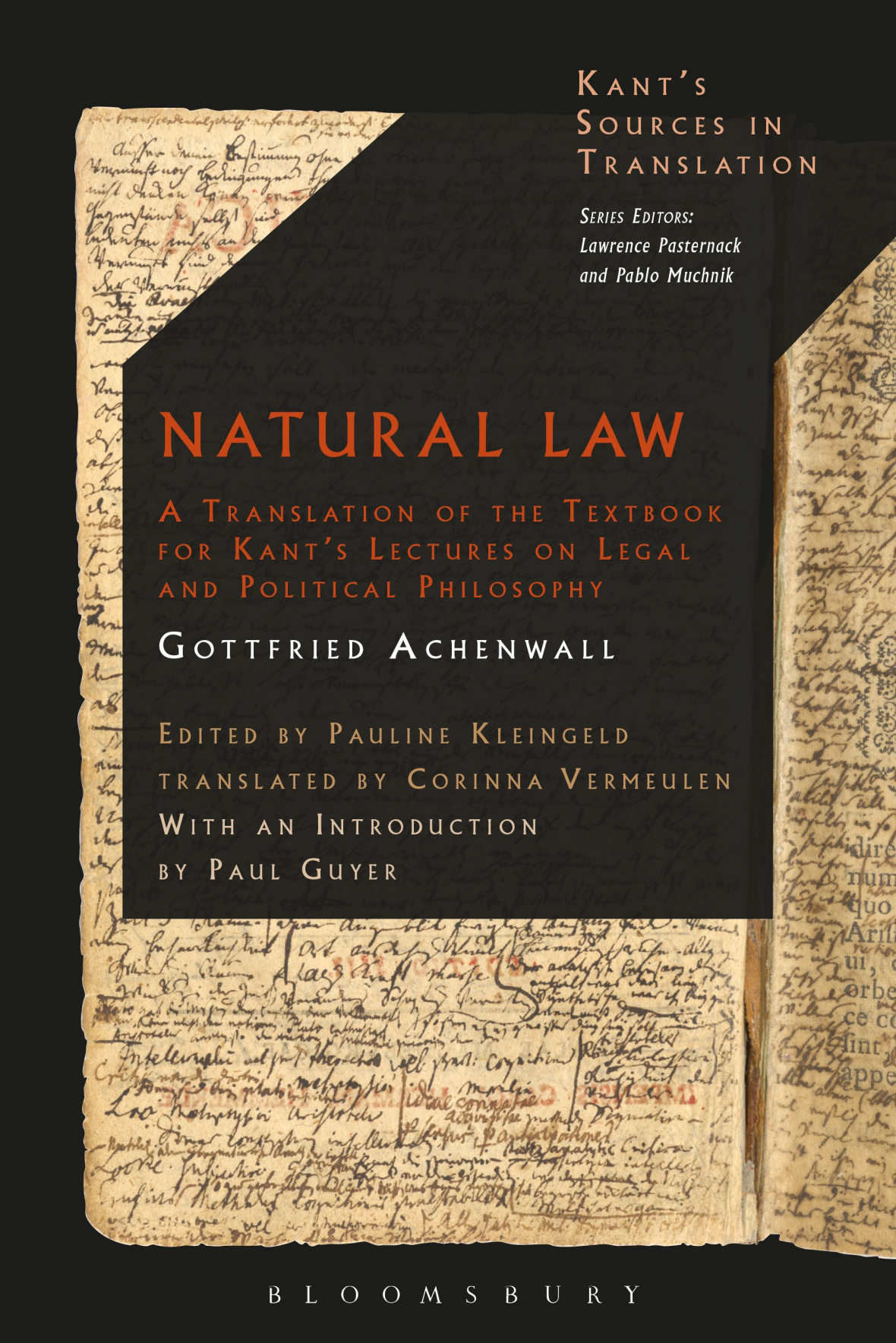

KANT'S SOURCES IN TRANSLATION

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NATURAL LAW

A TRANSLATION OF THE TEXTBOOK FOR KANT'S LECTURES ON LEGAL AND POLITICAL PHILOSOPHY

GOTTFRIED ACHENWALL

EDITED BY PAULINE KLEINGELD
TRANSLATED BY CORINNA VERMEULEN
WITH AN INTRODUCTION
BY PAUL GUYER

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Kant's Sources in Translation

Before becoming a famous philosopher, Kant was a famous teacher. For over forty years, he lectured on a wide array of topics—ranging from metaphysics to mineralogy, physics to pedagogy, anthropology to logic. Before officially entering the ranks at the University of Königsberg with the *Inaugural Dissertation* (1771), Kant's living depended on the popularity of his lectures. He took them very seriously, and used for each of them one or another of the textbooks recognized by the Prussian authorities. In many cases, he even used the same copy for decades. These copies, as a result, accumulated scores of marginal notes (often referred to as "*Reflexionen*"), which acted sometimes as reminders, sometimes as objections, and sometimes as springboards for Kant's own thoughts.

This wealth of material has been transcribed and printed in the *Akademie-Ausgabe von Immanuel Kants gesammelten Schriften*. Likewise, most of the extant notes composed by students who attended Kant's lectures have also been incorporated into the *Akademie-Ausgabe*. These resources have over the years received modest attention, but with Cambridge University Press' translation of selected lectures and *Reflexionen*, interest in them (especially among Anglophone Kant scholars) has burgeoned.

Unfortunately, however, it is common for interpreters to overlook the fact that Kant's lecture notes are not his own writings, but transcriptions from his students. Similarly, his *Reflexionen*, though of his own hand, are often just glosses on some point made in the textbook from which he was teaching. These materials, therefore, should not be considered in isolation—they are an outgrowth of the manuals Kant was using, part of an implicit dialogue with their authors, and, as any teacher would attest, often open to students' misrepresentation. As stand-alone pieces severed from this context, it is impossible to know whether a particular *Reflexion* or lecture passage conveys Kant's restatement of the textbook content, or is instead a qualification, extrapolation, criticism, or merely a digression on Kant's part.

The goal of this series is to offer the tools necessary for reconstructing the context of Kant's thought. Many of these sources are in Latin and in German, and have heretofore remained in the hands of specialists. Their reliable English translations will make them accessible to a much broader public and help contemporary readers put Kant's lectures, notes, and *Reflexionen* in perspective.

The first phase of this project will focus on the most important philosophical textbooks Kant used throughout his teaching career. In addition to newly translated material, each volume will be accompanied by a system of concordances that allows readers to correlate Kant's *Reflexionen* and lectures to their corresponding textbook passages.

In a second phase, the series will cast a broader net and offer translations of influential German and Latin texts of the eighteenth century that are not currently available in English or need updating. Combined, these efforts promise to give Anglophone scholars a more comprehensive picture of the intellectual world that made possible the German Enlightenment.

In the first volume of our series, the translation of Georg Friedrich Meier's *Auszug aus der Vernunftlehre* (Halle, 1752), we presented one of the most enduring influences on Kant's theoretical philosophy, the textbook he used throughout his logic courses during a period of forty years (1756–96). Our second volume, the translation of Johann August Eberhard's *Vorbereitung zur natürlichen Theologie zum Gebrauch akademischer Vorlesungen* (Halle, 1781), does a comparable job—this time making explicit the background against which Kant developed his mature philosophy of religion. In the present volume, we offer the first English translation of Gottfried Achenwall's *Ius naturae* (5th edition: 1763), the textbook from which Kant lectured on Natural Law for over twenty years (1767–1788). Not only does this textbook serve as the basis for Kant's Natural Law lectures and related *Reflexionen*, but it also shaped the legal and political philosophy found in his Doctrine of Right, the first part of the *Metaphysics of Morals* (1797).

Editor's Preface

Pauline Kleingeld

This volume presents the first translation of the book that Immanuel Kant used as the basis for his lectures on natural law: the fifth edition of Gottfried Achenwall's *Ius naturae* (1763).[1] This book, together with Achenwall's *Prolegomena iuris naturalis*,[2] had a formative influence on Kant's legal and political philosophy, as well as his moral philosophy.

There are at least two reasons why Achenwall's *Natural Law* is of crucial importance for Kant scholarship. First, it is indispensable for understanding Kant's 1784 *Feyerabend Lectures on Natural Law* (*Naturrecht Feyerabend*) and the extensive handwritten notes in his personal copy of volume II of Achenwall's book (published in vol. 19, pp. 333–613 of the *Akademie-Ausgabe*). The Feyerabend transcript is the only known transcript of Kant's lectures on natural law, and it is the only detailed statement of his legal and political philosophy from the 1780s. This text cannot be fully understood without comparing it to Achenwall's textbook, however, because it is not always clear from the lecture notes whether Kant is explaining Achenwall, criticizing him, or developing his own theory.

Second, Achenwall's book is important for understanding Kant's published work on legal and political philosophy. As Paul Guyer explains in his Introduction to the present volume, knowledge of Achenwall's *Natural Law* is indispensable for understanding the Doctrine of Right of the *Metaphysics of Morals*. Despite Kant's many disagreements with Achenwall on matters of philosophical substance, he greatly respected his work (e.g., GTP 8:301) for its precise definitions, evenhandedness, and systematic organization. This is reflected in Kant's own terminology, his framing of the issues, and the structure of his system.

Furthermore, Achenwall's *Natural Law* is crucially important for understanding Kant's moral philosophy, even if indirectly. During the very semester in which Kant taught the course on which the Feyerabend transcript is based, he was writing the

[1] There is a German translation of the first edition of the work, from 1750, which Achenwall co-authored with Johann Stephan Pütter, and which appeared under a different title: Gottfried Achenwall and Johann Stephan Pütter, *Anfangsgründe des Naturrechts* (*Elementa iuris naturae)*, translated and edited by Jan Schröder (Frankfurt am Main: Insel Verlag, 1995). After the 2nd edition, Achenwall assumed sole responsibility for the work and revised and expanded the text for subsequent editions.

[2] Achenwall's *Prolegomena* have also been translated: Gottfried Achenwall, *Prolegomena to Natural Law,* edited by Pauline Kleingeld, translated by Corinna Vermeulen (Groningen: University of Groningen Press, 2020), available at https://doi.org/10.21827/5cdabd4c2a027 (open access).

Groundwork for the Metaphysics of Morals. Kant's discussion in the *Groundwork* (and other texts on moral philosophy) is replete with legal terminology and political analogies, such as moral "legislation," "autonomy," and the idea of a "realm" of ends. In order to fully understand what he means by these terms, we often need to take recourse to the Feyerabend lectures, and in order to understand these lectures we need to take recourse to Achenwall's textbook.

In short, this translation of Achenwall's *Natural Law* is meant to facilitate scholarship on Kant's Feyerabend lectures and on his legal, political, and moral philosophy more generally.

Given the vital importance of Achenwall's textbook for understanding Kant's work, one might wonder why an English translation did not appear much sooner. An important part of the explanation is the relative obscurity, until very recently, of Kant's Feyerabend lectures. As explained by Gerhard Lehmann, the editor of the *Akademie-Ausgabe* volume containing the Feyerabend lectures, the transcript was rediscovered in the late 1970s and was then hastily published as an appendix to volume 27, which contained notes on Kant's moral philosophy lectures and appeared in 1979 (27:1038, 1052–55). Their publication in an inconspicuous volume, the reputation of the published version as unreliable, and the absence of an English translation all contributed to the enduring relative obscurity of the Feyerabend lectures, which in turn meant that the importance of Achenwall's *Natural Law* for Kant's legal, political, and moral philosophy largely escaped notice.[3] Thanks to the new critical edition by Heinrich Delfosse, Norbert Hinske, and Gianluca Sadun Bordoni (2010, 2014) and to recent English and Italian translations, many more scholars are becoming interested in the Feyerabend lectures. I hope that they will find the present volume useful.[4]

Aside from its usefulness to Kant scholarship, Achenwall's *Natural Law* will be of great interest to those working on the history of legal and political philosophy. The book offers a careful and balanced "state of the art" account of eighteenth-century natural law theory by one of its leading German representatives, and it was used very widely at the time.

[3] There are notable exceptions. Achenwall's influence on Kant's work has been emphasized by scholars of Kant's philosophical development (see the bibliography at the end of Paul Guyer's Introduction for some examples) and, among Kant scholars working on Kant's legal and political philosophy, especially by Joachim Hruschka.

[4] Frederick Rauscher's English translation of the Feyerabend lectures is found in the volume *Lectures and Drafts on Political Philosophy*, in the Cambridge Edition of the Works of Kant, edited by Frederick Rauscher and Kenneth R. Westphal (Cambridge: Cambridge University Press, 2016). The Italian translation is found in *Immanuel Kant: Lezioni sul diritto natural (Naturrecht Feyerabend)*, edited by Norbert Hinske and Gianluca Sadun Bordoni (Milan: Bompiani, 2016).

Acknowledgments

Pauline Kleingeld

I am deeply grateful to a large number of people who generously contributed to this project. Most of all, I would like to thank Corinna Vermeulen for an eminent translation. Our collaboration started in 2015 with a mere twenty pages from Part II. As the import of the text quickly became clear, the project expanded. I feel fortunate to have found such a talented and experienced professional translator with such excellent knowledge of Latin, a background in the history of philosophy, and facility with technical juridical terminology. I have very much enjoyed working with Corinna over the past four years and have learned a lot.

I thank the series editors, Pablo Muchnik and Lawrence Pasternack, for their enthusiastic support and their efforts at various stages of this project, and I am very grateful to Paul Guyer for writing a lucid and instructive introduction. John Hymers, Gualtiero Lorini, Fred Rauscher, Arthur Ripstein, Werner Stark, and Ernest Weinrib all shared their great expertise and gave valuable advice. Carolyn Benson provided crucial assistance in getting the manuscript ready. I am very grateful to Linda Ham for producing the Latin-English and English-Latin subject indices.

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Introduction

Paul Guyer

I Gottfried Achenwall and Immanuel Kant

Immanuel Kant lectured on "natural law" twelve times between 1767 and 1788.[1] His textbook for this course was *Ius naturae—Natural Law,* which was intended as a handbook for students—by Gottfried Achenwall, specifically the fifth edition of 1763. This is what is translated here. One student transcription of Kant's course survives, based on notes taken by Gottfried Feyerabend in the summer semester, 1784, and consequently known as *Naturrecht Feyerabend*.[2] The version of the course that Feyerabend took was given in the very months when Kant was composing his first major work in moral philosophy, the *Grundlegung der Metaphysik der Sitten* (*Groundwork for the Metaphysics of Morals*), which would be published the next spring (1785). The "Introduction" to Kant's lectures does not correspond closely to the "Preliminary Remarks" in Achenwall's text, but is closely related to Kant's *Groundwork*, indeed it is in some ways even clearer, and is thus of central importance for understanding the foundations of Kant's entire practical philosophy. But acquaintance with Achenwall's text is indispensable for understanding Kant's *Naturrecht Feyerabend* lectures and his

[1] See Immanuel Kant, *Lectures and Drafts on Political Philosophy*, edited by Frederick Rauscher, translated by Frederick Rauscher and Kenneth Westphal (Cambridge: Cambridge University Press, 2016), Editor's Introduction to "Natural right lecture course notes by Feyerabend," 76.

[2] This notebook was found in the library of Danzig (later Gdansk); it was examined by Paul Natorp when he was preparing Kant's *Metaphysik der Sitten* (*Metaphysics of Morals*), for the *Akademie* edition of Kant's works—*Kants gesammelte Schriften*, edited by the Royal Prussian Academy of Sciences (Berlin: Georg Reimer, later Walter de Gruyter & Co., 1900—; the *Metaphysik der Sitten* was published in volume 6 in 1907). The third section of the *Akademie* edition, containing transcriptions of Kant's lecture courses, did not begin to appear until after the Second World War. The *Naturrecht Feyerabend* was published for the first time in volume 27, Second Half, Second Part, 27:1317–94, in 1979. It was rediscovered as the work on this volume had already been completed, which is why it is placed after the notes on the lecture courses in moral philosophy that occupy the first two parts of volume 27, and why it shows signs of having been hastily edited by the editor of Kant's lectures, Gerhard Lehmann. A better edition, with extensive apparatus, has recently been published in *Stellenindex und Konkordanz zum "Naturrecht Feyerabend," Kant-Index*, volume 30, edited by Heinrich P. Delfosse, Norbert Hinske, and Gianluca Bordoni, in three parts (Stuttgart-Bad Canstatt: Frommann-Holzboog, 2010–14); the Introduction is in volume 30.1, pp. 3–15, and the remainder of the text is at volume 30.2, pp. xv–xcvii. That edition of the text has been translated by Frederick Rauscher in Kant, *Lectures and Drafts on Political Philosophy*, pp. 81–180. In addition, Kant's own copy of Volume II of Achenwall also survived, and his marginal notes were transcribed; a selection of these is also included in *Lectures and Drafts on Political Philosop*hy.

"Doctrine of Right" (*Rechtslehre*), one of the two divisions of Kant's practical philosophy, alongside his "Doctrine of Virtue" (*Tugendlehre*), or ethics narrowly construed. Indeed, the very division just alluded to, that between right and ethics, the distinction between those of our duties to others that may be coercively enforced and all the rest of our duties to ourselves and others, which cannot be enforced by the use of coercion but can be fulfilled only out of the internal motivation of respect for the moral law, is taken directly from Achenwall and the tradition of German natural law theory going back to the beginning of the eighteenth century which for Kant was summed up by Achenwall's book.

A new critical edition of Kant's *Naturrecht Feyerabend* lectures as well as new English and Italian translations have focused recent scholarship on that source, to which Kant's lectures directly respond. But Kant's major published statement on legal and political philosophy and his own version of natural law theory was the "Doctrine of Right" in one of his final works, the *Metaphysics of Morals*. Kant refers to Achenwall only a few times in this text, but his predecessor's influence on both its form and content was deep. Kant's Doctrine of Right can be regarded as his response to Achenwall's work. This Introduction will therefore concentrate on the relation between Achenwall's text and Kant's Doctrine of Right.

Kant's *Metaphysics of Morals* was published in 1797, when Kant was already seventy-three years old, and, along with the *Anthropology from a Pragmatic Point of View* and the *Conflict of the Faculties* published in 1798, was in the last group of major works from Kant's own hand (textbooks on logic, physical geography, and pedagogy would be published in Kant's name before his death in February, 1804, but they were edited by others from Kant's own, often very sketchy, lecture notes). As a work of his old age, hastily written in short paragraphs and not proofread by Kant himself, the *Metaphysics of Morals* presents many difficulties;[3] indeed, Arthur Schopenhauer, who thought that Kant's work had started to go downhill immediately after the publication of the first edition of the *Critique of Pure Reason* in 1781, asserted that the *Metaphysics of Morals* was "so weak" that it would "die a natural death from its own weakness."[4] The Doctrine of Right can be particularly opaque to Anglophone readers, who may have an ingrained cultural understanding of the common-law tradition but are generally unfamiliar with the background of Roman law that Kant assumes in his reader. For that reason, the *Metaphysics of Morals* and especially the Doctrine of Right have never been as central for the Anglophone reception of Kant as his earlier works in moral philosophy, the *Groundwork* and the *Critique of Practical Reason* (1788); for example, John Rawls, who regarded his theory of justice as a version of

[3] On the textual problems with the *Metaphysics of Morals*, especially the Doctrine of Right, see Bernd Ludwig, *Kants Rechtslehre*, *Kant Forschungen*, vol. 2 (Hamburg: Felix Meiner Verlag, 1988), pp. 7–49, and Immanuel Kant, *Practical Philosophy*, edited and translated by Mary J. Gregor (Cambridge: Cambridge University Press, 1996), pp. 355–57.

[4] Arthur Schopenhauer, "Critique of the Kantian Philosophy," in *The World as Will and Representation*, translated and edited by Judith Norman, Alistair Welchman, and Christopher Janaway, vol. I (Cambridge: Cambridge University Press, 2010), p. 558. Schopenhauer's primary objection to the argument of Kant's doctrine of right turns on his failure properly to understand the distinction between right and ethics, to which we will return.

"Kantian Constructivism," based his "Kantian interpretation" entirely on Kant's general works in moral philosophy and made no use of the specifically political philosophy of the Doctrine of Right at all.[5] But as soon as one reads Achenwall's text, much of the difficulty of reading Kant's Doctrine of Right falls away, because one sees that Kant has taken over almost unchanged the structure and organization of Achenwall's work, which is itself the product of a century-old tradition; that many of the topics Kant treats with such frustrating brevity he thought he could afford to do so precisely because Achenwall had already treated them in adequate detail; but also that in some cases where Kant took up topics in more detail than might have been expected, he was doing so precisely because he was taking issue with Achenwall.

But this is not to say that Kant's Doctrine of Right is a largely derivative work with only minor differences from Achenwall's. For what a comparison of the two texts shows above all is that while Kant has preserved much of the structure of Achenwall's text, both its topics and its organization, he has constructed his own Doctrine of Right on a radically new foundation from Achenwall's, or perhaps more precisely has fundamentally clarified the foundations he found in Achenwall. For while Achenwall variously appeals to a right to *self-preservation*, the value of *freedom*, the goal of *perfection*, and the necessary conditions for human *happiness* in his exposition of the laws that naturally govern the relations of human beings independent of their membership in various levels of society ranging from the family to the nation and that govern all levels of society as well, and grounds all of this on the putative will of God, Kant rigorously grounds his account of legal and political rights and obligations on the sole requirement of *maximal, co-equal freedom* for all human beings, which is in turn derived in his foundational works not from any claims to knowledge of the will of God but from the nature of reason as such. To put the point in other words: while much of the history of philosophy has consisted of repeatedly pouring old wine into flashy new bottles, comparison of Kant's Doctrine of Right with Achenwall's *Law of Nature* will show that Kant was carefully filtering the wine of the natural law tradition, refining out of it a theory of justice based on the sole "Universal Principle of Right," that "Any action is **right** if it can coexist with everyone's freedom in accordance with a universal law, or if on its maxim the freedom of choice of each can coexist with everyone's freedom in accordance with a universal law" (Kant, *MM*, DR, Introduction, §C, 6:230).

In what follows, we will compare the foundations and organization of Kant's version of natural law theory to Achenwall's, and then consider several more specific controversies between them that we can recognize as such only when we compare both texts. But before we turn to that, a few words about Gottfried Achenwall and his book are in order.

[5] See John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971, revised edition, 1999), §40, and "Kantian Constructivism in Moral Theory," in Rawls, *Collected Papers*, edited by Samuel Freeman (Cambridge, MA: Harvard University Press, 1999), pp. 303–58; for commentary, see Paul Guyer, "Principles of Justice, Primary Goods, and Categories of Right: Rawls and Kant," *Kantian Review* 23 (2018): 581–613.

II Gottfried Achenwall and his *Ius naturae*

Gottfried Achenwall was born on November 20, 1719, in Elbing, West Prussia, a Hanseatic city founded in 1237 by the Teutonic Knights, which was part of Poland at the time of Achenwall's birth, then Prussian from 1772 until the end of the Second World War, and is now once again Elblag, Poland. His father, also Gottfried Achenwall, was a merchant and brewer. The younger Gottfried studied philosophy, mathematics, and physics at Jena from 1738 until 1740, then law (*Rechtswissenschaft*), political science (*Staatswissenschaft*), and history at Halle from 1740 to 1742; the beginning of his studies in Halle thus coincided with the triumphant return of Christian Wolff to Halle after he had been banished (and landed at Marburg) in 1723. From 1742 or 1743 he was a tutor in Dresden, then in 1746 he received a master's degree from the philosophical faculty in Leipzig. That same year he went to Marburg as a *Privatdozent*, where he taught history; "statistics," that is, not mathematics but the discursive description of the governments, resources, and so on of different states; and natural right and the rights of nations. In 1748 he received a call to the Hannoverian university in Göttingen as professor *extraordinarius* of philosophy. He would remain at Göttingen for the rest of his career, with promotions to *extraordinarius* in jurisprudence and *ordinarius* in philosophy in 1753, to professor of natural law and politics in 1761 (with the award of the doctorate in both fields in 1762), and appointment as councilor (*Rat*) to the royal court of Great Britain and the electoral court of Braunschweig-Lüneberg in 1765. With royal support he traveled in Switzerland and France in 1751 and England and the Netherlands in 1759; these trips benefited his empirical work in "statistics" as well as his extensive knowledge of European and British political philosophy, demonstrated in the bibliographies of his works. In his lifetime and for some time thereafter Achenwall was best known for his work in "statistics," which "made little use of numbers and tables" but consisted of "extensive descriptions of different countries, of their 'lands and people,' 'forms of government and administration,' 'land and sea power,' and 'resources and needs.'" Achenwall died from pneumonia on May 1, 1772, having been married three times; his first two wives died young while the third survived him; he had six children, five of whom survived infancy.[6]

The work that is translated here is Achenwall's *Ius naturae*. This actually originated as a volume coauthored with his student friend and then Göttingen colleague, Johann Stephan Pütter (1725–1807), entitled *Elementa iuris naturae in usum auditorum adornata* (*Foundations of Natural Law elaborated for use in lectures*), published in one volume in Göttingen in 1750.[7] According to Achenwall, Pütter wrote several chapters

[6] Sources for this paragraph are [Emil] Steffenhagen, "Achenwall, Gottfried," in *Allgemeine Deutsche Biographie* (1875), http://www.deutsche-biographie.de/pnd118643657.html; Friedrich Zahn and Ernst Meier, "Achenwall, Gottfried," *Neue Deutsche Biographie* 1 (1953), http://www.deutsche-biographie.de/pnd118643657.html; and Clemens Schwaiger, "Achenwall, Gottfried (1719–72)," in *The Dictionary of German Philosophers*, Heiner F. Klemme and Manfred Kuehn, General Editors, 3 vols., vol. 1 (London: Continuum, 2010), pp. 10–15.

[7] There is a bilingual, Latin-German edition of this work, Gottfried Achenwall and Johann Stephan Pütter, *Anfangsgründe des Naturrechts (Elementa iuris naturae)*, edited and translated by Jan Schröder (Frankfurt am Main: Insel Verlag, 1995).

in Books III and IV on public (state) and international law, while Achenwall himself wrote all the rest, thus the introduction on natural law in general, and the chapters on private law, thus the law of property and of "lesser societies" such as marriage law and domestic (master-servant or employment) law. This work enjoyed a second edition in 1753, but beginning with the third edition, published in two volumes in 1755 under the simpler title *Ius naturae*, Achenwall took over complete responsibility for the work, Pütter having become "occupied with other matters," namely positive law in the German (that is, Holy Roman) Empire (see Preface to third edition, below, p. 3). It was the 1763 third edition of this version, thus the fifth edition of the work overall, that Kant owned and used for his course, and which is thus translated. Kant's copy of the second volume of the 1763 edition survived until the Second World War, his notes in it were transcribed in the *Akademie* edition of his works, and a selection of these notes was translated in *Lectures and Drafts in Political Philosophy*; the fate of his copy of the first volume is unknown.

III Achenwall's Influence on Kant's Doctrine of Right

The influence of Achenwall's work on the organization of Kant's Doctrine of Right is readily apparent. Achenwall begins with the statement that natural law is divided into four parts: "*purely natural law* on the one hand and *family law*, *public law* and the *law of nations* on the other" (I, §1). By "purely natural law" Achenwall means the laws that govern the interactions of human beings independently of any sorts of groups or societies to which they might belong, or "RIGHTS and OBLIGATIONS which are posited once the natural state of man is posited and which for this reason are of the kind that can be conceived of without positing any particular society" (I, §61). In this context "natural" thus means pre-social, conceptually and perhaps historically as well. This "purely natural law" is divided into two parts: first, "innate" (*connatum*) or "absolute natural law," which includes the rights that "fall to a man in as far as he is a man, and therefore *by nature* or in the original natural state" (I, §64) and thus independently of any "juridical act being given" (I, §63), such as the purchase of some property that creates certain rights; and, second, "conditional natural law," which includes "acquired" rights which arise from a "rightful" or "juridical" act (I, §109), such as, again, the legitimate purchase of some property or voluntary entrance into a contract. Innate right comprises a list of freedoms that all human beings are owed by others just insofar as they are human, and this list includes the right to acquire acquired rights under suitable circumstances: a person "*has the innate right to procure for himself any goods of the external state, and the right to use any things belonging to the necessities, commodities, and pleasant things of life, and to use them for any necessity, commodity, and pleasantness of his life*; as long as no one is wronged by it" (I, §107). Acquired rights include the various rights flowing from non-wrongful or rightful acquisition, such as the rights to the fruits of rightfully acquired property, the right to transfer or otherwise dispose of rightfully held property, and so on. Under family law, Achenwall then discusses the rights and obligations inherent in what we might call sub-state societies,

including marital rights, the rights and obligations of parents and children with regard to each other, and the rights of masters and servants in households or what we might call, modernizing, the rights and obligations of employers and employees. Under public law, Achenwall discusses the rights of rulers and their subjects, at the level of states—which of course might have been quite small in eighteenth-century Germany, such as the Duchy of Saxe-Weimar that employed Goethe, or considerably larger, such as the Prussia of Frederick the Great or the Electorate of Hannover, which employed Achenwall at its university in Göttingen (and also held the crown of the United Kingdom of Great Britain). Under the law of nations, finally, Achenwall discussed the rights and obligations of international relations, and the states from the third category of right count as nations in this fourth category (although in the German case he certainly made no pretense to include all members of a common ethnicity, all speakers of a common language, all members of a particular church, or anything else that might have been thought to define a nineteenth-century or Wilsonian "nation-state" in the full sense of later usage). This area of natural law comprised the rights of ambassadors, the conditions for just war, and the conditions for the just conduct of just wars.

Kant's division of his own Doctrine of Right is clearly based on Achenwall's categories, although with some by no means always trivial variation. The most fundamental division of Kant's version is that between innate and acquired right, although what Kant has to say about innate right is so brief that he can include it in his Introduction without devoting even a whole chapter to it (*MM*, DR, 6:237–8). Kant can treat innate right so briefly precisely because his account clearly builds upon the fuller account already given by Achenwall, although we will see that Kant makes one significant departure from his model. The main body of Kant's work then concerns acquired right, divided into the two main parts of "Private Right" and "Public Right." His scheme differs from Achenwall's not only in making it clear that public right is acquired right, but also in including the sub-state social rights of marriage, family, and employment along with property and contract law under the general rubric of private right, and in including both national and international law under the single category of public right as well as adding a third category, "cosmopolitan right," to this category. Cosmopolitan right asserts the right of individuals from one nation to present themselves to other nations to invite commerce or other relations, but the obligation of the visited nations is strictly limited to hearing the visitors without hostility, and by no means forces them to accept the offers of the visitor; this category provides the vehicle for Kant's stinging critique of European colonialism (*MM*, DR, §62, 6:352–3), a critique of which there is no hint in Achenwall. The addition of cosmopolitan right is thus Kant's most obvious departure from Achenwall.

A less obvious departure, but one that is as significant theoretically as the critique of colonialism is politically, is Kant's distinction between "provisional" and "peremptory" or conclusive rights (e.g., *MM*, DR, §9, 6:257). For Achenwall, the innate rights and corresponding obligations of individuals and the rights and obligations of spouses, parents, children, employers, and employees that are independent of higher forms of government are genuine rights and obligations that hold with full force even in the absence of government. For Kant, however, claims to such rights are only provisional until the establishment of the state makes them conclusive, and are rightful only insofar

as they are claimed with a commitment toward the establishment of a state.[8] This is so for two reasons; first, the boundaries of such claims are indeterminate in nature, and need to be made determinate by the public mechanisms of the state; second, absent a functioning state, such claims are insecure, and no one can be expected to make any concessions of rights to another in exchange for obligations or commitments from the other that they cannot reasonably expect will be fulfilled. This may be most obvious in the case of claims to property, for example, in land: I may want to sell a piece of land to you, and it may have some rough-and-ready boundaries—the banks of a river here, a rock there, a big tree at the far corner, and so on—but riverbeds can move, rocks can be moved, trees can fall or be cut down, and so on, thus I cannot really know what I am selling or you what you are buying unless we have publicly recognized surveys, recorded deeds, and so on. Further, though I might want to grant you a mortgage that you promise to pay off over a certain period in order to effect our transfer, I may not have a reasonable expectation of repayment unless the mortgage is backed up by some form of law. Thus, according to Kant, what look like private rights and obligations that can have full force without government do not really have full force and are only provisional until government is in place. But the distinction between provisional and conclusive can also apply to innate right. For example, as we will see Kant asserts an extensive right to freedom of speech, even when the speaker knows it to be false, but does yelling "Fire!" in a crowded theater when there is no fire count? We will need some public laws to decide such cases. Other aspects of the innate right to freedom, as we will see, include equality before the law, and we will need public laws and institutions such as courts to make that right determinate as well as secure.

Before we can get into such details, however, we have to step back from this preliminary discussion of the organization of Achenwall's book and Kant's response and ask a more general question, namely: *What is natural law or natural right*, as Achenwall and following him Kant understand it? Or we can break this up into two questions: What is *natural* about natural right or natural law? And what is a *right* or a *law* in natural law?

The answer to the second of these questions is simpler than that to the first. Achenwall begins with the statement that "NATURAL LAW (*in the strict sense*, peremptory, external natural law) is … the knowledge of external natural rights and obligations" (I, §1), and such natural rights and obligations are in turn defined as those the fulfillment of which can be *coerced*: "A *natural obligation* that, if it is violated, is connected to another man's moral ability [*facultas*; this could also be translated here as 'entitlement'] to coerce the violator is called a PERFECT OBLIGATION," whereas "an IMPERFECT OBLIGATION is one that is not linked to such a natural right to violence, i.e., that cannot be enforced (exacted by force)" (I, §34). Natural law as a whole, comprising natural law in the loose as well as strict sense, is thus divided into perfect and imperfect, or coercively enforceable and not coercively enforceable, obligations and duties (I, §35). To be clear, both the perfect and the imperfect, the coercively enforceable and that which is not, are part of *moral law in general*. "The natural law [in the strict sense] and the natural obligation constitute a type of moral

[8] This point is suggested by Jan Schröder in his afterword to his edition of Achenwall and Pütter, *Anfangsgründe des Naturrechts,* p. 336.

laws and obligations" (I, §20), and "everything that, given the divine laws, is *impossible*, *possible*, or *necessary* to do; and *everything that, in relation to those laws, is found to be illicit, licit, indifferent, prescribed, prohibited, owed, right, not right, imputable, blameworthy, or malicious*, is MORALLY (strictly and simply) so" (I, § 22), but only some of what is morally right or wrong is a subject for natural law, namely that of it which can be coercively enforced. Natural law concerns the coercively enforced part of moral law. Or, in theological terms, "every sin is subject to divine punishment, but only that which goes against a duty of necessity is subject to human coercion" (I, §42). Only that which is subject to human coercion is part of natural law or natural right.

Neither Achenwall's distinction between right and ethics nor his division of right into innate and acquired were new. Christian Thomasius (1655–1728) had earlier made both distinctions, and himself traced at least the first one back to Hugo Grotius (1583–1645): "First," Thomasius wrote, "*right* is of course divided into *perfect*, which Grotius calls a *faculty*, and *imperfect*, or an *aptitude*, as he has it. The former is the power by which I can coerce another who does not want to fulfill his obligation to render what is due. The latter is a different matter. Here the fulfillment of the obligation is left to the shame and conscience of the person who has the obligation corresponding to the right."[9] This is the distinction between right and ethics that both Achenwall and Kant maintained. The distinction between innate and acquired right also goes back at least to Thomasius: "with respect to the source from which right is derived it can be divided into *connate*, which man has immediately from God without the consent of the person who is placed under an obligation … and *acquired*, which belongs to him on the basis of an agreement with another."[10]

Achenwall's distinctions thus were not innovations, and Kant in turn entirely accepted Achenwall's definition of natural law or right—in Kant's terms, right or *Recht*—as the coercively enforceable part of morality more generally. Contemporary readers may find Kant's distinction unintuitive or confusing, but Kant could present it so briefly precisely because in his own time the distinction was utterly familiar. Of course, Kant varied the language a little: he formulates the distinction by saying that while *ethical* lawgiving "makes an action a duty and also makes this duty the incentive" to the action, "duties in accordance with *juridical* [*rechtlich*] lawgiving can be only external duties, since this lawgiving does not require that the idea of this duty, which is internal, itself be the determining ground of the agent's choice, [yet] since it still needs an incentive suited to the law, it can connect only external incentives with it" (*MM*, Introduction, 6:219), namely, coercion by means of the threat of punishment, a threat made effective by carrying through on it when necessary. But Kant makes it clear, like Achenwall, that juridical as well as ethical duties are part of morality as a whole, for only thus could it be the case that juridical duties *can* be satisfied solely out of respect for the moral law—"all duties, just because they are duties, belong to ethics"—if the juridical duties did not flow from the moral law, there is no way compliance with them could be motivated

[9] Christian Thomasius, *Institutes of Divine Jurisprudence with Selections from Foundations of the Law of Nature and Nations*, edited and translated by Thomas Ahnert (Indianapolis: Liberty Fund, 2011), *Institutes*, Book I, §104, p. 77.

