Vattel, *Law of Nations*, preliminaries, secs. 1–5. Reid made an abstract of this; see his MS. 3/II/5,1v printed in this volume, pp. 168–9.
4. In the preceding paragraph, Reid combines points from the preface and sec. 6 of the preliminaries to Vattel's *Law of Nations*.
5. See the Commentary above at p. 246 n. 3, and Reid's manuscript at p. 172 ll. 24–8.

6. See the Introductory Lecture, printed in this book, pp. 12–13. In *Law of Nations*, I.2.xiii, Vattel divided a nation's duties into those to itself, which are detailed in book I, and those to others, which are dealt with in book II, while book III is more particularly devoted to war. Reid took the analogy with individuals a step further and began with a nation's duty to God, which Vattel included in book I, namely ch. 12's bland discussion 'Of Piety and Religion' in political society.
7. See, e.g., Reid's manuscript printed in this book, pp. 23 ff.
8. Although there is no direct evidence that William Penn had read Harrington, Reid was as certain as everyone else who has looked into the matter that the 'Frame of Government' Penn tried to introduce in Pennsylvania in the 1680s was 'perfectly Republican & Harringtonian' (4/III/19,1v). This in itself would have been enough to interest someone of Reid's political inclinations in Penn's work, and he was of course supported in this by Montesquieu's dictum that 'Mr. Penn is a real Lycurgus' (*Spirit of Laws*, 1:35; there is an oblique reference to this in Robert Jack's notes of Reid's lectures in 1776, p. 650). The manuscript referred to above contains Reid's notes from 'the Charter of Cha. 2d. to William Penn Proprietary & Governour of Pensilvania 4th March 1681' and from 'The Frame of the Government of the Province of Pensilvania in America Together with certain Laws agreed upon in England by the Governour and divers freemen of the afforesaid Province; To be further explained and continued there by the first Provincial Council that shall be held if they see meet. 25 Aprile 1682.' This manuscript does not mention the provisions for toleration. The famous fourth of Voltaire's *Letters on England* did much to keep the issue in people's minds, and this was reinforced not least for Scotsmen by the Jacobite rebellion in 1745. Since 1686, Penn had supported the plans of James VII and II for a repeal of the Test Acts and the penal laws for Catholics and Dissenters, and it was therefore natural that the Jacobite insurrection should lead to an interest in Penn and a reprinting of some of his pamphlets (*Repentance, recommended to the inhabitants of Great Britain in general (Extracted from a book intituled An Address to Protestants . . .)*, and *The free-born English man's unmasked battery . . . with some quotations from . . . William Penn . . .*).
9. In 1776 Reid declared that only experience could tell whether a state could do without an established religion. There was, however, only one example of this – Pennsylvania – and this was too little and too recent to provide much guidance. Instead, Reid resorts to a telling

analogy: just as those who treat the ills of the body must be trained professionals, so must those who attend to the maladies of the mind, otherwise ‘Individuals the most Impudent & the most Ignorant. . . might easily fill the people with Inthusiastic notions’ (Jack, ‘Reid’s Lectures’, p. 651). According to these notes (*ibid.*, p. 657), Reid also referred to Locke’s *Letter concerning Toleration* as most sensible and politically effective despite attacks by ‘many very learned Divines in England’.

10. Acts 17:22–3: ‘Then Paul stood in the midst of Mars’ hill, and said, Ye men of Athens, I perceive that in all things ye are too superstitious. For as I passed by, and beheld your devotions, I found an altar with this inscription, TO THE UNKNOWN GOD. Whom therefore ye ignorantly worship, him declare I unto you.’ See also Cudworth, *True Intellectual System*, 2:192 ff.
11. Reid is presumably thinking partly of Machiavelli’s representation of religious rites as a tool of social and military control (*Discourses*, I.11–15), partly of Hobbes’s distinction between public and private worship and his theory of the conventional, politically regulated character of the former (*De cive*, XV.12, 16–19, and cf. XVII.10–28; *Leviathan*, pp. 401, 405–6, 331–4; see also the Commentary above, at n. 4, p. 182), and partly of Rousseau’s famous notion of a civil religion (*Contrat social*, IV.8, and the first of the *Lettres écrites de la montagne*, esp. pp. 703 ff.), though the latter suggested a good deal more than mere rites. The idea of a more or less confessionless public religion was often floated in the eighteenth century; two likely sources for Reid would be Hume, *History of England*, 4:25 ff. and 273 ff., 6:78 ff., and Mandeville, *Letter to Dion*, p. 40: ‘Mix’d Multitudes of Good and Bad Men, high and low Quality, may join in outward Signs of Devotion, and perform together what is call’d Public Worship, but Religion it self can have no Place but in the Heart of Individuals.’

Reid’s discussion of public worship and an established church must also be seen in the light of William Warburton’s influential contractualist defense of the Church of England, with which it has some similarities, *The Alliance between State and Church*, books I and II. See also Rousseau’s criticism of Warburton, *Contrat social*, pp. 318, 384 and 464, and Warburton’s reply in the fourth edition of *The Alliance*, pp. 175 ff. of the edition used here. This issue must again be seen in the context of the general debate about the minimum of religion necessary for a cohesive society, a debate that repeatedly raised the question

whether atheism was any worse or perhaps even better than idolatry and false religion. The issues were clearly set out by Bacon:

It were better to have no Opinion of God at all, than such an Opinion as is unworthy of him: For the one is Unbeleefe, the other is Contumely: And certainly Superstition is the Reproach of the Deity. . . . Atheisme leaves a Man to Sense, to Philosophy; to Naturall Piety; to Lawes; to Reputation; All which may be Guides to an outward Morall vertue, though Religion were not; But Superstition dismounts all these, and erecteth an absolute Monarchy in the Mindes of Men. Therefore Atheisme did never perturbe States; For it makes Men wary of themselves, as looking no further: And we see the times inclined to Atheisme (as the Time of Augustus Caesar) were civill times. ('Of Superstition', *Essayes*, pp. 96–7)

These views and those ascribed to Hobbes were repeatedly rejected by natural lawyers and others who agreed with Locke's argument in the well-known passage from his *Letter concerning Toleration*, p. 93: 'those are not at all to be tolerated who deny the being of a God. Promises, covenants, and oaths, which are the bonds of human society, can have no hold upon an atheist. The taking away of God, though but even in thought, dissolves all.' The debate was particularly invigorated by Bayle's argument in the *Dictionary*, 5:811–14, and in the *Miscellaneous Reflections*, 1:234 ff., that atheism was no worse a support for morality and society than religion, as commonly practiced, and that a society of atheists was eminently possible. This argument was entertained by Shaftesbury (e.g., *Characteristics*, 365–79) and with typical forthrightness by Mandeville in the Third Dialogue of *An Enquiry into the Origins of Honour* (esp. pp. 154 ff.). When Montesquieu attacked Bayle's version of it in *Spirit of Laws*, 2:24, the agenda for Hume's magisterial treatment of the whole issue was set, here especially his argument in the *Natural History of Religion* that polytheism is not inferior and is in some respects superior to monotheism as a social cohesive, and that polytheism may practically be identified with atheism.

12. Reid is referring to the treaty between China and Russia in 1689. See Voltaire, *Histoire de Russie*, pp. 121–2:

on jura une paix éternelle; et, après quelques contestations, les Russes et les Chinois la jurèrent au nom du même Dieu en ces termes: 'Si quelqu'un a jamais la pensée secrète de rallumer le

feu de la guerre, nous prions le Seigneur souverain de toutes choses, qui connaît les coeurs, de punir ces traîtres par une mort précipitée.’ Cette formule, commune à des Chinois et à des chrétiens, peut faire connaître deux choses importantes; la première, que le gouvernement chinois n’est ni athée ni idolâtre, comme on l’en a si souvent accusé par des imputations contradictoires; la seconde, que tous les peuples qui cultivent leur raison reconnaissent en effet le même Dieu, malgré tous les égaremens de cette raison mal instruite.

See also Grotius, *War and Peace*, II.15.ix–xii, and Heineccius, *Universal Law*, II.206; and the Commentary above at p. 222 n. 98.

13. This passage is close to Vattel, *Law of Nations*, XII.131 and 136.
14. A similar example is used by Locke, *Letter concerning Toleration*, p. 65; cf. Grotius, *War and Peace*, II.20.xlvii (5). Apart from Locke and Vattel, the present discussion should be compared with Grotius, *War and Peace*, II.20.xliv–li, and most important, with Hutcheson’s discussion of the principles of toleration in *Short Introduction*, pp. 318–20, and *System*, II.310–16, and with Warburton, *The Alliance*, book III. As will be evident, Reid goes much more directly to the heart of the dilemma: how can the necessity of a public religion be combined with toleration?
15. Reid emphasises even more strongly than, for instance, Hutcheson that aberrant religious practices, as opposed to opinions, may prove infectious and thus damaging to society if not restrained; cf. Hutcheson, *Short Introduction*, pp. 318–19, and *System* II. 315–16. The specific reference here is presumably to Jacques Boileau’s history of the flagellants and the considerable stir it caused. The *Historia flagellantium. De recto et perverso flagrorum usu apud Christianos*, was published anonymously in 1700 and immediately translated into French (1701); Reid may have used the revised French edition of 1732. As late as 1777 de Lolme still found it worthwhile to issue an anonymous mockery of the work: *The History of the Flagellants, or the Advantages of discipline; being a paraphrase and commentary on the Historia Flagellantium of the Abbe Boileau, Doctor of the Sorbonne*. . . By somebody who is not Doctor of the Sorbonne. This was reissued in 1783 and 1784.
16. This is the end of the discussion of established religion. A *malus animus*, ‘evil intention’ (Hutcheson, *Institutio*, p. 239), was the defining characteristic of *dolus* as opposed to *culpa*, negligence; see the Commentary above at pp. 234–5 n. 129.

17. See Hutcheson, *Short Introduction*, pp. 318–20, and *System*, II.310–13, and Locke, *Letter concerning Toleration*, p. 71:

But idolatry (say some), is a sin, and therefore not to be tolerated. If they said it were therefore to be avoided, the inference were good. But it does not follow, that because it is a sin it ought therefore to be punished by the magistrate. For it does not belong unto the magistrate to make use of his sword in punishing everything, indifferently, that he takes to be a sin against God. Covetousness, uncharitableness, idleness, and many other things are sins, by the consent of men, which yet no man ever said were to be punished by the magistrate. The reason is, because they are not prejudicial to other men's rights, nor do they break the public peace of societies. Nay, even the sins of lying and perjury are nowhere punishable by laws; unless, in certain cases, in which the real turpitude of the thing and the offence against God are not considered, but only the injury done unto men's neighbours and to the commonwealth.