[10] Thomasius, *Institutes*, Book I, §114, p. 79.

by the moral law.[11] But "juridical lawgiving is that which can also be external" (*MM,* Introduction, 6:220), that is, juridical duties are those that it is *morally* legitimate to enforce by coercion when necessary, that is, when "the idea of duty by itself would" *not* "be sufficient as an incentive." Kant thus makes the distinction between right and ethics in the same way that Achenwall does. He further shows his allegiance to Achenwall's distinction by adopting his predecessor's language of right "in the strict sense"; Kant says that "strict right" is precisely that which is consistent with "the possibility of a fully reciprocal use of coercion" (*MM*, DR, Introduction, §E, 6:232). The relevance of this fact to Kant's innovative claim that rights are only conclusive in the state and can be provisionally claimed only with an eye to the foundation and/or maintenance of the state now becomes obvious: rights go hand in hand with the possibility of coercion, and coercion can be properly exercised only within the framework of a state. Just as claims to right can only be made fully determinate within the framework of a state that can properly define and record them, so they can be made fully secure only within the framework of a state.

We can come back to this point, but now let's go back to our previous question, namely what makes natural law *natural* for Achenwall?—and does Kant stay with or depart from him on this point? This question goes to the deep question of the foundations of natural right in Achenwall and Kant respectively. The references to divine law and punishment in Achenwall (and Thomasius) in the previous quotations might seem to be in tension with his characterization of natural law as natural. Actually, it is part of the standard picture of natural law before Kant, the model that we find in Thomasius as well as Achenwall and in many others besides. Jan Schröder has written that "natural right in the seventeenth and eighteenth centuries is the fascinating attempt to develop a complete system of right from reason alone—and no longer, as in the older Christian natural right, from divine revelation."[12] It is true that the modern natural law tradition aims to do without reliance on *revelation*, but it would be wrong to conclude from this that it attempted to do without divine foundations altogether. On the contrary, the confidence of the natural law tradition that human reason can determine what is right and what is wrong, including what claims to right are suitable for coercive enforcement, was grounded in belief in the ultimately divine origin of human reason and the nature, including human nature, that it can comprehend. In other words, the normativity of the moral principles that reason can discover is grounded in the divine origin of all of nature, including human reason. This is why Thomasius's *magnum opus* on *natural* law is entitled *Institutes of Divine Jurisprudence*: It concerns laws for human conduct toward other humans, not rules for the worship or service of God, and those laws are the rules for the successful social life of human beings; but humans

[11] Schopenhauer claimed that Kant's distinction between right and ethics is undermined by his derivation of right from the fundamental law of *ethics* (*World as Will and Representation*, p. 559). But he was just confusing *ethics* with *morality in general*. There is some explanation for this: Achenwall uses the Latin word *moralis* to mean both moral and more specifically ethical, and Kant's terms can be slippery too—he can use *Moral* and *Sitten* interchangeably, although he never uses *Tugend* (virtue) to mean morality in general—but the distinction between the coercively enforceable and non-coercively enforceable parts of morality in general is always completely clear in both Achenwall and Kant.

[12] Schröder, afterword to *Anfangsgründe des Naturrechts*, p. 335.

need such laws precisely because they "have been created by God in such a way, both in their body and soul, that one human being cannot live without another, so [that] the entire nature of man is that he forms societies with others."[13] On the one hand, the dictates of natural law can be determined by human reason, because reason can determine "whenever the omission of an action by humankind would necessarily cause it to perish," thus there is "repugnance to reason whenever humanity would perish as a result of this action being committed"; but, on the other hand, "it is apparent from natural reason," not revelation, "that God wanted man to be rational and also for his actions to be subject to a particular kind of norm," from which "it follows necessarily—to avoid contradiction—that God wanted to command the actions which necessarily further the rational nature of man and to forbid those which are contrary to it."[14] Or as Achenwall, who was influenced as much by Thomasius as by Wolff, bluntly puts it, "a MORAL LAW (divine law) is a law according to which we are obliged to direct our actions because of God's will, and therefore it is the norm for free actions which God obliges us to observe, i.e., to whose observance we are obliged by God" (I, §21). The difference between modern natural law and older Christian jurisprudence is just that we do not need revelation to determine God's will:

> There exists a natural obligation and a natural law because (1) there is a God, our Creator and Preserver, the Wisest, Holiest, Benignest, Omniscient and Omnipotent Being; and because (2) in most of our free actions we can gain sufficient knowledge of God's will regarding their direction, both from God's essence and attributes as philosophical principles and from His works—i.e., from our own nature and that of other things—that are accessible to our reason, and hence from God's aims that are manifested through creation. Natural law exists (has force) to the extent that from this general obligation and law many others can be deduced by reasoning. (I, §27)

Despite his preservation of so much from the natural law tradition in general and from Achenwall in particular, Kant certainly departed from it on this fundamental issue. For Kant, reason—which need not be exclusively *human* reason, but which would be shared with any other rational beings—does not need any sort of external validation for its norms. To derive the fundamental principle of morality, from which, in Achenwall's terms, many other obligations can be deduced, all it needs to do is to apply its own principles, above all its most fundamental principle, the law of noncontradiction, to the most obvious fact about ourselves, namely that we each possess our own wills. We must each be treated as if we were ends in ourselves because to do otherwise would be to deny a fact that cannot be denied, thus to commit a self-contradiction. Kant makes this foundational argument as clearly as anywhere in the opening remarks of his course on Achenwall: "The inner value of a human being is based on his freedom, that he has a will of his own"; since each human being has a will of his or her own, "a human being is an end" simply because "it is contradictory to say that a human being should

[13] Thomasius, *Institutes*, Introductory Dissertation, §53, p. 57.
[14] Thomasius, *Institutes*, Book I, §§72–3, pp. 100–1.

be a mere means."[15] In other places Kant will argue that we can *represent* the authority of reason over all our own inclinations by conceiving of it *as if* it represents the will of God,[16] and it is the core argument of his own "moral theology" that we can rationally *believe* in the existence of God as the condition of the possibility of the realization of the complete *object* of morality, namely the highest good consisting in "universal happiness combined with and in conformity with the purest morality throughout the world."[17] But for Kant, reason has its own authority, without God, and indeed the authority of the divine will can only come from its conformity with reason as such. It is the moral law that first introduces all ideas of holiness, not the other way around.[18]

IV The Right to Freedom

Kant's meta-ethical position is thus at the very least a radicalization of the tendency of the modern natural law tradition. His substantive understanding of the fundamental normative principle of natural law, the Universal Principle of Right that defines the condition of right as the greatest freedom of action for each compatible with an equal freedom for all (again, *MM*, DR, Introduction, §C, 6:230), also represents a refinement of Achenwall's account of the principles of right, or an isolation of a single principle out of what is more of an aggregate in Achenwall.

Achenwall offers as the most general principle of natural law a statement that combines elements of Christian Wolff, Christian Thomasius, and even Thomas Hobbes: "Live, therefore, in accordance with God's perfections and aims; illustrate God's glory, seek the best of mankind, the best for yourself, and your own and others' happiness; don't do what goes against the preservation of another man; perfect yourself and preserve yourself" (I, §29). That we should "illustrate" or reflect God's glory is the fundamental principle of Wolff's teleology and his metaphysics,[19] while that we should "seek the best of mankind" and "perfect" ourselves, including under that rubric our mental, physical, and external conditions, is the fundamental principle of Wolff's

[15] Kant, "Natural right course lecture notes by Feyerabend," 27:1319. For a more extensive presentation of this approach to Kant's moral philosophy, see Paul Guyer, *Kant on the Rationality of Morality* (Cambridge: Cambridge University Press, 2019).

[16] Kant makes this particularly clear in the unfinished drafts for a final book, which we know as the *Opus postumum*, where he writes such things as "All human duties have … been regarded as superhuman (that is, as divine) commands. It is not as if a particular person had to be presupposed to promulgate these laws; they lie, rather, in moral-practical reason. There is such a reason in man: Moral-practical reason commands categorically, *like* a person, through the imperative of duty"; from Kant, *Opus postumum*, 21:37; edited by Eckart Förster, translated by Eckart Forster and Michael Rosen (Cambridge: Cambridge University Press, 1993), p. 239. Had Kant completed this last book, it would have been a radical restatement of transcendental idealism.

[17] See Kant's 1793 essay "On the Common Saying: That May Be Correct in Theory, but It Is of No Use in Practice," 8:279.

[18] See, for example, *Critique of Practical Reason*, 5:86–7.

[19] See Christian Wolff, *Vernünfftige Gedancken von den Absichten der natürlichen Dingen*, new edition (Frankfurt and Leipzig: Renger, 1726), §8: "The chief aim of the world is that we should cognize God's perfection from it. … He therefore must have so ordered the world that from it a rational being can through consideration of it infer the grounds that allow one to recognize with certainty his properties" (6).

practical philosophy.[20] That we should seek the happiness of others (and through that increase the chances of our own happiness) is the net result of what Thomasius presents as the "sum of natural law," the principle "Do that which necessarily conforms to the social life of man and omit that which is contrary to it."[21] And that we should seek to preserve ourselves is Hobbes's fundamental principle of "right reason," although that we have an equal obligation to preserve others insofar as that is compatible with preserving ourselves, and that this is not merely usually the most prudent thing to do, is perhaps more Thomasian than Hobbesian. The contrast between the obligation to preserve oneself and the obligations to perfect oneself and promote the happiness of others is then connected to the distinction between perfect and imperfect duties that divides right from ethics, and anticipates Kant's way of developing this distinction as well, for it is the right to preserve oneself that is the basic principle of natural law: "Because I am naturally obliged to preserve my body and life, I have the natural right, as a moral ability [*facultas*], to remove obstacles to my preservation; therefore if you undertake an action that conflicts with my preservation, and some other, milder remedy does not suffice, I have the right to coerce you to refrain from that action," although only so far as is actually necessary to preserve myself; "so there is a certain strict natural right, namely the perfect right that everybody has to preserve himself" (I, §§37–8). This right to self-preservation defines the limits of acceptable coercion and thus the scope of natural right strictly speaking, while the more general principle that "Every man is naturally obliged to promote everybody's happiness as much as he can, and hence all are naturally obliged to mutually pursue common happiness with joint forces" (I, §43) does not create specific and coercively enforceable rights of one person against specific others and is therefore the basis for ethics but not for natural right strictly speaking.

Under the rubric of "absolute," "innate" right, however, Achenwall argues that the right to self-preservation includes the right to preserve one's own freedom of action in any way that does not conflict with the preservation of others: "A man has a natural right to the preservation of his body and life, hence he also has the natural (in any case external) right to do anything that does not go against another person's preservation, and the right to do whatever is not wrongful naturally (externally), i.e., by which no one else is wronged." This right, Achenwall continues, falls to anyone "in as far as he is a man, and therefore *by nature* or in the original natural state" (§64), thus independently of membership in any particular kind of society and independently of any particular juridical act, such as the purchase of property, marriage, entrance into a contract for employment, and so on, although it includes the right to undertake such juridical acts and therefore acquire further acts, or "the right to ACQUIRE" (I, §81). More fully, innate right on Achenwall's account begins with everybody's "*innate proper right with regard to himself, his person, his body and soul and any of their faculties, and any limb of his body*," "thus *everybody by nature has the right to exist as well as the right to operate*, and

[20] For example, Christian Wolff, *Grundsätze des Natur- und Völckerrechts*, translated from Latin by Gottlob Samuel Nicolai (Halle: Renger, 1754), §103: "The human being must, so far as he can, improve in part his soul, in part his body, and also his condition. One thus has **duties toward the soul, duties toward the body**, and duties **with regard to one's external condition**" (65).

[21] Thomasius, *Institutes of Divine Jurisprudence*, Book I, §64, p. 141.

everybody has the right to his life and its harmless (not-wrongful) *use*" (I, §65–6). This right can also be described as "natural equality," or "*the same rights and the same obligations*" for every person as for every other person as long as they remain in the natural condition, i.e., have not agreed to any departures from their natural equality (I, §69). From this it follows, first, that "*by nature there is no* PREROGATIVE (special right), i.e., some right that one has in contrast with others who otherwise use the same law," "*no* PRECEDENCE," and that "*that which by nature is permitted to one man is also permitted to another*" (I, §72). It follows next that "*liberty should be attributed to everyone as a natural and innate right*" (I, §77), which means in turn that

> Specifically, by force of natural liberty *everyone by nature* also *has the right* (1) *to do all natural duties*—to God, to oneself, and to others—… to the effect of course that anyone … is obliged not to disturb me in the course of such actions; (2) *to do all the things with which he can perfect himself and his state*, i.e., *the right to his* own *perfection and happiness*; (3) *the right to use at will that which is his own, and his own right* (4) the right to make something his own that is not, i.e., the *right to* ACQUIRE; (5) *the right to preserve* and keep *that which is his own*. (I, §81)

Achenwall will subsequently go into detail on how one can acquire something without harming the right of others to do the same. But meanwhile he continues his specification of the meaning of the innate right to equal liberty with the following further rights: one has the right to declare one's own mind "sincerely or insincerely … and to that extent *by nature you do not have the right with regard to another person, nor does he have an obligation towards you, that he should declare his mind to you, or that he should declare it sincerely*" (I, §90), although it is wrong for anyone "*to speak falsehood with the intention that someone else, led by the appearance of sincerity* (…), *be deprived of what is his*" (I, §94), and indeed Achenwall more generally claims that "all deceit is a wrong" (I, §95); next, everyone has the right to "esteem" and to "*being esteemed a just man*" unless his "*injustice is established*," that is, until he has done and has been proven to have done something wrong (I, §§97–8); and finally, every person has a right to a "good REPUTATION" as long as he has not "*detract[ed] from his deserved good reputation, deserved honor, or deserved praise with the intention to wrong*" another (I, §105).

As was earlier suggested, Kant could afford to describe the innate right to freedom briefly just because Achenwall wrote about it at such length. Kant divides this innate right into just three parts. He defines "**freedom** (independence from being constrained by another's choice), insofar as it can coexist with the freedom of every other in accordance with a universal law"—that is, insofar as the use of one's freedom complies with the Universal Principle of Right—as the *only* innate right, and then divides this into three parts: "innate **equality**, that is, independence from being bound by others to more than one can in turn bind them"; being "**beyond reproach**," or entitled to the same rights as everyone else unless one has oneself performed some act negatively affecting one's right (this is a moral fact of innocence, not merely a procedural presumption of innocence as a matter of burden of proof); and finally "being authorized to do to others anything that does not in itself diminish what is theirs," for example telling or

even promising *anything* to others, whether true or false, as long as it remains "entirely up to them whether they want to believe [one] or not" (*MM*, DR, 6:237). Nevertheless, Kant's brief treatment contains two important departures from Achenwall's. For one, although Achenwall begins his discussion of the right to declare one's mind with the statement that in general we have no obligation to declare our mind to anyone else sincerely, he goes on to say that one has no right to lie, defined as speaking falsely with malicious intent, or even to withhold the truth from another with malicious intent, thus that "*lies and reticence are simply prohibited by natural law*" (I, §92). The difference between Achenwall's "malicious intent" and Kant's "as long as one leaves others free to decide whether to believe one or not" may seem subtle, but it is important: both authors agree in principle that in general the law does not care about underlying motivation, only the effect of actions, but whereas Achenwall risks loosening this distinction by allowing the moral quality rather than specific content of one's intent to determine one's right to lie, Kant is more rigorously insisting that it is only the effect of one's action, namely whether it leaves the addressee free or not, for example, whether it manipulates the other into doing something (accept a promise) that he would not otherwise do, that matters. For Kant, the question of right is always *just* whether one person's action unequally compromises the freedom of others.

Second, Achenwall's treatment of the "law regarding esteem" is also broader than Kant's. Part of this right in Achenwall is his version of Kant's innate right to be beyond reproach: if a violation of an external law and hence of another man's right—in one word, a wrong—cannot be imputed to a man, he is just. For this reason "*by nature no one is unjust*, but rather *anyone is born just, and remains just in so far as he has wronged no one*" (I, §97). Achenwall goes on to imply that this does entail a burden of proof on prosecutors rather than defenders: a person must be considered just until his "*injustice is established*." But he also goes on argue that the right to esteem includes the right to good reputation (I, §104), to "*moral good esteem*" (I, §99), and to no more but no less "honor" than anyone else (I, §101), all, that is, unless someone has done something to forfeit this right. Kant, however, consigns the duties of "respect," that is, the "legitimate claim" of "every human being" to "respect from his fellow human beings" (*MM*, DR, §38, 6:462) and the corresponding obligation to refrain from the "vices" of "arrogance," "defamation," and "ridicule" (*MM*, DR, §42, 6:465) to the duties of *virtue*, or more properly to the general class of *ethical* duties. He does not spell out his reason for this reassignment, but presumably it is because it is somehow inappropriate or impossible to attempt to enforce these obligations by coercion, so they can only be motivated by agents' respect for the moral law.

V The Justification of Coercion

This brings up a more general difference between Achenwall and Kant, namely that while Achenwall simply assumes from the outset that the "*law on not hindering the preservation of others*" may be coercively enforced (§39), Kant clearly thinks that the right to enforce the Universal Principle of Right by the threat and when necessary the use of coercion *needs to be justified*, and he makes the justification of the use of

coercion a centerpiece of his Doctrine of Right. To be sure, his argument is cast in terms directly taken from Achenwall, though again Kant refines Achenwall's concept of self-preservation to the preservation of *the equal freedom* of each, and it is very simple: Kant defines a wrong as "a hindrance to freedom in accordance with universal laws" and the coercion of freedom, other things being equal, as therefore a wrong; states that "resistance that counteracts the hindering of an effect promotes this effect and is consistent with it"; and then infers that coercion that is opposed to "a hindrance to freedom in accordance with universal laws" "as a **hindering of a hindrance to freedom**," or the use of coercion against coercion, is right. This is supposed to follow from Kant's initial premise that what counteracts the hindering of an effect is compatible with it or promotes it, but Kant goes even further and states that "hence there is connected with right by the principle of contradiction an authorization to coerce someone who infringes upon it" (*MM*, DR, Introduction, §D, 6:231); perhaps what he really has in mind here is that a double negation is an affirmation, thus that the negation of a negation of freedom is simply the same as freedom. Kant was clearly enamored of this argument, and first stated it in his lectures on Achenwall, thus clearly thought of it as a necessary supplement to anything that could be found in Achenwall's text. Thus he told his students that "an action that opposes any action that itself opposes universal freedom is right." This is because "opposition to a wrong action is a hindrance to the action that opposes universal freedom thus it is an advancement of freedom and of the agreement of private freedom with universal freedom." Because "opposition to an action of the freedom of another is called coercion," the possibility and indeed necessity of the use of coercion to ensure the "agreement of private freedom with universal freedom is the supreme principle of right."[22]

Kant's justification of coercion needs to be fleshed out. The last sentence of his published exposition of the argument suggests that it rests on pure logic, but his opening sentence suggests that he needs a substantive premise that coercion can promote the rightful use of freedom and can be compatible with it, or that the use of coercion against coercion would not just compound the wrong. This would require showing that the juridical use of coercion can in fact save the freedom of potential victims of crime without at the same time just stripping potential criminals of freedom to which they are entitled. The way to do this is through a publicly promulgated criminal code, or list of crimes and punishments, so that a criminal who would simply deprive his victim of his freedom of choice can be thought to have knowingly and therefore freely brought his punishment upon himself—without the threat of coercion against criminals, victims are simply deprived of their freedom, but the threat of coercion does not in fact deprive criminals of their freedom. Kant does not explicitly make such an argument, but shows that he is sensitive to considerations of efficacy when he argues that there is no right to necessity, for example in the case of a shipwreck no right to push another off a floating timber in order to save oneself, but that it would be impossible to punish such an act because the threat of possible punishment in the future could not outweigh the certain death staring the pusher in the face

[22] *Naturrecht Feyerabend*, 27:1328; *Lectures and Drafts on Political Philosophy*, p. 92 (translation modified).

(*MM,* DR, 6:235–6). In other words, it is a substantive question whether in any given situation there is an effective way to preserve the freedom of all involved; in some circumstances there might not be. Kant also shows that he is sensitive to a further issue about the legitimacy of the use of coercion to preserve freedom in all cases in his consignment of the prohibition of suicide to the doctrine of virtue rather than right: presumably he treats the prohibition of suicide as a moral but not a legal right because other people may disapprove of someone else's suicide but not have a right to prevent it by means of coercion. All of this would need to be worked out in much more detail, but Kant seems at least to recognize that the rightful use of coercion needs more argument than Achenwall gives it.

VI Marriage, Church, and State

There are many more issues in Achenwall's detailed account of natural, social, and civic right and Kant's reconstruction of it under the two rubrics of private and public right that are well worthy of discussion. Just two of these will be mentioned here. One concerns the nature of marriage. Kant's definition of marriage as "the union of two persons of different sexes for lifelong possession of each other's sexual attributes" (*MM*, DR, §24, 6:277) has been thought to be retrograde and reprehensible by many contemporary commentators. But a comparison between Kant's treatment of marriage and Achenwall's shows that Kant's is actually a step toward a more enlightened conception of marriage, for two reasons. First, Achenwall, like many in his time, holds that the only legitimate marriage is "a society of a man and a woman, entered upon to produce and bring up offspring," and that a "society between a man and a woman … created for some other reason … is not marriage" (II, §42). Kant recognizes that this would block marriage between those who are incapable of producing a child, for reasons of infirmity or age, or even those who just do not want children, and thus removes the necessity of procreation from the definition of marriage. Equally important, Kant's claim that in sex without marriage the partners are treating both themselves and each other as mere means to bodily pleasure, not ends in themselves, ridiculous as that might sound to us, leads to an important point: Kant argues that the only way to avoid this demeaning outcome is for each member of the couple to treat the other as a person, as an end in him- or herself, and thereby to regain his or her own personhood from the other; but since, in Kant's view, a person is an "absolute unity," this means that each must treat the other as an equal not just in sex, but in all sorts of matters, for example, property, inheritance, and so on. Thus Kant argues that morganatic marriage, in which a wife and her offspring would not inherit the husband's wealth and titles because of a difference in social standing between them,[23] is nothing but concubinage,

[23] For example, the marriage of Archduke Franz Ferdinand and Countess Sophie was regarded as a morganatic marriage in the waning days of the Hapsburg empire, because the Countess did not come from a high enough level of the aristocracy to produce children eligible for the Imperial crown. Thus, if Franz Ferdinand had not been assassinated, he could have succeeded Franz Joseph, but his own children could not have succeeded him. Of course, in this case it was World War I and the collapse of the empire, not Kant, who rendered morganatic marriage irrelevant.

itself nothing but prostitution, not genuine marriage (*MM,* DR 6:278–9). This was a progressive view for Kant's time, not a regressive one.

The final point on which I will touch here is the issue of church and state. Here the differences between Achenwall and Kant are more subtle, but Kant still turns out to be more the liberal of the two. Achenwall begins with a good Protestant statement of the fundamental reason for the separation of church and state: "because it is given to no mortal to know the internal acts of another's mind as such, and so no one can judge another man's internal matters, all *internal acts*, and therefore *also religious acts* in as far as they are *internal, refuse human law*," and "because an obligation to God is infinitely greater than an obligation to men … *no one can be obligated by another to do what goes against God's will, religious dogma,* and *his faith*" (II, §134). Because religion is at bottom an internal matter, of an individual's faith or belief in and about God, it is not subject to interference from the state. However, Achenwall hedges this blanket statement in several ways. Of course he adds what may be called the Lockean proviso, after Locke's qualification of the otherwise strict separation of church and state in his 1689 *Epistola de tolerantia*, on the ground that the state is concerned only with the "Temporal Good and outward Prosperity of Society" and religion only with eternal salvation, that the magistrate does have the right and indeed the obligation to prevent any outward religious *practices* from disturbing civil peace, the same right and obligation that he has in any other context.[24] But Achenwall goes further than that. He allows the state a "right of supreme inspection," which is not only the right to watch the churches to make sure they do not threaten civil peace but also a "sovereign right to *confirm the creed of the church*, i.e., the text containing the dogmas of the faith, and the *liturgy*"; he interprets the (Lockean) "*right to guard* against the church's being in the way of the republic" to include "*the right of exclusion*," that is, the right to force religious dissidents to emigrate, "even by proposing punishment"; and "*the right to direct* the church toward public welfare," including "the sovereign right to *appoint ecclesiastic judges* to pass judgment in church matters in his name" (II, §139).

Kant will have none of this. He reverts to a purer Lockeanism by insisting that the "state has only a **negative** right to prevent public teachers from exercising an influence on the **visible** political commonwealth that might be prejudicial to public peace. Its right is therefore that of policing, of not letting a dispute arising within a church or among different churches endanger civil harmony." But further, Kant rejects any right of the state to "confirm the creed" of any church or to establish religious dogma, because he rejects the right of *anyone* to do this. His view is that the sovereignty of the state derives entirely from the general will or sovereignty of the whole people—and here he certainly goes beyond Achenwall—therefore "what the whole people cannot decide upon for itself the legislator also cannot decide for the people. But," Kant continues, "no people can decide never to make further progress in its insight (enlightenment) regarding beliefs, and so never to reform its churches, since this would be opposed to the humanity"—that is, the freedom—"in their own persons and so the highest right of the people" (*MM*, DR, General Remark C, 6:327). For anyone and therefore for the

[24] See John Locke, *A Letter concerning Toleration and Other Writings*, edited by Mark Goldie (Indianapolis: Liberty Fund, 2010), p. 38.

state to block complete freedom of thought on religion would be an unjust abrogation of the freedom of anyone and everyone, a violation of the innate right to freedom not only to think but also to say whatever one wants as long as others are left free to decide whether to believe it or not. Kant, the Prussian civil servant whose formative years were spent under the rule of Frederick the Great, who summed up the Lockean proviso with his famous "Argue all you want but obey!," was willing to argue for greater freedom of religion than Achenwall, the Hannoverian civil servant.

Kant's argument for maximal religious freedom flows directly from his conception of innate right and from its foundation in a Universal Principle of Right focused, laser-like, on the idea of equal freedom. For all that Kant learned from Achenwall, the latter's more eclectic foundation for natural law, including vaguer concepts of perfection and happiness along with the narrower conception of self-preservation, left him open to a more absolutistic conception of the power of the state and a less rigorous separation of church and state. On the issue of religious freedom as on many other issues, the comparison of Achenwall and Kant shows how much Kant learned from the author of his textbook, but also how significant his departures from his predecessor could be.

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Remarks on the Translation

Corinna Vermeulen

The use of italics and capitalization of entire words mostly follows the original text, in which Achenwall uses italics to highlight the important points for his students and capitalizes whole words to make definitions stand out. I have added some italics of my own following modern usage, to signal words in foreign languages, and have tacitly corrected obvious typographical errors in this respect.

The corresponding page numbers in the original editions[1] are given in the margin, as are those in the *Akademie-Ausgabe* of Part II. Part II of Achenwall's *Ius naturae* was published in volume 19 (1934) of the edition of Immanuel Kant's works by the Königlich Preußische Akademie der Wissenschaften in Berlin to accompany the edition of the philosopher's handwritten notes in the margin of his copy. Since Kant's copy of Part I was already lost at the time, the editors saw no reason to include Part I of the *Ius naturae*.

Achenwall's bibliographical entries have been checked and corrected or supplemented where necessary. Achenwall provides Latinized versions of the authors' names, which do not always correspond to the names under which they published their work. In this translation the authors are listed under the names by which they are known nowadays, so as to make it easier for current readers to recognize whom Achenwall is referring to and to track down their work.

The nature of the work—a textbook for students—and Achenwall's noticeable predilection for airtight systems and consistent structuring present the translator with specific difficulties. The many definitions and frequent references to preceding paragraphs involve a lot of cross-checking to guarantee a consistent translation. On the other hand, the different idioms of Latin and English sometimes make one-to-one translations impossible. Language is not mathematics, not even in a highly systematic text such as this one, and not even Achenwall is always consistent in his use of certain terms.

To give some examples of varying translations of a single Latin word: depending on the context, I have used both "obligate" and "oblige" for *obligare*, "contract" or "pact" for *pactum*, and I have translated *existimatio* with "esteem" or "reputation" in accordance with Achenwall's specific use of the term. *Vires* is notoriously versatile and a favorite with our author; I have used "powers," "forces" and "resources." In this

[1] Gottfried Achenwall, *Ius naturae in usum auditorum* and *Iuris naturalis pars posterior complectens ius familiae, ius publicum et ius gentium in usum auditorum*. Editio quinta emendatior (Göttingen: Victorinus Bossiegelius, 1763).

case and a few others, I took the liberty of adding the synonyms to the definition or explanation, as Achenwall himself often does. Vice versa, Achenwall sometimes adds synonyms for Latin technical terms that he apparently thought would be of use to his students, while English has no useful equivalents: in such cases I have left out the untranslatable synonyms.

Sometimes Latin terminology makes a distinction that is not mirrored in English. In I, §. 217, for instance, "He who rents a building or a piece of land is its TENANT," Achenwall gives both specific Latin terms "INQUILINUS, COLONUS" (the tenant of a building and a piece of land, respectively). The reverse, a distinction in English that is not made in Latin, occurs in the same paragraph with the definition of *merces*, for which in English one always has to choose between "rent" and "hire," resulting in a double translation: "The sum of money itself in this case is called RENT or HIRE" (cp. II §. 69).

Consulting translations of related works by other authors was often helpful in solving problems with Achenwall's terminology.[2]

I have aimed for a readable translation that respects English usage as much as possible while being as faithful as possible to the original and avoiding anachronisms. The latter means that I have kept the old-fashioned "man" for *homo* instead of introducing human beings: to Achenwall and his contemporaries, men were the self-evident norm and women were naturally invisible in discourse on almost any subject.

Respecting English usage means that I have rendered *ius* with either "law" or "right," instead of always using "right," as historians of philosophy working on Kant have tended to do.[3] After long deliberation I have chosen "rightful" and "wrongful" for *iustus* and *iniustus*, at least in the case of acts and the like; for persons I have used "just" and "unjust."[4] Vice versa, Achenwall may use two Latin synonyms as separate technical terms (e.g., *externus* and *extrinsecus*), while only one English translation is desirable ("external," see I §. 49 for *externus* and II §. 5 and 87 for *extrinsecus*).

Respecting English usage also means avoiding the numerous false friends that the English translator finds in Latin. To name a few: *merus* rarely means "mere," *industrialis* is not "industrial," *affirmativus* usually should not be translated with "affirmative," *detentio* is not detention, *habitus* often does not mean "habit" and a *facultas* is not always a faculty. Likewise, I have rendered *factum commissivum* with "positive act" (introduced as a synonym in *Prol.* §. 7) because "act of commission" no longer is the neutral term it was to Achenwall and for most current readers will have the connotation of committing a crime.

The complex structure of technical terms that Achenwall uses to discuss aspects of property presented its own problems. I decided to render *dominium* with "dominion"

[2] Hugo Grotius, *On the Law of War and Peace*, edited and annotated by Stephen C. Neff (Cambridge: Cambridge University Press, 2012); Samuel Pufendorf, *De jure naturae et gentium libri octo*, 2 vols. (photographic reprod. of the edition of 1688; translated by C. H. and W. A. Oldfather), The Classics of International Law 17 (Oxford: Clarendon Press, 1934); and Samuel Pufendorf, *De officio hominis et civis juxta legem naturalem libri duo*, 2 vols. (photographic reprod. of the edition of 1682; translated by Frank Gardner Moore), The Classics of International Law 10 (New York: Oxford University Press, 1927).

[3] See I §. 22n.

[4] See *Prol.* §. 116.

everywhere, following the Oxford translation of Pufendorf's *De jure naturae et gentium* ("ownership" didn't fit all the occurrences), *dominus* with "owner," and *proprietas* with "proprietorship." Then there is the cluster that includes *suum/meum*, etc., *ius suum/meum*, etc., *(ius) proprium, alienum*, which is hard to translate, let alone to translate elegantly, and impossible to translate consistently. I have chosen solutions using "proper," "property," "another's," "another's own," "his" etc., "his own" etc., and "to own."[5] Just as *suum* poses a problem in Latin sentence construction because it must refer to the syntactical subject (which probably gave rise to the use of *proprium* as a synonym), in English one cannot always use "own" without creating confusion.

Some clusters of terms used in the *Ius naturae* suddenly become clear when one reads the *Prolegomena*, where Achenwall explains the foundations of his system. This applies to *voluntas* vs. *arbitrium*[6] as well as to *anima* vs. *mens*.[7]

Achenwall's Latin is typical of eighteenth-century academia: one could call it practical or ugly. His sentences, although sometimes long and treacherous (which is often due to the punctuation system that he used, quite different from ours), are never nearly as complicated as Cicero's or as elegant as Erasmus's. I have tacitly corrected the few real mistakes that he makes.

Textual criticism of the source text is an integral part of translation. In this case it is sometimes a little complicated, due to the history of the editions of *Ius naturae* as well as the history of this project. The initial plan was for me to translate some sections of Part II; the project then grew into a complete translation of the *Ius naturae*. For Part II, the source text naturally was the digital version of the *Akademie-Ausgabe*. It was only toward the end of Part II that I realized just how flawed this text was. I had of course kept a list of apparent typos in the Latin text, but when I dug deeper it became clear that most of them (33 to be precise, some easily identifiable, such as *competum* for *competunt*, and some a bit harder to spot, e.g., *vitalis* for *vi talis*) were not in the 1763 edition and had been introduced by the editors of the paper *Akademie-Ausgabe*. The digital version had perpetuated the typos in its paper source while creating fresh ones of its own (7 that I have noticed, some of them typical of OCR and some inexplicable, which includes undoing a correction that was rightly made in 1934). These were just the errors that were noticeable when translating, because the Latin made no sense as it was; collation of a few random paragraphs yielded more undesirable differences between the digital AA and the 1763 edition. On the other hand, the original AA editors corrected quite a few typographical errors of the 1763 edition (not all, though: I noticed 6 more in Part II), often following the edition of 1781. In the few cases where I had to supply a word that was not in any edition, I have signaled it with square brackets (which are used for translator's clarifications as well).

For Part I, I have worked with a single edition (that of 1763, which Kant used) and made emendations as I went along. There is a complete list on pp. 203–4.

Achenwall often refers to earlier paragraphs either within *Ius naturae* or in his *Prolegomena iuris naturalis*. The references within *Ius naturae* contained a few evident

[5] See, for instance, I §. 53f., 113, 137f.
[6] See *Prol*. §. 4–6.
[7] See I §. 65 and 87 and *Prol*. ch. I.

typos, which I have tacitly corrected; with the references to the *Prolegomena,* things are a bit more complicated. Achenwall had revised the *Prolegomena*, restructuring some paragraphs and groups of paragraphs, and apparently neglected to correct the references in the *Ius naturae*, or at least to do so consistently. The Akademie editors of Part II corrected the references to *Prolegomena* §§. 141–144 (now 143–146). In Part I many of those to *Prolegomena* §§. 51, 72, 112–118, 136, and 143f. appear to be incorrect. Sometimes the new point of reference is easy to spot when looking at the 1763 text of the *Prolegomena*, sometimes it is nowhere to be seen; I have left them as they were. It will soon be possible to compare the two works in English, since my translation of the *Prolegomena* is forthcoming in open access at University of Groningen Press.[8]

There are many people to whom I owe a debt of gratitude for making this project possible and improving the result. Pauline Kleingeld not only initiated it but carefully read the entire translation, providing many useful comments and fruitful discussions as well as patient and attentive support—a rare luxury for a professional translator. Arthur Ripstein and Ernest Weinrib helped generously in various ways, as did Lawrence Pasternack and Pablo Muchnik. Gualtiero Lorini and John Hymers took the time to read through the translation and pointed out several mistakes, especially in Part I. It goes without saying that I alone am accountable for the remaining errors—I know they are there, because perfect translations do not exist (*non dantur*, Achenwall would say). Frederick Rauscher kindly gave me a sneak preview of materials from Kant's *Lectures and Drafts on Political Philosophy* (which includes a translation of the Feyerabend lecture notes).[9] At Bloomsbury Publishers I would like to thank Andrew Wardell for his help with the contract and Colleen Coalter for her enthusiastic and enduring support.

[8] Gottfried Achenwall, *Prolegomena to Natural Law,* edited by Pauline Kleingeld, translated by Corinna Vermeulen (Groningen: University of Groningen Press, 2020); https://doi.org/10.21827/5cdabd4c2a027.

[9] Immanuel Kant, *Lectures and Drafts on Political Philosophy,* edited by Frederick Rauscher, translated by Frederick Rauscher and Kenneth R. Westphal (Cambridge: Cambridge University Press, 2016), pp. 81–180. On the Feyerabend lecture notes, see above, pp. x–xi and p. xiii.

IVS NATVRAE

IN VSVM AVDITORVM

AVCTORE

GOTTFR. ACHENWALL D.

IVRIS ET PHILOSOPHIAE SPECIATIM-QVE IVRIS NATVRAE ET GENTIVM ATQVE POLITICES PROFESSORE PVBLICO ORDINARIO IN ACADEMIA GEORGIA AVGVSTA

EDITIO QVINTA EMENDATIOR

GOTTINGAE

SVMTIBVS VICTORINI BOSSIEGELII

CIↃIↃCCLXIII.

NATURAL LAW

for Students' Use

by Gottfried Achenwall,
Doctor of Law and Full Professor of Philosophy,
in particular of Natural Law,
Law of Nations and Politics
at the Georg August University

5th, corrected edition

Göttingen
published by Victorinus Bossiegelius
1763

Part I

Natural Law in the Strictest Sense

Prefaces

iii

Preface to the third and fourth editions

This little work, which was published twice already in a *joint effort by Johann Stephan Pütter and myself*, now comes out once more; and as the title page states, with me as its sole author. I think I should briefly explain to you, benevolent reader, what the reason
iv is for the change in the title page. As both of us had earlier lectured on natural law at Marburg University, one succeeding the other, and later by a stroke of luck found ourselves reunited at this nourishing mother of the humanities, the Georg August University, we immediately saw such an extraordinary concord and harmony of our principles in this field that we did not hesitate to join our efforts to publish a handbook of universal law together. My friend Pütter was to write the chapter on state law in general and on public universal law in particular, the rest was to be covered by my humble effort. We then divided the lectures on philosophical law between us in the same way: he would devote himself to interpreting matters of state law and universal public law, while the rest would be my duty to elucidate.

v But when my friend, occupied with other matters, was called away from further cultivation of this learned topic, the task of explaining this entire compendium as well as preparing a new elaboration—rather than a new edition—, which he had also had in mind regarding public state law, fell to me alone. So just as I have worked continuously toward this goal since that time, by teaching and expounding—work that was not ill received by my illustrious, honorable and noble students, nor without use to myself for acquiring a preciser understanding of these things, indeed fruitful to the highest degree—, so I have also engaged in writing down these new elements of philosophical jurisprudence in such a way that I have thought through and studied everything
vi anew, taking great care to improve all that seemed to need more clarity in defining, greater firmness in reasoning, higher accuracy in distinguishing, or a better structure in arranging. But although in this edition there is much that was either not said at all or at least expressed differently in the previous editions, nonetheless the boundaries of natural law, which confine it within the measure of the perfect duties and "to each his own," have persisted without moving. For that they cannot be extended unless you prefer mixing ethics with philosophical law, the highest with the lowest, in an inextricable tangle, of that I am not so much persuaded by the authority of Gundling, Treuer, Gebauer and the Coccejis[1] (who in fact should have been mentioned first, for

[1] See below for Nicolaus Hieronymus Gundling, p. 187; Gottlieb Samuel Treuer, pp. 167, 171, 189; Georg Christian Gebauer: pp. 84, 125; Heinrich von Cocceji, pp. 23–4, 84, 118, 191, 199, 202; Samuel von Coccejus, p. 24.

vii more than one reason)—such great men, though!—as more convinced every day by the very truth of the matter. But although by the same token I am averse to the opinion of those who think that natural law should be deduced either from its own perfection or from the will of God in as far as it can be known by reason, nonetheless I am so far from trying to eliminate these principles from this work that in fact I dare confidently assert that if they are removed, the very foundation of universal law is overthrown. Of course these and other principles quite rightfully claim their place among the higher principles of natural law; but since they extend more widely, and pertain as much to this field of ours as to the other disciplines of practical philosophy, we have to elicit other, more particular principles from them that are proper and adequate to our
viii subject. For this reason we have to descend further to self-preservation, to "to each his own," "wrong no one" and their equivalents, and it is only after we have established them correctly that out of the conclusions we draw from them a discipline is born that is not only separated neatly from civil and household prudence, but also perfectly distinguished from ethics: that is why it deserves to be designated with the specific name of natural law. April 11, in the year of our Lord 1755.

With these words I prefaced the third edition. As regards the *fourth edition* which I hand to you now, benevolent reader, I thought that this occasion was not to be missed either, to put as much work into improving and perfecting the booklet as my other
ix occupations and these turbulent times allowed. I therefore resumed the task of revising everything; I modified some things, deleted a few and added others; I also decided to add bibliographies to the main subjects—highly selective ones, as is desired in this kind of publication. I furthermore think that the work I have put into a new (as far as I know) method of showing which way leads to correctly understanding and accurately establishing and applying the old principle of "to each his own" will not prove entirely useless. The explanation of that subject was taken from my *Prolegomena* which have appeared recently, but its use has now been spread throughout the discussion of natural law.

For the rest, in the present volume that part of universal jurisprudence is presented
x to you, reader, which comprehends the natural rights and duties of individuals; which will be excluded from the second volume, containing social and public law and the law of nations and will appear shortly, if God grants me life and strength, and to which the table of contents of the entire work will be added. October 19, in the year of our Lord 1758.[2]

xi

Prefaces to the earlier editions, which sprang from a joint effort by the learned jurist Pütter and myself

Preface to the first edition

There are just a few things, benevolent reader, that we think we should tell you before you look at this booklet itself. A new compendium of natural law dares enter the world.

[2] Achenwall did not include a separate preface to the fifth edition.

Should we make excuses so that, among the great number of texts of this kind available everywhere, writing a new one will not appear disrespectful? We do not ask for forgiveness, being sufficiently protected by customary law. German minds have long been used to the philosophical novelties that spring from the universities as if from the Trojan horse. We hardly think that you hope to find new truths in this booklet; and if in beginning to read it you are so kind as to believe some may be found here, you should know that nothing easy is said in our time that has not been said before—nor is it very desirable in a compendium. In order to avoid mistakes, however, we have
xii combined our efforts as far as possible in outlining, pondering and digesting these theses. But we do not arrogantly think that in this way we have made no mistakes; we merely intended to make fewer. And this is perhaps the only thing you will find that is new and unexpected in the writing of this little work: the joint effort of two friends who are the same age—so rare is it, particularly these days, to find others than a teacher and his student who agree with each other in the philosophical disciplines, especially in natural law. Now it is up to you to judge our endeavor. Form your judgment with kindness; we wish you all the best. April 9, in the year of our Lord 1750.

Preface to the second edition

We offer you, benevolent reader, a little work not only reprinted but also revised. You will find various changes in this edition: some things more determined; some expanded, others curtailed; some added, some thrown out. In accordance with our views on how everything could be arranged more aptly, proposed with greater clarity or demonstrated more firmly, we have done our very best to improve it all by rearranging, explaining and corroborating. September 30, in the year of our Lord 1752.

1

Introduction to Natural Law

Preliminary Remarks

§. 1.

Natural law (*in the strict sense*; peremptory, external natural law) is the knowledge of perfect natural laws, or the knowledge of external natural rights and obligations; its main parts are *purely natural law* on the one hand and *family law*, *public law* and the *law of nations* on the other, in as far as these are conceived of as *universal law*.

2 §. 2.

The *use* of natural law, if we consider it *by itself*, is that by applying its principles to human actions, we can understand which actions go against natural law and which ones comply with it. That is to say, its use is that it helps to distinguish rightful and wrongful, and hence to decide conflicts. Now this use natural law has in common with the other types of law; but the one that is unique to our field of law goes back most of all to its use 1) *in the first place*: to judge actions (as regards their rightfulness and wrongfulness) and to decide controversies, both between *nations* and between *civil overlords* and their *peoples*, since not being bound by any human law, they are ruled by natural law; 2) *subsidiarily*: to judge the actions and end the conflicts also of all those who are under a certain human law when this human law clearly falls short, because then one will have to resort to natural law if necessary.

3 §. 3.

The use of natural law with regard to other fields can be seen first and foremost 1) in the other disciplines of practical philosophy, which are connected with natural law by ties of sisterhood; 2) in the customary law of European states and nations; 3) in all positive law, both public and private, both human and the divine law which is explained in Christian moral theology.

§. 4.

Hence if you consider the use of natural law *with regard to persons*, apart from the fact that this study suits all the learned and definitely the philosophers, knowledge of it is useful and necessary most of all to those who interpret, apply or make any kind of positive laws, and to those who administrate or pursue the rights of a nation, civil overlord or people, and therefore to future theologians, politicians, lawyers, and all those who aspire to public office and to managing domestic or foreign public affairs

4 of war and peace. The cultivation of this discipline must be commended to Germans first and foremost, because in the German Roman Empire, composed of so many states and hence of so many civil overlords, peoples and nations, its practical use is by far the most frequent.

§. 5.

To build a system of natural law that is accommodated to these uses and objectives, the writer and teacher of this discipline not only needs 1) a solid knowledge of all philosophy, especially of the fields that contain the higher principles of our discipline, because it is from philosophy that the boundaries and the systematic method of natural law are understood and that the very foundation must be sought upon which the entire natural law is built; but also 2) a command of positive jurisprudence (not just private, but also and especially public), 3) of practical civil history, and 4) finally of the various systems of natural law themselves that have been published until now—particularly the better ones—and of this discipline's bibliographical history; because a grasp of these disciplines supplies natural law with subject-matter and aids, while paving the way to further thinking and to more fruitful principles.

5

§. 6.

The foundations of natural law thus lie in other philosophical disciplines, whose higher principles which serve our objective are assumed to be known here, and indeed have to be because of the time limit; but we have investigated and discussed them more extensively in our *Prolegomena*, together with the things that regard natural law in general. Therefore, in order to comprehend in a brief outline everything it is necessary to know before we begin to explain the specific propositions of natural law, we will summarily and in pointers mention these few things, which are mostly taken from the aforementioned *Prolegomena*.

6

TITLE I
THE NORM FOR FREE ACTIONS; OBLIGATION IN GENERAL

§. 7.

A LAW *in general*, namely taken as a rule for free actions, is a proposition stating an obligation, §. 13 *Prol. Nat. Law*; a (passive) OBLIGATION is the necessity that arises from a distinct representation (motive) of a true good, to determine a free action, i.e., it is the moral necessity that springs from some rational goal, §. 11, 12 *Prol.* The person on whom such a necessity to determine some free action is placed, i.e., on whom it rests, *is obligated*; the person placing this necessity on someone, i.e., connecting (constituting) a rational motive with someone's free action, *obligates*, §. 12n. *Prol.*

7

§. 8.

Concerning obligations and laws in general it should be noted 1) that there can be no obligation to what is physically impossible, physically necessary or purely natural,

§. 14 *Prol.*, nor 2) to what is unknown, §. 16 *Prol.*, and that therefore these things are not subject to any law, in as far as they are considered by themselves and as such. So *no one is bound beyond his ability* (i.e., beyond that which lies in his power) *and knowledge*.

§. 9.

It should furthermore be stated that 3) neither obligation nor law applies to him who lacks the use of his intellect, §. 14 *Prol.*, and finally 4) that there is no obligation without a true good (which includes avoiding an evil and avoiding a greater evil as compared to a lesser one) that someone can represent to himself as a goal that can be obtained by means of a certain free action (as the consequence of an action). So *without hope or fear that is set before one there can be no obligation*, §. 20 *Prol.*, *and obligation can apply to future actions only*, as it cannot be linked to past ones.

8 §. 10.

Obligation is divided into *positive obligation*, to achieve something, and *negative obligation*, to omit something; and hence the *law* is divided into *prescriptive* and *prohibitive* law, §. 19 *Prol.* For a prescriptive law to be binding in a given case, it is required that the agent have sufficient resources as well as occasion to achieve what it prescribes, §. 19 *Prol.*

Moreover an *obligation* and *law* can be *greater* (stronger) or *lesser* (weaker) in relation to another obligation and law, according to the different degree of motives connected to each, §. 21. *Prol.* Hence if obligations and laws collide, the rule of exception comes to the fore, which must be seen as a law itself and is called the *perfective law: in a collision* (conflict) *of obligations and laws, the stronger one wins and the weaker one cedes to it*, §. 25 *Prol.*

§. 11.

Finally, once a certain type of laws is given, a *free action* related to it becomes *obligatory* or *indifferent*, *illicit* or *licit*; an obligatory action in particular becomes *prescribed* or *prohibited*, *right* or *not right*, §. 26 *Prol.*

9 §. 12.

The effect of an obligation and law is called *imputation*, which consists in a judgment by which the deserts of an act (a single free action) are attributed to its author, who is also called its *free cause*, §. 27 *Prol.*, §. 28 *Prol.*

§. 13.

The *deserts of an act* means the good or bad consequence that has been connected with someone's free action as the motive. If the deserts of the act are good, it is called a *reward*; if they are bad, a *punishment*, §. 27 *Prol.*

§. 14.

So there is *imputation toward a reward* and *imputation toward a punishment*; furthermore it is called *effective* if it is coupled with the actual conferment of the reward or the infliction of the punishment; if it is not, it is called *ineffective*, §. 28 *Prol.*

§. 15.

Imputation, therefore, is the conclusion from an act and a law, and consequently every imputation is reached by a reasoning whose *minor* is: "You are the author of this act,"
10 and whose *conclusion* is: "To you these deserts must be assigned, i.e., you deserve this reward or this punishment," §. 29, 33 *Prol.*

§. 16.

On imputation the following rules must be observed: 1) everything that is not subject to obligation and law, and hence all the more everything that cannot be subject to them, is not imputable either, §. 31, 32 *Prol.*; 2) only that whose contrary the agent should and could have done can be imputed towards punishment, §. 35 *Prol.*; 3) only that violation of an obligation and that transgression of a law, i.e. that act that is not right, can be imputed that contains a surmountable lack of rectitude, §. 34 *Prol.*

§. 17.

The lack of rectitude of an act, in as far as it is imputable towards punishment, is called GUILT, §. 35 *Prol.*; it can be either *malicious intent*, which is connected with the will to violate the law, i.e., the agent acts consciously; or *blameworthiness* (in the stricter sense), i.e., the agent does not act consciously in that way. Hence an *act* that lacks rectitude is either culpable or inculpable, and a culpable act is either malicious
11 or blameworthy, §. 34, 35 *Prol.* An *act with malicious intent* is imputable to a higher degree than a *blameworthy act*, because the former was committed by someone who knew it and wanted it, and the latter not to the same degree; still the latter is also subject to imputation, since for your blameworthiness it is sufficient that you do not know or pay no attention to that which you could have and should have known and paid attention to, §. 36 *Prol.*

§. 18.

From this we may conclude that there exist acts that in themselves are not free and hence in themselves are not imputable, which nonetheless definitely also have imputability because they belong to the free acts indirectly, i.e., by consequence, §. 39 *Prol.*

§. 19.

Thus the *force* or virtue of every law is twofold: 1) to *obligate*, 2) to *impute*, §. 42 [*Prol.*].

12

TITLE II
NATURAL LAWS

§. 20.

The natural law and the natural obligation constitute a type of moral laws and obligations. Man's obligation to act in accordance with the will of God is called MORAL OBLIGATION (obligation of conscience), §. 43 *Prol.*

§. 21.

Hence a MORAL LAW (divine law) is a law according to which we are obliged to direct our actions because of God's will, and therefore it is the norm for free actions which God obliges us to observe, i.e., to whose observance we are obliged by God, §. 43 *Prol.*

§. 22.

So everything that, given the divine laws, is *impossible*, *possible*, or *necessary* to do; and
13 *everything that, in relation to those laws, is found to be illicit, licit, indifferent, prescribed, prohibited, owed, right, not right, imputable, blameworthy, or malicious*, is MORALLY (strictly and simply) so, §. 44 *Prol.* A man's physical ability, in as far as it does not go against any moral law, is called MORAL ABILITY or, in one word, (moral) RIGHT, taken broadly and subjectively, i.e. as it affects a person,[1] §. 44 *Prol.*

§. 23.

A free action that is not morally indifferent is called a MORAL ACTION. A morally owed action is called a MORAL DUTY; moral guilt a SIN or a MORALLY BAD action; a morally right action, on the other hand, a MORALLY GOOD action, §. 47 *Prol.*

§. 24.

Regarding moral obligations, it should further be noted: 1) no one is morally obligated beyond his ability, both physical and moral, i.e., we are morally obligated only to the extent that there is no physical or moral obstacle; 2) whatever someone is morally
14 obligated to, to that he also has a right or moral ability; 3) he who is morally obligated to a goal has the right to the things without which that goal cannot be attained, and consequently to the use of remedies and the removal of obstacles, in as far as these are considered by themselves, §. 45 *Prol.*

[1] Achenwall carefully distinguishes the two meanings of *ius*, "right" and "juridical discipline/body of law": the former is the subjective, the latter the objective sense. Cp. §. 26n. Since in English we use "right" and "law" respectively to convey these meanings, Achenwall's explanation does not apply to the translation, but I decided against leaving it out. See also "Remarks on the Translation," p. xxxiii.

§. 25.

A moral obligation and a moral law that man can know from philosophical principles are called a NATURAL OBLIGATION and a NATURAL LAW. So it is a law and obligation that we can understand from our own, God's and other things' essence and nature, without any special revelation by God, without faith, by reason alone, §. 49, 50 *Prol.*

§. 26.

The knowledge of natural laws is called NATURAL LAW or LAW OF NATURE in the *broad* and *objective* sense,[2] and in this sense a synonym for natural law is *moral philosophy* in the broad meaning of the word, §. 51 *Prol.* But depending on its subject matter, "natural law" also means the natural laws and obligations themselves, taken as a whole.

15 §. 27.

There exists a natural obligation and a natural law because 1) there is a God, our Creator and Preserver, the Wisest, Holiest, Benignest, Omniscient and Omnipotent Being; and because 2) in most of our free actions we can gain sufficient knowledge of God's will regarding their direction, both from God's essence and attributes as philosophical principles and from His works—i.e., from our own nature and that of other things—that are accessible to our reason, and hence from God's aims that are manifested through creation. Natural law exists (has force) to the extent that from this general obligation and law many others can be deduced by reasoning, §. 52, 53 *Prol.*

§. 28.

Hence the universal principle of the knowledge of natural law, conceived of as a proposition and the most general law of nature, is: *act in accordance with the will of God as much as you can in all actions in which you are able to know that will by reason alone*, §. 58, 60 *Prol.*

16 §. 29.

Live, therefore, in accordance with God's perfections and aims; illustrate God's glory, seek the best of mankind, the best for yourself, and your own and others' happiness; don't do what goes against the preservation of another man; perfect yourself and preserve yourself.

§. 30.

The principle of the knowledge of natural law if it is thought of as a source of knowledge, however, is the essence and nature itself of things, in as far as they are accessible to our reason without any special revelation by God, §. 59, 64 *Prol.*, and from there we can arrive at the knowledge of that which God wants us to do or to omit.

[2] See §. 22n.

§. 31.

The divine laws of natural law obligate by the punishments connected with their culpable violation and the rewards connected with their observance, §. 55 *Prol.*; and since these punishments and rewards necessarily suit God's attributes, it is clear that in
17 comparison with punishments and rewards we can expect from elsewhere, following opposite actions, both must be greater, and hence both are the greatest, §. 56 *Prol.* It follows that the divine laws' imputing force and consequently also their obligating force is the strongest, §. 74 *Prol.* So in a conflict between a divine law and any other law, the former wins, and all other obligations and laws have this essential (tacit) exception: *unless a moral obligation and law is in the way*, §. 57 *Prol.* Therefore *no one is simply obligated beyond his physical and moral ability*, i.e., *no one is obligated if a physical or moral obstacle prevents him.*

§. 32.

Once the natural laws are in place, that is: in the sphere of natural law, what is meant by MORALLY *impossible*, *possible*, *necessary*, *good*, and *bad*; what a *moral ability* is, and a *moral obstacle*; what is meant with NATURALLY *illicit*, *licit*, *indifferent*, *obligatory*, *prescribed*, *prohibited*, *wrong*, *owed*, *right*, *not right* and *imputable*; and furthermore,
18 what is called a NATURAL *right* (in the subjective and broad sense),[3] *sin*, *duty* or *virtue*, §. 47 *Prol.*, will therefore be understood without further ado.

§. 33.

Because we are naturally obligated to act well morally, *as much as* we can, 1) *we are obliged to natural virtue*, 2) *when comparing two or more actions that we owe in themselves and that cannot go together, we are obliged to the one that is morally best*. It follows from 2) that there is no real conflict of two natural duties, even when two actions conflict of which any one, regarded in itself, is a duty. From this the law of exception is conceived: *in an* (apparent) *conflict of natural duties, the one whose observance suits God's will more wins*, as the more important duty. Therefore all special natural laws have this tacit exception: *unless a more important natural law is in the way*, §. 77, 78, 81 *Prol.*

19

TITLE III
PERFECT LAWS

§. 34.

A *natural obligation* that, if it is violated, is connected to another man's moral ability to coerce the violator is called a PERFECT OBLIGATION; so an IMPERFECT OBLIGATION is one that is not linked to such a natural right to violence, i.e., that cannot be enforced (exacted by force), §. 98 *Prol.*

[3] See §. 22n.

§. 35.

Hence as a *natural law* contains either a perfect or only an imperfect obligation, it is called PERFECT (peremptory in the strict sense) or IMPERFECT (non-peremptory). From this the division of the *natural duties* into *perfect* and *imperfect* ones is understood as well, §. 106 *Prol.* The body and the knowledge of the perfect natural laws is called
20 NATURAL LAW (taken objectively)[4] *in the strict sense* (peremptory natural law), §. 99 *Prol.* The knowledge of the imperfect natural laws, on the other hand, is called ETHICS (moral philosophy in the strict sense, §. 26).

§. 36.

The moral ability that is given once another man's perfect natural obligation is given, i.e., the natural right to coerce (under the aforementioned condition) is called a STRICT NATURAL RIGHT (perfect right) *taken subjectively*,[5] §. 100 *Prol.* From this it is clear 1) that *to every perfect obligation on my part corresponds a strict natural right on someone else's*, and vice versa *to every perfect right on my part corresponds a perfect obligation on someone else's, as far as possible*, i.e., in as far as there is no physical or moral obstacle in the way, §. 31, so in as far as in the given case the other person is capable of being obligated, §. 89 [*Prol.*], and no greater obligation is in his way, §. 34; 2) that peremptory natural law can be conceived of as the knowledge of perfect rights and obligations, §. 101 *Prol.*

21 §. 37.

Because I am naturally obliged to preserve my body and life, I have the natural right, as a moral ability, §. 22, to remove obstacles to my preservation; therefore if you undertake an action that conflicts with my preservation, and some other, milder remedy does not suffice, I have the right to coerce you to refrain from that action, §. 102 *Prol.* Because you, on the other hand, are naturally obliged not to do those things that go against my preservation, and if you violate this obligation with respect to me I naturally have the right to coerce you, it follows that this natural obligation of yours is perfect and this right that I naturally have is a strict natural right, §. 103 *Prol.*

§. 38.

So there is a strict natural right, namely the perfect right that everybody has to preserve himself, and there is a perfect natural obligation that lies on everybody not to do those
22 things that go against someone else's preservation. To this extent the following natural law exists (has force) as a perfect law: *Do not do anything that conflicts with another person's preservation*, §. 29 and 37, *as far as possible*, §. 31. Or, which is the same: *Everybody is perfectly obligated to refrain from doing things that go against another person's preservation, as far as possible*. And hence peremptory natural law exists, because once this perfect law is posited (i.e., this strict natural right for everyone and this perfect

[4] See §. 22n.
[5] See §. 22n.

natural obligation for everyone), peremptory natural law must be posited with the things that derive from it.

§. 39.

Furthermore, all moral and natural duties belong either to the duties to God, or to the duties to ourselves or others, §. 62 *Prol.*, and the perfect natural duty not to hinder someone else's preservation is a type of natural duty to others; but all the other duties of the same order without exception cannot be morally enforced, indeed everybody is naturally and perfectly obliged not to extort these duties from anyone. Consequently they must all be categorized as imperfect duties. Hence also the *perfect duties* are called
23 *duties of necessity* and the other duties to others duties of charity ("duties of humanity" in some authors), §. 106, 107 *Prol.* And so it is clear that *all perfect duties necessarily derive from the law on not hindering the preservation of others*, and that therefore *this law is the universal* or *general* (complex) *principle* (of knowledge)[6] *of peremptory natural law.*

§. 40.

For this reason the natural law *Do not do things that go against another person's preservation* can be called the internal, first and adequate principle of the perfect laws, and as it were their focus and center.

§. 41.

From this it is now easy to understand what, in the sphere of peremptory natural law (i.e., once the perfect laws are given), is said to be *morally impossible*, *possible* or *necessary*; what a *moral ability* and a *moral obstacle* are; what, in strict law, is called NATURALLY *illicit*, *licit*, *indifferent*, *obligatory*, *prescribed*, *prohibited*, *owed*, *right*, *not right*, or *imputable*; what constitutes *guilt*, *blameworthiness* and *malicious intent* in strict
24 natural law; and what is meant by an *inculpable*, *culpable*, *malicious* or *blameworthy act*, §. 32. Of course in this sphere these terms are all considered in as far as they are such *by force of a perfect law*.

§. 42.

A culpable act committed against a strict natural law is not only imputed by *God* as the legislator, by *punishing*, but can also be morally imputed by the man whose right has been violated, by *coercing*. Peremptory natural law and ethics agree on the former, while they differ as to the latter: every sin is subject to divine punishment, but only that which goes against a duty of necessity is subject to human coercion, §. 109, 110 and 138 *Prol.*

[6] See *Prol.* §. 23.

§. 43.

Every man is naturally obliged to promote everybody's happiness as much as he can, and hence all are naturally obliged to mutually pursue common happiness with joint
25 forces. This gives rise to a certain *natural* and *universal society* of men, and from this all the natural duties to others, and consequently also the duties of necessity, can be conceived of as social duties, §. 82–86 *Prol.* All this makes it clear that the perfect natural obligations and laws, whose objects are the duties of necessity, can be regarded as *social obligations* and *laws*, since they can be understood from the society that God has naturally constituted among all men.

§. 44.

Finally, everyone is naturally obliged to gear all his actions to God's will as much as he can, and therefore all men are God's *subjects*, hence God is the *superior* of all mankind (which is also confirmed from the notion of a universal society as the greatest state, whose supreme overlord is God—this can be understood more clearly from the principles of social law hereafter). It follows that all the natural laws—indeed more in
26 general the moral laws, and more in particular the perfect laws as well—are *laws in the juridical sense* (juridical laws), i.e., made by the superior and obligating the subjects with the threat of punishment (which undoubtedly awaits all sinners, §. 52, 54 *Prol.*); and that God thus is the *legislator* of all natural law, i.e., the superior who is the creator of the juridical laws, §. 63 *Prol.*

§. 45.

We can deduce from this that all natural law, including peremptory natural law, is rightly called *law*, since it actually consists in the knowledge or also in the body of similar juridical laws (juridical laws of the same kind); that all natural duties, including the duties of necessity, deserve the name of *duties*, actions that are owed on the basis of a juridical law; and that every natural obligation is an obligation in the juridical sense, §. 63 and 65 *Prol.*

§. 46.

And because all moral laws are divine laws and juridical laws, §. 54, 52 *Prol.* and
27 §. 44 of this Intr., it now becomes clear as well that law 1) following the difference in legislators is either *divine* or *human*, §. 63 *Prol.*; 2) following the difference in sources of knowledge is either *natural* or *positive*, §. 65 *Prol.*; 3) hence that *divine law* is either *natural* (which can also be called *philosophical law*, §. 63 *Prol.*, or *law of reason*, §. 64 *Prol.*) or *positive* (which is also known as *law of revelation* and *law of faith*, §. 64 *Prol.*); while on the other hand 4) all human law is positive law. It is easy to understand that these divisions also apply to related terms such as *laws*, *duties*, *obligation*, and so forth.

§. 47.

Natural obligation in general is posited once God is, and this essence and nature of man and other things; and hence natural obligation, when compared to the obligation that

springs from human laws, cannot be so arbitrary, particular, changeable and temporary as we experience, in any case, the latter to be. Therefore by a certain common sense *inevitability*, *universality*, *immutability* and *eternity* have always been attributed to
28 natural obligation and the first natural law, which is also peremptory, §. 67 *Prol.*

§. 48.

Finally, from the idea of the juridical law we should also observe this regarding perfect laws: there are not only perfect laws that *command*, but also ones that *permit*. A LAW is called PERMITTING (permissive) in as far as it determines that some action is not prescribed, but should not be hindered either. Hence such a law is called "permitting" with regard to the person to whom it concedes the ability to do something licitly, but "commanding" with regard to the person whom it obligates not to hinder someone else, §. 90 *Prol.*

29

TITLE IV
PERFECT LAWS AS EXTERNAL LAWS

§. 49.

A juridical obligation that is brought about by the fear of human coercion, i.e., by which a man is obligated to a man, is called an EXTERNAL OBLIGATION (an obligation in the external or human court); one that is brought about by the fear of divine punishment, i.e., by which a man is obligated to God, is called an INTERNAL OBLIGATION (an obligation in the internal or divine court, in the court of conscience, §. 110 *Prol.*). From this spring the notions of an EXTERNAL and INTERNAL *law*, external and internal *law* in the objective sense,[7] and external and internal *duty*, §. 112, 113 *Prol.*; and by the same token those of EXTERNAL and INTERNAL *guilt*, *blameworthiness*, *malicious intent*, *imputativity* and *imputation*; and also of that which is EXTERNALLY and that
30 which is INTERNALLY *illicit*, *licit*, *indifferent*, *obligatory*, *prescribed*, *prohibited*, *owed*, *commanded*, *permitted*, *right*, *not right*, *imputable*, *culpable*, *inculpable*, *malicious*, or *blameworthy*. For whatever is allowed, prescribed, prohibited, etc., once external law is given (in the sphere of external laws, in the human court), is allowed, prescribed, prohibited, etc., *externally*. Hence an EXTERNAL RIGHT in the subjective sense[8] should be thought of as the ability to do something licitly in as far as it corresponds to someone else's external obligation. An action that is externally indifferent, i.e., indifferent in the human court, is also called an *act of pure choice* (a purely facultative or voluntary matter), §. 114, 115 *Prol.*

§. 50.

In order to avoid confusion of the matters of external law with those belonging to internal law—to which alone the word *moral* is properly reserved—it is a good idea to call that which is impossible, and so forth, by force of an external law, LEGALLY

[7] See §. 22n.
[8] See §. 22n.

impossible, possible or *necessary*. From this the notion of a *legal obstacle* is derived as well, as is the notion of external law itself as *legal ability*, §. 114 *Prol.*

31 §. 51.

From this it is understood 1) that every imperfect obligation is purely internal, and therefore *moral philosophy in the strict sense*, i.e. *ethics*, §. 35 of this Intr., belongs to *internal law* only; 2) that every perfect obligation, on the other hand, is internal and external at the same time, and therefore *peremptory natural law* in as far as it is considered *with regard to* its *obligations*, is *mixed law: internal and external at the same time*. 3) There naturally is an external right to everything that does not go against someone else's preservation—which may include many things that are morally and ethically illicit, §. 132 *Prol.*—and a strict natural right or perfect right can be seen as external, §. 130 *Prol.*; hence there are some strict rights that are not internal, but purely external. It follows that *peremptory natural law, in as far as it is considered with regard to its rights, is mixed law as to some rights and purely external law as to other rights.*

32 §. 52.

An externally illicit action is called a WRONGFUL action (*externally*, and in an external court even *simply* wrongful) or a WRONG, while an externally licit action is called (externally) RIGHTFUL, §. 116 *Prol.* An act that is not right by force of an external law is called a WRONGFUL ACT, which is inculpable, malicious or blameworthy. Hence a *wrong* also is either malicious or blameworthy—culpable, in one word—or inculpable. A culpable wrong is called an INJURY in the wider sense; a malicious wrong, i.e. an externally malicious act, is referred to as a MISDEED, §. 117, 118 *Prol.*

§. 53.

Something that a person can use by right (by force of external law), to the exclusion of others, is called HIS OWN[9] from that person's perspective, ANOTHER'S from the others' perspective. A right that falls to someone while excluding others is likewise called *his own right.* Hence he who violates someone else's right to that which is that person's own, and he who violates someone else's own right, does not *give* the other person *his own*, and *disturbs his right* (this includes: *invading*, *diminishing*, *taking away that which*
33 *is another's*); he who does not violate them, *gives* the other person *his own*, and *his right* (this includes: *leaving* to someone else *what is his*, *abstaining from what is another's*). So once the "one's own" and some right of one's own are given, another person's external obligation is given to *give each his own*, to *abstain from what is another's, not to take away that which is another's own, not to hinder* or *disturb anyone in the use of his own right,* §. 121 *Prol.*

[9] See "Remarks on the Translation," pp. xxxiii–xxxiv.

§. 54.

Because the right that I have to exclude others from the use of what is my own constitutes my PROPRIETORSHIP *in the broader sense*, it follows that every *own* and *own right* that someone has, contains *proprietorship* in this sense and is *owned*, §. 122 *Prol.* From this, *one's own* can also be conceived of as that to which someone has a proper right, §. 124 *Prol. In the stricter sense*, however, OWNED designates that which is owned by one person alone, and COMMON that which is owned by several people at the same time. From this it is clear that 1) something that is *one's own* is either *owned in the stricter sense* or *common*, 2) that something *common* is either *my own* or *another's*, 3)
34 but that every COMMUNION (of a right, of that which is one's own) is proprietorship, only conceived of *more broadly*, as it falls to several people simultaneously.

§. 55.

Because, finally, the harm that a wrong causes the wronged party is called LOSS, §. 126 *Prol.*—which is divided into *culpable* and *inculpable*, *blameworthy* and *malicious*, §. 127 *Prol.*—it can readily be noticed that once the "one's own" is given, an external obligation is given not to cause loss to another person; and therefore, if some loss has been caused, to bring about its cessation. In other words: that for the wronging party an *obligation* is given *to repair the loss to the person who suffered it*. Corresponding to this obligation, *the wronged party has the right to demand reparation from the wronging party* as the party that caused the loss, in other words: the *right to indemnity.*

§. 56.

It is crystal clear that these principles of external law can be applied to *peremptory natural law* in as far as it is regarded as external law. So everything that, given the perfect natural laws, is *wrongful*, *rightful*, *a wrong*, *an injury*, *a person's own*, *owned*,
35 *common* or *a loss*, is NATURALLY so, and everything that is conceived of as *wrongful*, *rightful*, *a wrong*, *a person's own*, *a loss*, etc., in the sphere of peremptory natural law, is conceived of merely in as far as it is such by the force of *a perfect natural law*.

§. 57.

So if, for example, we posit something that is *naturally* someone's own, a wrong, a loss, etc., then we must also posit and admit as principles of peremptory natural law 1) with regard to obligations: *give each his* (natural) *own, do not wrong anyone, a loss caused has to be restored*, etc., §. 131 *Prol.*; 2) with regard to rights: *everyone has the strict* (natural) *right to be given his* (natural) *own, not to be wronged, that a loss caused to him be restored by the wronging party*, etc., §. 132 *Prol.*

And so *by hypothesis* the natural right to the preservation of our body and life can already in advance be thought of more generally as the right to preservation of everything that is naturally ours, and as the right to preserve intact all the rights that

36 fall to us naturally. Hence we can also extend the notion of the *right to self-defense*[10] which naturally falls to a wronged party, §. 133 *Prol.*, the *right to indemnity*, §. 55 of this Intr., and the *right to security*, §. 134 *Prol.*; indeed *coercion* and *violence* itself can be conceived of more generally as an act by which the wronging party's own, of whichever kind, is invaded and which, as a necessary means to preserve one's self and one's own against another's wrong, is naturally rightful, §. 135 *Prol.*, while all other coercion is naturally prohibited and therefore wrongful.

§. 58.