Reid's discussion here should also be seen in the light of the distinction between perfect and imperfect rights and the debate about the enforceability of the latter, concerning which, see the Commentary above at pp. 196–7 n. 25, and at pp. 251–2 and 253 nn. 21 and 30. See also Warburton's standpoint, that the state via its alliance with the church may enforce the imperfect duties (*Alliance*, pp. 94–6 and 145; cf. pp. 29 ff.).

18. This traditional agenda for government was, in Reid's view, more concerned with political means than with ends, and accordingly we find most of these topics dealt with at some length in the lectures on politics rather than here.
19. Concerning eminent domain, see Grotius, *War and Peace*, I.I.vi, II.14.vii–viii, III.19.vii, and III.20.vii–ix; Pufendorf, *Law of Nature*, VIII.5.vii, and *Duty of Man*, II.15.iv; Heineccius, *Universal Law*, II.166–70; Hutcheson, *Short Introduction*, pp. 289–90, and *System*, II.236–7; Vattel, *Law of Nations*, I.20.244, and II.7. See also the Commentary above at p. 207 n. 41, and especially the discussion of the limitations on private property in Section XI (above, pp. 105–7).
20. Concerning the four examples of the exercise of eminent domain for military purposes, see Pufendorf, *Law of Nature*, VIII.5.vii (the first three examples), and Grotius, *War and Peace*, III.17.iii (1); and see

Reid's manuscript at pp. 106–7 above. Concerning the Canal, see 8 Geo. III, cap. 63:

An Act for making and maintaining a navigable Cut or Canal from the Firth or River of Forth, at or near the Mouth of the River Carron, in the County of Stirling, to the Firth or River of Clyde, at or near a Place called Dalmuir Burnfoot, in the County of Dumbarton; and also a collateral Cut from the same to the City of Glasgow; and for making a navigable Cut or Canal of Communication from the Port and Harbour of Borrowstounness, to join the said Canal at or near the Place where it will fall into the Firth of Forth.

The Canal Act was passed in March 1768, but the project was not completed until 1790.

See further 8 Geo. III, cap. 16: 'An Act for making and widening a Passage or Street from The Salt Market Street, in the City of Glasgow, to Saint Andrew's Church, in the said City; and for enlarging and completing the Church-yard of the said Church; and for making and building a convenient Exchange or Square in the said City.' The details of the latter statute give a perfect idea of the justification and operation of contemporary expropriation (*Statutes at Large*, 5 Geo. III–10 Geo. III, vol. 10, pp. 454 ff.). By 'the town house' Reid meant the Tolbooth from 1626, of which only the steeple exists today. These references provide some dating of the present manuscript.

21. It was unusual to subsume the right of taxation under eminent domain; cf. Pufendorf, *Law of Nature*, VIII.5.iii–vii, and *Duty of Man*, II.15.i–iv; Heineccius, *Universal Law*, II.166; Vattel, *Law of Nations*, I.244.
22. *Negotium utile gestum* means, {somebody else's} business usefully managed {for him, on his behalf}; see the Commentary above at p. 233 n. 124.
23. Locke, *Second Treatise*, 138:

The Supream Power cannot take from any Man any part of his Property without his own consent. For the preservation of Property being the end of Government, and that for which Men enter into Society, it necessarily supposes and requires, that the People should have Property, without which they must be suppos'd to lose that by entering into Society, which was the end for which they entered into it, too gross an absurdity for any Man to own.



24. Reid could have known the relevant principles of the American colonists from a host of sources, such as the following pamphlets: {Thomas Fitch, et al.}, *Reasons Why the British Colonies, in America, Should Not be Charged with Internal Taxes . . .*; {James Otis}, *The Rights of the British Colonies Asserted and Proved*; {Stephen Hopkins}, *The Rights of Colonies Examined*; {James Otis}, *A Vindication of the British Colonies, against the Aspirations of the Halifax Gentleman . . .* {Daniel Dulany}, *Considerations on the Propriety of Imposing Taxes in the British Colonies for the Purpose of Raising a Revenue . . .*; all in B. Bailyn, ed., *Pamphlets of the American Revolution, 1750–1776*. Principles such as those laid down in the post-script to Otis’s abovementioned *Vindication* were commonplace in the pro-American literature on both sides of the Atlantic: ‘1. That it is the incontestable right of the subject in Great Britain not to be taxed out of Parliament; and every subject within the realm is in fact or in law represented there. 2. The British colonists being British subjects, are to all intents and purposes entitled to the rights, liberties, and privileges of the subject within the realm and ought to be represented in fact as well as in law in the supreme or some subordinate legislature where they are taxed, else they will be deprived of one of the most essential rights of a British subject, namely that of being free from all taxes but such as he shall by himself or representative grant and assess. 3. As the colonies have been erected into subordinate dependent dominions with subordinate powers of legislation, particularly that of levying taxes for the support of their respective subordinate governments, and at their own expense have not only supported the civil provincial administration but many of them have, to their utmost ability, contributed both in men and money for the common cause, as well as for their more immediate defense against His Majesty’s enemies, it should seem very hard that they should be taxed also by Parliament, and that before they are allowed a representation in fact and while they are quite unable to pay such additional taxes’ (Bailyn, ed., *Pamphlets*, pp. 576–7). For the debate in Britain, see also the texts printed in M. Beloff, ed., *The Debate on the American Revolution, 1761–1783*. As for the elder William Pitt (since 1766 Earl of Chatham), Reid is referring to his and his circle’s (esp. Lord Camden) distinction between legislation and taxation; the former is an exercise of sovereignty, which in Britain belongs to the king in Parliament, while the latter is a free grant – a benevolence, as Reid refers to it in the following

sentence – out of one's own property or the property of those one represents and it therefore is solely in the powers of the Commons who, however, do not represent the Americans. If legislation and taxation are not kept separate, rights of sovereignty and rights of property are in effect conflated:

Equally bound by its laws, and equally participating of the constitution of this free country, the Americans are the sons, not the bastards of England. Taxation is no part of the governing or legislative power. The taxes are a voluntary gift and grant of the Commons alone. In legislation the three estates of the realm are alike concerned; but the concurrency of the Peers and the Crown to a tax, is only necessary to close with the form of a law. The gift and grant is of the Commons alone. In ancient days, the Crown, the Barons, and the Clergy, possessed the lands. . . . At present . . . the Commons are become the proprietors of estates . . . and this House represents these Commons, the proprietors of the lands; and those proprietors virtually represent the rest of the inhabitants. When, therefore, in this house we give and grant, we give and grant what is our own. But in an American tax, what do we do? We, your majesty's commons of Great Britain, give and grant to your Majesty, what? our own, property? – No, we give and grant to your majesty the property of your Majesty's commons of America. It is an absurdity in terms. The distinction between legislation and taxation is essentially necessary to liberty. The Crown, the Peers, are equally legislative powers with the Commons. If taxation be part of simple legislation, the Crown, the Peers, have rights in taxation as well as yourselves; rights they will claim, which they will exercise, whenever the principle can be supported by power. (William Pitt, Speech in the Debate on the Address, House of Commons, 14 January 1766; in Beloff, ed., *Debate on the American Revolution*, pp. 94–5)

25. See Hutcheson, *System*, II.236–7:

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 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. {Note: 'These powers some call *dominium eminens*; others more properly the *jus imperii eminens*, as they are not confined to the matters of property only.'} 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. . . . Such extraordinary rights extend over life as well as property.

Cf. *Short Introduction*, pp. 289–90, and the Commentary above at n. 19 and at pp. 256–7 n. 20.

26. Reid does not explicitly pursue the list begun here. He probably had in mind the subsequent discussion of modern colonisation as 'B'. Beginning opposite this line there is a marginal note that has been crossed out. It is not possible to find any clear place for it on this page and it belongs instead to the discussion of international relations. The note reads: 'The Laws of Commerce with other Nations. Consuls & their privileges. Of Precedency and Titles of Honour among Sovereigns.' Reid's contrast between ancient and modern principles of colonisation was commonplace at the time. For the natural law background to the distinction, see Grotius, *War and Peace*, I.3.xxi (3) and II.9.x–xi (2); Pufendorf, *Law of Nature*, VIII.11.vi and VIII.12.v (cf. for the analogy with the family, Hobbes, *De cive*, 9.viii); Heineccius, *Universal Law*, II.219–20; Vattel, *Law of Nations*, I.18.208–10; and Hutcheson's important discussion in *Short Introduction*, pp. 316–17, and esp. *System*, II.306–9.
27. See the Commentary above at p. 213 n. 55 and at p. 241 n. 8.
28. See the Commentary above at p. 300 n. 18.
29. This paragraph should be compared with Vattel, *Law of Nations*, I.11.119–24.
30. This sentence gives a transition from the discussion of self-government to that of the relations between states. For the present point, see Vattel, *Law of Nations*, II.1.3: 'Social bodies or sovereign states are much

more capable of supporting themselves than individuals, and mutual assistance is not so necessary among them, nor of so frequent use. Now whatever a nation can do itself, no succour is there due to it from others.' The general lines of the following discussion of international relations in peacetime should be seen in the light of Vattel, *Law of Nations*, II.1.

31. Concerning Elizabeth I's treaties of assistance with money and troops to the Dutch of 1578 and 1585, see Hume, *History*, 5:196 ff. and 242 ff. For her similar assistance in 1590 to Henry of Navarre, by then Henry IV of France, against the Catholic League, see *ibid.*, pp. 318 ff. See also Vattel, *Law of Nations*, II.1.4: 'A powerful league was formed in favour of the United Provinces when threatened with the yoke of Lewis XIV. {Note: 'In 1672'.}'
32. Reid is referring to two of the most important problems that occupied eighteenth-century scientists throughout Europe: the figure and measure of the earth, and the sun's mean distance from the earth, which could be used to measure the size of the solar system. Concerning the former, Reid is referring to the Parisian Académie Royale des Sciences' expeditions to Peru (conducted by Pierre Bouguer and La Condamine) and to Lapland (by Pierre Maupertuis) in 1735–36 with the aim of testing Newton's demonstration that the earth is flattened at the poles. He also celebrated this in the first of his *Philosophical Orations* in 1753 (p. 939). In January 1751, Reid made extensive reading notes from an account by Bouguer of the former expedition (3/i/7), and two other manuscripts (3/iii/15 and 7/ii/22) preserve his own computations. In the present context, it should be pointed out that in 3/i/7,1r he notes that the French expedition had Spanish participation.