From this it is also clear that although the use of violence against one who culpably wrongs us does come under imputation, §. 138 *Prol.*, since the right to preservation is derived from the natural obligation to preserve ourselves, *there is a naturally rightful violence that is not imputation*, in as far as e.g. there are acts that wrong us but cannot be imputed to another person, §. 139 *Prol.*

§. 59.

In peremptory natural law, if it is considered *as external law, account should be taken*
37 *of external actions only, in as far as they can be proved among men*, §. 141 *Prol.* And it is impossible to consider this law as anything other than external, whenever it has to be applied to the human court to use the principles of natural law in order to decide conflicts that have arisen among people, and hence also in order to judge human actions as to their external rightfulness or wrongfulness. Therefore it is not only possible to view peremptory natural law as external law, but both the very nature and *essential character* of this discipline—which make it different from the other fields of practical philosophy—and its *use* and *objectives* (see above, §. 2, 3, 4) necessarily require it to be regarded in this way and no other. For this reason we have decided to treat it mostly as external law and under the aspect of external law. Hence for the sake of brevity we will simply call peremptory natural law *natural law*, and the same goes for the related terms.

38 §. 60.

We will first set out the *rights* and *obligations* that apply in the *natural state of individuals*; then we will turn to considering the *social state* of men. The *natural law* that we are speaking of can, like natural law in general, of course be divided—according to the different *states*, either *social* or *natural*, that are assumed in men—into *universal social law* and *purely natural law*, §. 91 *Prol.*, and among those various meanings of "natural law" this *purely natural law (peremptory natural law of individuals)* is *natural law in the strictest sense*.

[10] *Sui* in *sui defensio* has a double meaning, as it is the genitive of *se* and of *suum*. Indeed the definition in *Prol.* §. 133 shows that Achenwall means to include defending both oneself and that which is one's own. I sometimes give a double translation, e.g., for *defensor sui* in I §. 269.

39

Appendix to the Introduction to Natural Law: The Bibliographical History of Natural Law

I.

The *history* of natural law has been written by those authors who have published either on the history of learning in general, or in particular on the history of all philosophy or that of the whole of law, or those who more especially added the history of natural law to their system; but the authors who expounded it the most particularly in a single work are first of all Buddeus (1), Gröning (2), Ludovici (3), Thomasius (4), Glafey (5) and Schmauss (6).

1) Johann Franz Buddeus (Budde) in his *Historia juris naturalis*; an augmented
40 edition is included in his *Selecta juris naturae et gentium*, Halle 1704 and 1717, *dissert*. I.
2) Johann Gröning, jurist, *Bibliotheca juris gentium Europaea, seu de juris naturae et gentium principiis juxta doctrinam Europaeorum libri III*, Hamburg 1703.
3) Jacob Friedrich Ludovici in his *Delineatio historiae juris divini naturalis et positivi universalis*, augmented edition, Halle 1714.
4) Christian Thomasius in his *Paulo plenior historia juris naturalis*, Halle 1719.
5) Adam Friedrich Glafey in his *Vollständige Geschichte des Rechts der Vernunft (...) nebst einer bibliotheca juris naturae et gentium*, improved ed. Leipzig 1739.
6) Johann Jacob Schmauss, *Neues Systema des Rechts der Natur*, Göttingen 1754, most of which is taken up by an overview of the history of natural law.

II.

In the cradle of the world, natural law started to direct the actions of individuals and
41 families towards giving each his own, then those of larger societies, states and nations as well; so by *its very use* it was never unknown to any era. But the fact that its *systematic discussion* was neglected for very long meant that this most noble discipline found a place among the other fields, shaped into arts, very late.

III.

In ancient times sects of *Greek* philosophers, continued later by the *Romans*, did have some teachings on natural laws, building various principles of the rightful and the wrongful; but they did not separate as a special discipline the arguments of natural law from the rest of practical philosophy.

IV.

During the *Middle Ages*, when all the humanities lay as if shrouded in impenetrable darkness, natural law was so neglected by the learned men of this age—*church fathers*, *jurists* and *scholastics*—that the purer learning of the ancients regarding natural law
42 was now most ineptly mingled with the decrees of *Christian theology* and *Roman* and *canon law*.

V.

After the restoration of the humanities Johannes Oldendorp (1), Niels Hemmingsen (2) and Benedictus Winckler (3) took up explaining natural law, but since they came unprepared, their efforts were fruitless. The work of others in discussing some particular aspects of natural law and the law of nations did have some success, but it is Hugo Grotius (4) who merits the honor, sacred to his name, that by publishing his *Law of War and Peace* in three books he became the founder of the discipline of natural law. This work of his, excellently geared toward public uses, although it is erudite rather than systematic, is most famous to this day because of the multiple effort that so many men of learning have contributed to illustrating and correcting it with their comments,
43 commentaries, summaries, synoptic tables and translations. As in Grotius's work not a few things are missing that are required for a correct system of natural law, his brother William (5) later reworked it entirely.

1) Johannes Oldendorp, *Iuris naturalis, gentium et civilis* εἰσαγωγή, Cologne 1539. It was reprinted a few times, also quite recently, ed. Karl Anton von Martini, Vienna 1759. The author, Johannes Oldendorp, a German jurist who has so far been neglected by the writers of the history of natural law, can rightfully be said to have laid the first foundations of this discipline, as observed by the excellent Samuel Christian Hollmann in *Iurisprudentiae naturalis primae lineae*, Göttingen 1751, §. 6.
2) Niels Hemmingsen, *De lege naturae apodictica methodus*, Wittenberg 1562, 1564, 1577.
3) Benedictus Winckler, *Principiorum iuris libri quinque, in quibus genuina iuris, tam naturalis quam positivi, principia, et firmissima Iurisprudentiae fundamenta ostenduntur, eiusdem summus finis ob oculos ponitur, et divina auctoritas probatur*, Frankfurt (Oder) and Leipzig 1615.
44 4) Hugo Grotius, *De iure belli ac pacis libri tres*, Paris 1625, reprinted very often. The best edition, with the author's comments, his *De mari libero* and his booklet *De aequitate, indulgentia et facilitate*, as well as Johann Friedrich Gronovius's notes, is the one edited and with little notes by Jean Barbeyrac, 2 vols., Amsterdam 1720 and once more 1735. Among the translations, the same Barbeyrac's French one stands out: *Le droit de la guerre et de la paix par Hugues Grotius, avec les notes de l'auteur (...) et (...) du traducteur*, 2 vols., Amsterdam 1724 and once more 1729, corr. ed. Basel 1746; and another edition augmented with Grotius's biography written by Burigni, new notes by Barbeyrac and some extracts from Cocceji's commentary was published in Amsterdam in 1754 and again in Leiden, 1759. On the other translations of this work, notes and commentaries on it, and so forth, cp. Meister's *Bibliotheca iuris naturae et gentium* p. 199ff.[11]
5) Willem de Groot, *De principiis juris naturalis enchiridion*, The Hague 1667.

[11] This is a reference to Christian Friedrich Georg Meister, *Bibliotheca iuris naturae et gentium*, Göttingen vol. I 1749 and vols. II and III 1757. The section on Grotius is found in vol. I, 199–225.

45 VI.

Having embraced new principles and a new method, the brilliant mathematician Thomas Hobbes (1) philosophized very well, but from a very bad principle. Richard Cumberland (2) opposed him with his own, more balanced work, as did others; but they were all outshone by Samuel von Pufendorf's (3) *Ius naturae et gentium*, a most useful and systematic work made extremely famous by the throng of adversaries and followers alike.

1) Thomas Hobbes, *Elementorum philosophiae sectio III. De cive*, Paris 1642. Later it was published separately titled *Elementa philosophiae de cive*, Amsterdam 1647, a text that was reprinted a few times, most recently in Geneva, 1742. French translation by Samuel de Sorbière, Amsterdam 1649.
——, *Leviathan, or concerning Commonwealth*, London 1651. The same book was published in Latin titled *Leviathan sive de civitate ecclesiastica et civili*, Amsterdam 1667, and *Appendix ad Leviathanem*, Amsterdam 1668.

46 2) Richard Cumberland, *De legibus naturae disquisitio philosophica, in qua (...) Elementa philosophiae Hobbianae, cum moralis tum civilis, considerantur et refutantur*, London 1672, of which there are more recent editions as well, and a French translation: *Traité philosophique des loix naturelles (...) par le Docteur Richard Cumberland, (...) traduit du Latin par Monsieur Barbeyrac (...) avec des notes du traducteur, qui y a joint celles de la traduction angloise*, Amsterdam 1744.

3) Samuel von Pufendorf, *Elementorum jurisprudentiae universalis libri duo*, Leiden 1660.
——, *De iure naturae et gentium libri VIII*. First published in Lund, 1672. After other editions, a new one, with the complete commentaries by Hertius and Barbeyrac, was prepared by Gottfried Mascov, who added his own remarks; 2 vols., Frankfurt and Leipzig 1744, reprinted Frankfurt 1759. A French translation with notes was published by Jean Barbeyrac, 2 vols., Amsterdam 1706, corrected and augmented Amsterdam 1734, sixth and latest ed. of this translation
47 2 vols., Basel 1750. Italian translation: *Il diritto della natura e delle genti (...) di Samuele Barone di Puffendorf rettificato, accresciuto, e illustrato da Giovambatista Almici*, Venice 1757.
——, *De officio hominis et civis juxta legem naturalem libri duo*, Lund 1673. Regarding the notes and commentaries on both latter books, of which the latter is a compendiary while the former contains a completer system, and on their other translations, cp. *Bibliotheca iuris naturae et gentium*.[12]

VII.

A different road was taken by Christian Thomasius (1), a fierce enemy of received opinions and defender of new ones who is not always consistent; he has offered much that had not yet been said, but it is not always better. It is different with Heinrich von

[12] See note 11. Meister's bibliography contains a lengthy section with works by and about Pufendorf, vol. III, 104–31.

Cocceji (2), who much later began to derive the precepts of natural law from a new source and to first establish its boundaries, carefully distinguishing them from the arguments of the other moral disciplines. This system, which was explained rather extensively in a commentary on Grotius, was published and at the same time discussed
48 more clearly by his famous son, Samuel von Coccejus (3). Finally Heinrich Köhler (4) and Christian Wolff (5), each of them nourished from Leibniz's principles, endeavored to unfold natural law following the rules of the demonstrative method, shining an excellent light on the discipline. They still have many followers, although there are those who prefer to go their own various ways.

1) Christian Thomasius, *Institutiones jurisprudentiae divinae*, Frankfurt and Leipzig 1688.
——, *Fundamenta iuris naturae et gentium ex sensu communi deducta*, Halle and Leipzig 1705. Both works have appeared a few times, augmented and changed.
2) Heinrich von Cocceji (Coccejus), *Disputatio iuridica inauguralis de principio iuris naturalis unico, vero, et adaequato*, defended by his son, Samuel von Coccejus, Frankfurt (Oder) 1699. This is the first of the many texts in which he proposed his new system.
3) Heinrich von Cocceji (Coccejus), *Grotius illustratus seu commentarii ad Hugonis Grotii de jure belli et pacis libros tres*, with observations and an introduction
49 by Samuel von Coccejus (Cocceji), Wroclaw, vol. I 1744, II 1746, III 1748; with an added introduction by Samuel von Coccejus to the *Grotius illustratus* Halle 1748 (the introduction was published separately in the same city shortly after, titled *Novum systema iustitiae naturalis et Romanae*). Augmented with Gronovius's and Barbeyrac's remarks this work was published in a corrected version, 5 vols., Lausanne 1751.
4) Heinrich Köhler, *Exercitationes iuris naturalis*, Jena 1729.
——, *Iuris socialis et gentium ad ius naturae revocati specimina VII*, Jena 1736. Both the *Exercitationes* and the *Specimina* were reprinted twice.
5) Christian Wolff, *Jus naturae methodo scientifica pertractatum*, 7 vols., Frankfurt and Leipzig, later Halle 1740–1747.
——, *Jus publicum universale*, Halle 1748.
——, *Jus gentium*, Halle 1749.
——, *Institutiones juris naturae et gentium*, Halle 1750. A German translation of this little work extracted from the greater work was published as *Grundsätze*
50 *des Natur- und Völkerrechts*, transl. Gottlob Samuel Nicolai, Halle 1754. Also for sale is a compendium of Wolff's work in French, titled *Principes du droit de la nature et des gens tirés du grand ouvrage de Mr. de Wolf (par Mr. Formey)*, Amsterdam 1757.

VIII.

The aforementioned authors more or less are the *leaders* of all the others who have discussed natural law in publications. It seems unnecessary to review the *Germans*, the one people that far surpasses all the others in the multitude of its universal jurists.

There are quite a few *foreigners*, though, who are very famous in this field; among them, we should first mention the English Rutherforth (1) and Hutcheson (2), the Swiss Burlamaqui (3), the French Aube (4) and Vattel (5) and the Danes Holberg (6) and Basedow (7).

1) Thomas Rutherforth, *Institutes of Natural Law; being the Substance of a Course*
51 *of Lectures on Grotius de Iure Belli et Pacis*, 2 vols., Cambridge 1754–56.
2) Francis Hutcheson, *A System of Moral Philosophy, in Three Books*, 2 vols., London 1755. It was published in German in 2 vols. in Leipzig, 1756, titled *Sittenlehre der Vernunft*.
3) Jean Jacques Burlamaqui, *Principes du droit naturel*, 2 vols., Geneva 1747 (quarto) and 1748 (octavo). Latin translation by Abraham Sage titled *Juris naturalis elementa*, Geneva 1754.
——, *Principes du droit politique*, Geneva 1751. Both works have been reprinted in the Low Countries under the author's name, and there are English translations of both.
4) François Richer d'Aube, *Essai sur les principes du droit et de la morale*, Paris 1743.
5) Emer de Vattel, *Le droit des gens, ou principes de la loi naturelle*, 2 vols., London [Neufchatel] 1758.
52 6) Ludvig Holberg, *Einleitung in das Natur- und Völkerrecht, nach der vierten dänischen Ausgabe ins Deutsche übersetzt*, Copenhagen and Leipzig 1748 [orig. *Morals Kierne eller Introduction til Naturens og Folke-Rettens Kundskab*, 1716].
7) Johann Bernhard Basedow, *Practische Philosophie für alle Stände*, 2 vols., Copenhagen and Leipzig 1758.

IX.

For the rest, anyone who, apart from the history of the field of natural law, wants to know about books, commentaries, observations, dissertations, and so forth, in which either natural law as a whole or some specific part or any particular subject of it is explained, will have to consult the *bibliographies* serving this purpose. In general bibliographies of all learning or of the various disciplines are relevant, but more in particular those in which the texts of law as a whole or all of philosophy are enumerated, and most especially those which are geared toward the proper use of our discipline. Among them
53 is Meister's *bibliography* (1), and if one knows Meister one can safely ignore the rest.

1) Christian Friedrich Georg Meister, *Bibliotheca iuris naturae et gentium*, Göttingen, part I 1749, II and III 1757.

54

Book I

Natural Law in the Strictest Sense

§. 61.

NATURAL LAW *in the strictest sense*, i.e. PURELY NATURAL LAW, is the knowledge of the natural laws that must be observed in the natural state, §. 60. It therefore teaches the PURELY NATURAL RIGHTS and OBLIGATIONS, which are posited once the natural state of men is posited and which for this reason are of the kind that can be conceived of without positing any particular society, §. 91 *Prol.*; and it determines what every person's own is in the natural state, his PURELY NATURAL OWN,[1] and the duties of the natural state, the PURELY NATURAL DUTIES.

§. 62.

The natural state of men can be considered either as it is *by itself* and *absolutely*, or as it is once some *juridical act* is given, i.e. a human act, by which right and obligation
55 are *introduced*, that is: a new right and a new obligation are formed, *conditionally*. The former NATURAL STATE is called ORIGINAL (primitive, absolute, state of nature, state of origin), the latter ACQUIRED (conditional). Furthermore the *act* that is supposed in the acquired state is conceived of either as *rightful* or as *wrongful*, i.e., as a wrong; if a wrong is posited, so is the wronged party's right to coerce the wronging party, which in the natural state turns into the right of war, as we will show. Hence the acquired state can be divided into the ACQUIRED STATE *in the stricter sense* and the STATE OF WAR. From this the three sections of *purely natural law* are deduced: 1) original-state law is the subject of the discipline of ABSOLUTE NATURAL LAW, 2) the law of the acquired state in the stricter sense is the subject of CONDITIONAL NATURAL LAW, and 3) state-of-war law is that of NATURAL LAW OF WAR. Because the state opposite to war is called *peace*, and hence both the original and the acquired state must be considered a state of peace—since in them, in the absence of wrong, the absence of war is consequently posited as well—all purely natural law can also be divided into *natural law of peace* and *war*.

[1] See "Remarks on the Translation," pp. xxxiii–xxxiv.

56

Section I
Absolute Natural Law

§. 63.

Absolute natural law is the knowledge of the natural laws that must be observed in the original natural state, §. 62. It therefore teaches the purely natural rights and obligations, which can be conceived of without any juridical act being given, i.e., while abstracting from any juridical act, §. 61, and which are called absolute (innate) rights and obligations. And it determines the purely natural own of the original state, which is innate, and its purely natural duties, which are absolute.

57

TITLE I
EVERYBODY'S RIGHT WITH REGARD TO HIMSELF

§. 64.

A man has a natural right to the preservation of his body and life, §. 37; hence he also has the natural (in any case external) right to do anything that does not go against another person's preservation, §. 51 and §. 132 *Prol.*, and the right to do whatever is not wrongful naturally (externally), i.e., by which no one else is wronged, §. 132 *Prol.* This right falls to him in as far as he is a man, and therefore *by nature* or in the original natural state, and hence as an *innate right*, §. 63. So *every man by nature has the right* 1) *to his own preservation*, 2) to all *actions that are naturally rightful*.

§. 65.

Because a man's every action thus consists in the use of his faculties, i.e., his natural
58 powers, that is to say: the use of his body and soul,[2] everyone by nature has 1) *the right to use his natural powers*, his body and soul, each and every one of their faculties, and any limb and part of his body—and hence his nature, humanity, person, substance, himself; in as far, of course, as no one else is wronged by this use. Consequently he also has this right 2) *to the exclusion of others*, of course in as far as no wrong can be conceived of in such an exclusion. For this reason, *everybody has a* certain *innate proper right with regard to himself, his person, his body and soul and any of their faculties, and any limb of his body*, and therefore all this must be considered to be everyone's *own from birth*, §. 53 and 63.

§. 66.

The right to preservation of one's body and life, and hence to the health of every single limb of one's body and the integrity of the whole, is also called the *right to exist*; and the right to do anything that does not wrong someone else, i.e. the right to do everything
59 by which no other person's right is violated, is also called the *right to operate* (rightfully). Thus *everybody by nature has the right to exist as well as the right to operate*, and *everybody has the innate right to his life and its harmless* (not-wrongful) *use*, previous §.

[2] See §. 87n.

§. 67.

Consequently, 1) *by nature no one has a right to another's life, body and person, nor over another's rightful actions. Everyone is his own* (owned by himself) *by nature, no one another's*. Indeed 2) *by nature everyone is obligated* both *to not violate someone else's life, body or person*, e.g. by killing him, wounding him, setting up an ambush to take his life, mutilating his limbs, torturing his body with pain, starvation, chains, flogging or other forms of torture, and *not to disturb another person in his rightful actions*. Consequently 3) in particular, *everybody is obligated to tolerate another person's doing whatever he wants to do and can do by right*; and therefore *everybody must be allowed to do what-*
60 *ever he can do without wronging another person*. Hence also *everyone must be allowed to use his right*, i.e., *exercise it*, and *no one should be forcefully stopped from doing what he would like to do without injury;*[3] *nor should anyone be required to do what he would prefer to omit or to omit what he would prefer to do, if there is no legal obstacle.* 4) So *he who does the opposite, violates another person's innate right and wrongs him.*

§. 68.

So it becomes clear in what way *the right* with regard to one's self and all one's not-wrongful actions, which everyone has by nature, *must be regarded as a proper right*, i.e., such that everyone has it *to the exclusion of others*. For the right with regard to myself and my rightful actions which I have by nature is proper to me, in as far as no one else by nature has the right 1) to use my substance like that and to determine my rightful actions in the same way, as he pleases, as I have that right as I please; and hence no one has the right either 2) to forcefully stop me from doing what I can do without wronging
61 another person, or to force me to do what I can omit by right.

TITLE II
NATURAL EQUALITY

Alexander Gottlieb Baumgarten, *Dissertatio periodica de aequalitate hominum inaequalium naturali*, Frankfurt (Oder) 1744.

§. 69.

The nature of all men is the same in general, and hence all men are subject to the same natural law, §. 47. Therefore it is clear that the natural rights and obligations of men as such—in as far as they are considered according to their generic nature, i.e., according to their mere humanity §. 10 *Prol.*—are the same as well. For this reason *all men by nature*, i.e., in the absolute natural state, *have both the same rights and the same obligations*.

62 §. 70.

In the *juridical sense*, the *broader* one to be precise, men are called (externally) EQUAL if their rights and obligations are the same, and UNEQUAL if their rights and obligations

[3] See §. 52, 103.

are not the same. So *men* as men *are equal by nature*, and therefore by nature there is mutual *equality* among them—their state in as far as they are equal—and hence that equality is called *natural* and *innate*.

§. 71.

If, therefore, every individual in the original natural state has the same rights and obligations as all the others who were placed in the same state, *no one can be attributed other* rights and obligations, or *more* and *greater*, or *less* and *lesser rights and obligations than* all *the other men of the same state*. So if we consider the special rights and obligations that are inherent to men by nature as a whole and as a certain *quantity*, of what-
63 ever kind this quantity may be, it is certain that that quantity is the same in everyone. Hence it is clear why the original state of men—i.e., the way man is by nature—was named the *state of equality*.

§. 72.

From this we can safely conclude that 1) *by nature there is no* PREROGATIVE (special right), i.e., some right that one has in contrast with others who otherwise use the same law, *for any man*; 2) hence there is *no* PRECEDENCE (right of precedence, pre-eminence) *either*, [i.e.] a prerogative in an order that has to be observed by several people at the same time; 3) that *that which by nature is permitted to one man is also permitted to another; that that which the one owes the other under certain circumstances, the latter vice versa* also *owes the former under the same circumstances*. Therefore *that which by right you do not want done to you by another person, you should not do to another person either*, and conversely *that which by right you want done for you by another person, you should do for another person as well. That which by right you do not want to do for another person, you should not require another person to do for you either.*

64 §. 73.

Therefore by force of this natural equality *no man is obligated by nature to acknowledge another's rights to be more or greater than his own, nor* another's *prerogative* or *precedence*; rather *you are obliged to acknowledge that what you claim to be your right with regard to me or someone else, is also my right with regard to you or someone else*. So *everybody has the right of equality* as an innate right. As a consequence, *anyone who claims a special right or precedence* and thus endeavors to remove equality *violates another person's right and wrongs him*.

§. 74.

There is, however, a *stricter meaning* of EQUALITY as well; then it denotes the state of men that is free from overlordship, i.e., of men among whom there is no overlordship. The *overlordship* of a man over another denotes the right to determine an associate's otherwise rightful actions at will (which will become clear below, cp. §. 63 *Prol.*). Therefore *overlordship*, both as the right over someone else's rightful actions and as a

65 special right, *does not exist in the absolute natural state*, §. 64, 72, *and indeed* as a right that supposes the social state *has no place whatsoever in any natural state*.

§. 75.

Hence *neither* anyone who is under someone else's overlordship—i.e., who depends on him, a *subject* (inferior)—*nor* anyone's dependence on someone else's overlordship, *subjection*, *can be conceived of in the natural state*. And therefore *men by nature*—indeed in both the acquired and the original natural state—*are equal in the stricter sense* and no man is another's overlord, hence no man is another's subject either.

§. 76.

Therefore *by nature no man is obliged to recognize another's overlordship; everybody has the right of equality, even this specific one*, as a right of the natural state and as an innate right; and *any man who pursues overlordship over another, wrongs the other*.

66

TITLE III
NATURAL LIBERTY

§. 77.

In as far as someone in acting is not dependent on another person's will (choice), i.e., is not obliged to act according to another person's will, he is FREE *in general*. Hence LIBERTY (*external* liberty, as opposed to liberty of the mind as *internal* liberty, §. 6 *Prol.*) is independence of another person's will in acting. So in as far as everyone by nature has a proper right over his own actions, §. 68, *everyone is free by nature*, and *liberty should be attributed to everyone as a natural and innate right*—hence it is also called natural liberty—*so that he who attacks someone else's liberty wrongs him*.

§. 78.

Because, however, men are bound by natural laws, *natural liberty cannot be extended*
67 *to doing anything that goes against another man's preservation or to wrongful actions*; and therefore it should not be thought of as a right to do as one pleases without any restriction, i.e., as LICENSE (unbridled liberty). For *license*, since it would take away all natural obligation and posit the right to wrong, *cannot fall to anybody* and belongs to the realm of absurdity.

§. 79.

Thus from the very concept of natural liberty we understand some of its *boundaries* that—as opposed to boundaries created later by an intervening human act, which are called *arbitrary* (accidental) boundaries—are known as *natural* (essential) boundaries. A person's LIBERTY that is circumscribed by natural boundaries only is *in a certain respect* called UNLIMITED (absolute); if it is limited by arbitrary boundaries as well, it is RESTRICTED (limited). So everyone originally has unlimited liberty, but in the acquired

state liberty becomes restricted in various ways, as will be shown in the appropriate place.

68 §. 80.

Thus because of this natural liberty all a man's actions that are naturally rightful are independent of the discretion, will and judgment of any other, and to that extent he is not dependent on anyone but himself in acting. For this reason everyone by nature has the right to follow his own judgment, will and discretion in determining his own rightful actions, while the others are obliged to respect the other person's judgment, and no man is obliged to give an explanation as to why he does something or not, as long as he does not do something to you while he has a perfect obligation to you to do the opposite. In as far as one should thus respect another person's judgment and allow him to do, at his own discretion, even things that are morally bad, but do not wrong you, all these things should be left to the agent's conscience and God's judgment.

§. 81.

Specifically, by force of natural liberty *everyone by nature* also *has the right* 1) *to do all*
69 *natural duties*—to God, to oneself, and to others—, whether they are duties of necessity or of charity, to the effect of course that anyone, and particularly with regard to duties to others any third person, is obliged not to disturb me in the execution of such actions; 2) *to do all the things with which he can perfect himself and his state*, i.e., *the right to his* own *perfection and happiness*; 3) *the right to use at will that which is his own, and his own right*; 4) the right to make something his own that is not, i.e., the *right to* ACQUIRE; 5) *the right to preserve* and keep *that which is his own*, that is: to want what is ours to remain ours and hence to not want it to stop being ours. And because this wish of mine is rightful, the other person is obliged to respect it. So *what is mine remains mine, as long as I want it to*. All of this belongs to natural law, *in as far as possible*, that is: in as far as there is no physical or legal obstacle in the way, §. 31 and 50.

§. 82.

A right that corresponds with another person's positive obligation, §. 10, is called a
70 POSITIVE RIGHT; one that corresponds with another person's merely negative obligation is a NEGATIVE RIGHT. Every innate obligation derives from not invading another person's life and body and not disturbing his rightful actions, §. 64. In as far as this invasion and disturbance can only be conceived of [as happening] by a positive act,[4] in the original natural state this obligation can only be thought of as an obligation not to do something, i.e., merely to omit something. Therefore *every obligation by nature is negative only*, and as a consequence *every right with regard to another person is negative only*. And so *by nature* there are no *positive obligations* (i.e., external obligations, regarded as such), *nor positive rights with regard to another person*.

[4] See "Remarks on the Translation," p. xxxiii.

§. 83.

So in as far as by nature wrongs and wrongful actions do not exist, apart from those that consist in committing, and hence no act of omission is a wrong, *every act of omission in this state is rightful*. In as far as, moreover, by nature only acts of omission are
71 subject to obligation, every *rightful positive act* is not obligatory either to perform or to omit, and therefore every action of this type *in this state is juridically indifferent and a purely facultative matter at the same time*, §. 49. And so we see an *extension* of natural liberty.

§. 84.

But there is a *narrower meaning* of NATURAL LIBERTY as well, in which it is the opposite of subjection, §. 75, and properly denotes a man's independence of another's overlordship. And this liberty is FULL if he is independent of another's overlordship in all his actions; if he is in certain actions only, it is NOT FULL. Hence someone is *free* (autonomous) in as far as he is not subjected (heteronomous). So he who is *fully free* is subject to another man's overlordship in none of his actions whatsoever; he who is *not fully* free is subject to another man's overlordship in some actions while in others he is not.

72 §. 85.

Because by nature men are equal and no man has the right to overlordship over another, §. 76, *anybody by nature is free with regard to anybody else, anybody is autonomous and nobody is heteronomous.* Indeed since all overlordship is completely absent in the natural state and therefore every action of anybody is independent of anyone's overlordship of any kind, §. 74, *anybody is fully free by nature*, and natural liberty is a full liberty that falls to everybody as an innate right that cannot be violated by another person without injury.[5]

§. 86.

This natural liberty (from overlordship) 1) considered as a right should, like liberty in general, not be extended to wrongful actions and hence cannot be thought of as license, §. 78; 2) full natural liberty applies not only in the original state, but endures throughout every natural state, even if it is acquired, §. 74, while in the social state on the other hand it can be removed, diminished and restricted in various ways, as will
73 become clear below; 3) hence this *liberty*, like natural liberty in general, can be divided into *unlimited* and *restricted* liberty as well.

* Natural liberty as it is conceived of in the original state comprises the right to actions of various kinds and can therefore be regarded as a *composite right* that can be divided into various *parts* (partial rights). Hence *full liberty* is liberty that is not diminished by any of its parts, while *not-full liberty* is liberty that has been diminished by some part of it.

[5] See §. 52, 103.

74

TITLE IV
THE LAW ON DECLARING ONE'S MIND

1) Gottlieb Gerhard Titius, *De officio sermocinantium ex iurisprudentia universali*, Leipzig 1695, and in his *Disputationes juridicae*, Leipzig 1729, p. 253.
2) Christian Thomasius, *De homicidio linguae*, Halle 1699, reprint 1736.
3) Johann Gottlieb Bohn, *Dissertatio moralis de eo an liceat simulare et dissimulare*, Leipzig 1714.
4) Johann Eberhard Rösler, *Dissertatio moralis de sermone indeque orta obligatione*, Tübingen 1715.
5) Jacques Saurin, *Dissertation sur le mensonge*, in vol. 2: *Discours sur les evenemens les plus memorables du Vieux et du Nouveau Testament*, The Hague 1728, pp. 431–44.
6) Johann David Michaelis, *Von der Verpflichtung der Menschen die Wahrheit zu reden*, Göttingen 1750.
7) Georg Heinrich Ribov, *Dissertatio inauguralis de dissimulatione licita*, resp. Johann Jakob Starck, Göttingen 1751.

75

§. 87.

Declaring one's mind means notifying another person of an internal action of one's soul,[6] i.e., making it known by an external action, §. 1 *Prol.* Because thoughts, volitions, and the other internal actions of our soul cannot be physically perceived by another man immediately and can only be perceived by means of external actions as signs of internal ones, *whenever what is in our mind has to be communicated with others and our mind has to be understood by others, this must be achieved by a declaration.* And therefore, if not every declaration indiscriminately, then *in any case some declaration* and *some signs of our thoughts and volitions necessarily are equivalent in human affairs to these internal acts of the soul themselves.*

§. 88.

A declaration of one's mind, or *simply* declaration, through words (language) is called express; one made through acts other than words, tacit.

76 An express declaration is made with words that are either produced orally (speech) or written (writing, whether the words are expressed with a pen, in print or with other signs); the former is called an oral declaration (called a verbal declaration *in the strict sense* by some), the latter a written one.

Every tacit declaration is made by a positive act; but *in as far as another person's mind can be deduced, according to the circumstances, from his omission of an external action, this omission is equivalent to a declaration* and therefore comes under the tacit declaration.

[6] Achenwall's use of *anima* and *mens* (translated here as "soul" and "mind," respectively) is a bit puzzling at first sight, and in part is dictated by Latin idiom—he simply could not write *declarare animam*, just as we cannot say "declaring one's soul." He explains his view of the soul and its faculties in his *Prolegomena to Natural Law*, ch. I.

§. 89.

Someone's external ACTION that agrees with his soul's internal action is called SINCERE; hence a DECLARATION is SINCERE if its sign agrees with the mind of the declaring person. Sincere language is called (MORALLY) TRUE DISCOURSE; for in order to distinguish the *truth* that is conceived of in sincere language from *logical truth*, the former is called *moral*.

77 An external ACTION on the other hand that disagrees with the internal one is called PRETENSE (a pretense, an insincere external action). Hence a DECLARATION is INSINCERE (pretense) if its sign contradicts the mind of the declaring person. Insincere language is called (moral) FALSILOQUY; also in this category is PRETEXT (ruse), language with which someone makes known a (morally) false intention, i.e., feigns an intention. DISSIMULATION is the omission of an external action in order to hide an internal action that agrees with it.

§. 90.

Declaring or not declaring our mind to another person, stating what we think or want or not stating it, declaring our mind sincerely or insincerely: these things, considered in themselves and generally, do not involve wronging, and to that extent *by nature you do not have the right with regard to another person, nor does he have an obligation towards you, that he should declare his mind to you, or that he should declare it sincerely.*

78 §. 91.

If, however, there arises some obligation to speak the truth—which can happen in an acquired state, as will be shown—, then, since in this case silence and falsiloquy result in violation of that obligation, it is quite easy to understand that *he who is obligated to speak the truth acts wrongfully if he is silent or speaks falsehood.* So more generally, *everyone who is obligated to act sincerely wrongs if he does not act sincerely.*

§. 92.

Falsiloquy with malicious intent is called LYING; silence with malicious intent, RETICENCE. Thus *lies and reticence are simply prohibited by natural law*, prec. §. And if someone who is obligated to speak the truth commits falsiloquy, he is a liar; if he is silent while conscious of his guilt, he is guilty of reticence.

§. 93.

But now the question is asked whether and to what extent some natural obligation
79 not to speak falsehood can be proved; an obligation that is perfect and innate, i.e. an obligation that, after the conditional state of men has been removed and before any intervening human act creates a definite obligation to speak the truth, pertains to men universally. In order to reply to this question we must state beforehand that *the intention to wrong is equivalent to wronging*; of course it must be *declared* or manifested by an external act for a human court to be able to ascertain it. For if a man with some

action of his has the intention that another be deprived of what is his, then by force of everyone's right to preserve himself and what is his there is a right to violence against him as the person from whom a wrong is imminent: the same right that everyone has against a person wronging him, §. 134 *Prol.*

§. 94.

If, therefore, anyone wrongs who has the intention to wrong, it follows *that anyone wrongs who speaks falsehood with the intention that someone else, led by the appearance of sincerity* (of a sincere action), *be deprived of what is his.* It also follows *that everyone*
80 *is obligated by nature not to commit falsiloquy while appearing to speak the truth with the intention that someone else be deprived of what is his.* So more generally: *every simulation that is done with the intention to wrong (to harm*, i.e., in that which is another man's own) *is naturally illicit*.

And *this wrong can only be malicious*, §. 17, 52, indeed is malicious to some higher degree, because under the guise of friendship it hides a wrongful intention, and therefore *such falsiloquy is classed as lying*, §. 92.

§. 95.

A man who with words or other acts *leads* another *into error*, i.e., makes him hold true something that is not, DECEIVES the other. Deceiving another person is not simply illicit, §. 90: someone who deceives does not always act wrongfully. But *he who deceives with the intention to wrong, indeed who clearly shows that he wants* (intends) *to deceive with this intention, wrongs*, prec. §. An external action with which a man intends to deceive another with malicious intent, i.e., with the intention to wrong, is called DECEIT. Consequently 1) all deceit is a wrong, 2) *he who lies commits deceit*. 3) *If a man*
81 *is led into error by another's lie, falsiloquy with malicious intent or some other kind of deceit, by which he is harmed in some way in what is his, this harm to him comes from a malicious wrong by the deceiver and therefore constitutes damage that is imputable to the deceiver as its cause*, §. 55. 4) A *wrongful action* can be *violent* or *fraudulent*.

TITLE V
THE LAW REGARDING ESTEEM

Christian Thomasius, *Dissertatio inauguralis de existimatione fama et infamia extra rempublicam*, Halle 1709.

§. 96.

The ESTEEM for a person (his reputation) *generally* speaking consists in the judgment
82 of others, by which they attribute to him perfection or imperfection; esteem can thus be *high* or *low*. Since in high esteem there lie many great means to our happiness and indeed our preservation, as conversely in low esteem there lie many great obstacles to them, it is clear that because of the right that *a man* by nature has to his preservation and happiness, he *cannot be denied a certain right regarding the esteem in which he is held*.

§. 97.

Now it should be repeated here that in an external court no one is unjust unless he is guilty of an act perpetrated against an external law, while on the other hand anyone is just who is not unjust, §. 116 *Prol.* and §. 52. So if a violation of an external law and hence of another man's right—in one word: a wrong—cannot be imputed to a man, he is just. For this reason *by nature no one is unjust*, but rather *anyone is born just*, and *remains just in as far as he has wronged no one*. To the extent that someone can be considered just, he is vested with all the rights that fall to a man by nature, and the others
83 are obliged not to disturb him in the use of these rights. Therefore they are also obliged to acknowledge that this obligation rests on them and that those rights fall to the other man; and that therefore he is worthy of being disturbed by no one in the use of his rights. From this we can conclude that *any man by nature has the right not to tolerate another declaring him to be unjust*. For if I were obliged to tolerate this, I would be obliged to acknowledge another man's right to commit violence against me and to do things that go against my preservation. This, however, conflicts with my natural liberty, and indeed with my primary right to self-preservation. So *everyone is obliged not to declare anyone to be unjust unless he is guilty of injustice*. As a consequence, *if a man wants to pass judgment on another's justice or injustice by some external action, he is obliged to take and declare him to be just as long as he has not wronged anyone; indeed*—which amongst men amounts to the same thing—*until the other man's injustice is established.* It is established by means of *bringing proof*, an act by which truth is ascertained. For this reason, *if a man declares another to be unjust while he can prove nothing unjust about him, he wrongs the other, and much more so if he divulges this judgment among others*.

84 §. 98.

Thus it is clear in what the *right* consists *to being esteemed a just man*, which falls to everyone by nature, and to what extent *any man should be presumed just until the contrary is proved*. Hence any action should also be taken to be *rightful* in an external court; not only an action that can be proved to conform to an external law, i.e., that is such *in a positive sense*, but also an action that cannot be proved to be contrary to some law, i.e., that is such *in a negative sense*.

§. 99.

The good esteem to which everyone has an innate right is a kind of *moral good esteem*, §. 72 *Prol.*,[7] because a person's justice is a kind of *moral perfection*, §. 69 *Prol.* But in as far as this moral perfection merely consists in pure external justice, in actions' agreeing with a natural obligation that is external only, it is of less importance compared to the moral perfection that is placed in virtue and consists in actions' agreeing with an obligation that is internal at the same time. Hence the former *moral perfection*, like the
85 *moral good esteem* that arises from it, is called *simple*, and the latter *intensive.* For this

[7] In *Natural Law* as in the *Prolegomena*, I have translated *existimatio* with "esteem" or "reputation", depending on the perspective in specific contexts. See also "Remarks on the Translation," p. xxxii.

reason *the good esteem to which everyone by nature has an innate right is a simple moral good esteem only and a good esteem in the negative sense*, because it can consist in the mere absence of external injustice.

§. 100.

Because, however, by nature the rights of all men are equal and the same, §. 70, *every man's right to his esteem is equal as well*, and to that extent *men are equal in esteem by nature*, and equality with regard to esteem is due to all as an innate right.

§. 101.

The act by which someone is declared to be more perfect than others, i.e., by which someone's greater perfection is indicated, is called HONOR, and specifically PRAISE, if such a judgment is expressed in words. Since men by nature are equal in esteem, prec. §., *no man is obliged to acknowledge*, indicate or admit *that another is more perfect than*
86 *he is, to honor and praise another*, and hence *no man by nature has the right to demand honor or praise from another*, or any indication of it. So *he who does demand it violates the right to natural equality and liberty*; and *such honor as one man demands from the other, the other rightfully asks from him in return*, §. 72. In as far as precedence, §. 72, is viewed as an honor, as such it can also be rightfully denied to another man.

§. 102.

The act by which someone is declared to be more imperfect than others, i.e., someone's greater imperfection is indicated, is called DISDAIN, and specifically CENSURE if it is expressed in words. In as far as by disdain another person's right to esteem is violated, it either detracts from his reputation as a just man or from the equality of esteem; he who disdains, wrongs. So *if a man indicates some act by another to be wrongful which he cannot prove to be wrongful, if he declares him to be unjust or unworthy of simple good esteem or equal esteem, if he demands honor and praise from the other man, his disdain is wrongful*. And to that extent *no one should be disdained*.

87 §. 103.

A wrong with malicious intent to another person's good reputation is an INJURY in the *strict* sense, VERBAL if it is indicated with words, REAL if by another act. For this reason *no one should be injured*.

§. 104.

The highest degree of bad reputation is DISGRACE. Disgrace arises from acts that demonstrate an excessive habit of violating external natural duties and hence are called disgracing acts. Therefore *no one is born disgraced, and he who declares a just man to be disgraced, or imputes a disgracing act to him, greatly wrongs and injures him*.

Disgrace belongs to moral low esteem, for a habit of violating external natural duties is a kind of *moral imperfection*, §. 72 and 69 *Prol.* And this moral imperfection, which

consists in a conflict of actions with an external natural obligation, is greater than the one that is placed in the mere absence of virtue and involves a conflict of actions with
88 an internal natural obligation only. Hence the former *moral imperfection*, like the *moral low esteem* resulting from it, is called *intensive*, and the latter one *simple*.

§. 105.

A man's good REPUTATION is DESERVED if it arises logically true from his perfection. Because every act that betrays the intention to wrong is classed as a wrong, §. 93, *a man is understood to wrong and injure another if he detracts from his deserved good reputation, deserved honor, or deserved praise with the intention to wrong him*. So 1) *a man who with this intent sprinkles falsehoods* (that are false logically and morally at the same time) *over the public, whether by* contradicting another man's true perfection (DETRACTING) *or by* attributing to him a false imperfection (SLANDERING), *injures the other.* 2) *Detraction and slander involve lying*, §. 92. 3) *All disdain with an intention to wrong*, by which another person's deserved good reputation is detracted from with this intent, and which contains detraction or slander, as well as 4) *every external action that declares the intent to injure, should be classed as an injury* (in the strict sense).

89 **TITLE VI**
THE LAW REGARDING THINGS

§. 106.

EXTERNAL THINGS, i.e., corporeal entities that are outside of us or substances outside of us that are perceptible with an external sense, *in the juridical sense* are simply called THINGS (sometimes corporeal things), and thus *things* are opposed to *persons*. By force of his natural liberty *a man has the innate right to use the things available in this world, in as far as no one is wronged by their use*, §. 64.

§. 107.

Things, and more in general that which can perfect our external state, belong to the NECESSITIES OF LIFE (necessity), without which life or body cannot be preserved; to the
90 COMMODITIES of life (commodity), without which life is lived with a certain uneasiness (tediousness); or to the PLEASANT THINGS of life (pleasantness), with whose help life is lived with greater pleasure.

A man by nature has the right to do whatever can perfect him and his external state, §. 81, and therefore *he has the innate right to procure for himself any goods of the external state, and the right to use any things belonging to the necessities, commodities and pleasant things of life, and to use them for any necessity, commodity and pleasantness of his life*; as long as no one is wronged by it, §. 64.

§. 108.

Suppose that Gaius and Titius arrive in a region that is uninhabited thus far, where various VACANT THINGS are available, i.e., things for which no man so far has any use.

Then both Gaius and Titius have the right to use these things, a right that is innate, §. 106, and the same or equal to both, §. 71, so that proprietorship falls neither to Titius
91 nor to Gaius, §. 54. For this reason *by nature* (in the original state, before men use the available things) *no thing is one's property or another's property*, §. 53. A thing that is no man's property is called an OWNERLESS THING. Thus it is clear that *by nature all things are ownerless.* Proprietorship of things is innate to no one. By nature the use of things is open to all, and proprietorship falls to no one.

92

Section II
Conditional Natural Law

§. 109.

CONDITIONAL NATURAL LAW is the knowledge of the natural laws that should be observed in the acquired natural state in the strict sense, §. 62. So it teaches the purely natural rights and obligations that can be conceived of once a juridical act is given; such PURELY NATURAL RIGHTS and OBLIGATIONS are called CONDITIONAL (acquired). It specifically expounds those conditional rights and obligations which arise from a *rightful act*, and determines the PURELY NATURAL OWN of the acquired state, which is ACQUIRED, and the PURELY NATURAL DUTIES of the same state, which are CONDITIONAL, and in particular the conditional own and duties that can be conceived of without positing a wrongful act, i.e., supposing the absence of a wrong, §. 61, 62.

93

TITLE I
OCCUPANCY

Augustin von Leyser, *Disputatio inauguralis iuridica de iure privatorum circa occupationem*, Helmstedt 1727, and in his *Meditationes ad Pandectas*, vol. 7 (Leipzig 1780), esp. 439, p. 1.

§. 110.

We have established every man's right to use vacant things, §. 106. Now let us look at Gaius's acts with regard to a vacant thing.

1) He begins using some vacant thing, e.g., in order to feed himself; he uses it rightfully.
2) He begins to use it in such a way that at the same time Titius is *excluded* from its use; he excludes him rightfully, since a vacant thing is ownerless and therefore by this act nothing of Titius's own is taken away and he is not wronged.
3) He declares to Titius that he wants to retain this thing, i.e. preserve it for himself, for future uses; he rightfully wants what he declares that he wants, for the same
94 reason, and therefore Titius is obliged to respect this wish of Gaius's, §. 80, and consequently he cannot grab the thing from Gaius.

Thus in this case the thing becomes Gaius's own, §. 53, and his property, §. 54.

§. 111.

So this is the process by which a thing that originally is vacant and ownerless can legally, i.e. without a natural law standing in the way, become somebody's property: a man begins to use it to the exclusion of others, and he wants to retain it to the exclusion of others. As soon as others know of this wish of his, from the other man's act and wish an obligation arises for them to abstain from the thing, because it is no longer ownerless but is the property of the man who performed this act.

§. 112.

From this a general proposition can be deduced: *he who performs an act by which he wants and is able to acquire* (physically and legally), *acquires*, that is to say: *he who performs an act by which he wants* and *is physically able to acquire,* and *who has the right to perform this act*, acquires.

95 *A further argument for this thesis can be sought from psychology. There it is demonstrated that *every decision of the mind becomes effective, unless an obstacle is in the way*—more briefly: *whatever I* (fully) *want and can, happens*. In the sphere of practical philosophy and in every sphere of law, obstacles are not only conceived of as *physical*, but also as *moral*, and in external law as *legal obstacles*; likewise possibility is conceived of as *physical*, *moral*, and *legal possibility*, §. 114 *Prol*. and 49.

§. 113.

A man who brings a thing into a state where he has its use in his power to the exclusion of others, i.e., who brings it into his power while excluding others (subjects it to his exclusive power), SEIZES THE THING. Seizing an ownerless thing with the intention (will) to make it one's own (to have it as one's property) is called OCCUPANCY. So *an ownerless thing falls to* (is acquired by) *the occupant*, i.e. becomes his own, and therefore the thing occupied is an acquired own, §. 109.

96 §. 114.

For acquiring by occupancy, in a given case the occupancy must be *possible* and must *exist*.

For it to be *possible*

1) *physically*, a thing is required with the physical possibility to be brought into one's power to the exclusion of others, a SEIZABLE THING: the person who wants to occupy it must have the physical ability to seize it. To that extent it is possible to occupy a single thing, a group of things existing in a certain space, or as much of a thing as is included in a certain space. On the other hand a) whatever is not a (corporeal) thing, §. 106, cannot be occupied; b) a thing with regard to which

the exclusion of others is physically impossible (which is *not subject to exclusion, to defense*) cannot be occupied since it cannot be seized, e.g., a great sea.

For occupancy to be *possible*

2) *legally*, it is required that the action by which something is seized with this intent is not wrongful, §. 52: he who wants to occupy it must have the legal ability to acquire and the *right to occupy*, §. 64. So seizing a thing that is another's own or seizing a man with the intent to occupy not only does not constitute occupancy,
97 but also constitutes a wrong to the person to whom the thing belongs, or whose natural liberty is violated.

§. 115.

For occupancy to *exist*, 1) an *act* is required by which someone brings a thing into his power to the exclusion of others—such an act is conceivable only as an external (corporeal) one that must be performed—; 2) and the *intention* to make it one's own is required.

Hence 1) neither the mere will or purely verbal declaration of will, §. 88, 2) nor the mere act of seizing without the will and intent to have the thing as my property makes an ownerless thing my property; 3) but there is no need for a declaration other than the seizure itself, which suffices as a tacit declaration, §. 88. Nor is the occupant obligated to any other declaration, because by force of his natural liberty his judgment in determining his rightful actions should be respected, §. 80.

§. 116.

By nature all things are ownerless, so they cannot be called common, §. 54. And *the*
98 *right that you have in common with all men indiscriminately, to use vacant things*, is not the right to exclude others from the use of what is your own (since a vacant thing is not your own, but ownerless), and therefore it *is not proprietorship nor communion*, §. 54. Furthermore, for me to make an ownerless thing my own, my occupancy is sufficient, §. 113; so *for an ownerless thing to become my own legitimately, the added will of the other men is not required*.

* Those who think that the proprietorship of things is only introduced rightfully once the other men's *will is added* (by *consent* and *contract*, which are discussed below) deduce true rights from a *figment of the imagination*. For they imagine an act by which all men have agreed that that which someone occupies should be his own. And this imaginary hypothesis was provided with a foothold by the error that *a man who occupies an ownerless thing against the other men's will violates their innate right* to have equal use of the available things.

But this opinion, which arises from a confusion of the *right to use vacant things* with the right to use some thing that is one's *property*, is easily refuted if we consider the difference between the two rights. The right to use a thing that is one's property, which is an *acquired right*, §. 113, is a right *connected to a specific*

thing—the thing that has been acquired—and a *right particular* to the person who
99 by some rightful act has achieved that this right falls to him. The right to use vacant things, on the other hand, which is an *innate right*, §. 106, is *not connected to any specific thing*, but exists indiscriminately with regard to any thing whatsoever as long as it is vacant, and is a *universal right* that falls to all by force of natural liberty. And this latter right, which follows from the innate right to do anything that is not wrongful, only has the effect that *no one can hinder me* in the use of vacant things, while the former right on the other hand simultaneously has the effect that *I can also* exclude *others* and consequently *hinder* them in the use of a thing that is my property. So he who seizes a thing that is another man's wrongs [him], but he who seizes and occupies a vacant thing acts rightfully, since he exercises his innate right in that way, which is not wrongful. If you were to think of your innate right to use vacant things as a right for whose exercise the consent of others is required, they would have the right to exclude you from the use of vacant things and consequently would have the proprietorship of vacant things, which goes against §. 108. Indeed *your right* to use vacant things would not be a right, since without the additional consent of others it would be completely useless, §. 124 *Prol.*

For the rest, this false opinion gave rise to Grotius's *primeval communion*,
100 which he takes as *positive* communion, i.e., as proprietorship over everything, falling to all by nature; but later it produced Pufendorf's primeval communion, which he regards as *negative* communion, i.e., a right to all things that by nature falls to all indiscriminately, but in such a way that all things are ownerless. But although these opinions differ in concept, both Grotius and Pufendorf fall for the same mistake, each on the basis of his own idea: as if a man were violating the right of others and *disturbing the primeval communion* if against the will of others he wanted to make a certain vacant thing his property. So in order to save the rightfulness of occupancy, they had to make up mankind's consent to occupancy, which however has never existed and is not necessary to assume either.

And so together with this opinion collapses its corollary, which the same authors call the *remnants of primeval communion* and which they seek 1) in the *right to enjoy harmless profit from another man's things*, and 2) in the *right to take away necessary things from their proprietor in a case of extreme need*. The latter undoubtedly comes under the privilege of necessity, §. 143 *Prol.* And for me to allow another man harmless profit from what is my own is a duty of charity, not of necessity, §. 136 and §. 144 *Prol.*

101 §. 117.

The occupant acquires the ownerless thing, and acquiring the ownerless thing is the occupant's goal, §. 113; consequently *occupancy is a sufficient means of acquisition*, which is called a method of acquiring, a *rightful* (legitimate) one to be precise, §. 110—otherwise occupancy would be legally impossible, §. 114, and therefore would not produce the effect of a right which is intended by occupying and thus would not be a method of acquiring.

Yet in the notion of occupancy, the *rightfulness of the act* by which it takes place can be conceived of separately, and distinguished from the occupancy itself; and in the concept of the method of acquiring in general, ideally it is possible to separate the *rightfulness of the means* by which the acquisition takes place from the *sufficient means of acquisition* itself.

The ground from which the rightfulness of the method of acquiring is understood is called the TITLE OF ACQUISITION; consequently the title also is the ground from which the rightfulness of the acquisition itself becomes clear. 1) So *the method of acquiring differs from the title of acquisition in the sense that the acquisition's existence is determined from the former*, while *from the latter only the rightfulness of the acquisition*
102 *is determined*. 2) So *without a title there can be no method of acquiring*. 3) *The occupant's title is his innate right to occupy*, §. 106, 110.

From the above it also becomes clear that *occupancy is a* VALID ACT, i.e., a juridical act, §. 62, that is rightful, by which the agent's goal is attained and that, like any valid act by someone, others are therefore obligated to deem rightful and valid, §. 80.

> For something to be acquired, i.e., to become someone's acquired own, beside every man's innate right to acquire some hypothesis is also required, a certain *occurrence*; otherwise an ownerless thing would be one's innate own. As regards the occupancy, this occurrence is found in the act by which the occupancy takes place. The *effect* of this act is acquisition, so the *occupancy* itself is the *immediate cause* of the acquisition, which however must be based on the right to occupy in order to lead to a juridical effect. Hence the Roman jurists in general call the METHOD OF ACQUIRING the *immediate cause* of an acquisition, and the TITLE its *remote cause*.

103 §. 118.

The method to acquire what is another man's is called the DERIVATIVE (secondary) METHOD OF ACQUIRING A THING; the method to acquire a thing that is not another man's, the ORIGINAL (primary) METHOD OF ACQUIRING A THING. Occupancy is a method of acquiring an ownerless thing, so it is an original method of acquiring a thing.

§. 119.

A thing occupied by Gaius becomes another man's own with regard to Titius, and as a consequence Titius can no longer seize it; if he dares seize it, he wrongs Gaius. So *in occupying he who is first in time is strongest in right*.

> * This principle of natural law regarding occupancy, *the first in time is the strongest in right*, can be extended to all cases where 1) several people enjoy the same right to act regarding a certain thing, and 2) the exercise of one person's right makes the exercise of another's right impossible in any way. For otherwise a person who were to use such a right could continuously be kept from using it by the others and therefore anyone's right would be completely useless or without any effect, §. 124 *Prol.*

104 §. 120.

A man POSSESSES A THING NATURALLY (in general) if he has its use in his power, to the exclusion of others; he possesses it JURIDICALLY (specifically) if he has in his power the use of a thing that he wants to be his own, to the exclusion of others, i.e., a man juridically possesses a thing if he possesses it with the intention to have it as his property. So because the occupant commences to have in his power the use of the thing occupied, to the exclusion of others, *the occupant becomes the possessor of the thing occupied*, not only naturally but also *juridically so*, and the *rightful* possessor to be precise. Seizure is the beginning, possession the lasting of the state by which a man has a thing in his power to the exclusion of others, i.e., by which a man has the physical ability to use a thing while excluding others. From this it is also clear that *possession of a thing is to its proprietorship as physical ability is to legal ability*.

The *occupant* with regard to the *thing occupied*, indeed anyone with regard to *what is his own* has the *right to possess his property*, and *no one should be disturbed in the possession of a thing that is his own*.

105 * So he who does have a thing subjected to his power to use it, to the exclusion of others, but either considers it another man's or in any case does not want it to be his, does not possess it juridically. Non-juridical or merely natural possession is usually called RETENTION.

** Even an *absent* man possesses a thing, in as far as he still keeps others excluded from it and can perform a possessor's acts through another as he pleases.

*** A *right* is also said to be *possessed* (quasi-possessed) by a man who is not hindered in the performance of some act to whose performance he wants to have the right. So if *a certain right falls to a man*, the *right to possess it* also falls to him, and *no man should be disturbed in the possession of his right* (of what is his own).

§. 121.

An occupied thing remains the occupant's property for the time he rightfully wants it to, §. 81, i.e., for as long as he retains the intention to have it as his property. So *even if possession is interrupted, proprietorship of the thing and the desired right to it can be retained by the intention alone*.

106 * Gottlieb Gerhard Titius, *Dissertatio juridica de dominio in rebus occupatis ultra possessionem durante*, Braunschweig 1704, and in his *Disputationes juridicae varii argumenti*, Leipzig 1729, pp. 316–49.

§. 122.

Occupancy has the effect that the occupant acquires a proper right to the occupied thing, and consequently that for the others the obligation arises at the same time to abstain from the thing that is occupied by the other man, §. 57. So *occupancy and the introduction of proprietorship of things brings about diverse rights and obligations of*

men, and to that extent removes natural equality in the broader sense, §. 70, because it removes the original state.

And because a right to an occupied thing, indeed every proper right to a certain thing is a conditional right, §. 106 and 109, the *obligation* by force of which *one should give any other man what is his own and any right to what is his own is conditional* as well. So someone's *legitimate act can create an obligation, certainly a negative one, for others* to omit what they were not obliged to omit so far.

Jean-Jacques Rousseau, *Discours sur l'origine et les fondemens de l'inegalité parmi*
107 *les hommes*, Amsterdam 1755, seconde partie, p. 95ff. German translation Berlin 1756.

§. 123.

Things are either *animate* (animals, wild animals, *moving* things, i.e., things that can move from one place to another of their own accord) or *inanimate*; moreover they are either MOVABLE THINGS, which can be moved from one place to another while their substance remains intact (*moving things* belong to this category), or IMMOVABLE THINGS, which cannot be moved from one place to another with their substance intact. *In as far as any thing, animate or inanimate, movable or immovable, is ownerless and seizable, it can also be occupied*, §. 114, *and falls to the occupant*, §. 114.

Kinds of occupancy of animate things include HUNTING, occupying (terrestrial) wild animals; FISHING, occupying fish; and FOWLING, occupying birds. But *hunting* is also used in a broader meaning, which includes fishing and fowling.

* *Wild animals* and *fish* are occupied as soon as, with nets or other instruments
108 placed in whatever way, they are detained to the effect that they cannot escape.

A wild animal that has been shot down, wounded or exhausted with a firearm in such a way that it cannot escape, becomes the hunter's *prey* (his own).

A wild animal that someone is pursuing while it flees, on the other hand, is not yet occupied in as far as it can still escape, because it is not yet subjected to the power of use, §. 113; and therefore another man's right to intercept it and occupy it for himself has not yet been taken away.

** For the rest, as to whether wild animals, fish and other moving things are held in *loose* or *close custody*, that distinction is not relevant to natural law, because no man should prescribe the method of occupancy to the occupant, but it should be left to the latter's judgment, §. 115.

§. 124.

As soon as a thing that was ownerless so far *is understood to have been seized by another man, it should be deemed occupied, unless an intention to the contrary is clear*, because for occupancy a tacit declaration is sufficient, which is included in the act of seizing, and in this one should respect the wish of the person seizing the thing, §. 115. So *a thing that was ownerless so far and that someone is preparing for a better*

109 *use, and a piece of land that has been bordered off or is being tilled, should* also *be deemed occupied*.

In general the act by which an ownerless thing is seized can be connected with some labor and effort, and therefore *labor, effort, tilling the land*, and the like *can constitute occupancy* and a *method of acquiring*.

* On work as a primary method of acquiring cp. John Locke, *Du gouvernement civil* (transl. from the English, Brussels 1749), chap. IV, De la proprieté des choses, p. 32f.; and Paul Jacob Marperger, *Commentatio de acquisitione dominii originaria in statu naturae*, Leipzig 1741.

110 **TITLE II**
PUTATIVE OCCUPANCY

§. 125.

Since man's resources are finite and therefore there is much that he does not know, which causes many of his mistakes and false judgments, it frequently happens that he does things which he would not have done if there hadn't been something he did not know (this also includes if he had not been mistaken, since a mistake is ignorance doubled). Such actions are called *actions from ignorance* (or specifically *from error*), §. 37 *Prol.*; and thus it also happens sometimes that an action undertaken from ignorance or error is wrongful, i.e., that a man who is ignorant or mistaken wrongs another.

§. 126.

An illicit act from ignorance that could not have been prevented cannot be imputed to the agent, §. 16, and hence a wrongful act from ignorance that could not have been
111 prevented is not imputable to the wronging party either. Moreover a wrongful act from ignorance of something that a man is not obliged to know in general cannot be imputed to him, §. 35 *Prol.* So a wrongful act of either kind is an inculpable act and an unimputable wrong, §. 52. More briefly: *if a man is physically unable or in general is not obliged to know something, his ignorance of it is without blameworthiness* (without guilt), §. 37 *Prol.*

§. 127.

Indeed since 1) no man is obliged to know what he is physically unable to know, §. 16 *Prol.* and 8, and 2) the duty to do away with ignorance and drive out errors and to acquire knowledge for one's self does not belong to the innate obligations, §. 39, it follows that *every man by nature has the right to be ignorant of what he is physically unable or in general is not obliged to know*, and therefore *a certain right not to know that of which he is ignorant without blameworthiness*. So many things are rightfully unknown and *there is a certain innate right to ignorance* and *error*. And to that extent we can also demonstrate the *right* to those *actions* which originate *from inculpable*

112 *ignorance* and *error*, and hence it is clear that there also exists a *right*, falling to anyone by nature, *to do as if it were rightful that which without blameworthiness one does not know to be wrongful.*

§. 128.

Because, however, the right to act of a man who wrongs another from inculpable ignorance rests on this ignorance alone, *once the ignorance is removed, the right to commit such wrongful acts as rightful is also removed*. Therefore *this right does not last beyond the ignorance and is removed together with it*. Consequently that which so far could not be imputed to him as a wrongful act could now be imputed to him as a wrong with malicious intent if he continued to do the same thing.

§. 129.

A man acts IN GOOD FAITH if he acts wrongfully and without blameworthiness does not know that it is wrongful; and vice versa a man acts in BAD FAITH if he acts wrongfully and knows (or in any case is to be blamed for not knowing) it to be wrongful. Hence a POSSESSOR IN GOOD FAITH is a man who possesses a thing that is another's, and without blameworthiness does not know that it is another's; a POSSESSOR IN BAD
113 FAITH, on the other hand, knows that it is another man's (or in any case is to be blamed for not knowing it).

§. 130.

If a man acts in good faith, his action 1) *with regard to the other man* whose right is violated is a wrong, but one that is inculpable and non-imputable, §. 126, 2) with regard to *himself*, both as regards his knowledge and as regards his right to ignorance, is a rightful action to which he has a right, §. 127. To that extent *good faith is the equivalent of truth*, and *good faith does as much as truth does for the man who possesses it.*

But this right ends when his ignorance ends: if, knowing that he acts wrongfully, he now wanted to keep doing the same thing that so far he did in good faith, he would begin to act without right and to wrong culpably, indeed with malicious intent, and so his good faith would turn into bad, prec. §. and 128. Because, therefore, good faith ends when such ignorance ends and turns into bad faith, the right to act in good faith will not endure beyond the ignorance itself either, but rather what was thus far done by right will now be turned into a wrong with malicious intent. So *the*
114 *right to do what is done in good faith ends as soon as it becomes clear to the agent that the opposite is true*, whether that happens through another man's bringing proof or otherwise.

§. 131.

If a man seizes a thing that is another's while without blameworthiness he does not know that it is another's and hence thinks it ownerless, with the intention to have it as his property, by force of the right to ignorance, §. 127, and the right to act in good faith,

§. 129, *he has the right to regard it as an occupied thing and as his own until it becomes clear to him to whom it belongs*; and he is a possessor in good faith, §. 129, until the proprietor appears and becomes known to him.

§. 132.

Such an act of seizure of a thing that is another man's is not occupancy, but is considered closely similar to it and *has the same effect as true occupancy until it becomes manifest that the opposite is true.* Hence it can be called PUTATIVE OCCUPANCY (or quasi-occupancy, because the occupant *assumes*[8] the thing to be ownerless, i.e., from rightful ignorance holds true something that is not).

115 From this arises the concept of the PUTATIVE (or quasi-) METHOD OF ACQUIRING in general, in as far as a man without blameworthiness does not know that the means by which he intends to acquire is wrongful, as well as those of *putative title*, *putative acquisition*, *putative right*, *putative proprietorship* and *putative own*, for all these things are called such in as far as they are deemed to be such *in good faith*.

§. 133.

Seizure of a thing that was hidden so far is called FINDING (in the *juridical sense*). Finding a thing with the intention to have it as one's property 1) if the thing is ownerless becomes occupancy, §. 113; but if the thing is 2) another man's and the finder without blameworthiness does not know this, it is putative occupancy, which results in the finder's acquiring the thing putatively and becoming its possessor in good faith, §. 132 and 130; if, finally, the thing is 3) another man's and the finder knows this, it is a culpable wrong and results in the finder's becoming a possessor in bad faith, §. 130. To this category also belongs the finder who does not know that the thing he has found
116 is another man's, but is to blame for not knowing; but his wrong is less than that of the man who knows that the thing belongs to another.

§. 134.

The above applies to the finding of *things that were thrown away, left behind, lost, lost in a shipwreck, and of a hidden treasure*. Suppose that Gaius has thrown away, left behind, or lost a thing of his, or has been shipwrecked, or has hidden a treasure; in as far as he wants those things to remain his property, they do remain his property by intention, although their possession is interrupted, §. 121. If, however, Titius, the finder of those things, in the meantime seizes them with the intention to make them his own because in good faith he takes them to be ownerless, he acquires them putatively and rightfully possesses them as his own until he learns to whom those things that were thrown away, lost, lost in shipwreck, or that hidden treasure belong.

[8] Achenwall uses the verb *putare*.

§. 135.

If in this case the wronged party, i.e., the person to whom such things belong, *undertakes to bring proof of his right, the wronging party is obliged to admit the proof.* For
117 since the wronged man's right to something of his own that is retained by another also comprises the right to make the other man abstain from it, §. 53, it is clear that from this right to the end there arises the right to the necessary means, which in this case is bringing proof, i.e., the act by which he proves that such a thing that was seized and retained by another is his property.

TITLE III
DOMINION

Christian Thomasius, *Dissertatio inauguralis juridica de dominio ejusque natura*, Halle 1730.

Daniel Maichel, *De genuina dominii notione deque eius diversis adquirendi modis praesertim derivativis*, Tübingen 1740.

§. 136.

Suppose that some thing is my own and my property: then I naturally have the right to use it to the exclusion of others, §. 53, and by force of natural liberty this right is extended at will to all acts that are possible with regard to such a thing and to the exclu-
118 sion of all others, §. 80. Therefore *the right that falls to me regarding a thing that is my own naturally* (according to origin)—that is: if it is regarded *in itself and as concerns my natural liberty—is the right* 1) *to undertake at will all acts that are possible with regard to such a thing, and simultaneously* 2) *to exclude* at will *all others from any act with regard to it*. So given any single defined act that is possible with respect to such a thing, 1) my right is also given to exercise that act, and at the same time 2) the obligation for all others to abstain from it.

§. 137.

For this reason the right regarding one's property naturally is a complex of several rights: of all rights that can be conceived of regarding one's property if it is considered according to origin. The sum of the rights regarding one's property is called DOMINION, and the man to whom it falls is the OWNER.[9] So dominion comprises the complex of all the rights that are possible regarding one's property and naturally consists in the right to exercise any acts that are possible regarding some thing and to exclude all others
119 from any act regarding it, §. 136. And so a thing regarding which dominion falls to someone will be *his own*, a thing that is in my dominion will be *my own*, and a thing of which another man is the owner will be *another man's own*.

[9] See "Remarks on the Translation," pp. xxxiii–xxxiv.

§. 138.

Dominion 1) is the *right to a thing*, i.e., *with regard to a thing*; so a right that is conceived of as a right with regard to a person cannot be dominion. 2) It is the right to a *thing that is one's property*, and thus a right with exclusion of others, a proper right, §. 54, [and] dominion of a thing comprises proprietorship of that thing. The proper right to things is not an innate right, §. 108, so dominion 3) is an *acquired right*, §. 109, indeed the sum of all acquired rights with regard to a thing.

§. 139.

The owner has the right to undertake all *acts that are possible* with regard to the thing that is his own, §. 136: *solely to those acts*, therefore, *that are possible not only physically but legally as well*, §. 112n. By force of the natural law the owner cannot undertake an act with regard to a thing that is his, by which another man is wronged, for then there would be a right to act wrongfully and the owner's natural liberty
120 regarding a thing that is his would turn into license, §. 78. On the other hand *all acts that are legally possible with regard to a thing by force of dominion are licit to the owner with regard to the thing that is his, and illicit to all others by force of the other man's dominion.* Thus *dominion naturally extends to all acts, as far as the owner's rightful wish reaches; and it is not naturally limited, except with regard to acts that comprise a wrong. The owner's* (rightful) *goal with regard to the thing that is his* serves as *the measure of his dominion*.

And so we understand the *natural limits* of dominion (like the limits of liberty above), which should be distinguished from its *arbitrary limits*, §. 79; and from this we can also grasp what *unlimited dominion* is and what *restricted*, same §, and that the owner naturally has unlimited dominion over the thing that is his.

§. 140.

Since dominion is the sum of several rights, it can be viewed as a *composite* and *whole right*, and hence the *single rights* included in it can be regarded as many *parts of dominion.*
121 Hence DOMINION is called NOT-FULL if it is diminished by some part of it (i.e., by some particular right naturally included in dominion), and FULL if it is not. Therefore *the owner naturally has full dominion with regard to the thing that is his*, because he has unlimited dominion, §. 139.

§. 141.

So we see that all unlimited dominion is full, while not-full dominion is limited at the same time, §. 139 and 140. LIMITED or RESTRICTED DOMINION, however, is mostly used in a more *particular sense* as dominion whose exercise (as a whole or in part) is connected to a certain arbitrary obligation, i.e., whose exercise is restricted by a certain (positive) law. From this it is easy to understand what its opposite means, *unlimited dominion*. And in this sense restricted dominion differs from not-full and unlimited from full: there is unlimited dominion that is not full, and vice versa restricted

dominion that is full. Therefore in this sense as well, the owner naturally has unlimited dominion with regard to the thing that is his, §. 139.

122 If some part is taken away from dominion, that which remains is no longer the whole, strictly speaking; hence not-full dominion properly is not true dominion. Sometimes however it is still denoted with the same name, in as far as names tend to be based on what is stronger and in as far as the rights of dominion that remain after a part has been removed still constitute the sum and whole of several partial rights.

§. 142.

He who occupies a thing makes it his own and his property, §. 113; so *the occupant naturally*, by force of natural liberty, *becomes the owner of the occupied thing*, §. 137, *full*, §. 140, and *unlimited*, §. 139 and 141.

Thus through occupancy dominion of things was introduced and first emerged, and hence the word THING is used specifically for that which is susceptible to our dominion: for the main subject in law is mine and thine, and hence also with respect to things, the things that are mine or thine.

123 §. 143.

Since anyone has the right to possess that which is his own, §. 120, and the rights of dominion reach as far as the rightful wish of the owner, *the owner has the proper right to possess a thing that is his own.* For he is understood to want that without which he cannot exercise the rights of dominion, hence also the right to exclude anyone else from retaining and possessing a thing that is his.

§. 144.

Because the owner has the right to exclude others from any act regarding a thing that is his, §. 137, *he has the right not to allow another man to arrogate to himself undertaking any act regarding a thing that is his*, and consequently *the owner has the right to prohibit another man from doing that and to forbid others any act regarding a thing that is his.* Because, finally, every man's own remains his own as long as he wants, §. 81, *the whole dominion and any particular right of dominion will fall to the owner for as long as he wishes.* For this reason no man can exercise any act regarding a thing that is another's at any time, nor take away, diminish or restrict dominion of that thing against the will
124 of the owner, i.e., if he is unwilling. Hence *if the owner is unwilling dominion of a thing that is his own or some right of dominion cannot pass to another man.*

§. 145.

The *right to use*, which falls to the owner with regard to a thing subjected to his dominion, in general is the right to undertake all possible acts regarding a thing that is his own, §. 136, which right in general is also often called the *right to disposal* (of a thing that is his own, at his discretion, i.e., according to what he decides). Now the

owner can undertake acts regarding a thing that is his while keeping the thing and his dominion intact, or without keeping the thing intact, or his dominion in any case. The first act is called USE OF A THING (receiving profit, often usufruct as well), the second DISPOSAL, both terms being used *strictly* and *simply*. Thus *the owner has the proper right* both *to use the thing that is his in any way*, i.e., to receive all profits from it (to have usufruct), and to *dispose of it at will*.