Concerning the second problem, French scientists connected with the Académie had for years planned how best to exploit the transits of Venus across the face of the sun for measuring the distance between the earth and the sun. The transits occurred on 6 June 1761 and 3 June 1769, and on both occasions an extraordinary interest was generated all over Europe and its outposts. Many European nations organised observations of the phenomenon, and both the French and the British sent expeditions around the world for the purpose. The usual tension between national rivalry and international cooperation in such matters was particularly intense in 1761, in the middle of the Seven Years' War, and it may be that Reid was well advised to use the ambiguous verb 'concur'. He himself had, within the Aberdeen Philosophical Society,

been active in preparing for the transit since 1758, and on 14 July 1761 he read an account to the society of his own observations, which were partly frustrated by the weather conditions. He continued to follow the debate about the observations of the transit; see 2/1/7.

33. Vattel, *Law of Nations*, II.1.5:

The calamities of Portugal have given England an opportunity of fulfilling the duties of humanity with that generosity which distinguishes an opulent, powerful and magnanimous nation. On the first advice of the misfortune of Lisbon {Note: ‘the earthquake by which the greatest part of that city was destroyed’}, the parliament voted a hundred thousand pounds sterling for the relief of an unfortunate people.

34. See Hume, *History*, 5:385.

35. See Hume, *History*, 7:233.

36. See 12 Anne C. 15, ‘An Act for providing a Publick Reward for such Person or Persons as shall discover the Longitude at Sea’. The Act provided for up to £2000 in subsidy for approved projects and up to £20,000 for an accurate determination of the longitude. The act was amended by 2 Geo. C. 18. John Harrison (1693?–1776) eventually solved the problem with a succession of ever more accurate sea clocks.

37. Concerning the status of foreigners, see especially Vattel, *Law of Nations*, I.19.213 and II.8, and Grotius, *War and Peace*, II.2.v, II.11.v (2) and II.14.viii.

38. See Vattel, *Law of Nations*, preliminaries, 18, and II.3.36.

39. The discussion of peaceful relations between states ends here.

40. See Grotius, *De jure belli*, I.1.ii (1): ‘Cicero dixit Bellum certationem per vim’ (English version: ‘Cicero defines War a dispute by force’). The reference is Cicero, *De officiis*, I.xi (34). Grotius goes on to say: ‘But Custom has so prevailed, that not the Act of Hostility, but the State and Situation of the contending Parties, now goes by that Name; so that War is the State or Situation of those . . . who dispute by Force of Arms.’ Hobbes obviously paid some attention to this point; *De cive*, I.12, and *Leviathan*, pp. 185–6. Cf. Hutcheson, *Philosophiae moralis Institutio*, p. 239 (with a partial quotation of Grotius), and Heineccius, *Universal Law*, II.185.

41. See Hutcheson, *Short Introduction*, pp. 232–3:

Wars are divided into publick and private. The former are such as are undertaken by a state, or in the name of a body of people: private wars are those among private persons. The publick wars

are divided into solemn, or these authorized on both sides by the supreme powers of states, upon some specious shews of rights; and those so authorized only on one side: such as the wars made upon bands of pyrates or robbers, or citizens making insurrections; or what are called civil wars, between different parties in the same state contending about some rights of the people, or of the government. We first treat of the private wars of men in natural liberty. And the same reasonings hold in publick wars; since sovereign states and princes are with respect to each other in the same condition of natural liberty.

Cf. *ibid.*, pp. 332–3. Similarly, in *System*, II.347–9 and cf. *ibid.*, pp. 92–7. The basis is Grotius, *War and Peace*, I.3.i–iv and III.3, followed by Pufendorf, *Law of Nature*, VIII.6.ix, and *Duty of Man*, II.16.vii; Carmichael, n. 1, pp. 482–7, in Pufendorf, *De officio*; Carmichael, *Natural Rights*, pp. 200–4; Heineccius, *Universal Law*, II.188 and 192–3; Vattel, *Law of Nations*, IV.1.2.

42. The common position was that serious transgressions on perfect rights justified war; see Grotius, *War and Peace*, II.1; Pufendorf, *Law of Nature*, VIII.6.iii, and *Duty of Man*, II.16.i–ii; Heineccius, *Universal Law*, II.188–90; Hutcheson, *Short Introduction*, pp. 228–32, and *System*, II.92–4; Vattel, *Law of Nations*, III.3.26. Once men were living in civil society, the defence of their perfect rights was taken over by the state; nevertheless, in certain situations it would still be justifiable to exercise the original right to private war, and it is in this context that the distinction between a day thief and a night thief plays a role. When we confront a thief at night, we may wage private war and kill because it is hard to bring him to justice by court (because we cannot easily apprehend him or recognise him or find witnesses or be sure whether he is armed – the reasons vary and are disputed): ‘. . . that even since Tribunals of Justice were erected, every private War is not repugnant to the Law of Nature, may be gathered from the Law given to the Jews, where God thus speaks by Moses, “If a Thief be found breaking up”, (that is, by Night) “and be smitten, that he dies, there shall no Blood be shed for him; but if the Sun be risen upon him, there shall be Blood shed for him.” . . . That of the Twelve Tables is well known, . . . “If a Thief commit a Robbery in the Night, and if a Man kill him, he is killed lawfully”’ (Grotius, *War and Peace*, I.3.ii). Grotius’s final quotation, from Macrobius, *Saturnalia*, I.4, is the one Reid gives here from the Latin text. Cf. Grotius, *War and Peace*, II.1.xii (with Barbeyrac’s notes);

- Pufendorf, *Law of Nature*, II.5.xvii–xviii, and *Duty of Man*, I.5.xxiii; Hutcheson, *Short Introduction*, p. 235, and *System*, II.94.
43. Concerning duels, see the Commentary above at p. 237 n. 139. Grotius thought duels were justifiable under certain circumstances (*War and Peace*, II.1.xv); this is rejected by Pufendorf, *Law of Nature*, II.5.ix, and *Duty of Man*, I.5.xiii; Hutcheson, *Short Introduction*, pp. 237–40, and *System*, II.97–101. For the remaining points, see also Grotius, *War and Peace*, II.20.viii (5), II.23.x, and III.20.xliii; Pufendorf, *Law of Nature*, II.5.xii, VIII.3.xxvi, and VIII.4.viii.
44. The starting point for the natural law discussion of this topic was the great chapter in which Grotius develops his complicated theory of sovereignty in considering the question of who may make war, *War and Peace*, I.3. See Pufendorf, *Law of Nature*, VII.6.x–xi, and *Duty of Man*, II.16.viii; Heineccius, *Universal Law*, II, pp. 186–7; and Vattel, *Law of Nations*, III.1.4:
- the sovereign power has alone authority to make war. But as the different rights which constitute this power, originally resident in the body of the nation, may be separated or limited according to the will of the nation . . . we are to seek the power of making war in the particular constitution of each state. The Kings of England, whose power is otherwise so limited, have the right of making war and peace.
45. The following paragraph is, point for point, a précis of Vattel, *Law of Nations*, III.2.
46. See Grotius, *War and Peace*, I.2.X and I.5.iv.
47. Vattel, *Law of Nations*, III.2.18:
- The regulations, the particular end of which is to maintain order in the troops, and to render them capable of performing the best service, constitute what is called military discipline. This is of the last importance. The Switzers were the first among the modern nations that revived it . . . Machiavel, in his discourse on Livy, says, That ‘the Switzers are the masters of all Europe in the art of war.’ The Prussians have very lately shewn what may be expected from a good discipline, and assiduous exercise: soldiers, collected from all quarters have, by the force of custom, and the influence of command, performed all that could be expected from the most zealous and affectionate subjects.
- The reference is Machiavelli, *Discourses*, II.16.6. As for Frederick the Great, Reid did of course not need Vattel to advise him about his

importance. The alliance between Britain and Prussia during most of the Seven Years' War and Frederick's spectacular early successes had made him a popular hero in Britain and created something of a craze for everything Prussian, which was an important ingredient in the increased preoccupation with things military in Britain from the 1750s onward. In the present context it should be mentioned that the Prussian military regulations were quickly translated into English and popularized: e.g., in *Regulations for the Prussian Infantry*, excerpted in *London Magazine*, 23 (August and October 1754): pp. 356 ff. and 460 ff.; *New Regulations for the Prussian Infantry*; *Regulations for the Prussian Cavalry*, excerpted in *London Magazine*, 26 (June 1757): pp. 267–9; and *Military Instructions, written by the King of Prussia for the Generals of his Army*. Altogether more than two dozen official or semi-official Prussian works and works by Frederick were translated into English between 1741 and 1786, culminating with Holcroft's translation of the *Posthumous Works of Frederic II* in thirteen volumes (1789). Prussian ways of exercising troops began to be introduced into the British army, and private 'Prussian' exercise societies shot up, even in the Scottish Highlands (*Glasgow Evening Courant*, 30 January–6 February 1758. See in general Manfred Schlenke, *England und das friderizianische Preussen 1740–1763. Ein Beitrag zum Verhältnis von Politik und öffentlicher Meinung im England des 18. Jahrhunderts*). We may therefore assume that Reid's discussion of military matters, even though some years later, was listened to with interest, especially considering its obvious relevance for the continuing debate about the relative merits of a standing army and a militia.

48. Vattel, *Law of Nations*, III.2.21:

if an inferior officer exceeds the authority of his post, his promise becomes no more than a private engagement. It is a *Sponsio* only. . . . This was the case of the Roman consuls at the Furcae Caudinae. They might agree to deliver hostages, and that their army should pass under the yoke, &c. but their power did not extend to their making peace, as they took care to signify to the Samnites.

Vattel's reference is Livy, who gives the account of the Romans' disaster at the Caudine Forks in 321 BCE in *From the Founding of the City*, IX.ii–vi; the specific reference for the *sponsio* is IX.v.1–6. Vattel uses the case for a detailed discussion of *sponsio* at II.14.209 ff. This is directly derived from Grotius, *War and Peace*, II.15; Pufendorf, *Law of Nature*,



VII.8.xii–xiii, and *Duty of Man*, II.17.viii; cf. Heineccius, *Universal Law*, II.205–6.

49. This line and the following paragraph select some of the main points in Vattel's chapter on 'The Just Causes of War', *Law of Nations*, III.3. First the distinction between reasons and motives: 'The reasons which may determine us to have recourse to {war} are of two kinds. The one manifest that we have a right to make war when we have a lawful cause for it. These are called justificatory reasons. The other taken from fitness and advantage. These shew whether it be expedient for the sovereign to undertake a war, and are called motives.' This is built directly upon Grotius, *War and Peace*, II.1.i and II.22.i–ii. As for pretexts, see Vattel, *Law of Nations*, III.3.32:

there are just causes of war, real justificative reasons; and why should there not be sovereigns who sincerely consider them as their warrant, when they have besides reasonable motives for taking up arms. We shall therefore call pretences the reasons alledged as justificative, and which have only the appearance of such, and are absolutely void even of the least foundation. The name of pretences may likewise be given to reasons true in themselves, but which not being of sufficient importance for undertaking a war, are made use of only to cover ambitious views, or some other faulty motive.

Cf. Grotius, *War and Peace*, II.22.xvii.

As for offensive and defensive war, see Vattel, *Law of Nations*, III.1.5 and III.3.28: 'we may set down this triple end as the distinguishing characteristic of lawful war. 1. To recover what belongs or is due to us. 2. To provide for our future safety by punishing the aggressor, or offender. 3. To defend ourselves from an injury by repelling an unjust violence. The two first are the objects of an offensive, the third that of a defensive war.' Cf. Pufendorf, *Law of Nature*, VIII.6.iii, and *Duty of Man*, II.16.ii; Heineccius, *Universal Law*, II.189.

50. Vattel, *Law of Nations*, III.3.29: 'As nations or leaders are not only to make justice the rule of their conduct, but also to regulate it for the good of the state. So decent and commendable motives must concur with the justificative reasons, that they should undertake a war.' Concerning just war in general, see the Commentary above at p. 307 n. 42.
51. Vattel, *Law of Nations*, III.3.36.
52. This is one of the most explicit connections between Reid's distinction between jurisprudence and 'the science of Politicks' and the distinction

between ends and means, which is fundamental to modern natural law and provides the best clue to the true nature of the former distinction, especially the 'scientific' nature of politics. See the Introductory Lecture, pp. 14–16 above.

53. See the Commentary above, at p. 306 n. 33.
54. The idea of a universal or general society of mankind is put forward by Vattel, *Law of Nations*, preliminaries, 10 ff., and especially invoked in the present context in II.1. For Henry IV and Cromwell, see the Commentary above at p. 306 nn. 34 and 35. The reference to Vattel concerns a case that Reid quotes below, p. 170.
55. See the Commentary, at pp. 312–13 n. 66.
56. See Vattel, *Law of Nations*, II.18.324.
57. For the following three points, see Vattel, *Law of Nations*, II.18.327–9 and cf. Grotius, *War and Peace*, II.23.viii; Pufendorf, *Law of Nature*, V.13, and *Duty of Man*, II.1.xi.
58. For the following three points, see Vattel, *Law of Nations*, II.18.334–8. Concerning retaliation, see also Grotius, *War and Peace*, III.4.xiii; Pufendorf, *Law of Nature*, VIII.3.xxvii. Concerning reprisals, see Grotius, *War and Peace*, III.2.iv ff.; Pufendorf, *Law of Nature*, VIII.6.xiii, and *Duty of Man*, II.16.x; Heineccius, *Universal Law*, II.198; Hutcheson, *Short Introduction*, pp. 335–7, and *System*, II.355–6.
59. Ever since the peace treaty of Aix-la-Chapelle, ending the War of the Austrian Succession in 1748, had failed to sort out the relations between the British and the French in North America, the conflict had intensified between the westward trade push of the former and the grandiose plan of the latter for a French inland territory, a north-south corridor, from the Mississippi basin to that of the St Lawrence, from Quebec to New Orleans. The focal point for the conflict was the Ohio Valley, where the French established a number of fortified positions during 1753 and 1754, imprisoning British traders. This was used by the British government to explain the capture of two French men-of-war with some troops on board off the coast of Newfoundland in June 1755 as a reprisal. The British tactic was basically to get the French to declare war as a consequence of this, so that they would be seen as the aggressor and so that Britain could invoke the provisions in the earlier peace treaty for assistance (from the Dutch, among others) in case of unjustified attack. They got the declaration of war in early 1756 but had difficulties having it seen in the desired light. See Gibbon, *Autobiography*, p. 86: 'We were then (Spring 1758) in the midst of a war: the resentment of the French

- at our taking their ships without a declaration had rendered that polite nation somewhat peevish and difficult.’
60. Vattel, *Law of Nations*, II.18.346: ‘in all civilized states, a subject who thinks himself injured by a foreign nation, has recourse to his sovereign in order to obtain the permission of making reprisals. This is what is called desiring letters of marque.’
  61. Vattel, *Law of Nations*, IV.18.354: ‘There are cases . . . in which reprisals would be justly condemned, even when a declaration of war would not be so, and these are precisely those in which nations may with justice take up arms.’
  62. See the Commentary above, at pp. 306–7 n. 41.
  63. As in the previous manuscript (and see the Commentary above at pp. 310–11 nn. 49 ff.), Reid here clearly had recourse to Vattel, *Law of Nations*, III.3, esp. sec. 39, for the principle that both parties to a moral dispute cannot be right, which was so important to him. Concerning the extracts, see Reid’s MS. 3/II/5 above, pp. 168 ff.
  64. See the Commentary above, at p. 237 n. 138.
  65. This sentence confirms the point made in the Textual Notes for p. 153 that some of Reid’s 1766 manuscript has been lost; the rules of war have not been dealt with in the previous manuscript.
  66. Concerning untruthfulness in war, the common natural law position was that ‘deceiving our enemies, when we have a just cause of war, by any such signs as import no profession of communicating our sentiments to them are stratagems universally justified’, but ‘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 perfidious’ (Hutcheson, *System*, II.354–5; similarly *Short Introduction*, pp. 334–5. See further, Vattel, *Law of Nations*, III.10; Heineccius, *Universal Law*, II.194–6; Pufendorf, *Law of Nature*, VIII.6.vi and VIII.7.ii, and *Duty of Man*, II.16.v – all building on Grotius, *War and Peace*, III.1 and III.19. It is tempting to speculate that Reid’s reflections on the viability of the linguistic distinction employed here may have influenced his general theory of language and its application in the theory of contract; see the Commentary above at pp. 277–9 nn. 2 and 4.

Concerning poisoning, see Grotius, *War and Peace*, III.4.xvxxvi; Hutcheson, *Short Introduction*, p. 335, and *System*, II.352–3; Heineccius, *Universal Law*, II.194–5; Vattel, *Law of Nations*, III.8.155–7. Of these, only Heineccius asserts the legitimacy of poisoning.

As for the treatment of prisoners of war, see Grotius, *War and Peace*, III.7.iii, and Vattel, *Law of Nations*, III.8.149–51.

67. Vattel, *Law of Nations*, III.8.158:

The Duke of Cumberland, after the victory of Dettingen (1743), appears to me still greater than in the heat of battle. As he was under the surgeon's hands, a French officer, much more dangerously wounded than himself, being brought that way, the prince immediately directed his surgeon to leave him, and assist that officer.

This is an illustration of the 'Dispositions which should be maintained towards the enemy.'

68. Not traced.

69. There are many testimonies to this. In a letter to the Comtesse de Boufflers in January 1763, Hume, regretting Rousseau's low opinion of the English, says:

He would have seen many instances of humanity very honourable to their character: besides the magnificent charities, which are supported by voluntary contributions, where superstition has little share, they practised, during the late war, a piece of humanity which was very commendable. We had sometimes near 30,000 French seamen prisoners, who were distributed into different prisons, and whom the Parliament maintained by a considerable sum allotted them. They received food from the public, but it was thought that their own friends would supply them with clothes, which however was found, after some time, to be neglected. The cry arose, that the brave and gallant men, though enemies, were perishing with cold in prison: a subscription was set on foot; great sums were given by all ranks of people; and, notwithstanding the national foolish prejudices against the French, a remarkable zeal every where appeared for this charity. (*Letters of David Hume*, 1:373; cf. Smith, LJ(B), 346)

The most significant of the charitable efforts to which Hume refers was organised in 1759 by Thomas Hollis, who printed the *Proceedings of the Committee appointed to manage the Contributions . . . for Cloathing French Prisoners of War* (1760), for which Dr Johnson wrote a pithy introduction. Concerning the 'zeal' for the French prisoners, see also Wesley's *Journal*, 4:237, 355–6 and 417, and 6:256. These efforts and the

- parallel ones in France drew much attention from the contemporary press. See also Vattel, *Law of Nations*, III.8.150.
70. Vattel, *Law of Nations*, III.7.106. See also Grotius, *War and Peace*, III.17.iii; Hutcheson, *System*, II.357.
71. Vattel, *Law of Nations*, III.7.110. See also Hutcheson, *Short Introduction*, p. 357, and *System*, II.360.
72. Vattel, *Law of Nations*, III.7.111. See also Grotius, *War and Peace*, III.1.v. On neutrality and trade, see also Barbeyrac's long n. 1 on p. 842 of Pufendorf, *Law of Nature*. See also Hutcheson, *Short Introduction*, p. 339, and *System*, II.360–1; Heineccius, *Universal Law*, II.196–7. Reid has undoubtedly here referred to the problem that arose when France, in order to break the British navy's stranglehold on her colonial trade, relaxed the national monopoly on this trade and permitted Dutch merchant ships to carry it. The British captured a large number of these ships, and British courts treated them as fair prize, thus trying to establish the principle that subsequently came to be known as the rule of the war of 1756, that neutrals who during war carry out trade that is not open to them in peacetime may be captured.
73. Vattel, *Law of Nations*, II.9.121 and III.7.112–16. See also Hutcheson, *Short Introduction*, pp. 338–9, and *System*, II.359–60. In addition to the incidents during the Seven Years' War, Reid is here likely to have made reference to the preceding War of the Austrian Succession, when Britain captured Prussian ships and confiscated, among other things, food supplies as contraband.
74. Vattel, *Law of Nations*, III.13.196–7. See also Grotius, *War and Peace*, III.6.iii–iv; Hutcheson, *Short Introduction*, pp. 337–8, and *System*, II.357–8; Heineccius, *Universal Law*, II.197.
75. Vattel, *Law of Nations*, III.8.150.
76. Vattel, *Law of Nations*, III.9.165.
77. Contrast Grotius, *War and Peace*, III.5, and Vattel, *Law of Nations*, III.9.164.
78. Vattel, *Law of Nations*, III.7.119 ff., and Grotius, *War and Peace*, III.4.viii. Concerning neutrality in general, cf. Grotius, *War and Peace*, III.17; Hutcheson, *Short Introduction*, pp. 337–40, and *System*, II.356–62.
79. Vattel, *Law of Nations*, III.8.153 and 150. Concerning ransom, see also Grotius, *War and Peace*, III.7.ix and III.14.ix. Cartels were among the relatively recent developments in international law that fascinated Reid's contemporaries: 'In the same manner {as humane treatment of