125

TITLE IV
THE RIGHT TO USUFRUCT OF A THING THAT IS ONE'S OWN; ACCESSION

§. 146.

The owner has the proper right to receive all possible profits from the thing that is his, whether they belong to any type of necessity, commodity or pleasure of life, or some act brings him a real or merely perceived (imaginary) profit, since by force of natural liberty he should be allowed all these things. Thus the owner also has the right to make the thing that is his more profitable, including the *right to improve*.

§. 147.

A thing that in any way whatsoever is connected to another thing as its increment (increase of profit, emolument) is said to ACCEDE to it and is therefore called an ACCES-
126 SORY (accessory thing) in the *broader sense*. Its counterpart, the thing to which it accedes, is known as the PRINCIPAL (principal thing). As the owner has a proper right to all possible profits from a thing that is his, §. 146, it follows that 1) *everything that is some thing's accessory is owned by the owner of the principal thing*; 2) *the moment when something becomes the accessory of such a thing is the moment when it becomes the property of the principal thing's owner*. And to that extent *the accessory is acquired by the owner of the principal thing at the same time it becomes accessory to the thing that is his own. The accessory follows its principal. The owner has a proper right not only to the substance of the thing that is his own*, i.e., the existing body of the thing, *but also to its accessories*.

§. 148.

The event by which a thing becomes a thing's accessory is called ACCESSION *in general* (in the literal sense). So there is accession by which, once it is given, the accessory's acquisition made by the owner of the principal thing is given, and which therefore is a method of acquiring. Accession in as far as it is a method of acquiring is called ACCESSION *in particular* (in the juridical sense).

127 §. 149.

For accession to be a method of acquiring it is required 1) that there are two things, the one principal and the other accessory; 2) that the principal thing is in the dominion of the person who desires to have its accessory as his property; 3) that the accessory thing is not another man's, for then it would be a wrong to have it as his property; 4) that

the accessory did not already belong to the man who is the principal's owner before it acceded, for in that case there is no need for a new method of acquiring; 5) that the accessory, as soon as it becomes such, also comes into the power of the principal's owner, to the exclusion of others. For if the nature of the accessory thing prevents it from being in the power of the principal's owner unless he seizes it at the same time, the owner of the principal thing should not be said to have acquired already that from which he is still physically unable to exclude others and use it; 6) that the principal thing's owner *wants* to acquire the accessory to the thing that is his, since the rights of dominion do not extend beyond the owner's intention, §. 139.

128 So to tie it all into one package: *The owner of a thing acquires its accessories as soon as they become such, in as far as he wants and is able* (physically and legally) *to acquire them*.

§. 150.

The *title* or remote cause of an accessory's acquisition is the right that naturally falls to the owner of the principal thing to have all accessories to a thing that is his own as his property as far as possible. Accession itself in the general sense, in as far as it is based on this right, as stated in §. 148, is this acquisition's *method of acquiring*.

§. 151.

All other things reserved, the owner of the principal thing acquires its accessory as soon as it becomes such, §. 147; so *the accessory thing becomes his, although he has not yet seized it and has not yet performed a corporeal act with regard to it*. Because of this, once dominion of the principal thing is given, acquisition of the accessories does not
129 finally arise *from an additional* corporeal *act* of the principal's owner: the *mere event* suffices after which the owner of the principal thing wants and is able to acquire. And to that extent *this acquisition is brought about by the natural law alone*, by whose force the event by which a thing accedes to a thing takes the place of act and seizure: and hence *accession*, as opposed to the methods of acquiring based on an act, *is called a method of acquiring based on a law* (by right itself, i.e., *by right of a thing that is our own*).

§. 152.

Accessories either are the principal thing's effects, i.e., originate from it, or not; the former are called FRUITS, the latter ACCESSORIES *in the strict sense*. FRUITS originate from a thing either without man's effort (labor, care) or only when it is added; the former are NATURAL, the latter EFFORT-RELATED. Accessories in the strict sense likewise become such either without man's effort or only as it is added; the former are FORTUITOUS ACCESSORIES *in the strict sense*, the latter ARTIFICIAL ones.

130 §. 153.

The owner of the principal thing becomes the owner 1) of its fruits, both effort-related and natural, as soon as they begin to emerge (to exist), as well as 2) of fortuitous accessories, in as far as there is no physical or legal obstacle in the way, §. 149.

3) Under the same restriction, artificial accessories also pass into the dominion of the principal thing's owner, unless they were already his before he brought about by his labor that they became accessories to a thing that was his—for that which has already been acquired by an earlier method of acquisition should not be said to be acquired by accession, §. 149.

§. 154.

Accession of fruits and fortuitous accessories 1) *is an original method of acquiring*, §. 118, *and one with qualification* to be precise, since it has the prerequisite that the principal thing should already be in dominion.

2) *Accession is not occupancy*. For as soon as the fruits begin to exist, they are ac-
131 quired by the owner of the principal thing, §. 183, and thus they were never ownerless; fortuitous accessories on the other hand, even if they were ownerless before the accession, are not subjected to the dominion of the principal's owner by seizure, but by the event alone by which they accede. So *there is no accessory occupancy*. *Occupancy is an original method of acquiring that is absolute* (without qualification), since it does not suppose another thing already subject to dominion.

3) *Accession brings about the acquisition itself of the accessory at the discretion of the principal thing's owner*, §. 151, so it does *not merely* involve *the right to acquire,* let alone provide the mere *occasion to acquire*.

4) *Fruits and fortuitous accessories* are acquired by right itself and pass into the dominion of the principal thing's owner although he has not yet seized them (§. 151); so *by nature they are not things lying idle*, i.e., things regarding which the owner of the principal thing does have the right to exclude others, but not yet dominion itself. In this case deducing the acquisition of dominion only later from seizure (a corporeal act,
132 gaining access) is superfluous, contrary to natural liberty, and against the rightful wish of the principal thing's owner which should be taken as the measure of dominion, §. 139.

5) Since effort-related fruits are produced by the additional labor of man, *labor* and *effort*—if in this case they are regarded as a method of acquiring—*is classed under accession*, and thus labor can be a method of acquiring by accession.

§. 155.

If a *thing that belongs to another man* becomes accessory to a thing of mine, such an accessory is in no way acquired by me as the owner of the principal thing by the sole event of accession, §. 149. But if the owner of the principal thing without blameworthiness does not know that the accessory is another's, he has the right to deem it his own as an accessory until its owner becomes known to him, §. 127, 128. In this case we have accession of a thing that is another man's that is not known to be such, without blameworthiness. We call this PUTATIVE ACCESSION, which is a type of the putative method of acquiring, §. 132, and results in the owner of the principal thing
133 becoming the possessor in good faith of such an accessory thing, §. 129, and its putative owner, §. 132.

Examples of *accession of a thing that is another man's* are generously supplied by Roman law, which in the matter of accession mainly has attention for that accession

of a thing that is another man's that comes about by human effort, e.g., soldering on, cementing on, interweaving, melting in, mixing in, and so forth. The same can also be found in *things lost in shipwreck, thrown away, lost*, and in *hidden treasure*, according to the circumstances.

134

TITLE V
THE RIGHT OF DISPOSAL OF A THING THAT IS ONE'S OWN

§. 156.

The owner DISPOSES *(in the stricter sense)* of a thing that is his if with regard to it he undertakes an act by which either the thing that is his own or his dominion regarding it does not remain intact, i.e., by which the owner does some kind of damage either to the thing that is his own or to his right to it (causes to himself any kind of loss regarding the thing or the rights of dominion); and *the owner naturally has the proper right to dispose of a thing that is his own at will*, §. 145.

An act regarding a thing by which it perishes is the DESTRUCTION OF A THING (*consumption of a thing* also comes under this category); one by which it becomes less useful, i.e., by which it is caused to yield less profit than before, is DETERIORATION; the higher degree of this, i.e., which has the effect that a thing no longer yields its normal
135 profit although its substance endures, is CORRUPTION. Thus *the owner has the proper right to destroy, consume, deteriorate or corrupt a thing that is his own*. If by the *abuse* of a thing (in the good sense) you understand an act regarding a thing by which it is damaged, *the owner should* also *be attributed the proper right to abuse a thing that is his own*.

By change a thing can sometimes become more useful, sometimes less so; hence the right to change a thing that is one's own can be classed either under the right to use a thing that is one's own or under the right to dispose of it. In either case the owner has the proper right to change a thing that is his own in any way whatsoever. Changing a thing in such a way that it is then in another category (juridically, i.e., in another species philosophically) is called SPECIFICATION; so the owner also has the proper right to specify a thing.

§. 157.

The owner by force of the right to dispose of a thing that is his own *has the proper right also to undertake such acts regarding a thing that is his own* by which its *dominion does not remain intact*; so by *which its dominion is taken away entirely, or diminished, or restricted*, §. 140 and 141.

136 §. 158.

He who declares that he no longer wishes to have his right RENOUNCES HIS RIGHT. So *the owner has the proper right to renounce all and every single right that he has to a thing that is his own.* And more generally: *anyone* by force of natural liberty *has the right to renounce his right*, in as far as this is physically and legally possible. Since *renunciation* of one's right is a declaration, it is either *express* or *tacit*, §. 88.

§. 159.

A THING IS RELINQUISHED if the owner simply does not want it to be his own any longer; *simply* means that the act of will contains nothing more than that the thing should not be his own. So *the owner has the proper right to relinquish a thing that is his own*. And because relinquishing a thing is an act of will, which cannot be known to another unless it is declared by words or some act, he who relinquishes a thing that is his own renounces, tacitly in any case, all right that by force of dominion he has to that thing, prec. §.

137 §. 160.

A man ALIENATES something if from his own he makes it another's, i.e., transfers what is his to another man, i.e., makes what is his pass to another man. If dominion of a thing is transferred to another, we say that the THING itself IS ALIENATED; if it is only some right included in dominion that is transferred, not the thing but such RIGHT is *alienated*. And so *the owner has the proper right* both *to alienate a thing* that is his, either the whole or part of it (dominion either of the whole thing that is his, or of a part), and to *alienate* any *right* pertaining to the dominion of a thing that is his. Indeed by force of natural liberty *anyone has the right to alienate his right*, unless a law or a physical obstacle is in the way.

Since alienation is an act of will, which cannot be known to another unless it is declared, he who transfers to another man either some right that falls to him regarding a thing or his right in general, renounces that right, §. 158.

§. 161.

Since the owner has the proper right to alienate in any way whatsoever any rights of
138 dominion regarding a thing of his own, it follows that he can 1) also admit another or others into *communion* either of the whole dominion or of any right of dominion, 2) also *divide* the rights of dominion between himself and another or others so as to transfer one or more rights to another man to the exclusion of himself while he alone retains the remaining right or rights, and 3) in a combination of both acts have the rights of dominion *partly common, partly divided* with another or others.

In the first case, if some communion of dominion is formed, this is called CO-DOMINION, and the individuals to whom it falls CO-OWNERS; the co-owners as a group are known as the MORAL (mystical) OWNER, because it is a moral person, §. 92 *Prol.* And then the co-owners as a group have full dominion, but to the individuals—if you still want to call the right that they have dominion—only not-full dominion can be attributed, §. 140. Co-dominion is also called *communion of a thing*, to distinguish it from *communion of a* particular *right* of dominion or any other right. So *the owner has the right to establish co-dominion* and any *right* for another *with regard to a thing that*
139 *is his*, with or without exclusion of himself. And such acts of the owner come under alienation and hence under renunciation of one's right, prec. §.

One can think of practically innumerable kinds of dominion that is divided among several people, arising from the diversity of uses and hence of the special rights that

are possible regarding various kinds of things, and from the diverse distribution of these rights that are possible in different ways among different numbers of persons.

§. 162.

The more eminent or major parts of dominion, which comprise several lesser ones as we have shown, are 1) the right to enjoy profits, and 2) the right of disposal. If the owner alienates the right to enjoy some profit from a thing that is his (be it all profit or merely a certain type) while retaining the rest of dominion, the other man receives a SERVITUDE, i.e., a right to enjoy some profit that falls to someone with regard to a thing that is another's, or: a right to enjoy some profit from a thing that is another's. So *the establishment of servitude on a thing that is one's own constitutes an alienation of a right by which dominion, although not taken away, certainly is diminished*, §. 161.

140 If the owner, e.g., Gaius, transfers to Titius the right to enjoy all profits from a thing that is his, and simultaneously shares the right of disposal with him, both Gaius and Titius are usually called the owner (not-full of course, §. 140) with regard to this thing, but with the difference that Gaius is called the DIRECT OWNER, and hence his right is DIRECT DOMINION; while Titius is the PROFIT OWNER, and hence his right is PROFIT DOMINION.

§. 163.

Once the division of the rights of dominion between several men is given, any *proper right regarding the thing* naturally is such that a man can use it, and consequently undertake all acts that are possible by force of such a right, to the exclusion of others, §. 53 and 136, whether the right remains intact or not—if that right is taken away, diminished or restricted—after some act has been undertaken. Hence proper rights regarding a thing are viewed as *things* placed under dominion and are equated with them, and so it came about that Roman jurists gave proper rights regarding a thing, primarily the particular ones, and other similar rights the name of *things* as well, with
141 the addition of "*incorporeal.*" Thus an INCORPOREAL THING is a proper right that a man can use in the same way as a (corporeal) thing that is his, i.e., of which he can dispose at will, §. 145. Hence 1) incorporeal things are said to be in *quasi-dominion*, and 2) their possession, §. 120 n. 3, as opposed to the possession of corporeal things, is also called *quasi-possession*. And just as in a corporeal thing we can distinguish its substance, use and fruit, by analogy 3) incorporeal things beside their *use* are also attributed *substance* and *fruit*: the right itself and the profits that are obtained from it are distinguished from the exercise of the right.

§. 164.

Finally the owner, by force of the right to dispose of a thing that is his own, also has the right to allow another man any act belonging to the exercise of dominion, i.e., to *concede to him a certain use* (as opposed to abuse, §. 156) of a *thing* that is his, or of some *right* that he has with regard to it. Although dominion is not diminished by this
142 concession, it is nonetheless restricted as regards the acts permitted to the other man,

for the exercise of some right that is naturally included in dominion is temporarily suspended to the benefit of the man to whom a certain use of the thing is conceded and to whom consequently the right is conceded to the acts without which such use cannot be obtained.

So *the use of an incorporeal thing can be conceded to another man as well, and its owner* (quasi-owner) *has the proper right to concede it; and once it has been conceded, his own right is restricted*, prec. §.

143

TITLE VI
CONTRACT

1) Christoph Andreas Remer, *Tractatus de vero ex iure Romano, statui Germaniae attemperato, obligationum valore*, Hamburg 1714 and 1731.
2) I. G. Sincerus (Ioachim Gotthelf Sparmann), "De simplicitate iuris naturae in materia contractuum a Germanis servata," preface to Paul Ciesius, *Manuale exceptionum forensium*, Greifswald 1742, reprinted.

§. 165.

A DECLARATION OF ONE'S MIND IS SUFFICIENT if it can be judged with moral certainty to be sincere, i.e., if its sincerity is morally certain. Since we cannot know another man's
144 mind unless it is declared, §. 87, and therefore we can be certain of it only in as far as the other declares it sufficiently, among men a sufficient declaration of mind is equivalent to the mind itself. Therefore that which by words or act you sufficiently indicate that you think or want, is held true against you: that you actually think or want that. As a consequence *whatever you sufficiently declare that you want, I have the right to judge that you actually want*, and more in general: *as you declare yourself to be, so I have the right to judge you to be*.

§. 166.

Therefore if I sufficiently declare that I simply do not want a thing that is mine to be mine any longer, from then on another man has the right to judge that I actually internally want this thing to be mine no longer, and consequently to judge that it has now become no man's property, ownerless, §. 108, and can be occupied by him, §. 114. And so in this way for the other man a right to occupy arises from my declaration, and if he occupies, such a thing falls to him as the occupant. So for a thing to be validly
145 relinquished, §. 159, a sufficient declaration of the relinquishing party is required, and to that extent *the relinquished thing becomes ownerless and will fall to any occupant.*

Johann Heinrich Feltz, *Excerpta controversiarum illustrium de rebus pro derelictis habitis*, Strasbourg 1708.

So *a willing man is not injured*. For if a man takes from me something that was mine so far, but of which I have sufficiently declared that I want it to be mine no longer, then he does not take from me what is mine, and consequently does not wrong or injure [me]. So only he wrongs who takes from an unwilling party what is his. Hence *also there is no loss but that which is inflicted upon an unwilling man*.

§. 167.

I PROMISE you something if I sufficiently declare to you that I want something that is mine to become yours. I AGREE with you in the *sense of external law* if I sufficiently declare to you that I want the same as what you want. I ACCEPT your PROMISE (I simply accept) if I consent to the promise you make to me. Therefore I accept if to the man
146 who promises me something I sufficiently declare that I want what he has promised to become mine. An accepted promise is a CONTRACT (pact, agreement). So a contract contains the consent of both agreeing parties, i.e., MUTUAL (reciprocal) CONSENT on the transfer of what is one agreeing party's own to the other agreeing party. The party accepting the promise is also called the *promisee*, as opposed to the promising party or *promissor.*

§. 168.

Suppose object X, which Gaius promises to Titius and which Titius accepts. In this case 1) Gaius sufficiently declares that he wants X to become Titius's own, 2) Titius sufficiently declares that he wants X to become his own, and consequently Titius performs an act by which he wants to acquire; and he has the right to perform this act, a right that he gains from Gaius's sufficient declaration, §. 165. So X becomes Titius's own, that is to say: *the contract effects that which is the promising party's own to become the accepting party's own*.

147 All that is proved by this demonstration is that in the concept itself of a contract there is nothing to prevent that which is the promising party's own from becoming the accepting party's own.

§. 169.

With a contract the promising party causes that which is his to become another's (the accepting party's, that is), and therefore he alienates, §. 160; the accepting party on the other hand causes something that is not his to become his, and so acquires, §. 81. So *a contract is a method* of *alienating* and *obligating one's self* and *acquiring*, a *derivative method of acquiring* to be precise, §. 118, and hence also a *contractual own* is an acquired own. The rightfulness (title) of contractual alienation rests on the right to renounce one's right and alienate what is one's own which falls to anyone by force of natural liberty, §. 166; the rightfulness of contractual acquisition rests on the right to acquire that is innate to anyone, §. 81.

§. 170.

I give (hand over) something to you if I transfer its possession to you, i.e., if I cause something to go (pass) from my possession to yours. That which is mine is either an
148 act (work) or anything else, be it a thing or a right. If a man promises another his work, he promises something that simply has to be done; if he promises something else, he declares that he wants it to become the other's own, and hence that the other should possess it, §. 120, and consequently, in as far as giving is a necessary remedy to obtain possession, he simultaneously promises something that has to be given. Giving

something to another man or simply doing something for him is in one word called DELIVERING. So every promise contains something that has to be delivered. A contract therefore is a reciprocal consent to delivery of the same thing, i.e., it is a declaration of two or more that they want the same with regard to something that one has to deliver to the other, i.e., it is the consent of two or more to delivery of the same thing (to the same decision).

§. 171.

The promissor either by the same act with which he promises also delivers his promise, or not. Suppose the latter: that the promissor has not yet delivered what he has promised. Because that which is promised becomes the acceptant's own by force of the contract, from the contract there arises a right for the acceptant with regard to
149 the promissor, that he should actually deliver; this corresponds to the promising party's obligation to deliver, which arises for him from his own act. This is called a CONTRACTED (acquired) OBLIGATION, and is classed with the conditional obligations, §. 109. A man HONORS A CONTRACT (fulfills a contract, keeps his promise) if he actually delivers that which by contract he has promised to deliver. So the promising party in this case is obligated to keep his promise and to that extent *the contract must be honored.*

§. 172.

In general for a *contract* to create a right and an obligation in accordance with the parties' mutual consent, it is required that 1) it is a *true contract*, i.e., that the contract exists, and consequently that there exists a mutual consent of the parties regarding some object that the promissor must deliver to the promisee; and 2) that *there is no obstacle*, whether *physical* or *legal, to its validity*. So a contract has the effect that that which is the promising party's own becomes the accepting party's own in as far as this is physically and legally possible, and the contract must be honored unless a law or something else prevents it.

150 §. 173.

For this reason, as concerns I. the *truth of the contract*, there is no contract if mutual consent 1) is not *possible*, so if the promising or the accepting party lacks the physical ability to consent. A contract therefore requires the *use of the intellect*, both in the promising and in the accepting party: for if the use of the intellect is denied, the ability to consent is removed, §. 5 *Prol.* Nor 2) is there a contract if mutual consent does not *exist*, so if there is no a) wish (volition) that is b) sufficiently declared, c) regarding a certain object that is to be delivered, d) that also is the wish of both parties, and e) the same, §. 167.

§. 174.

a) The *will* is required. A man who is still deliberating whether he should enter into a contract, whether he should consent, does not yet consent or enter into a contract.

Therefore 1) (contract) NEGOTIATIONS, in as far as they are conceived of as the deliberations of more than one party about entering into a contract between them, lack the obligation of a contract. If a man declares that he is entering into a contract by
151 way of a *joke*, or declares his will insufficiently, or declares that he actually wants the complete contrary of what he otherwise indicates that he wants, to that extent 2) *joking annuls a contract.* 3) If a man affirms that he will deliver something to the other with the reservation of non-obligatory delivery, i.e., that he does want to deliver something to the other, but does not want the other to have the right to demand delivery, he is not obligated to deliver, and hence such a declaration does not have force of contract.

§. 175.

b) *The will* is required to be *sufficiently declared*. As CONSENT is a declaration of will, it is either EXPRESS (explicit) or TACIT (implicit), §. 88. A contract that contains the express consent of both parties is an EXPRESS CONTRACT, and then it is either ORAL (verbal) or WRITTEN, §. 88. A contract that contains the tacit consent of both or in any case the other
152 party is a TACIT CONTRACT. If consent is attributed to either party while in truth he does not consent, from such a fictional consent no contract arises but a fictional one, and no contractual right and obligation can be born from it but fictional ones.

For this reason if consent is attributed either to one who is *ignorant* or to one who *lacks the use of his intellect*, it is not consent but fictional consent.

The *fictional* consent of another man is based on *sufficient reason* if it is attributed to one whose consent cannot be had at the appointed time, because of its manifest benefit to him. Such a fictional consent is usually called PRESUMED CONSENT, and based on it is a PRESUMED CONTRACT (called a quasi-agreement by some), in which the consent of one party is true while that of the other is merely presumed. Presumed contracts do not lead to right and obligation naturally, i.e. by themselves, because they belong to the fictional contracts; but once the real consent follows of the man whose consent was only presumed thus far, the fictional contract turns into a true one. Consent that comes after the fact is called RATIFICATION, which can be express or tacit, §. 88. So if you ratify what another man has done based on your presumed consent with the intention to obligate you, you are obligated by contract.

153 In the civil state there are *juridical deeds* that create right and obligation just like contracts and hence are called presumed contracts and quasi-agreements, e.g., *managing of business*, where another man's business is conducted without his consent with the intention to obligate him to one's self. But in this and similar cases it is not necessary to create a fictional contract and quasi-agreement, because the obligation for the man whose business is managed, although it is not born *from his consent*, nonetheless arises on another ground that is valid enough: from a superior's *law*. Hence Roman law itself determines that an obligation of this kind does not arise *from a quasi-agreement*, but as if *from an agreement*. For an obligation that is produced directly by a law and one that arises from a valid contract have *the same* and an equally valid *effect*, although they rest on *very different foundations*.

§. 176.

c) The will is required regarding a *determined object that is to be delivered*. An uncertain contract, which contains either an uncertain mutual consent or an uncertain object that is to be delivered, also leads to an uncertain right and obligation. The promises
154 that someone makes as a general assertion in courteous and respectful words come under this category, in as far as they involve a declaration that he wants to serve the other if an occasion arises that he is free to take.

§. 177.

Then d) the sufficiently declared *will of both parties*, promising and accepting, is needed, §. 167. So to establish a contract the act of just one person does not suffice, but some act of both parties is required.

Since of course promising and accepting by nature belong to the purely facultative matters, §. 83, it depends only on any man's choice whether he wants to promise or accept or not. Therefore for something that is mine to become yours and vice versa by contract not only my promise is required, but your acceptance as well, and not only the act by which I intend to accept, but your promise as well. So a promise without acceptance is not yet a contract, nor an obligatory act yet; nor is my declaration that I want what is yours to become mine a fact by which I acquire a right to what is yours without the addition of your consent as promissor. But once it is added, a contract is
155 posited and acquisition is posited. In this case acceptance preceding the promise is valid. So 1) OFFERING, whether it is conceived of as a promise that is not combined with the other man's acceptance or as a promise with the declaration that we do not wish the other to have the right to require delivery, §. 174, does not produce obligation as a contract. 2) A VOW, i.e., a more particular resolution to deliver something to please God, in as far as it lacks an accepting man cannot have force of contract among men. 3) And thus for a contract to be valid it does not in itself and necessarily require a *triple act*, although depending on the circumstances it is often achieved by even more acts undertaken from both sides.

§. 178.

Finally, e) the *will* of both parties must be *the same*. This identity of will also involves identity in the *concept* of that which is to be delivered and identity of *time*: the will of both the promissor and the promisee must exist at the same time, i.e., there must be SIMULTANEOUS WILL. For I do not agree with you if I do not want what you want, §.
156 167. So if what you now want I only wanted once but do not want now, there is no agreement but rather DISAGREEMENT, i.e., a declaration that I want the opposite of what the other man wants.

§. 179.

If the parties to the contract have different concepts of the object to be delivered, to the effect that the promise is an *action from error*, §. 125, i.e. that the promissor is mistaken in such a way that he would not have consented had he not been mistaken,

several cases should be distinguished: for the cause or author of the error in making the contract either is *either* or *neither* of the parties. In the former case its author is either the mistaken party itself, i.e., the *promissor* himself, or the other party, therefore the *acceptant*.

Now if the *promissor*, who is himself the *cause of his own error*, does not honor a contract that is otherwise valid, he acts against the sufficient declaration of his will, so against the right of the other party, and thus against *his obligation*, §. 165. For this reason, since he is obligated on the basis of the contract, it is valid. So in this case *the error in making a contract is imputed to the mistaken party* himself.

157 Suppose, however, that not the mistaken promissor Gaius, but the other party Titius as *acceptant* is the *cause of the error* that moves Gaius to make the promise: in this case Titius intends to deceive Gaius, §. 95. If a man by some deception brings another to promising by contract, so with the intention to acquire that which is the other man's, he causes 1) the other man to not truly consent, and at the same time 2) the other man's property to be diminished. Consequently if he forces the other to keep his promise, he diminishes the other's property without his consent, i.e., takes away what is his against his will, and thus *wrongs* the mistaken party, §. 141 n., hence commits *deceit*, §. 95. And as a consequence he does not acquire on the basis of such a contract, nor is the mistaken party obligated by it, and thus such a *contract* by which a man is induced to make a promise by the promisee's deceit is *invalid*. Such a *contract* is also called a contract built on *malicious intent*. In this case *the error is imputed to the deceiver*. So more generally: *an error in a contract harms* (should be imputed to) *the party that has caused it*.

If, finally, *neither of the parties* is the *cause of the error* in making the contract, he
158 who would not have made the promise had he not been mistaken does not truly want it and consequently does not truly consent. So such an *error* takes away consent, *takes away the truth of the contract*, §. 173, and hence [the contract] has no effect.

§. 180.

Furthermore for a contract to be valid it is necessary II. that *it is physically possible to deliver the object that is to be delivered*. For since no man is obligated beyond his physical ability, §. 8, the promissor is not obligated to deliver what he is physically unable to.

§. 181.

Finally for contract to be valid III. it must be without *wrongfulness*. So 1) on the promissor's part the *right to promise* is required; promising an illicit (wrongful, shameful) act contains a wrong. Disposing of what is another man's, which includes promising it to a third party, is forbidden by law, §. 145 and 167. Every object that is to be delivered that cannot be delivered legally renders the contract invalid. 2) On the part of the accepting party the *right to accept* is required. He who by a wrongful act compels another to make
159 a promise cannot legally acquire on the basis of such a contract. So a contract extorted by fear and wrongful force, and likewise a contract built on malicious intent, as stated in §. 179, is invalid.

TITLE VII
THE EFFECTS OF A CONTRACT

§. 182.

Now that we have established the requirements for a *valid contract*, we will descend to its *effects*. REVOCATION is a declaration of mind that goes against a prior declaration; REVOCATION OF A PROMISE is a declaration that one does not want to keep a promise. A promise that has not yet been accepted does not yet lead to an obligation, §. 177, and can therefore be rightfully revoked; an accepted promise obligates, and therefore can only be revoked wrongfully by the promissor considered in himself. To that extent *a contract gives an irrevocable right*, imposes an *irrevocable obligation* (the need to persevere), and he who by contract has promised something is not allowed to repent of his promise.

160 From this it is also clear that anyone can establish an obligation for himself at his discretion by means of a contract, besides the obligation which a natural law establishes for him directly. Thus *every obligation* is either *based on a law* (solely or directly, namely without intervention of the obligated subject's will) or *based on a contract* (simultaneously, because obligation based on a contract also derives its force from the natural law on honoring contracts, §. 171).

If on the basis of a contract obligation you form a proposition, it will be obligatory and therefore a law, §. 32. Hence *contracts create a law between the parties*.

§. 183.

A man OWES (*specifically*, for it is often used *more generally* for *being obligated*) if he is obligated to deliver something to another. He who owes is a DEBTOR and the object to be delivered that he owes, i.e. that he is obligated to deliver, is his DEBT. A CREDITOR on the other hand is a man who has a right with regard to another as his
161 debtor and hence the object to be delivered, which the other owes, with regard to the creditor is his CREDIT. A promissor who has not yet delivered what he has promised becomes a debtor, and under the same condition the acceptant is the creditor, §. 171. Delivery of the debt is called its PAYMENT, so a debt must be paid, and hence also that which is owed on the basis of a contract must be paid by the promissor to the promisee.

§. 184.

Juridical FIDELITY (active contractual faith) is justice in honoring contracts; a man who is just in honoring contracts is called FAITHFUL. Promising by a valid contract that one will deliver something to another is MAKING A PLEDGE; keeping such a promise is FULFILLING A PLEDGE; not keeping it while one could keep it is BETRAYING (breaking) a pledge. Therefore *a given pledge must be fulfilled*, and hence *must not be betrayed*. Violation of a given pledge with malicious intent is called FAITHLESSNESS, the man who is guilty of it is FAITHLESS.

The judgment by which others attribute fidelity (active faith, both in the sense of
162 external law) to a man is called TRUST (passive contractual faith), which falls under simple good esteem, the right to which is innate to all, §. 97. Hence *any man must be presumed faithful and no man faithless*, §. 98.

§. 185.

Whatever and *how much* the promissor promises to the acceptant, that is alienated by the former and acquired by the latter in that quantity, §. 168. Thus *by accepting no more right can be acquired* than *the quantity that the promissor wanted to transfer* to the other, i.e., than he sufficiently declared that he wanted to transfer.

§. 186.

Because, therefore, that which has been promised by contract becomes the acceptant's own to which he has a right that no man should violate, and hence that no man should violate that which is connected with that right, *in general* from a contract there arises a *right* for the acceptant *with regard to any man, that he should not violate that own right acquired by contract*.

But in as far as that which by force of contract must be delivered has not yet been delivered, *in particular* from a contract there arises a *right* for the acceptant *with*
163 *regard to the promissor, that he should deliver*; this right, based on the act and will of the man who made the promise, naturally is a right whose corresponding obligation rests on a certain person only and is hence called a PERSONAL RIGHT. As for the rest, the general right falling to the acceptant with regard to any man, i.e. with regard to all indiscriminately, that no man should violate his right that he has acquired by contract—which therefore is a NON-PERSONAL RIGHT—also reveals its force before delivery, e.g., in the right not to tolerate anyone impeding the promissor in delivering.

§. 187.

The object to be delivered that is promised in a contract can be, as stated in §. 170, a *pure act* or a *thing* or some *right* that can physically and legally be transferred to another man.

As regards *acts*, both a positive act[10] and an act of omission—which includes tolerating an act by another man—can be promised, or more briefly: both an act and a non-act can be promised. So a positive act is delivered by doing, an act of omission by omitting, or in particular by tolerating another man's doing something.

164 *If the act promised in the contract has not yet been delivered, the acceptant has* 1) the *personal right with regard to the promissor* that he should deliver it by acting, or by not acting, or by tolerating the acceptant's doing something; 2) *the right with regard to any third party, that he should not impede the promissor in acting, nor force him to do anything that goes against the given pledge*.

[10] See "Remarks on the Translation," p. xxxiii.

§. 188.

Now as concerns *things* and *rights with respect to things, if by a contract a thing in particular* (an individual thing) *is transferred, i.e., alienated*, then once the contract is posited the dominion of the thing is acquired by the acceptant, §. 160 and 168. *If the thing has not yet been handed over, the acceptant has* 1) *the right with regard to the promissor that the thing should be handed over*, a personal right, 2) *the right with regard to anyone that he should not impede the promissor in handing over the thing or impede the acceptant himself in accepting it*, §. 186. As for the rest, 3) *the accepting party's right on the basis of such a contract* is a right that is connected to the promised thing and therefore to a certain thing, a RIGHT REGARDING A THING (real right).[11] The owner of a thing has the proper right to possess it, §. 143, and thus to exclude anyone from the
165 possession of the thing that is his, and can therefore also make any possessor of that thing hand it over to him; it follows *that such acceptant, if the thing is not possessed by the promissor and physically cannot be handed over by him, has the right with regard to anyone who is the possessor of the thing that is his, that it should be handed over to him.* This right of the accepting party follows from his right regarding the thing. *Mutatis mutandis* the same argument goes for *rights regarding a* particular *thing* that have been promised to another man.

§. 189.

If someone alienates a particular thing by contract, once the contract is posited the acceptant is posited to be the owner of the thing. If the promissor later hands over the thing to the acceptant, once the handover is posited the acceptant is posited to be the possessor of the thing, §. 120. So in this case *by the handover the accepting party begins to have the physical ability to use the thing to the exclusion of others; but it is not at that point only* that he begins to obtain the *legal ability to use the thing* to the exclusion of others, i.e., to have a proper right to the thing, because that right already falls to him
166 from the moment the contract was closed, and thus he does not begin to have it only from the moment of handover. So in this case the handover does not confer a new right to the acceptant, but merely gives him possession. To that extent *a handover is not naturally required for the transfer of dominion*. And this can be applied in the same way to rights regarding a thing that is alienated by contract.

> For this reason in natural law the distinction in rights cannot be admitted that Roman laws make with respect to contracts regarding alienation of particular things before their handover and after their handover; stating, namely, that *once the thing has* finally *been handed over* the acceptant has the dominion and the *right regarding the thing* (which in Roman law is specifically called a *real right*), a right therefore *against any possessor* of the thing in question; but that *before the handover* the acceptant only has a mere *personal right* regarding the promissor that the thing should be handed over (a *non-real right*).

[11] "Real right" is the literal translation of *ius reale*, *realis* deriving directly from *res*, "thing." See the end of §. 189.

§. 190.

Therefore the promissor cannot promise the same particular thing or right to a thing that he has promised to another by contract to a third party again later, §. 181. For at the very moment when the contract is closed, such thing or right ceases to be the promissor's own and becomes another man's own. To that extent *an earlier contract detracts from a later contract*.

167 §. 191.

If that which is transferred, i.e. *alienated, by a contract is a thing in general*, i.e. an undetermined thing of a certain kind—this often applies to a *quantity of things* that is transferred to another man, i.e. a group of things of a defined quantity—*and such a thing in general has not yet been handed over, the right to determine (choose) which individual thing of the agreed kind he wants to give to the other party* still *depends on the promissor's discretion*, §. 185. So from the very nature of such a contract it is clear that no particular thing can be said to belong to the acquiring party until the promissor has determined it by declaration; and this declaration can either be included in the handover itself, or be made by a separate act. Thus in this case *it is only from* such a *declaration by the promissor that the acceptant gains* the right connected to a certain thing, *the right regarding a thing; before* this *declaration*, i.e., from the contract alone, *the acceptant merely has the right with regard to the promissor that he should indicate which particular thing of the promised kind should be the acceptant's*, and therefore that he should simply do something, and consequently a *personal right* only; *but at the*
168 *same time also a right with regard to anyone that he should not impede the promissor in achieving this act.* And this personal right, in as far as it still excludes a right connected to a certain thing and therefore does not extend to any possessor of the thing, is the *non-real right*, as the Roman jurists call it, and the opposite of the real right or right regarding a thing.