prisoners of war} cartel-treaties, by which soldiers and sailors are valued at so much and exchanged at the end of every campaign, the nation which has lost most prisoners paying the balance, is an evidence of our refinement in humanity. In the late war {1756–63} indeed, we refused to enter into any such treaty with France for sailors, and by this wise regulation soon unman'd their navy, as we took a great many more than they' (Smith, LJ(B), 346–7; cf. Hume, 'Of the Populousness of Ancient Nations', *Essays*, 1:402, and Ferguson, *Essay*, pp. 199–200). An agreement about soldiers was, however, entered into in 1760, and in 1765 we see the newly appointed embassy secretary in Paris, David Hume, wrangling with the French over implementation (*New Letters of David Hume*, pp. 109, 113 and 129).

80. Vattel, *Law of Nations*, III.5.76–7.
81. Vattel, *Law of Nations*, II.3.37.
82. Hutcheson, *Short Introduction*, pp. 339–40, and *System*, II.362–3.
83. Hutcheson, *Short Introduction*, p. 341, and *System*, II.364.
84. Vattel, *Law of Nations*, IV.5.57 and 66; IV.7–9. See also Grotius, *War and Peace*, II.18; Heineccius, *Universal Law*, II.212–13; Hutcheson, *Short Introduction*, pp. 342–4, and *System*, II.366–71.
85. Pufendorf, *Law of Nature*, VII.12; Hutcheson, *Short Introduction*, pp. 344–7, and *System*, II.372–6. In the following a large number of points recur; they will generally not be noted.
86. See Grotius, *War and Peace*, III.4.ix and xix; III.11.ix (2).
87. See Grotius, *War and Peace*, III.6.xiv–xvi.
88. Vattel, *Law of Nations*, III.10.174–6 and III.16.
89. Vattel, *Law of Nations*, III.13.199 and 201.
90. Vattel, *Law of Nations*, III.13.200.
91. Vattel, *Law of Nations*, III.18.287 ff.
92. Vattel, *Law of Nations*, III.2.13.
93. Reid may here have made reference to the personnel difficulties during the Seven Years' War.
94. Vattel, *Law of Nations*, III.2.10.
95. 'The ways in which an obligation is dissolved.' Pufendorf's chapter headings have this in the plural (*solvantur obligationes*), while Justinian has it in the singular but uses a different verb (*tollitur*, 'is extinguished'); *Law of Nature*, V.11; *Duty of Man*, I.16; *Institutes*, III.xxix. In the Pufendorffian systematics, this subject belongs elsewhere, as we have seen (above, pp. 230–1 n. 122, and p. 263 n. 1). The appearance here of these eight points, which are identical with those in 7/VII/25 (above,

- p. 114), is however, explainable by the fact that Grotius touches upon this topic (especially compensation) in his chapter ‘Concerning Faith between Enemies’ (*War and Peace*, III.19.xv–xvi). See also the Commentary above at p. 263 n. 3.
96. This and the following manuscript, 4/III/23c (i.e. p. 168 l.12–p. 175 l.18) are taken up by Reid’s notes from his reading of Vattel’s *Le Droit des gens ou principes de la loi naturelle*, which had been published in French in London in 1758. In the English translation, the first volume is dated 1760, while the second is dated 1759. Reid’s notes consist of summaries, extracts and paraphrases. In general, I have therefore not annotated them beyond identifying the relevant references in Vattel, and supplying the more important cross references.
  97. The reference is to Christian Wolff, *Jus gentium*, which was preceded by his *Jus naturae* in eight volumes. For the rest, Vattel may have been thinking of the *Philosophia moralis* in five volumes, which is systematically prior though temporally subsequent to the *Jus gentium*. If we are to take Vattel’s figure more literally, we may understand him to mean the whole of Wolff’s practical philosophy, thus including also the *Philosophia practica universalis* in two volumes. Reference should then also be made to the compendium *Institutiones juris naturae et gentium* and the *Oeconomica*, both of which are, however, later than the *Jus gentium*. It is also possible that Vattel has been thinking of the somewhat earlier German works, and especially the *Deutsche Ethik* and the *Deutsche Politik*. Cf. Haakonssen, ‘German natural law’.
  98. This paragraph summarises secs. 1–6 of the preliminaries in Vattel, *Law of Nations*.
  99. Vattel, preliminaries, secs. 7, 9 and 21.
  100. The paragraph covers Vattel, *Law of Nations*, I.1.4–8.
  101. Vattel, I.4.39: ‘{a wise king} uses the public power only with a view to the public welfare. All this is comprehended in the fine saying of Lewis XII. “A King of France does not revenge the injuries of a Duke of Orleans”.’
  102. Vattel, I.4.52.
  103. Vattel, I.4.54.
  104. Vattel, I.5.68.
  105. Vattel, II.1.15; cf. the Commentary above at p. 311 n. 54.
  106. Vattel, II.1.19.
  107. Vattel, II.2.33.
  108. Vattel, II.2.34.

109. Vattel, II.3.38.
110. Vattel, II.3.39.
111. Vattel, II.3.40.
112. Vattel, II.3.45.
113. Vattel, II.3–48.
114. Vattel, preface, p. vi, note a. The reference is Hobbes, *De cive*, XIV.4. In the original English translation, the sentence is rendered, ‘but because Cities once instituted doe put on the personall proprieties of men’.
115. Vattel, preface, p. iv. The passage from Justinian, which is quoted more fully by Vattel, is in the English translation of the *Law of Nations* rendered ‘that law, which natural reason has established among all mankind . . . is called the *Law of Nations*’. The function of the priestly *collegium fetialium* is described repeatedly in Livy, *From the Founding of the City*. See also Cicero, *De legibus*, II.ix (21), and *De officiis*, I.xi (36): ‘As for war, humane laws touching it are drawn up in the fetial code {*fetiali iure*} of the Roman People under all the guarantees of religion.’ Vattel himself gives a further explanation in *Law of Nations*, III.4.51.
116. Vattel, preface, v. Vattel refers to Grotius, *War and Peace*, prolegomena, 41.
117. This is the fragment of Cicero, *De re publica*, already quoted in 7/vii/21 (printed above, p. 81), and again in 8/iv/9 (above, p. 154).
118. Vattel, I.5.67.
119. As we know from 7/vii/25 (printed in Section XIII of this book), there is every indication that Reid did find the time for this task.
120. Vattel, III.1.4; III.2.8; III.2.15.
121. Vattel, II.7.84 and note a.
122. Vattel, III.3.36, quoting Livy, *From the Founding of the City*, IX.i (10): ‘Samnites, that war is just which is necessary, and righteous are their arms to whom, save only in arms, no hope is left.’
123. Vattel, III.4.65.
124. Vattel, III.4.63.
125. Vattel, III.4.66–8 and III.12, to be read in the light of Vattel’s preliminaries, 17:

the obligation, and the right correspondent to it, or flowing from it, is distinguished into external and internal. The obligation is internal, as it binds the conscience, and as it comprehends the rules of our duty: it is external, as it is considered relatively to other men, and as it produces some right between them. The internal obligation is always the same in nature,



though it varies in degree: but the external obligation is divided into perfect and imperfect, and the right that results from it is also perfect and imperfect.

126. Vattel, III.6.78–82.
127. Vattel, III.7.103 ff.
128. Vattel, III.7.112 ff. and 119 ff.
129. The heading refers to ch. 8 of book III in Vattel and the first paragraph to secs. 140 and 151 there. In the latter we find: ‘Admiral Anson, on taking the rich Acapulco Galleon near Manila, and finding his prisoners to out-number his whole ships company, he confined them in the hold, by which they suffered extremely.’
130. Vattel, III.8.155; cf. the Commentary above at p. 312 n. 66.
131. Vattel, III.8.158; cf. the Commentary above at p. 313 n. 67. The following two points are from the same place.
132. The general reference is Vattel, III.9.165, where we find: ‘The instances of humanity and discretion cannot be too often cited. The long wars of France in the reign of Lewis XIV. furnish an instance which can never be too much commended. The sovereigns being respectively interested in the preservation of the country, used on the commencement of the war to enter into treaties, for regulating the contributions on a supportable footing: both the extent of the country in which each could demand contributions, the amount of them, and the manner in which the parties sent for levying them were to behave, were settled. In these treaties it was expressed, that no body of men under a certain number, should advance into the enemy’s country beyond the bounds agreed on, under the penalty of being treated as *parti bleu* {Note: ‘Marauders, or robbers’}.’
133. Vattel, III.9.166–8.
134. Vattel, III.12; cf. the Commentary above at n. 125.
135. Vattel, III.13.196–8; cf. the Commentary above at p. 314 n.74.
136. Vattel, III.18.296 with II.4.54–6; II.12.196–7; and IV.5.68.
137. Vattel, IV.6.71–4.
138. Vattel, IV.7.80–5.
139. Vattel, IV.9.117–24.
140. I assume that Reid is here referring to Vattel’s discussion of the jurisdiction over ambassadors in IV.8.
141. Vattel, III.1.4–5.
142. While Vattel does not use this arrangement in four points, they are all to be found in III.3.24–30.

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143. Vattel, III.3.33–4 and 42.
144. Reid may be referring to Vattel’s discussion of the benefits of a balance of power system, III.3.47–9.
145. Vattel, III.4.51 and 64.
146. Again Reid cuts across Vattel’s organisation to achieve his own. The most central references are III.2.19 and 8; III.6.78–80 and 83; III.2.13.
147. Vattel, III.7.107–8.
148. Vattel, III.3.40; for the consequences, see III.4.66–8 and III.12. See also the Commentary above at nn. 125 and 134.
149. Vattel, II.2.34 and IV.6.75.
150. Vattel, IV.8.114.
151. Vattel, IV.6.79 and IV.7.103.
152. Vattel, II.8.101–2.
153. This surprising arrangement may reflect that Reid has remembered that in Grotius the right of burial arises from ‘the same arbitrary *Law of Nations*’ as do ‘the Rights of Embassies’; see *War and Peace*, II.18 and 19.
154. Vattel, I.21.
155. Vattel, I.19.214.
156. Vattel, I.19.228.
157. Vattel, IV.7.95 ff.
158. In one of the manuscripts containing disparate points in jurisprudence, we find a note in which Reid reminds himself of a number of disputed issues. Because these belong to or relate to political jurisprudence and have been encountered in the preceding, the note is added here below without further comment. The note is in 7/vii/1c,1v (which is described in the Textual Notes at p. 329):
- Points of jurisprudence that have been disputed & in which Mankind have been gradually Enlightened. The Patria Posestas. Right of Conquest. Causes of War. Right over Captives. Dominion of the Sea. Popes Right to give Kingdoms and absolve Subjects from Allegiance. The Measures of Submission to the Civil Magistrate. The Rights of Conscience in Matters of Religion, & of Religious Liberty. Servitude.



# TEXTUAL NOTES

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## I. Introductory Lecture

3 *MS. 2131171v14: Nine folios, paginated from p. 2 to p. 17; fol. 1 is unnumbered recto (r) and fol. 9 verso (v) is blank. MS. 2131141l27: One folio, apparently detached from 71v14, carrying recto some cancelled formulations of points belonging here and, verso, two marked insertions for 71v14. Heading added.*

3/11–  
4/15 All human . . . not.] All the Objects of Human Knowledge may be comprehended under two General Heads **BODY & MIND**, Things material & things intellectual. about one or other of these Objects or things pertaining to them all Sciences treat, all Arts are occupied all human Thoughts and designs are employed. The whole System of Bodies in the Universe of which we know but a very small Part is called the Material World & the whole System of Minds in the Universe from the infinite Creator of all things down to the meanest creature endowed with Thought may be called and has been called the Intellectual world. To determine positively that every Being in the Universe must belong to one or other of these Classes; that every thing that exists must either be extended solid and inert; or else that it must be thinking and intelligent, would perhaps be rash and presumptuous. There seems to be a vast interval between Body and Mind, and who can affirm that there can be nothing intermediate. We may indeed affirm that every thing which exists must be either material, or immaterial; for between these there can be no middle Nature. But it is not so evident that whatever is not material must be endowed with thought & intelligence. Is there not Reason to think that in Plants there is something more than inert Matter? Yet we have no Reason to ascribe to them Intelligence, thought or even Sensation. May there not possibly be in the Universe some immaterial Machinery (if we may Use that Expression) by which the Laws of Nature contrived by the Supreme Wisdom are put in Execution. It is highly probable that the Laws of Gravitation, Cohesion, Magnetism,

& the other Laws of the Material System cannot possibly result from any Material Machinery whatsoever. Whether therefore those Laws of Nature having been at first contrived by the Supreme Wisdom, are now put in Execution by the constant Energy of some Intellectual Being, or whether by some immaterial Machinery, if we may use that Expression, seems to be beyond the reach of our weak Comprehension. It becomes us ingenuously to confess our Ignorance in this Matter & to rest satisfied with this That although there may be for ought we know Beings which are neither Material, nor endowed with thought, yet if there be any such, they are Beings of which we have no knowledge nor can form any Conception. They are not discoverable by any of the Faculties God hath given to us, and therefore with Regard to us are as if they were not. We have no Means of acquiring any Knowledge or as much as of forming any Conjecture concerning them. (4/11/27, fol. 1r)] all the Beings or Substances in the Universe of which our Faculties give us any Intelligence may be reduced to these two classes, of Bodies, and Minds or Spirits. It would perhaps be too presumptuous to say that all Beings in the Universe belong to one or the other of these Classes. There may for any thing we know be in the Universe Beings of a different kind from both. If there be any such they are Beings of which we have no Knowledge nor can form any Conception. They are not discoverable by any of the Faculties which God hath given to us, and therefore with regard to us are as if they were not. We have no means of acquiring any Knowledge or so much as of forming any Conjecture concerning them. (7/v/4,1).

- 3/19–20 pertaining . . . occupied.] belonging to them all Sciences treat, all Arts are occupied, all human thoughts and designs are employed.
- 3/20–1 to which . . . limited] and all that falls within our Knowledge belongs to one or the other.
- 3/23 other . . . being] things of an Intermediate Nature
- 3/24 is] is perhaps
- 3/26 is indeed] seems to be
- 3/30 in] employed in
- 3/32 &] & *one word illegible.*
- 4/3 conjectured] thought
- 4/5 intelligent] Intellectual
- 4/5 conjectured] thought
- 4/6 in . . . Beings] unintelligent Natures in the Universe

- 4/24 What . . . Minds] What a variety of thinking beings or Minds there are throughout this vast Universe we cannot pretend to say. We inhabit but a little Corner of God's Dominion. The Globe which we inhabit is onely one of six Planets that encircle our Sun. What various orders of Beings and with what faculties endowed may inhabit the other five, their Sattelites and the Comets belonging to our System? How many other Suns may be encircled with like Systems? These are things altogether hid from us and which we have no means of knowing.
- 5/8 therefore] *alternate* then
- 5/31 State.] State. Most Systems of Pneumatology begin with enquiring Whether the mind be material or immaterial, whether mortal or immortal, and afterwards enter into an examination of its faculties. But this is certainly a preposterous order because all that our Reason can discover concerning the Nature and duration of the Mind must be deduced from the Nature of its powers and Faculties. The operations of our Minds are known immediately because we are conscious of them. We reason from its operations and faculties to its nature and duration but not the contrary way. The natural and scientific order in treating of the Mind therefore is to explain its Powers & Faculties.
- 6/20 General Prejudices] bugbears
- 6/28 Sister] Brother
- 7/10 of . . . Sciences] upon which they must be built
- 7/11 in . . . Nature] there, if any where
- 7/13 wrong & mistaken] false
- 8/26 Mind] Being and the duty we owe to him
- 9/22 low] base
- 9/35 Second] Third
- 10/22 the . . . him] as he ought to act
- 11/5-7 were . . . Man] were it not that
- 11/34 Pneumatology] the Powers of the human Mind
- 13/19 Nature. *A horizontal stroke divides the page after this line.*
- 16/8-9 are . . . of] may be framed in a

## II. Duties to God

- 17 *MS. 2131/8/iv/2: Six folios of varying sizes incompletely paginated 1 to 5, the sequence of the rest indicated in other ways. Heading added.*

- 17/20–1 our . . . Creatures] his being and his presence with us, and in all parts of his Wide Extended Dominion
- 18/26 2. *There is no preceding No. 1 but No. 3 follows at 19/19.*
- 18/33 moderate] lessen
- 22/39 Teacher. *Reid here adds a reference to a marginal note on fol. 2v, printed above at 20/3–21/13, In . . . God.*
- 23/28 some Men] many
- 24/3 father . . . heaven] the father of his Spirit

### III. Duties to Ourselves

- 26 *MS. 2131/8/iv/2: Those are the remaining passages of the manuscript described above at the textual notes for p. 17. MS. 2131/8/iv/3: Four folios incompletely paginated 1 to 5, the sequence of the rest indicated in other ways. Heading and sub-heading added.*
- 26/17 taught us] represented
- 26/22 his industry] Culture
- 27/12–13 from . . . Nature] in quest of Shells and Butterflies
- 27/29 low & humble] mean
- 27/30–1 has . . . employment] is meanly employed
- 27/39 employed . . . Station] tho' meanly employed
- 28/11 on . . . man] are mean
- 28/27 Mar . . . 1766. *The date is in the upper left-hand corner and is probably a later addition. There is no break in the manuscript between Nature in line 25 and These in line 27.*
- 29/27 Purposes.] Purposes. Candor & Impartiality in Opinion.
- 29/29 Inconstancy.] Inconstancy. Excessive Desire
- 31/1 Fortitude. *The following brief discussion of fortitude occurs below a horizontal line on fol. 3v of the present manuscript; the preceding text on that page ended at 23/18 above. Reid has given no indication where the present section is to be placed. He does, however, invariably mention the three virtues that constitute the duty to ourselves, in the order, prudence, temperance, fortitude; and in the retrospect of the subject, at 31/35 ff. below, this is also his order of presentation. There is thus good warrant for the arrangement chosen here.*
- 31/13 Sesostris of] Alexander of
- 31/13 Gengiskan of] Hannibal Scipio & Caesar of
- 31/16 therefore in] the Nature of
- 34/15 Opinion] breath

- 36/9 *The lower halves of fol. 3r and fol. 3v are blank, thus separating the preceding discussion of duties to ourselves from the remaining one-and-a-half pages of text, which are printed in the following section.*

#### IV. Duties to Others: Justice

- 37 *MS. 2131/8/IV/3: Those are the remaining passages of the manuscript described at the textual notes for p. 26. Heading added.*
- 37/21 fair dealing] fairness

#### V. Duties to Others: Individuals in Private Jurisprudence

- 39 *MS. 2131/8/IV/1: Four folios incompletely paginated 1 to 4. MS. 2131/8/IV/5: Two folios. MS. 2131/8/III/2: Two folios. MS. 2131/8/IV/7: Four folios. MS. 2131/4/III/4: Two folios. MS. 2131/4/III/7: Three folios of which fol. 2v is blank. Heading added.*
- 41/18 Romanum.] Romanum. Or with Nature or Nations
- 41/19 Law.] Law. Jus Naturae the Law of Nature that is the Body or System
- 41/39 Honestum. *Reid instructs, see A pages 4, 5, thus referring forward to fol. 3v and fol. 4r (43/13–39, In . . . external.)*
- 42/11 implementing] alternate fullfilling
- 43/10 have. *The sentence breaks off here. There follows a cancelled passage. In treating of the principles of morals in General We have considered Right and wrong as qualities of Actions which make them the just object of approbation or disapprobation.*
- 44/24 in] in corpore
- 44/38–  
45/5 Justinians . . . Nec M. *These definitions appear in the margin and their position in the manuscript is conjectural.*
- 45/7 (see . . . {them}). *This is a superscribed insertion and the brackets have been editorially added.*
- 45/36–7 signifying that] expressing
- 45/39 actions] duties
- 46/19 Another . . . Common. *Marginal note whose position is conjectural.*
- 46/23–4 Of . . . Suicide. *Marginal note whose position is conjectural.*
- 47/8–15 Cautions . . . tribuatur. *Marginal note whose position is conjectural.*
- 48/17 {as}] an
- 52/5–7 Prosperous . . . purchase. *This line appears as a superscription between to and lead in line 3. After Land holders in lines 4–5, Reid has instructed himself to turn over to fol. 2v, where he deals with the third*