§. 192.

Now *if a certain use of a thing* or *a right is conceded to another man,* that thing or right is not alienated, but nonetheless it is transferred and therefore the *right to* undertaking *certain acts* regarding such thing or by force of such right *is alienated*, §. 164. Hence *once such a contract is given, the acceptant's right is given* 1) *with regard to any man*, that he should not be hindered in this use of a right or thing that has been conceded to him; and in as far as the promissor has not yet fulfilled the contract, 2) the *personal right regarding the promissor*, that he should fulfill it, and consequently that he should tolerate the acceptant's actual use of that thing or right; and therefore, if using it is impossible without a handover, the right to demand the handover of that thing or right whose use has been conceded to him by contract.

169 §. 193.

The moment when the contract is closed is the moment when the object to be delivered becomes the acceptant's own. So the promissor is obliged to deliver what he has validly

promised from the moment when the acceptant demands delivery and as soon as the promissor can deliver. For this reason a debt must be paid, §. 183; a given pledge must be fulfilled, §. 184; a promised act must be performed; a particular thing or thing in general or a right that has been promised must be handed over, §. 188, 191; acts pertaining to the use of a promised thing or right must actually be permitted, §. 192; in one word: *promises must be kept, as soon as this is possible for the alienating party when the acquiring party demands it*.

§. 194.

The terms (conditions in the broader sense) under which, i.e. *the way in which, the promissor promises are the terms under which* or *the way in which the accepting party acquires and the promising party is obligated*. The DETERMINATION *of the contractual right* and *obligation* can either be gathered from the concept (nature, essence) of the
170 contract, or is established on the basis of the will of the parties once it is declared; the former is called NATURAL (tacit condition), the latter ARBITRARY.

Under the *natural aspects of a contract*, i.e., under the natural terms of the contractual right and obligation, also *come the things that usually are included in such an agreement*. Arbitrary terms comprise those by which that which is not sufficiently determined in natural law is determined further, as well as those by which the natural determination is canceled entirely.

For since entering into a contract is a matter of pure choice, §. 83, it follows that the parties can even add an arbitrary determination that contradicts the natural one (so a determination by which the natural one is removed) to a contract, and that therefore, all other things being equal, every added term is valid. For this reason *the natural terms of contractual right and obligation are valid only in as far as the contrary has not been stipulated* (the parties have not agreed on the contrary).

So if the contract determines the *time* when that which has been promised *must be*
171 *delivered*, only at the stated time can the acceptant demand delivery, not as soon as the contract has been closed as was stated in §. 193.

If a *time* is determined after which the *contract* must no longer *be valid*, the accepting party does not obtain a perpetual right as was stated in §. 81, but merely until that determined time.

If a thing has been *revocably* transferred, i.e., in such a way that the promissor can exclude the other man once more from the thing alienated if at some point he decides to do so, then such a contract does not give the promissor an irrevocable obligation and it is not forbidden for him to repent of his promise as stated in §. 182, but he is allowed to revoke his promise, and so forth.

§. 195.

An uncertain event from whose [actual] existence a right or obligation depends is called a CONDITION *in the stricter sense* in law. An event is conceived of either positively or negatively, whence the CONDITION is either POSITIVE or NEGATIVE. Furthermore the condition is POWER-RELATED if it depends on the choice of the man to whom a

right is transferred under it; CHANCE-RELATED if it depends on fortune; MIXED if it is partly power-related and partly chance-related. A CONDITION that postpones a right or
172 obligation until it is certain that the condition exists is SUSPENSIVE; a condition on the other hand that establishes a right or obligation that will last until it is certain that the condition exists is RESOLUTIVE.

§. 196.

Every condition added to a contract must be honored in as far as the parties have validly agreed on it, §. 194. Hence the condition itself is called an *added contract* and a *law* added to the contract, §. 182n. Therefore *if something has been promised under a suspensive condition* that is impossible by *nature* or *law*, *the contract is invalid*, §. 172.

Under the category of contracts under a suspensive condition come those containing an element of *chance*, i.e., a condition in which fortune dominates: e.g., *a lottery*, *a pot of fortune*,[12] *a players' contract*, *drawing lots*, *a wager* (die Wette), *buying in hope*, *insurance*, and so forth.

1) Karl Otto Rechenberg, *De erroribus iurisconsultorum in sponsionum doctrina*, Leipzig 1738.
2) Johann Ulrich von Cramer, *De aequitate in probabilibus exemplo emtionis spei illustrata (...) specimen novum juris naturalis*, Marburg 1731.

173 §. 197.

A man who promises a third party that which is another man's without the proprietor's consent violates the right of another man and hence closes an invalid contract, §. 181, and therefore since *by such an agreement nothing can be alienated, nothing can be acquired by it either*. Nonetheless there exists a *promise* and hence an *alienation* made in good faith, and therefore *putative*; there also exists an acceptance made in good faith or *putative acceptance*, and hence a *putative acquisition* based on a contract. From this a *putative contract* can be conceived of as well, as a putative *method* both *of alienating* and *of acquiring*, §. 132. A man who in good faith accepts a thing that is another man's from a non-owner, whether he assumes the promissor to be the owner or assumes the promise to be made with the owner's consent, acquires the promised object, until in the former case the true owner becomes known to him or in the latter case until the owner declares his disagreement. Thus on the basis of a putative contract *putative dominion*, and for the same reason also a *putative right regarding a thing* can be acquired, and a *certain use of a thing* or *right* can be *putatively* acquired. Once the thing has been handed over to him such an acceptant becomes its possessor in good faith, §.

[12] Samuel Pufendorf, *De jure naturae et gentium* V.ix.7: "It is called a *pot of fortune* when a certain number of tokens or tickets, some inscribed and some blank, are cast into a bowl, and one is charged for the privilege of drawing them out, the drawer receiving what the writing describes. This contract is very similar to buying in hope, although it clearly includes an element of chance" (transl. C. H. and W. A. Oldfather, Oxford 1934).

174 129ff., and thus by analogy of reasoning he can also possess the *right* in good faith and *use* the thing or right in good faith.

TITLE VIII
PRICE AND MONEY

§. 198.

If a man receives nothing in return for that which he delivers to another, he delivers GRATIS; if two men both receive something in return for what they deliver to the other, they deliver MUTUALLY. A CONTRACT that contains a promise that must be delivered gratis (a gratuitous promise) is called GRATUITOUS (beneficial); one that contains a promise that must be delivered mutually (a mutual promise) is called a CONTRACT OF EXCHANGE (an exchange in the broader sense).

§. 199.

If in contracts of exchange neither party wants to deliver anything gratis, both intend
175 what they transfer to the other to be of no less profit than what they receive in return, i.e., to receive as much as they transfer, and thus they intend that which is transferred mutually to be of equal profit. To this end the objects to be exchanged must be compared and its quantity of profit attributed to each, for their equality to be established as far as possible.

§. 200.

The quantity of perfection *in general* and the quantity of profit *in particular* that is attributed to some object is its VALUE; defining (determining) value is called ESTIMATING; the determined value is its PRICE. So for *things*, *rights*, *acts* (work), *for whatever is to be exchanged*, and more in general *for whatever was to be estimated*, *a price began to be established*.

§. 201.

Things, rights and acts are exchanged principally in order to meet a mutual need, and
176 therefore mostly are objects that are not *of the same kind*, HOMOGENEOUS, but *of a different kind*, HETEROGENEOUS. Hence in the same way this should be stated of their benefits as well. Furthermore value and price involve a relation of quantity or (mathematical) *ratio* of two objects. Heterogeneous objects do not have a *physical* or natural ratio; so the ratio that is attributed to them is attributed by the *choice* of men. And to that extent, and hence most often, *value* and *price involve an arbitrary* and *fictional quantity.*

§. 202.

That from which the value of another object is defined is its 1) *measure*, and in as far as it expresses identity of value with the other object, i.e., equality as to benefit, it is 2) its EQUIVALENT. The price of A cannot be conceived of without assuming something

else, B, from which the value of A can be estimated. So the B that is assumed is the equivalent measure of A. For this reason *anything that expresses the price of another object can be substituted for it as regards value,* and *can therefore be exchanged for it without loss*, §. 199.

177 §. 203.

Any man by force of natural liberty *has the right to set a* higher or lower *price on* his *things*, *rights, and acts at his discretion*, and to *change, raise or lower* it at any time as he pleases. Hence *any man's judgment in determining the price of what is his own must be respected*.

§. 204.

Since a price mostly is a fictional quantity, §. 201, the price of any object that is to be estimated based on another object or exchanged with it can be determined from the quantity of the other object at men's discretion. Hence any object that is to be substituted for another can be the equivalent and price measure of any other object. This price of some object, which is determined through the quantity of any other object indiscriminately, is the ORDINARY PRICE.

§. 205.

The ordinary price is often very hard to attach to objects that are to be exchanged. For if
178 it happens —as is usual—that while you have something I want, I do not have anything that you want in return, how then can the ordinary price meet the mutual need? Hence to be able to define the price of things and other objects all the more easily and to the common benefit of all, a determined physical quantity of some thing was assumed from which measuring it would be possible. And that thing of which some defined physical quantity is taken as the price measure of any objects to be estimated is called MONEY. A certain bit of money with a stamp is a COIN.

§. 206.

So *money was taken* as a price measure and equivalent of all things, rights, acts and anything that has to be estimated, §. 202, and therefore *as a universal price measure and equivalent*. Hence it is thought that a certain quantity of money can be substituted for all objects to be exchanged, §. 202. And this price of some object, which is defined through a quantity of money, is called the EMINENT PRICE.

179 §. 207.

Thus the main use of money is that as the equivalent of all objects to be estimated it can be substituted for any things, rights and works, and exchanged with them more easily than anything else. Now if money is actually exchanged, it passes from the dominion of one man to that of another; from this it is obvious that *money is a thing whose main and ordinary use consists in alienating*.

180

TITLE IX
BENEFICIAL CONTRACTS AND CONTRACTS OF EXCHANGE

§. 208.

That which can be promised and transferred to another man by a *gratuitous contract* is, in general, something to be given or done, i.e., it is an act, §. 187, or a thing, or any other right, in as far as there is no physical or legal obstacle in the way.

In particular, 1) *as regards a thing*, by a gratuitous contract both the thing itself and any right included in dominion can be alienated, and hence co-dominion, a right regarding a thing, communion of a right regarding a thing, direct or profit dominion or any servitude can be established for another man, §. 161 and 162, or also a certain use of a thing or of a right included in dominion can be conceded to another man, §. 164.

Indeed if there is some *right* that has been acquired *with regard to another person, a personal right*, §. 186, that we can transfer physically without being prohibited by a
181 law, then that can also be delivered gratis to another man, and hence can be validly promised to another by a gratuitous contract, either regarding the substance or regarding a certain use, §. 163.

As for the rest, it is clear by itself that *several objects to be delivered* can also be comprehended *together* in a single agreement, giving rise to a COMPOSITE CONTRACT, i.e., a contract that can be dissolved into several contracts, each of which can exist by itself; its counterpart is the SIMPLE CONTRACT, which cannot be dissolved into several. Hence one can also make several promises of giving or doing something and promise several acts, things, rights of any kind in a single gratuitous contract as in a composite agreement.

§. 209.

A contract by which a thing or right is alienated gratis is a DONATION. That which is given is a GIFT (present); he who promises a gift is the GIVER (donor); he who accepts it is the RECIPIENT. So 1) without acceptance there is no donation, §. 177. 2) The way in which and the law under which the giver transfers that which is his is the way in which the recipient accepts the gift, §. 194. 3) The donor does not have any remaining
182 right to the gift, unless it was reserved in making the contract, i.e., a right of which the giver in donating has sufficiently declared that he wanted to reserve it to himself, §. 194.

§. 210.

A contract by which a certain use of a thing or right (as opposed to *abuse*, §. 156) is conceded to another man gratis is a LENDING CONTRACT.[13]

[13] This paragraph and the next are about *commodatum* (a proper loan, loan for use) which in Roman law is distinguished from *mutuum* (loan for consumption, see §. 219). In §. 219f. I have translated *commodatum* with "non-consumption loan" to make the difference clear.

If a certain use of a *thing* is conceded to another man, the parties agree that the acceptant will use the thing to a certain end, and when he has finished using it he will return it to the promissor, i.e., restitute it specifically. RESTITUTION OF A THING SPECIFICALLY means returning the same thing numerically that one has accepted; RESTITUTION IN GENERAL means returning another thing of the same type or as much of the same type. And from *this consent* and *intention* of the parties on conceding a certain use of a thing to another man, including conceding it gratis and hence lending some thing, the *right* and *obligation* based on *this contract should be measured*, both of the *promissor* and of the *acceptant*. Therefore a *lending contract merely benefits the acceptant, but the promissor* in a contract on loaning a thing that is his to another man *remains the full owner of the thing loaned*, §. 185.

183

§. 211.

Since a thing whose use is conceded to another man must be in the other man's power for him to be able to use it, §. 120, he who concedes *is obligated* to an act by which the thing in question comes into the other man's power, and hence is obligated *to hand the thing over*; and then the man to whom its use is conceded is obligated to return the thing specifically once the use has ended. In as far as the thing has been handed over and not yet restituted, a lending contract is called a LOAN (agreement of loan); and so it is easy to understand what is *properly* called a THING ON LOAN, a LENDER, and a BORROWER. The fact that natural law conceives of a *thing on loan*, *a lender* and *a borrower in a broader sense*—that is: once a *lending contract* is posited, even if the promised thing has not yet been handed over—is of no importance.

As for the rest, a certain use of a *thing* that is ours as well as of a *right* that is ours *regarding a thing* or *another person* can be conceded to another, indeed even the *use of a right regarding ourselves*, i.e., the use of our own faculties (the powers of soul and
184 body),[14] regarding which everyone has an innate right, §. 65. Such a concession is in any case found in the *promise of a certain act*, i.e., of a certain *work* of ours. For this reason the use of all this can also be conceded by a gratuitous contract, and hence *things*, *rights* and *work can be lent*.

§. 212.

A contract by which a man promises to guard a thing that is another man's gratis is called a DEPOSITING CONTRACT and is sometimes called a DEPOSIT if the thing has been handed over and not yet returned. He who commits (hands over) a thing that is his own for another to guard is the DEPOSITOR; he who undertakes (accepts) its custody gratis is the TRUSTEE. *In a broader sense*, however, we can form the concept of *depositor*, *trustee*, and hence also of the *thing deposited* in the sphere of natural law, and use these terms as soon as a depositing contract is taken (just as we observed the same regarding loans in §. 211). As for the rest, every deposit is established to the benefit and for the sake of the depositor alone. Hence 1) since the depositor does not transfer the thing nor its use to the other man, nor concedes its use to him, *the trustee*

[14] See §. 87n.

185 *is not the owner of the thing deposited and cannot use it either*. Moreover 2) *the trustee is obligated to restitute the thing deposited with him to the depositor as soon as he asks it back; but* 3) *he is not obligated to its custody beyond the agreed time*.

§. 213.

I RETURN A PROMISE if in my turn I promise something to a man who promises something to me. So a contract of exchange 1) contains a promise in return by the acceptant, which is accepted by the promissor in his turn, §. 198. Hence 2) by such a contract both a right is acquired and an obligation is contracted on both sides. And so 3) a contract of exchange is a *composite contract*, §. 208, and can be dissolved into a twofold agreement.

§. 214.

Since those who CONTRACT with one another, i.e., enter into a contract of exchange with one another, contract a mutual obligation, prec. §, they usually intend that which is mutually transferred between them to be *equal* (as to benefit and hence value and price, in one word: equivalent, §. 200 and 202). Consequently *contracts*
186 *of exchange usually take into account equal delivery by both sides*, §. 199. This equality, however, naturally depends on any man's judgment, §. 203; so in a contract of exchange, equal is that which the parties deem equal. Since, therefore, any parties to a contract declare—by the act itself and tacitly in any case—that they deem equal that which they promise to deliver to one another, and moreover no man is obliged to follow the judgment of others in determining the price of what is his, *any party to a contract has the right to estimate that which he transfers to the other man at a price no less than what he receives in his turn*. As for the rest, an *error* in a contract of exchange should be judged from the same principles as an error in a contract in general, §. 119.

* There is no place in natural law for the principle of decision that in Roman laws is derived either from the judgment of a *fair-minded valuer of things* or from the so-called IMMODERATE WRONG, which consists in a party's loss from an agreement (a contract of exchange) in as far as it exceeds half of the usual price.

187 §. 215.

In a contract of exchange both parties must deliver: either give or do that which is promised, §. 170. Hence *simple contracts of exchange* fall into three categories: 1) *do ut des*, 2) *do ut facias*, 3) *facio ut facias*;[15] *composite* ones arise from a combination of these simple ones. As for the rest, it is self-evident that whatever can be promised by contract with regard to another man, §. 208, can also be promised by a contract of exchange.

[15] "I give so that you will give," "I give so that you will do," "I do so that you will do."

§. 216.

A contract by which a thing or a right is alienated for a certain sum of money is called BUYING AND SELLING. He who promises a thing or right is called the SELLER; he who promises money, the BUYER; that which is for sale, and specifically a movable thing that is for sale, the COMMODITY. *If a thing is sold specifically, its dominion passes to the buyer as soon as the contract is closed*, §. 188. *The dominion of money*, however, as a THING
188 IN GENERAL THAT IS PROMISED, *is not acquired by the seller*[16] *unless it has been handed over or has been shown physically*, §. 191. *As soon as the contract is closed, the seller is obligated to hand over the thing sold and the buyer to pay the money*, §. 193, *unless it has been stipulated otherwise*—e.g., if the seller hands over the commodity while giving the buyer credit for the price, or vice versa if the buyer pays the money while trusting the seller.

§. 217.

A contract by which a certain use of a thing or right, §. 211, is conceded or a certain work is promised for a certain sum of money is called LETTING AND HIRING. The sum of money itself in this case is called RENT or HIRE.[17] He who concedes the use of a thing or right in this agreement is the LESSOR OF A THING OR RIGHT; he who promises his work is a HIRED WORKER. A man who promises rent for the use of a thing or right is the LESSEE OF A THING OR RIGHT; one who promises hire for work is an EMPLOYER. He who rents a building or a piece of land is its TENANT. If the lessee lets out the thing, right or work let to him to a third party, this is called SUBLEASE. A thing that is let
189 remains in the lessor's dominion, so *the lessor can sell the thing that is let to a third party* and, more generally, *alienate it*; by such alienation, however, *he cannot take away the lessee's own right sought on the basis of this agreement*, to use the thing to a certain end, and if a certain term has been added, until the agreed time.

§. 218.

In buying and selling as in letting and hiring, money must be paid by one of the parties, §. 216 and 217, and as a consequence either contract is closed by means of money. A contract of exchange that is closed without money coming in is an EXCHANGE *in the stricter sense* (cp. §. 198), of which several species can be conceived of, §. 208. Generally, however, a *simple exchange* contains one of three types of contract: 1) *do ut des*, 2) *do ut facias*, or 3) *facio ut facias*, §. 215. An exchange that is composed of these simple ones is a *composite exchange*.

§. 219.

A contract by which a thing is promised in order to be restituted in general sometime is a CONSUMPTION-LOAN CONTRACT, and once the thing is handed over it becomes a

[16] The Latin text has "buyer" here, but the context makes it clear that that is an error.
[17] See "Remarks on the Translation," p. xxxiii.

190 CONSUMPTION LOAN.[18] From this arises the concept of the CONSUMPTIVE BORROWER, both *in the stricter* and *the broader sense* (as with the non-consumption loan, §. 211). So *the consumption-loan giver*, i.e., the man who promises a thing to have it returned to him in general sometime, *becomes the creditor once the thing is handed over*, §. 183; he who accepts the thing under the condition that he is to return it in general sometime, i.e., *the consumptive borrower*, *becomes the debtor once the thing is handed over*, §. 183. In this contract the parties' intention comes down to this: the borrower becomes the owner of the consumable thing borrowed and will return it in general, by which the lender will receive as much as he has given (the equivalent). Therefore a consumption-loan contract is mainly entered into with regard to things whose normal use consists in consumption or alienation and that cannot be restituted specifically for this reason. *In as far as a thing promised by this contract is only promised in general* (as mostly happens), *the borrower becomes its owner not at the moment of promising, but at that of giving or showing*, §. 191. A contract on a *quantity of things* to be given, for an equal quantity to be returned sometime, and in particular on a certain sum of *money* to be given to the other man, for an equal sum to be returned at some point, is a consumption loan.

191 §. 220.

Once the consumable thing on loan is handed over, the borrower obtains possession and use of the thing together with dominion; once the thing is returned the lender also regains possession and hence the use of such thing, together with dominion, and therefore receives as much as he gave before. So it is because of this consideration that *a consumption loan is the equivalent of concession of use of a thing that is one's own*. The use of a thing can be conceded to another man either gratis, from which a *non-consumption loan* arises, §. 210, or at a certain price, giving rise to the *letting and hiring of a thing*, §. 217. In a similar way a *consumption loan can be a beneficial contract* or *a contract of exchange; in the former case it is the equivalent of a non-consumption loan, in the latter of letting and hiring a thing*.

The price that the consumptive borrower promises for the use of the thing lent to him is called INTEREST (usury); a consumption-loan contract with interest is an INTEREST CONTRACT (usury contract), meaning particularly a contract for a loan of money with interest. Thus *interest is the equivalent of rent* or *hire*. So as the owner by force of dominion is allowed to obligate the lessee to promise rent in return for the use
192 of a thing that is his, he will be allowed all the more to demand interest in return for a consumption loan.

* Friedrich Wilhelm Pestel, *Dissertatio iuridica inauguralis repraesentans fontem errorum de odio usurarum legitimo investigatum et obstructum*, Rinteln 1753.

** [Jean-Baptiste Gastumeau], *Dissertation sur la légitimité des intérêts d'argent qui ont cours dans le commerce*, The Hague 1756.

[18] See §. 210n.

§. 221.

You ACT THROUGH ANOTHER MAN if you achieve that the other's action is your action from a juridical point of view. The other through whom you act is said to act IN YOUR NAME and hence to that extent is said to act IN ANOTHER MAN'S NAME with regard to himself, and to REPRESENT you (play your part). So *if a man acts in another's name, to that extent he is vested with another's right and in acting is bound to another's obligation; any right or obligation arising from his action is acquired for the other man*.

A man UNDERTAKES ANOTHER'S BUSINESS if he obligates himself to do something
193 in another man's name, i.e., to conduct some business in another man's name. If Gaius makes a contract with Titius on undertaking Titius's business, this contract is called a MANDATE; the man undertaking it is the MANDATARY (agent); the one whose business is undertaken, i.e. who *assigns* some business to another, the MANDATOR; and such BUSINESS is known as ENTRUSTED (assigned, given into another man's care). Thus a MANDATE is a contract by which a man undertakes another's business that the latter has assigned to him.

§. 222.

In this contract the parties' *intention* is for the mandatary to be obligated to conduct the business assigned to him for the mandator's benefit with the greatest diligence possible to him, and for the mandator to be obligated in his turn to acknowledge that which the mandatary does within the mandate's boundaries as if it had been done by himself.

Because, therefore, the mandatary by force of the mandate acts in the mandator's name and to that extent *represents* him, §. 211, *the mandatary* 1) *with regard to the*
194 *business assigned to him is vested with the same right and bound by the same obligation as the mandator himself has concerning any third party with regard to the same business*, §. 221. 2) *Whatever the mandatary does within the mandate's boundaries*, by force of contract *has the same effect both regarding the mandator and regarding any third party as if the mandator had done it himself, and* consequently *the mandator is obligated to ratify it*. *Anything a man does through another must be considered to have been done by himself*. For this reason, 3) whatever is seized, occupied, delivered or handed over to a third party by the mandatary as such, or is delivered or handed over to him as such by a third party, the mandator must be considered to seize, occupy, deliver or hand over to a third party himself, or it must be considered to be delivered or handed over to him by a third party. 4) Whatever the mandatary as such, i.e., within the boundaries of the mandate, declares, promises, accepts, and so forth, in the mandator's name, the mandator himself is understood to want, alienate or acquire.

§. 223.

A *mandate* can be *gratuitous* or a mandate of *exchange*. A mandate of *exchange* differs
195 from the letting and hiring of work and from a contract exchanging *an act for a gift or an act*, in as far as the mandatary's work in conducting the business assigned to him

is supposed to be so excellent that it is deemed not to allow of a certain estimate and determined price. Hence what a mandatary is promised in return for his work is called an HONORARY.

* As concerns the remaining *kinds of contracts* that are found to have been introduced by the positive law of so many diverse states: since their harvest is boundless, we cannot now linger on them, with the exception however of those without whose explanation one cannot arrive at an understanding of the further principles of natural law—we shall commemorate them in the appropriate place.

** As for the rest it is now clear that all contractual right and obligation derives its force and validity from the parties' *valid* consent or *intention*, i.e., in as far as that which the parties wish to achieve with their contract is physically and legally possible. If, therefore, some *contract case* is laid before one that must be decided following the norm of natural law, he who 1) carefully inquires into the *nature of the given contract*, 2) diligently examines the *conditions added* to the given pact in
196 order to ascertain the parties' mutual intention, both general and more specific, and also correctly links the precise case 3) to the principles of contractual natural law that we have established so far, will not easily go astray in eliciting a conclusion and decision of the case proposed to him.

TITLE X
SECURITY

§. 224.

Rather often a *security* and an *oath* are added to contracts. These generally have in common that they help to protect us from injuries by others in that which is ours, and hence to confirm the rights that fall to us regarding others and to substantiate
197 the obligations owed to us by others; consequently they help 1) to prevent wrongs, or in any case 2) to obtain restoration all the more easily for the loss caused. Any means of protection is called SECURITY *in general*; a contract for protection from a wrong is known as a (juridical) SECURITY *in particular*.

He who gives the security is the promissor in this contract; the acceptant, on the other hand, is the one who receives or demands the security and therefore, in as far as the security concerns the *protection of credit*, §. 183, the *creditor*. A security is demanded and given for the purpose that, *if he who is obligated to something fails to satisfy his obligation to the man receiving the security, the latter will* nonetheless *have no loss to fear from it*. For this reason *a security involves a contract* that is entered into *under a suspensive condition*, §. 195.

§. 225.

Since by means of a contract the acceptant acquires a right, §. 171, *the man receiving a security acquires a new right* to protection from wrong, and consequently *to protection of his prior right*, §. 52, 53, by means of the security. Such a right that is acquired for the
198 protection of another right is called a SUBSIDIARY RIGHT, and hence the former right

is called the PRINCIPAL RIGHT in this respect. Now if the principal right is supposed to be a contractual right, namely to the delivery of that which has been promised in the contract, and therefore a security is assumed that is given for the protection of the pact to be fulfilled, i.e., for the protection of the credit, then the security is called an ACCESSORY AGREEMENT and hence the contract from which the principal right derives is known as the PRINCIPAL AGREEMENT.

§. 226.

Since a security involves a contract, whatever is required for the validity of a contract is also necessary for a security to be valid. Moreover according to the parties' intention no right is given on the basis of a security but in as far as the principal right is given, §. 224; so if this condition is canceled, the right based on the security is canceled as well. Because of this, *for a security to be valid it is required* 1) *that it should involve a valid contract*, and 2) that *the principal right* for whose protection the security is given *should*
199 *be valid*, i.e., true. So in this sense we can affirm that the character of a security is such that it has no validity in itself, but follows the nature of the right to which it is attached. *An accessory agreement* that *accedes to an invalid principal agreement is invalid itself.*

§. 227.

Subsidiary rights that are acquired through a security for the protection of a principal right are established either with regard to a thing or with regard to a person. With regard to a *thing*, whether it is dominion or some specific right; with regard to a *person*, that something should be delivered, whether that person is the *debtor himself*, and more generally he who is obligated from the principal right, or *someone else*.

§. 228.

A contract by which a man promises another's creditor that which he wants to deliver in case the other man does not deliver what he owes, is a SURETYSHIP. A suretyship thus involves a security, §. 224, which is hence called a *security by suretyship.* In this contract the man who receives the security is the *creditor*; he who obligates himself for
200 another is called the SURETY; the man for whom suretyship is given, the PRINCIPAL DEBTOR—from which the latter's obligation is called the PRINCIPAL, and that of the surety the ACCESSORY (subsidiary) OBLIGATION. So 1) *if the principal debtor does not pay his debt, the surety is obliged to pay it*; 2) *if the principal debtor pays, the surety is released*. A man who gives suretyship for a surety as such is the SUCCESSIVE (substitute, vicarious) SURETY.

§. 229.

PLEDGING is the act by which a man establishes a right with regard to a (corporeal or incorporeal) thing for his creditor, so that if the debt is not paid he is compensated with the thing. So pledging involves a security, §. 224, which hence is called a *security by pledge. The thing pledged*, i.e., *assigned to the creditor*, is called the PLEDGE; the creditor's right to the thing pledged to him, the RIGHT OF PLEDGE, both *in general*.

If a thing is pledged in such a way that the creditor simultaneously gains the right to
201 retain it until the debt is paid, such a pledged thing and such right of the creditor are known as a PLEDGE and RIGHT OF PLEDGE *specifically*. If this is not the case, i.e., if a thing is pledged without simultaneously transferring to the creditor the right to retain it until the debt is paid, such a thing is called MORTGAGE, and such right of the creditor the RIGHT OF MORTGAGE. But *pledge* and *mortgage* are often used to mean *the right of pledge* and *the right of mortgage*.

Thus *with regard to a pledge* in the specific sense *the creditor has the right to retain it until the debt is paid, and if it is not paid, to compensate himself with it; with regard to a mortgage*, however, *he only has the right to make sure that he is compensated from the mortgage if the debt is not paid*. So *in the meantime the creditor cannot use or have usufruct from the pledge, unless this is conceded to him by an additional contract*; such a contract by which the fruits of the thing pledged are conceded to the creditor to enjoy by way of interest is an ANTICHRETIC[19] CONTRACT. If the debt is paid for whose security the right of pledge or mortgage was established, *the pledge or mortgage* IS REDEEMED; so *once redemption has been made, the pledge must be restituted* and *the mortgage is made free*.

202 **TITLE XI**
OATH

§. 230.

ATTESTING means affirming the sincerity of what one says with more specific words. The goal of attestation (assertion) is to give the other man more certainty regarding our mind, namely that in what we say we are speaking sincerely, and consequently that internally we actually think or want that which we are expressly declaring that we think or want, §. 89. Thus *by attesting the* (moral) *truth is confirmed of what someone says who asserts something*. Attestation by which someone confirms that his promise will be fulfilled is PROMISSORY, while any other ATTESTATION is ASSERTORY. *A promissory attestation* is *a confirmation of one's faith*, i.e., that one will fulfill the pledge that one has given to another, §. 184.

203 §. 231.

An attestation by which God is invoked as a witness to what is true and avenger of what is false (for He is aware of our speaking the truth and will punish falsiloquy with malicious intent, §. 92, 94) is an OATH. So an oath, like any other attestation, is either PROMISSORY or ASSERTORY, prec. §., and a contract that the promissor swears to keep is a SWORN CONTRACT.

§. 232.

The goal of an oath is that the man for whose sake it is taken may be more certain of the mind of the man taking it; the specific goal of a promissory oath is to give the acceptant

[19] *Antichresis* is a Greek technical term for substitution of usufruct for interest.

more certainty regarding the promissor's faith. For this reason an oath is a means of protection and hence a promissory oath is usually called a *security* (in the broader sense) *by oath*, §. 224.

Now for that goal to be attainable it is necessary for the man taking the oath to be certain that God exists, that He knows the thoughts of men and that he punishes lies
204 and faithlessness. For this reason 1) *a man who denies that God exists* or *knows men's thoughts*, or *who thinks that He does not care about the world of mankind, cannot take an oath*, i.e., it is useless if he does. On the other hand if someone who believes in false gods instead of the true one, and attributes to them that of which a man taking an oath must be certain regarding the true God, takes an oath, he swears truly: from his perspective it is the same as if he had sworn by the true God. So 2) *an idolater can swear by his false god*.

§. 233.

Now we gain more certainty regarding the mind of the man taking the oath by means of a *new motive*, by which he is bound more strongly to sincerity in what he declares, be it in general in speaking the truth or in particular in delivering his promise. This motive, of course, is derived from God's perfections: His divine omnipresence, omniscience, omnipotence, justice and sanctity. And this motive imposes a very strong and
205 also new obligation to sincerity on the man taking the oath with regard to God, §. 29, but with regard to the human person to whom the oath is sworn it does not produce a new obligation.

* Johann Wilhelm von Göbel, *Dissertatio academica de origine, usu et abusu iuramentorum*, Helmstedt 1738.

** Friedrich Lebrecht Stolze, *Vernunftmäßige Beurtheilung der heutigen Eydschwüre*, Leipzig 1741.

§. 234.

Because, therefore, an oath considered in itself does not produce an external natural obligation, §. 49, prec. §., *for me to have a right on the basis of another man's oath some prior right must be supposed and therefore an earlier obligation of the man taking the oath that is strengthened by a new internal obligation through the oath*. So if *the oath* 1) *is added to a spurious obligation*, e.g., to a contract that is wrongful or is invalid for some other reason, it gives no right, *it does not heal the defective obligation*, it does not render the invalid contract valid; *if*, on the other hand, 2) *it is*
206 *added to a founded obligation*, a valid promise, *it confirms it*, and *to that extent the oath itself is valid*.

* Thus an oath, like a security, follows the nature of the obligation to which it is added. If a man who is obligated to keep a promise takes an oath that he will fulfill the contract, he is also obligated to keep the oath. If on the other hand a man by natural law owes nothing on the basis of a defective promise, he is not obligated to deliver what he has promised either, even if it was confirmed by an oath.

** In *ethics* and *practical natural theology* a distinction can be made between an *oath regarding something illicit*, i.e., regarding delivery of an illicit object, and an oath regarding something *licit*, and the latter can be asserted as valid, even if the other man was induced in an wrongful way to make the promise and confirm it with an oath; indeed on the same principles every *oath that can be kept without harm to one's eternal salvation should* also *be kept*. But this *internal obligation* of the man taking the oath, by which he is obligated *to God*, considered in itself is not simultaneously an *external obligation* by which he is obligated to the *man* for whose sake he takes the oath.

§. 235.

Violation of an oath with malicious intent is called PERJURY; he who is guilty of
207 perjury is an OATH-BREAKER. An *oath-breaker wrongs with malicious intent*; in as far as he commits perjury regarding an agreement he is *faithless*, §. 184; in as far as in the act of swearing itself he intends to deceive the other man he is a *liar*, §. 95 and 92, and a *blasphemer* or guilty of blasphemy at the same time, since BLASPHEMY consists in (morally, §. 17 and 22) malicious language that goes against the perfections of God.

TITLE XII
SUCCESSION

* Joachim Georg Darjes, *Exercitatio philosophica de adquisitione hereditatis eiusque effectibus secundum ius naturae*, Jena 1746.

** Rutger Johann Kellinghusen, *Dissertatio juridica inauguralis de adquisitione hereditatis secundum principia juris naturalis et civilis*, Franeker 1750.

§. 236.

The owned things and proper rights that a man has acquired and of which he can
208 dispose as his own things (i.e., a man's corporeal and incorporeal property, §. 163), considered in general, are called his GOODS *in the juridical sense*, and the whole of the goods his ESTATE (patrimony). He who after another's death acquires a right regarding the goods that he had SUCCEEDS TO THE GOODS OF THE DECEASED and in one word is called the HEIR; the goods of the deceased are known as the INHERITANCE. And so *succession to a deceased man's goods*, which is also *simply* called SUCCESSION, indicates a method of acquiring an inheritance, while the RIGHT TO INHERIT means the proper right to succeed to a dead man's goods.

§. 237.

DISPOSING OF one's future INHERITANCE (of one's goods for reason of death) means sufficiently declaring whom one wants to be the heir to one's goods in the event of one's death. Suppose an inheritance in the natural state; either the deceased disposed

of it during his life, or he did not. I) *If the deceased did not dispose of his future inheritance in any way, the goods* that were his so far now cease to be his property and *become*
209 *no man's property*. 1) For when a being ceases to be, its every disposition ceases to be, and therefore when a man dies all his right and proprietorship ends; 2) by force of natural equality all have the same right regarding such goods, §. 71, 106, and hence no man has a proper right to them. So in this case the things belonging to the deceased become ownerless, §. 108, and as a consequence they fall to the occupant. Thus *in this case succession is a kind of occupancy*, and *to that extent there is no right to inherit by nature*.