- general criticism of entailing – namely, that it is in conflict with the law of nature. This instruction was necessary because he already, at the bottom of fol. 2r, after leaving a small gap, had begun the next topic: pledges and mortgages. The situation is further complicated by his (probably later) insertion of a few lines between Land holders and Pledges (line 39), and to these lines he again added a marginal note and gave the whole addition the number 5. This plainly means point no. 5 in his second general criticism of entails – namely, that they are harmful to the public.*
- 52/38 are. *A horizontal line indicates the end of the third and final criticism of entails. Before going on to the final paragraph on fol. 2v, Reid must have turned over recto to the last two kinds of partial property.*
- 54/21 with] to
- 54/29 with] to
- 54/37 Void. *A space of some three lines intervenes, and the next paragraph appears to be a later addition.*
- 57/21 made . . . signs] naturally expressive
- 57/37–8 man is . . . degree] man thinks himself highly dishonoured
- 57/38 is . . . and] grievously affronted and
- 58/30 Backbiting. *Reading is conjectural. The following word is illegible.*
- 58/34 Speaker. *The transition to a new topic is indicated by a gap of some three lines.*
- 60/11 others] alternate his neighbours
- 61/2–3 was . . . of] belonged to
- 61/29 It . . . of no] There can be no
- 61/35 measured. *Reid directs Insert A. There is no insertion marked A in the present manuscript, but in view of the fact that Reid, as he has just pointed out, is moving on the borderline between jurisprudence and politics, it is not surprising to find this insertion as part of his economics lectures in the course on politics. It may well be that he not only used this passage from his economics lectures in his jurisprudence course but that he also used the present lecture on price in the economics lectures and that it is therefore Reid himself who has lifted 4/III/4 from his original notebook (see textual note to p. 39 above). This gives a clue to another puzzle. The lecture Of the Price of Things is dated 25 March; the same date is given for the following lecture on Contracts (p. 65 below). If Reid, as I think, entered some of the dates for his 1765 lectures after he had written (and presumably delivered) them, and if the lecture of Monday 25 March on price had already been removed by the*

*time he dated the subsequent one, then it is readily understandable that this was given the same date and that, as we shall see (65/22), he was led to correct the subsequent dates.*

- 62/11 Since therefore] It might seem therefore that  
 62/25–6 such Maxims] them  
 63/3 quicksighted] sharp  
 63/29 particular] certain  
 63/29 professions] professions of Life  
 65/6–8 These . . . fineness. *This marginal addition plainly belongs here, although Reid in fact has placed the appropriate insertion sign after Value in l. 5.*  
 65/22 Mar 26. *The number 6 has been inscribed over 7 in the date, and similar emendations govern the two succeeding dates; hence Mar 28 becomes Mar 27 and Mar 29 becomes Mar 28 (ll. 32 and 66/1.) For the likely explanation of this, see the textual note to 61/35.*  
 65/23–  
 30 2 Onerous . . . Interpretation. *These lines consist in part of dense superscriptions that, because of lack of space, present the points in an impossible order, if taken literally. I have reorganised the material in accordance with the standard order of presentation in Pufendorf and Hutcheson. In the process, one confusing comma in front of Wagers in l. 27 has had to be cancelled.*  
 66/28 peace] good  
 67/18 gentle forbearing] gentleness forbearance  
 68/3–4 continuo . . . faemina. *This has in fact been lined out.*  
 68/34 kind. *Below this line follows a blank space of some five lines.*

## VI. Duties to Others: Individuals in Oeconomical Jurisprudence

- 69 *MS. 2131/8/IV/7: The remaining passages of the manuscript, described above at the textual notes for p. 39. Heading added.*  
 70/15 Grounds] alternate Foundation] Original

## VII. Duties to Others: Individuals in Political Jurisprudence

- 72 *MS. 2131/8/IV/10: Four folios. Heading added.*  
 72/10 There. *This and the following paragraph (l. 20) are marked A and B, respectively, for insertion in the corresponding lecture in the following year, 1766. See below at 145/28 and 146/14.*

- 76/14 that] that respect and  
 77/1 Apr 12. *There is a gap of a few lines between this and the following marginal date. Apr 12 is in fact written opposite the preceding list of thinkers, whose ideas presumably were explained on that day.*  
 77/12–13 which . . . hold] which merits Approbation  
 77/31 Material] Planetary  
 78/3 notions] System

### VIII. Duties to Others: States

- 81 *MS. 2131/7/viii/21: Two folios containing text on fol. 1r and one-third of fol. 1v. Heading added.*  
 81/13 The. A marginal N and a stroke of the pen single out the rest of this paragraph and the first Cicero quotation (ll. 25–8) for use in the corresponding lecture in 1766. See pp. 244–5, n. 9, and the textual note at 154/6–21.  
 81/32 colunto. *A gap of a few lines below this line indicate the transition to the topic of the morality of war.*  
 82/8 inhuman] criminal

### IX. Supplement to Duties to Ourselves

- 83 *MS. 2131/7/viii/8: Four folios of which only fol. 1 carries text recto and verso. MS. 2131/7/v/5: Six folios; fol. 2v, most of fol. 3v, the lower halves of 5r and fol. 6r and v are blank; fol. 1, fol. 2r and a couple of lines on fol. 3 deal with axioms in practical ethics (cf AP, pp. 637–40), while the text on fol. 4 appears under the heading Estimate of the Goods and Evils of Life and is a precursor of AP, pp. 580a–86a, where Reid also touches upon the cardinal virtues (cf. p. 187 above, n. 1). The brief treatment of the virtues on fol. 5r and v is not, however, tied in with the rest of the discussion in this manuscript, but has the character of fragmentary notes that are best read in the light of the more substantial manuscripts printed in this section and in Section III above. Heading added.*  
 83/1 or] and

### X. Natural Law and Natural Rights

- 87 *MS. 2131/7/v/3: Two folios; only fol. 1r and the upper half of fol. 1v carry text. MS. 2131/7/viii/1: Three folios; only fol. 1r and the upper*

*half of fol. 1v carry text. MS. 2131/8/iv/4: Two folios; only fol. 1r and the upper half of fol. 1v carry text. MS. 2131/7/viii/1a: Two folios; the text ends one-third down fol. 2v. MS. 2131/7/viii/1c: Two folios evidently used at various times for five notes on and sketches of widely different points in jurisprudence: (1) fol. 1r and the first six lines of fol. 2r deal with property in terms of an analogy. (2) The rest of fol. 2r and the first sixteen lines of fol. 1v deal with the basic relationship between right and obligation. (3) The third note takes up the middle of fol. 1v and deals with various disputed points in jurisprudence concerning sovereignty and its exercise. (4) A short horizontal line separates the last note on fol. 1v, which gives some afterthoughts on property. (5) Finally fol. 2v, which is dated 1770 March and is likely to be later than any of the previous notes, presents yet another attempt to get a clear view of the various distinctions of rights. It would serve little purpose to print these notes together, but when they are put in their separate contexts they are of value. Notes 2 and 5 are placed here together with 7/viii/1a. Notes 1 and 4 are in Section XI, below, and note 3 is in Section XVII, n. 158, p. 319. MS. 2131/7/viii/1b: Two folios; the text ends one-third down fol. 2r. The first half of fol. 1r is closely related to the drafts of AP, essay V, ch. 5 and is therefore not included here. Heading added.*

- 87/16 locum habent] obtinent  
 88/22– The English translation inserted here is the editor's.  
 89/34  
 91/36 an . . . thing] a bad thing  
 93/17 the . . . who] him that  
 93/18 many] innumerable  
 93/37 Parent] Parents  
 93/37 Child] Children  
 94/33–4 who . . . be] perhaps who are innocents are  
 94/34 it] the injured committed  
 95/37 treat of] treat of these  
 95/37–8 of individuals . . . Nations] which result from the Nature of Man and from the  
 96/20 Reasons. *A short horizontal stroke of the pen appears above this line.*  
 98/31 Distinguished] divided  
 98/34 (General Absolute). *This is a superscribed addition, and the brackets have been editorially added.*  
 98/35 (Special Hypothetical). *This is a superscribed addition, and the brackets have been editorially added.*

- 98/38 Source] Origin  
 99/22 human. *A short superscribed phrase in front of human is illegible. It may be a Man*  
 99/23 he] a man  
 99/36 they] he  
 99/36 are . . . State. *This is a superscribed correction or alternate to the following phrase, has . . . Community. Reid has failed either to delete the latter or to adjust it to the previous change from he to they*  
 101/14 Delineation] knowledge

## XI. Property

- 103 *MS. 2131/7/vii/1c: See the textual note at 87 above. MS. 2131/7/viii/11: Two folios; fol. 2r is blank, and the notes verso are more appropriately placed as insertions in 7/viii/13 (see 107/23–4 below). MS 2131/7/vii/13: Three folios; fol. 2v and fol. 3 are blank. Heading added.*
- 104/21 Naming] Goods at his Death disposed by will Naming  
 105/7 Adventitious] Acquired] Adventitious (*On both occasions*).  
 105/9 Adventitious] Acquired] Adventitious  
 105/8 original] original which are either Real or personal  
 105/37 1. *This numbering is not followed up.*
- 107/23–4 Division . . . Corresponding. *A cross-like marginal sign at the beginning and an asterisk at the end of this passage refer to two paragraphs similarly marked on 7/vii/11, fol. 2v. In my opinion, Reid first made the asterisked note, which takes up the first half of the insertion and concerns the distinction between external and internal rights, thus adding a new topic to the ones dealt with in 7/vii/13. He then apparently decided to expand upon the topic mentioned here in passing – namely, the distinction between perfect and imperfect rights – and this constitutes the cross-marked second half of the insertion. Only this assumption makes the arrangement of the insertion intelligible, and it conforms with the arrangement in Hutcheson, ‘Short Introduction’, pp. 122–3, and ‘System’, 1:257–60, as well as in Reid’s text above at pp. 100 ff. I here print the insertions in this presumed order (107/25–39 and 108/1–27) rather than according to the arrangement on the manuscript page.*
- 107/30 bestow] yield  
 108/3 Ex Gr. *Presumably Reid was abbreviating exempli gratia – i.e. for instance.*

- 108/15 yet] yet. *The full stop may have been intended in front of yet*  
 108/38–9 either . . . imperfect. *This passage is superscribed; in doing so, Reid must have forgotten that he already had specified perfect*  
 109/6–8 6 . . . Testimony. *This is a later addition, hence (presumably) the inconsistent numbering.*  
 109/31–2 must . . . Minors. *This phrase is superscribed.*  
 110/31 3] 3 from the End of God in giving this Faculty

## XII. Succession

- 112 *MS. 2131/7/viii/12: Three folios; only fol. 1r and part of fol. 1v carry text. Heading added.*  
 112/21 fit] proper

## XIII. On Dissolution of Obligations and on Interpretation

- 114 *MS. 2131/7/viii/25: Four folios; only fol. 1r has a text that is divided into three sections by two inch-long horizontal lines, one above Of Interpretation (114/16) and one above Of the Collision of Laws (115/25). Heading added.*  
 an . . . Justice] to Charity. *In cancelling Charity, it appears that to has*  
 115/28–9 *been crossed out inadvertently; I have restored it.*

## XIV. Oeconomical Jurisprudence

- 116 *MS. 2131/7/viii/15: Two folios; the lower halves of fol. 2r and fol. 2v are blank. MS. 2131/7/viii/17–19: One folio plus two folios plus three folios, which form one continuous text. 7/viii/19, fol. 1v is only two-thirds full of text, fol. 2r is only half full, and fol. 3v and fol. 4 are blank. MS. 2131/7/viii/20: Four folios; the text ends seven lines down fol. 4v. Heading added.*  
 118/8 so. *Undoubtedly see was intended.*  
 118/35 First. *This is followed by 2 (120/3) and 3 (121/22). These seem clearly to be later additions made to underline the structure of the material.*  
 118/35–  
 119/33 First . . . Parental. *The following note is written vertically in the extreme left-hand margin along the full length of 7/viii/17, fol. 1r. To This Shedule ought to be prefixed some general Observations upon the Oeconomy of Nature in the propagation of Animals. That Reid*

*did make such observations is shown by the preceding manuscript, 7/viii/15.*

119/4 must] behoved to

119/5 must] behoved to

120/9 friendship] attachment

120/10 seduce] gain

120/24 broke down] overcome

120/33–5 All . . . Nations. *This is a marginal note written vertically over the full length of the page. There is an insertion sign in the margin at 2 (120/3) above. But since the note does not fit with the first sentence of that paragraph, since the insertion sign may point to the paragraph as a whole, and since the note obviously fits the present place, I have ventured to print it here. Alongside this note there is another disconnected one The Education of Men is a Long work. Although this has not been cancelled, I do not insert it in the text of fol. 1v, where it is well-nigh impossible to find a sensible place for it. I believe that Reid mistook the verso for the recto side of the folio when he added this note; discovered his error, but did not cross out his false start, and turned to the recto side where he wanted to insert what is now 119/5–6 Man . . . Work.*

120/32–3 this . . . Sex] the Idea annexed to this Word

121/32–3 of . . . in] which are indicated as we conceive by

121/36 concern . . . the] desire of

121/36–7 of . . . Love] to please and

121/37–9 Every . . . merit] and a strong ambition of meriting

122/7 among] between

122/24 principle] affection

123/19 guidance] direction

124/20 they believe] is believed

124/38 13] twelve

124/38 14] 13

125/28 or] *one word illegible after or*

126/11 authorised] permitted

126/11 authorised.] authorised. And by the Laws of Cecrops it appears to have been prohibited among the Athenians

127/26 perused. *The transition to a new topic is signalled by leaving the last quarter of fol. 2v blank.*

128/9 Being] It is manifestly the Intention of the Supreme being that mankind should be propagated by Generation. and he hath in the

human Constitution made sufficient provision for the continuance of the Race to the End of the World. The long infancy and helpless State of Children requires the care of both parents to provide for and to rear them. And the Author of Nature hath implanted the Parental Affection in Parents for this very Purpose. That Modesty which is a part of the human frame, is intended by Nature to Bridle our animal appetites.

- 128/39 in substance] substantially  
 129/14 commonly] often  
 129/16 trouble. *A short horizontal stroke appears below the paragraph ending here.*  
 129/39 siet. *A short horizontal line separates the verse ending here from the following one.*  
 131/19 profitable] necessary  
 131/33 giddy. *A gap of some five lines follows.*  
 132/13 Apr . . . 1770. *This date appears in the upper right-hand corner immediately above the subsequent paragraph, which has been written along the right-hand margin. I presume that the dating pertains to the note only, but it could be of the entire fol. 2v.*  
 133/4–5 good Conduct] other virtues  
 133/36 permit] allow

## XV. Social Contract as Implied Contract

- 136 *MS. 2131/2/11/10: Four folios. Heading added.*  
 136/1 The . . . is That] The word Contract is like many others taken sometimes in a larger sometimes in a more constrained sense. The common definition That  
 136/2 given] entered into  
 136/19 moved] proposed  
 137/11 an Indenture] a deed upon  
 138/7 do . . . duty] the office  
 139/4 violated] invaded  
 139/14 committed] were guilty of  
 142/11 taking. *On turning to the last page of the manuscript, Reid apparently found that he had already scribbled some notes at the top of the page. Accordingly, he drew a line under them and continued the present text below it. I print the notes from the top of fol. 4v at the end of this section at 143/11–25 below.*



- 142/14 aliens] foreigners  
 143/13 Obligation] voluntary deed by  
 143/16 voluntarily] an obligation

## XVI. Political Jurisprudence

- 144 *MS. 2131/8/iv/9: Four folios. Heading added.*  
 144/9 publica] publica. The Rights & obligations arising from this State are either Such as belong to the whole State as one Body or such as belong to the particular Parts of which the State is composed, which are chiefly Rulers and Subjects.  
 144/21 enquire:] enquire what ought to be the Conduct towards other States whether in peace or in War  
 145/10 which] as  
 145/28– There . . . cause. *See above at 72/10.*  
 37  
 146/14– If . . . Neighbours. *See above at 72/10.*  
 37  
 152/17 give. *Presumably 'take' was intended.*

## XVII. Rights and Duties of States

- 153 *MS. 2131/8/iv/9, continued (see above at p. 144). MS. 2131/7/viii/23: Four folios; fol. 4 is blank recto. The composition of this manuscript is complicated, and it is impossible to be entirely certain of the proper order of its elements. The manuscript begins in the middle of a discussion of established religion, the beginning of which is in the preceding manuscript, 8/iv/19, though it is impossible to say whether the two manuscripts originally were one. Following the few clues given by Reid and the sense of the material, I have organised the text as follows: (1) Established religion from 156/13 As to 157/22 animus; (2) internal self-government from 157/23 Whether to 161/7 individuals; (3) relations between states from 161/9 Behaviour to 162/18 Nature; (4) war from 162/19 War to 163/16 Jurisprudence. MS. 2131/8/iv/8: Originally two folios; apparently two-thirds of one of them have been cut off vertically, the other third appearing as an extra wide margin of the remaining folio. This flap is full of marginal addenda. The main text ends verso in the middle. The manuscript is dated 2 May 1766; the previous date we have for that year is 24 April (144/2). While the latter*

*contains so much material that it must have taken Reid most of the following week to get through it, there is clearly something missing between this and the present manuscript, as we see from the recapitulation in the opening lines (163/19 ff). This gap may originally have been filled by the brief, undated 7/viii/22 (167/15–168/10), while Reid a year later decided to expand this material and hence inserted 7/viii/23, just as I have done here (156/13–163/16). MS. 2131/7/viii/22: One folio inscribed only recto. MS. 2131/3/iii/5: Two folios. Fol. 1 is recto dated September 1766 and taken up by notes from Reid's study of Herbert of Cherbury's 'De veritate', which have no direct relevance to the present volume. MS. 2131/4/iii/23c: Two folios; the text ends two-thirds down fol. 2v. This manuscript originally formed the middle part of the preceding manuscript, 3/iii/5. This is obscured because the two leaves of the present manuscript, as preserved, have been folded over the wrong way. I have corrected this in the printing and numbering. Fol. 2 contains reading notes of no relevance here, and I have not printed it. The heading has been added.*

- 154/3 each others Rights] Rights of other States as in. *In making this correction Reid apparently failed to cancel the in front of each.*
- 154/6–21 The . . . posse. *See the textual notes above at 81/13; and the Commentary at pp. 244–5, n. 9, and p. 295, n. 2. See also the textual note at 172/10.*
- 155/29–  
30 Rites . . . and] Service we pay to him and
- 156/32 differ] not agree
- 158/15 due to] Service of. *Reid appears to have overlooked at the in front of the cancellation.*
- 160/10 Inheritance] blood
- 161/14 Enlarge. *This is a superscribed self-instruction.*
- 172/10–  
28 Though . . . posse. *These paragraphs are marked by an A and a line in the margin for the cross-reference in 81v/9, fol. 4r; see the textual note at 154/6–21 above.*
- 173/5–  
21 When . . . Fide. *These paragraphs are marked by a B and a line in the margin; see the Commentary at p. 312, n. 63.*
- 174/16 Ambassadors. *Under this line appears a short horizontal stroke, marking the return to the third book of Vattel.*
- 174/22 obtaining . . . a] vindicating
- 174/22 Right] Right of the State

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# INDEX

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This Index covers the Introduction, Reid's *Practical Ethics*, and the Commentary. In entries for Reid's text the page numbers are printed in italics. This also applies to texts of Reid quoted in the Commentary and in the Introduction. In view of the many variations in Reid's spelling, it has been necessary to standardise the spelling in the index. Where not inappropriate, modern spelling has been adopted.

Apart from providing access to the details of each of the three main parts of the book, the index has two further functions. It indicates a large number of the particular links between Reid's text and the Commentary. It also gives an overview of Reid's linguistic usage. I have therefore sought to index Reid's text as non-interpretatively as possible. More particularly, I have reduced to a minimum the identification of synonymous expressions for the purpose of collective entries.

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