* *Succession* that is determined by civil law in the absence of a disposal by the deceased, which is called *intestate succession*, cannot exist in the natural or extra-social state, §. 60. For where there is no *society*, no children, parents, spouses or state treasury can be conceived of either. And as to *others*, by what reasoning could their primary and *proper right to* a deceased man's *inheritance* be proved? Rather in that way the *equality in right of all men regarding everything*, §. 108, would be taken away, and a *prerogative* assumed, §. 72.

§. 238.

If, on the other hand, the deceased did dispose of his inheritance, he did so with or without a contract. Now if, therefore, II) he disposed of it *by contract*, such a contract
210 by which a man transfers his goods to another in the event of his death is called a SUCCESSION CONTRACT. Since anyone can dispose of his goods at will, and consequently both for the present and the future, §. 145, 236, *it is crystal clear that succession contracts*, all other things being equal, *are valid* as well. Thus *from such a contract the acceptant gains a right to inherit*, §. 236, which is a *right under a suspensive condition or conditional right* because it is suspended until the time of the promissor's death. So once this event has occurred the acceptant acquires the deceased promissor's goods on the basis of the succession contract.

* Suppose that the promissor reserves to himself a revocable wish: then a new condition of the succession contract is posited and hence the acceptant's right is doubly conditional, for it is suspended to the condition 1) of the promissor's death, 2) of his wish not having been revoked, §. 182 and 194n.

** A *succession contract* can be a *beneficial* contract or one of *exchange*, §. 198. If it is beneficial, it comprises a *donation*, §. 209, and is known as a *donation for reason of death* if the donor's revocable wish has been reserved; if it has not, it can be called a *donation in the event of death*. If you count a *donation for reason of death* among the *wills, there exists a will that is valid by natural law*.

211 §. 239.

Now if III) he disposed of his inheritance but *without a contract*, the concept of the WILL comes to the fore. A WILL is someone's express and simple declaration (without

the future heir's acceptance) by which he appoints a certain heir of his goods; a man who thus declares his will is called a TESTATOR. So from a will there arises no right to inherit whatsoever, not even conditional, for the appointed heir *while the testator lives*; upon his death however we grant that the appointed heir does not act wrongfully if he seizes the things left behind by the testator with the intention to have them as his property, and we concede that in this way he acquires dominion of these things, which can be done by right of occupancy, §. 237. To that extent, however, the method of acquiring in this case is not founded in the *will* and the *proper right* of the heir by will, but in the *occupancy* of the inheritance as ownerless things and the *right* to occupy *common to all* men.

212 §. 240.

But we have to reply to the question whether this *disposal by will* of the deceased *obligates the remaining men to abstain from the deceased man's goods*, in such a way that through the latter's death *the heir gains a primary and proper right to the inheritance based on the will*. A doubt has long been raised: *before the testator's death* the appointed heir *acquires no right to the inheritance* from the will, prec. §; *once the testator's death has occurred*, however, he no longer has any *right to transfer* the inheritance, and hence the appointed heir cannot *acquire any proper right to the inheritance* from the will as if from a transfer. And so it is clear that *wills do not belong to natural law*. For the rest, this question is theoretical rather than practical.

A. The validity of wills in natural law is defended by the following authors, among others:
   1) Jacobus Sappius, *Dissertatio juridica inauguralis de origine testamentifactionis activae*, Leiden 1742.
   2) Joachim Georg Darjes, *Dissertatio de adquisitione hereditatis*, cited at §. 236.
213 3) Johann Christian Claproth in the "Abhandlung, ob die Testamente nach dem Rechte der Natur statt haben?" in his *Sammlung juristisch-philosophisch- und critischer Abhandlungen*, Stück IV Abhandl. 10, Göttingen 1747.
   4) Johann Gottfried Speirmann, *Dissertatio philosophica qua testamenta iuris naturalis esse demonstratur*, Helmstedt 1747.

B. But it is denied by:
   1) Heinrich von Cocceji (Coccejus), *Disputatio iuridica inauguralis de testamentis principum*, Frankfurt (Oder) 1699.
   2) Stephanus Wischer, *Dissertatio juridica inauguralis de testamentis juri naturae ignotis*, Utrecht 1720.
   3) Georg Christian Gebauer, *De origine testamentorum minime ex iure naturali repetenda*, Göttingen 1736.

214

PRESCRIPTION,
Which Is Unknown to Natural Law

You will find authors on prescription in as far as it belongs to natural law in Meister's *Bibliotheca iuris naturae et gentium*, part III, d. 39ff., under *praescriptio*.[20]

A. The following authors first and foremost *defend* the cause of prescription, together with Grotius and Pufendorf:
   1) Johann Werlhof, *Vindiciae Grotiani dogmatis de praescriptione inter gentes liberas contra (...) Petrum Puteanum*, Helmstedt 1696, repr. 1720.
   2) Christoph Andreas Meycke, *Dissertatio de naturali principio usucapionis et praescriptionis*, Altona 1754.

B. And these *argue against* it:
   1) Pierre Du Puy, *Si la prescription a lieu entre les princes souverains?* including
215 the author's work *Les droits du roi tres-chrestien sur plusieurs estats et seigneuries possédées par divers princes voisins*, Paris 1655, repr. Rouen 1670. Du Puy mostly argues against Grotius.
   2) Daniel Friedrich Hoheisel, *Dissertatio inauguralis iuridica de fundamentis in doctrina de praescriptione et derelictione gentium tacita, distinctius ponendis*, Halle 1723.
   3) Gebhard Christian Bastineller, *Dissertatio iuridica inauguralis de eo quod iustum et aequum videtur in praescriptione immunitatis ab oneribus publicis*, Wittenberg 1740.
   4) Johan Ernst Gunnerus, *Dissertatio philosophica in qua demonstratur praescriptionem non esse iuris naturalis*, Jena 1749.

§. 241.

The question is raised whether a thing that is another man's can be acquired on the basis of its presumed dereliction; or, which is the same here, *whether prescription belongs to natural law*. For PRESCRIPTION (usucaption) is defined as a method of acquiring that which is another man's based on presumed dereliction by the proprietor.

Titius possesses a certain thing for some years, believing that he has dominion; then
216 Gaius wants the thing back by right of dominion and proves not only that it used to be his, but also that he has lost possession of it in such a way that he has been able to retain dominion in his mind all the time until now—or, as they like to say, he wants the thing back *having shown* not only *original dominion* but the *fault* (wrongfulness) *of the present possession*. In this case Titius is the *possessor of a thing that is another man's*, §. 129, and if he possesses it 1) *in bad faith*, he is obliged to restitute it to its owner on the basis of his misdeed; 2) if he possesses it *in good faith*, as to the past he is excused by the *right of* good faith and *putative dominion*, but now that the true owner appears, his right ceases and he is obligated to return the thing to its owner, §. 130.

[20] See Part I, "Introduction to Natural Law," note 11.

But now Titius, the possessor in good faith, insists that he has acquired the thing based on its dereliction by Gaius. Therefore he has to prove a sufficient declaration by Gaius stating that he wanted this thing that was his to remain his no longer, §. 166. He cannot prove an express declaration nor a tacit one and so he takes refuge with *presumed dereliction*, using this argument: a man who *knows that a thing that is his is possessed by another and for a long time does not contradict, although there is no*
217 *obstacle, must be presumed to have relinquished it*. In this way a method of acquiring would be constructed based on presumed dereliction by the owner, and prescription would be founded in natural law. But 1) if I *do not contradict* so that I may be without the *possession* of a thing that is mine, and another man may have its possession *in the meantime*, for as long as I do not contradict, that is completely different 2) from a situation where I *sufficiently declare* that I *want* to be without the *dominion* of a thing that was mine so far, and at the same time want another man to acquire dominion and thus a *perpetual right* with regard to it.

In this case, therefore, dereliction can be presumed only weakly, and even if it is presumed, as soon as the true owner demands the thing, presumption cedes to the truth which contradicts it. For this reason prescription in this sense cannot be a true method of acquiring that which is another man's; at the most it will be putative, as we have said, and to that extent *usucaption is unknown in natural law*.

* You should observe that in prescription the presumed *dereliction* is in fact always *fictional*, because the man who asks a thing that is his back from the prescriber
218 demonstrates his *wish not to relinquish it*, and therefore his true wish to the contrary, *by this very act*. From a fictional dereliction, however, just as from a fictional consent, §. 175, only a fictional and therefore no true right to acquire can be deduced.

** But the proof of prescription that is deduced from the owner's knowing and not contradicting is usually strengthened with the further reasoning: *he who does not do what he could and should have done is presumed not to want to do it and therefore to consent*. But how can the "should," as a perfect obligation, be proved? Now the retort is: because *it matters to the entire human race that the dominion of things be certain*. Of course it matters; but it also matters that other imperfect duties be shown. From this benefit no necessity in natural law can be concluded; nor does everything of which it matters that it be done, by itself and absolutely result in a perfect obligation for any free man to do it.

*** If you define *prescription* on the basis of Roman law as a method of acquiring based on long-lasting possession, combined with a rightful title and good faith, prescription is confounded even more easily. For a) *possession* considered in itself
219 is a matter of act, not of right, i.e., it involves a physical ability, not a right or legal ability, §. 120, 189; b) a *long duration of time* cannot be defined on the basis of the principles of universal law; c) the prescriber cannot be forced to prove *good faith* and *rightful title*, since any man should be deemed just because of simple good esteem, and therefore the possessor of that which is another man's should be presumed to be of good faith until the contrary is proved, §. 129; d) but nor can good faith and a rightful title effect anything but *putative acquisition* until the true owner appears, §. 132, 131.

**** Nor can the foundation of prescription be placed in *tacit dereliction*. For since from mere non-contradiction hardly any, and in any case only a weak probability of the will to relinquish is deduced, much less can moral certainty and sufficient declaration of such a will be gathered from it.

***** Whether, for the rest, the right to prescribe is alleged to be founded in *dereliction* or in *alienation*, either tacit or presumed, it is clear that the same arguments are in the way on both sides.

220

TITLE XIII
WAYS IN WHICH CONTRACTUAL RIGHT AND OBLIGATION ARE CANCELED

§. 242.

Since right and obligation affect a person and cannot be posited unless a person is posited, it follows that the dead, like those who have not yet been born, cannot have any right or obligation. So when a man dies, he is no longer subject to any right or obligation and thus all his rights and obligations are canceled, i.e., he loses all his rights, and all his obligations cease. *Death takes away all rights and liberates from every obligation*, and therefore death is a way in which right and obligation are canceled.

221

§. 243.

A TRANSMISSIBLE RIGHT is a right that, canceled in the man who had it, goes to another, i.e., one that, lost by the man who had it, passes to another. A right that cannot pass in this way is a NON-TRANSMISSIBLE (highly personal) RIGHT. In the same sense an OBLIGATION is also called TRANSMISSIBLE or HIGHLY PERSONAL. So *highly personal rights end with their proprietor's death*, i.e., they cease simply and fully; *transmissible rights* on the other hand, in as far as they have been transferred to an heir by a succession contract, *do not end*, for they cease only in a certain respect, namely with respect to the dead man; but they endure with respect to the heir to whom they are transmitted, because the heir takes the place of the deceased and acquires his rights, §. 236. In a similar way, *highly personal obligations* also *end when the man dies on whom they lay*, but *transmissible ones can go to another*.

An obligation that is connected with a transmissible right in the same person, in
222 such a way that when the right is given the obligation must be given as well, passes to the same man to whom the right is transmitted, and therefore such an obligation is transmissible. So *any heir who succeeds to a dead man's rights simultaneously succeeds to the obligations connected with these rights*.

* Whether a *right* that is sought *on the basis of a contract* is *transmissible* or *not* must be judged from the *intention of the parties*, and hence from the tenor of the contract or its nature, the nature of the object to be delivered and other circumstances.

** Samuel Friedrich Willenberg, *Mortem non omnia solvere*, juridical disputation, Gdansk 1734.

§. 244.

An acquired right with regard to a certain thing and an obligation regarding it cannot be posited unless the thing is posited; for this reason *once a thing perishes all right regarding it perishes*, whether that right was dominion, servitude or any other right; *at the same time all obligation ceases that had been acquired with respect to it.* And therefore the *annihilation of a thing* is a way in which right and obligation regarding it are canceled.

223 §. 245.

If a thing that is mine perishes by another man's *wrongful act*, the wronging party is obliged to restore the loss caused, §. 55, and therefore *my right ceases in a certain respect only* and not fully, *in such a way that instead of the lost right I gain a right with respect to the wrongdoer*.

If a thing that is mine perishes by pure chance, my right with regard to it, considered in itself, ceases and *ends* simply and fully. So *the owner suffers chance*, and more in general *he who had the right regarding a thing*, indeed *any kind of acquired right regarding a thing, suffers the destruction of the thing by chance*. It is possible, however, for the right to cease only not-fully, in such a way that the canceled right is followed by an equivalent right, e.g., with regard to a man who by agreement has taken upon himself the risk regarding such a thing.

* So if a *specific thing* that has been promised perishes by chance before the handover, the debtor's obligation to hand it over is canceled, indeed every obligation ends that he incurred on the basis of such contract; and hence every corresponding right of the creditor's, be it related to the thing or personal with regard to the debtor, also expires, and therefore the creditor suffers this chance, unless it was stipulated otherwise.

224 ** If, on the other hand, a *thing in general* has been promised, and some thing of this type perishes by chance before it has been handed over or specifically determined by sufficient declaration, the debtor's obligation to deliver another thing of the promised type does not end, nor consequently does the creditor's personal right to demand this delivery.

*** Hence also in buying and selling according to Roman law, if the thing has not yet been handed over the buyer suffers chance, but the seller does not bear the risk of the price that has not yet been paid.

§. 246.

Apart from these *general ways* in which rights and obligations are canceled, a *contractual obligation* to deliver (an obligation incurred on the basis of a contract), and hence the corresponding contractual right can also be canceled *specifically*, both by various *acts of the parties* subsequent to the contract and *without these acts*.

It falls under the latter case if in the agreement itself the *debtor's obligation is restricted to a* certain *place, time, state, condition* or some other determination, *so that*

225 *the obligation incurred must cease if such determination fails*; or if it occurs that the man who was the debtor also becomes the creditor, an occurrence that is called *confusion of debt and credit*.

* Karl Philipp Kopp, *Dissertatio inauguralis de clausula, rebus sic stantibus, secundum ius cum naturale, tum civile*, Marburg 1750.

§. 247.

By the delivery of the debt, i.e., its *payment*, §. 183, *the obligation incurred on the basis of the contract is canceled*, and thus the *debt, credit,* and *right of the creditor ends*, and *the debtor is released*. Now *the debtor must pay precisely that which is owed, entirely and as much as is owed*, and *in the same way, place, time*, and so forth, *in which it is owed*, as far as possible. Otherwise, if the creditor incurs any loss from it, it is born from a wrong by the debtor, and therefore is a loss that the debtor must restore to the creditor.

§. 248.

The act by which something else is paid instead of what is owed is called a GIFT IN
226 PAYMENT. Since payment must be precise, prec. §, one thing instead of the other should not be forced upon the creditor, and hence also *giving something in payment is possible to a willing party only, or if precise payment is impossible, and nonetheless the obligation to pay an equivalent endures. By a gift in payment* (made validly) *the debt is ended*.

§. 249.

The act by which a debtor who wants to pay his debt imputes to the creditor what he owes him is called COMPENSATION. In as far as the creditor would be wronged by the compensation, compensation instead of payment should not be forced upon him. To that extent *compensating* 1) *the debt of a particular thing with the debt of another thing or of the remaining debt of whatever kind*, prec. §, and 2) *a* LIQUID DEBT, of which it is certain that someone is obligated to deliver it, *with a* NON-LIQUID one, of which the same is not yet certain, *is only possible to a willing party*. On the other hand, *if the debts to be balanced are exactly equivalent*—for instance if on both sides a thing or quantity
227 of things of the same type are owed in such a way that the creditor could not suffer any loss from the compensation—*the compensation can be rightfully made, even if the creditor resists. Once the compensation has been made, the debt of either party ends* inasmuch as it has been compensated.

§. 250.

The wrongful postponement of delivery is called DELAY. So a man who postpones what he has to do beyond the time when it has to be done is in delay. If *a debtor* is in delay of *payment*, he *is obligated to the creditor on the basis of a wrong*. A creditor's demanding payment from a debtor is called REMINDING. *A debtor who has been reminded is naturally obliged to pay as soon as he can*, §. 193. So if he postpones payment without a

rightful cause, he begins to be in delay from the moment of reminding, and is obliged to restore what loss the creditor suffers from it.

Now if, on the other hand, *the debtor* OFFERS PAYMENT *to the creditor*, i.e., declares that he is ready to pay, *but the creditor declines to accept the offered payment without a rightful cause, the* DEBTOR *is released from the obligation if he delivers as much as he*
228 *can by an act of his*, e.g., if he places himself outside of possession of the thing owed in such a way that it is in the creditor's power to seize it. Whatever loss the creditor suffers from the omitted seizure is only his own doing, §. 72 *Prol*., and therefore it cannot be imputed to the debtor, §. 31 *Prol*. So *there exists an offering of debt* as well, which serves as payment and *by which the debtor is* therefore *released*.

§. 251.

I REMIT A DEBT *in general* (my right with regard to a debtor as such), if I sufficiently declare that I do not want the other man to deliver that which he is obligated to deliver to me—more briefly: to pay his debt to me. A gratuitous contract by which a creditor remits a debt is a REMISSION *specifically* (remission contract, release contract *in the strict sense*, for sometimes it is used *in a broader sense*). He who remits a debt renounces his right with regard to the debtor, §. 158, and *the debt that is remitted ends*. A CONTRACT ON NOT ASKING also comes under remission; by it the creditor and the debtor expressly agree that the debt is not to be asked for.

229 §. 252.

In general, therefore, *to end a debt the agreement of debtor* and *creditor is naturally sufficient*. And such a mutual agreement must be regarded as a *contract* by which the creditor promises something and the debtor accepts, because *the release from an obligation is equivalent to the acquisition of a right*, and *the creditor* in this case obligates himself not to demand the debt, and therefore in fact *promises an act of omission*, §. 187.

If the debt that is ended by mutual agreement was based on a contract, such agreement is a mutual agreement to the contrary and hence is a mutual disagreement, §. 178, and it involves a contract that is opposed to the previous contract on which the debt was based. For this reason *the debtor is released by mutual agreement* or *contract*, and in particular *the debt that was incurred by contract ends by mutual agreement to the contrary*, or *mutual disagreement*, and *by a contract to the contrary*. And in this sense (cp. §. 190) *a later contract detracts from an earlier one*, and *by the later contract the earlier one is dissolved*.

* If *delivery of the debt* has been promised *under oath*, the validity of the oath is canceled once remission has been made or once a contract to the contrary has
230 been closed, §. 234. And by the same reasoning *a contract of which* the parties *have promised* each other *by a* mutual *oath that it would not be dissolved*, by external law in any case does not impede the parties from *dissolving* it by mutual disagreement and hence by that very fact from *releasing the oath* by which they have bound each other. For RELEASING AN OATH is a declaration by which a valid oath is made invalid.

§. 253.

Apart from these ways in which *a contracted obligation is* ended and *fully removed*, there are other ways in which a contracted obligation *is removed not-fully* only; that is, in such a way that another obligation follows the one that has been removed, i.e., is substituted for it—this can happen either by changing the debt itself, i.e., the object to be delivered, or by changing the persons between whom the debt lies.

Changing a prior obligation to another as to the cause or way of its being owed while the creditor and debtor remain the same is called NOVATION. If the debtor and creditor agree to the novation, the prior obligation is canceled by the novation in such
231 a way that the new obligation is substituted for the old one, and consequently *once the novation is made the debtor is released from his former debt, but is bound to the new one*.

§. 254.

ASSIGNMENT is an act by which the debtor instead of paying indicates to the creditor that another will pay for him, i.e., substitutes another man to pay in his stead. The debtor who substitutes another man is the ASSIGNER; he who is substituted is the ASSIGNEE. *If the creditor* and *the assignee agree to the assignment*, by force of this contract *the debtor is released* with regard to the creditor to whom the assignment is made and to whom instead of the original debtor the assignee is now obligated.

§. 255.

An *EXPROMISSOR* promises another man's creditor that he will pay the other's debt to release the latter from it. *Once the* expromissio *has been accepted by the creditor* the *expromissor* transfers the debtor's obligation to himself and thus *the debtor is released*,
232 i.e., no longer remains obligated to the creditor who has accepted the *expromissio* and to whom instead of the original debtor the *expromissor* is now obligated. If an *assignee* declares to the creditor that he agrees to the assignment that the debtor has made to him, i.e., *one who accepts an assignment*, becomes an *expromissor*.

§. 256.

The act by which a debtor substitutes an *expromissor* for himself to his creditor is known as DELEGATION. He who substitutes is the DELEGATOR; he who is substituted is the DELEGATE, who therefore is the *expromissor*; the creditor to whom the delegation is made is called the DELEGATARY. Delegation, therefore, is achieved by the consent of delegator, delegate and delegatary: the delegate promises the delegator that he wants to make an *expromissio*; the delegate promises the delegatary that he wants to pay him; and the delegatary accepts the *expromissio*. So *once a delegation is made, the delegator is released and* in his place *the delegate begins to be obligated to the delegatary*.

§. 257.

A contract by which an acquired right is transferred is a CESSION OF A RIGHT *in the*
233 *broader sense; more strictly*, indeed *simply*, it is a contract by which a personal right,

§. 186 (a non-real right, §. 189n.) is transferred to a third party. The transferring party is called the CEDENT, the accepting party the CESSIONARY. So *cession of a right of which the cedent can dispose as of a thing that is his own can be made without the debtor's knowledge and consent; but in as far as the debtor's right would be violated by the cession, it cannot be made without his consent*. Thus *by cession the debtor is released from his obligation to the prior creditor* as the cedent; but *he begins to be obligated to the new creditor instead*, i.e., the cessionary.

234

Section III
The Natural Law of War

§. 258.

The natural law of war is the knowledge of the natural laws that must be observed given a wrong, §. 62. It therefore teaches the *purely natural rights* and *obligations*, §. 61, and the *conditional* ones that can be conceived of once a wrongful act is posited and thus a wronging and a wronged party are posited, §. 62 and 109; it defines the *purely natural own that is acquired from another man's wrong*, and the *conditional purely natural duties* that cannot be established without assuming a wrongful act, §. 62 and 109.

235

TITLE I
THE WAYS TO PURSUE ONE'S RIGHT

§. 259.

By nature the wronged party with regard to the wronging party has the right of coercion to preserve himself and what is his in as far as coercion is a necessary means to this end, §. 135 *Prol.* and 57.

If, therefore, someone is a wrongdoer, if he commits a wrongful act, an act that goes against another's preservation, if he violates another's natural right, if he does not fulfill his obligation, by which he is obligated to another naturally, if he causes another injury[21] or loss, if he takes away, diminishes or invades that which is another man's natural own, if he does not grant another his right, if he hinders him in the use of his right, then he is rightfully coerced by the wronged party, the duty that he refuses to do of his own accord can be extorted, against him force is rightful and violence is used
236 licitly, coercive remedies are applied without injury, and invading anything that is his and his very body is allowed naturally, in as far as the wronged party cannot preserve himself and what is his against the wronging party in any other way, i.e., obtain his right in another way. Using the right that one has against a wronging party is called PURSUING ONE'S RIGHT (a right that was violated, that is); so *it is permitted naturally to pursue one's right while using force*.

[21] See I §. 52, 103.

§. 260.

Since a wrong thus has the effect that coercion by the wronged man, which he uses against the wrongdoer to preserve himself and that which is his, is right, and on the other hand all coercion is wrongful if there is no wrong, §. 135 *Prol.* and 57, it follows that *a wrong is the only cause of rightful coercion*. *Only a wrong* is a *cause that justifies coercion*. This should be interpreted as a wrong that cannot be averted or removed unless force is used, an INEVITABLE WRONG in one word, prec. §.

237 §. 261.

The wronged man's right to coerce the wrongdoer *extends to all acts without which he cannot preserve himself and what is his against the wrongdoer*, §. 259. *Acts of coercion* differ greatly among themselves, both in *kind* and in *degree*, but which among the many compossible acts of violence singly are those that in a given case are required to preserve oneself against a wronging party can only be judged from the given circumstances; therefore to that extent *the wronged party's right against the wrongdoer is extended infinitely*, i.e., *is an* INFINITE RIGHT (*indefinite*, properly speaking), in other words: a right to which no boundaries can be set *in abstracto*, but they have to be determined from the circumstances occurring, for example, in a given case. And so to that extent *against a wrong of any kind* and *any extent* (a greater or smaller wrong) *the wronged party has the right to violence of any kind* and *any extent*.

§. 262.

From this we can now understand 1) that *the wrongdoer has nothing of his own* and *no*
238 *right of his own that* abstractly speaking *is exempt from the wronged man's force*; indeed not only the wrongdoer's property is subject to the wronged man's violence, but also his rights, be they acquired or innate, any goods, his entire estate and the wrongdoer's very body and person—*as far as possible*, and particularly *as far as possible without wrong to a third party*. 2) That *the wronged man rightfully uses VIOLENCE against the wrongdoer*, both HIDDEN—which he against whom it is used cannot foresee—and EVIDENT, which he can foresee. 3) That *in case of doubt both the wronged man's force must be presumed to be rightful*, §. 98, *and judgment of the kind and extent of the violence that is required to obtain his right should be left to the wronged man* by force of natural liberty, §. 80.

§. 263.

Therefore the wronged man is not prohibited either from having a declared intention to use force against the wrongdoer. The declared intention to use force against another is called ENMITY, and he who has such an intention an ENEMY. So he who in word
239 or deed declares an intent to use force, i.e., a hostile intent, is an enemy; every act of violence is an act of enmity, and *the wronged party by nature has the right of enmity against the wronging party*. And so *the wronged party rightfully becomes the wrongdoer's enemy*.

§. 264.

Now if one of two parties uses violence while the other tries to avert it with force, there arises a state of several parties who are trying to use force against one another from a declared intention, i.e., who act toward each other in a hostile manner. This state is called WAR. Thus war is a state of mutual enmity, and a state through the evident force used by the battling parties; its opposite is PEACE, a state free from war. Thus by nature *the wronged party has the right of war against the wronging party who resists rightful force*. Hence *his war is rightful* and *he is a just enemy*, while the war that the wrongdoer wages against the wronged party is wrongful, he himself is an unjust enemy, and any act of hostility of his is a new wrong. So *the sole cause to justify a war is a wrong*, §. 260.

240 * Because, therefore, the right to war only falls to the wronged party against the wronging party, there is a law in natural law: *do not start a war against anyone before he wrongs you*. From this another law is derived: *cultivate peace as much as it can be had*.

** Since no one is born unjust, i.e., a wrongdoer, §. 67, it is not at all the case that *war*, i.e., the right of war, *of all against all is given by nature*, i.e., in the original state; indeed *by nature peace of all with all is given*, that is to say: everyone has an obligation toward everyone to cultivate peace.

§. 265.

Because the wronged party has the right to use as much force against the wrongdoer as is sufficient to preserve himself and that which is his own against the wrongdoer, §. 261, it follows that the *just enemy* and the just war-wager *is allowed to use as much force as is required to obtain his right and to overcome the resistance against rightful force*. And to that extent *the right of war is infinite and the just enemy is allowed everything against the unjust enemy*, §. 261.

241 * So the *right of violence* and *war* is not to be measured from the *degree of loss* that is caused, but from the *proportion* that the violence has *to the preservation* as a means to an end. To that extent in the use of violence there can be no attention in natural law for the distinction whether a wrong is less serious or more serious, whether greater or smaller loss is caused—in the sense that it is stated that against a more serious wrong, the wronged party has the right to a harsher remedy, while against a less serious wrong he has the right to a milder remedy only. For if against a less serious wrong the use of a relatively harsh remedy, and therefore force, would be absolutely wrongful, as a consequence the wronged party in this case would be simply obligated not to use force, and the wronging party would have the *right to wrong*, §. 101 *Prol*., which is absurd.

§. 266.

In as far as the wronged party has the right to coerce the wronging party, he must be attributed the *right to invade, take away*, grab whatever is *the wronging party's own*,

§. 259, and consequently acquires a right to that which he takes away, §. 112, and makes
242 it his own. To that extent *rightful force* and hence *rightful war can be a method of acquiring*; and the method to acquire a thing by right of war, indeed more in general the method by which someone by (rightful) force acquires that which belongs to another's *estate*, §. 236, is called OCCUPANCY IN WAR.

§. 267.

On the basis of a wrong that has already *been done to him*—and hence when loss has in fact been caused—*the wronged party with regard to the wrongdoer has the right* to compensation of the loss caused (to removal of the loss) and thus *to* INDEMNIFICATION; the right, hence, to obtain a state of indemnity as such, *indemnity*, in one word: *the right to indemnity*, §. 55; on the basis of a *present* or *imminent wrong, the right to self-defense*, §. 57; on the basis of an *imminent wrong in particular, the right to security*, same §.

§. 268.

So on the basis of the wrong done, the wronging party is obligated to deliver something to the wronged party by which his loss is restored, an obligation that he has incurred
243 from the wrong, and hence *the wronging party becomes the wronged party's debtor*, §. 183, and *reparation of the loss caused is payment of the debt*. For this reason the wrongdoer is obliged to repair the loss exactly in that in which he caused it, in which case reparation of the loss caused is *restitution* of what was taken away, §. 210; or if this is impossible, he is obliged to restore *as much as* the loss caused, as far as possible, by delivering an *equivalent* or by repairing the loss in another way. And this reparation of the loss caused, as opposed to a reparation that is made by restitution (of what was taken away), is called SATISFACTION *in the strict sense*, because in this way the wrongdoer fulfills his obligation and gives satisfaction to the wronged party. Hence *a loss caused is repaired by restitution or by satisfaction*, and *on the basis of the wrong done the wronging party is obliged principally to restitute what was taken away and subsidiarily to give satisfaction to the wronged party*.

* In the reparation of loss caused that is made by satisfaction, natural law strongly favors the wronged party. For the *quantity of satisfaction*, i.e., the estimation of the loss, is validly determined *based on the wronged party's judgment*, §. 203, not on that of the wrongdoer or a third party.

244 Johann Eberhard Rösler, *De restitutione damni ex principiis philosophiae moralis*, Tübingen 1707.

§. 269.

He who actually commences or threatens to wrong another, §. 133 *Prol.*, is an AGGRESSOR. So *against an aggressor there is a right of self-defense*, §. 133 and 134 *Prol.*, so that he may not achieve the commenced wrong and may desist from wronging more and longer. And *in this sense* every aggressor is a wrongdoer, and if he acts in a hostile manner, an unjust enemy, and all OFFENSIVE WAR, taken as war of aggression, is wrongful; on the other hand,

everyone who defends himself and what is his own is a wronged party and a just enemy, and all DEFENSIVE WAR, which is waged in self-defense, is rightful.

§. 270.

Force is also *rightful* against an *imminent wrong*, and hence against *one who threatens a*
245 *wrong*, because of the right to security which naturally falls to everyone, §. 133 and 134 *Prol*. Now *whether someone is threatening a wrong is deduced from his acts by which he clearly shows the intent to wrong*.

Against one who threatens a wrong I have the right to coercion to prevent being wronged, so I am not obligated to suffer the first act of wronging by him and wait until he actually does it to me, and thus *I have the right to coerce him before he actually begins to wrong me*. This right to use force against one who threatens a wrong as such, i.e., before he actually begins to wrong, is called the RIGHT OF PREVENTION; it arises from the right to security and is a species of it.

And so *one who threatens a wrong*, i.e., who is going to wrong, *is the equivalent of a wrongdoer, an imminent wrong is the equivalent of an actual wrong*, and one to whom a wrong is imminent is equivalent to one who is actually wronged.

The right to security exists from the moment when the danger of wrong arises until the moment when security has been restored.

§. 271.

Since *the malicious wrongdoer betrays the intent to wrong, the wronged party has the*
246 *right to judge that he retains the intent to wrong*, and hence will wrong anew in the future if he can, §. 165; *until the contrary has been established*, viz. that he no longer wants to, or in any case cannot wrong. For this reason, even if reparation of the loss caused has been extorted from a malicious wrongdoer and for the present both his actual wrong has been repressed and his imminent wrong has been averted, nonetheless *the wronged party can continue using force against the malicious wrongdoer in order to defend his security for the future*. And this coercion that the wronged party prolongs against the wronging party after the loss has been repaired and the actual and present danger of wrong has ceased, for the purpose that he should not want or be able to wrong in the future, is called VENGEANCE (revenge). From this it becomes clear to what extent *vengeance* is *licit* and to what extent the *right to vengeance* is given in natural law: it is given *against a malicious wrongdoer until he lays down his intent to wrong, or subsidiarily, until he is deprived of the power to wrong*. Hence it is also given for the purpose that he should sufficiently declare an intent to the contrary. Of course against one who *has wronged blameworthily* only, not as much revenge is permitted as
247 is permitted against one who wrongs with malicious intent; nor can it be given in order to break either the will or the power to harm, but only to *make him more attentive to doing his duty*; but revenging an *inculpable wrong* is simply forbidden.

§. 272.

Thus violence is licit and war is rightful if its aim is indemnity, self-defense, security for the present and for the future, §. 267, 271. *The rightfulness of war is* thus *extended*

as far as the rights to indemnity, self-defense and security reach. If, however, *war is extended beyond these bounds, the wronged party commences to wrong* and the just enemy becomes unjust, the defender becomes the aggressor, and hence vice versa he who was the unjust enemy and the aggressor now becomes the just enemy and the defender. And this is certain *in thesi*, although *in hypothesi* and in occurring cases it is often extremely difficult to determine the limits of rightful war.

As for the rest, it is clear from what has been said in the previous paragraph that the right to violence and war against a malicious wrongdoer extends further than against
248 a blameworthy one, and indeed also further against a blameworthy one than against someone whose wrong is free of all guilt.

§. 273.

Joining one's own forces with another's in pursuing the other's goal is called HELP; the help that is given to an enemy[22] as such is known as HELP IN WAR; he who gives it, i.e., who helps an enemy in pursuing war, is called an ENEMY'S HELPER. Since an enemy's helper by his help increases that enemy's forces in doing harm and using violence, and supports his war, §. 31 *Prol.*, *an enemy's helper himself becomes the enemy of the one against whom he helps the other in war*.

§. 274.

The wronged party has the right to get the help of others against the wronging party, including help in war, in order to preserve himself and what is his; and everyone has the obligation to help a wronged party against a wronging party, including help in war,
249 as a duty of charity based on the law of God, and therefore also a natural right to give that help, §. 81.

Conversely, since any goal of wronging is wrongful, either giving or accepting help to wrong others is illicit, and giving and using help in war to that end is forbidden all the more. For this reason *the helper of an unjust enemy is an unjust enemy* himself, *and the helper of an enemy can only wage a rightful war for a just enemy*.

§. 275.

One who, after a war has started between others, does not help either enemy is NEUTRAL IN THE WAR (neutral, of neither party), and his status as such is called NEUTRALITY. In general anyone should be allowed by force of natural liberty to be neutral in a war, and in particular not even a just enemy can force a third party to help him as to a duty of love, let alone an unjust enemy, §. 274. For this reason *anyone by nature has the right*
250 *to neutrality if war breaks out between others*, §. 81, but *on the basis of a pact will be obligated to help the just enemy—not the unjust one*, though.

[22] Achenwall uses "enemy" in the sense of "a party to a war" (see I §. 264).

§. 276.

Defending one's life or body is called BLAMELESS SELF-PROTECTION. If no other remedy suffices, this is allowed even if it includes killing the aggressor, §. 262, but in as far as a milder remedy suffices, the man defending himself is obligated to moderation according to the given circumstances, §. 104 and 136 *Prol.* *The right of blameless self-protection* supposes an aggressor and wrongdoer and so is quite *different from the privilege of necessity*, §. 143 *Prol.*

* Although in natural law there thus exists a moderation of blameless self-protection to which the man defending himself is bound, the limits to this defense are far stricter in the rules of moral doctrine and civil laws than they are in the natural state. Hence for example to the question *whether a man is obliged to flee if by flight he can avoid the aggression*, and to others of that kind, the answer is not the same in ethics, civil law and natural law.

251

1) Heinrich Wilhelm Finx, *Dissertatio de legitima defensione adversus iniustam vim*, Leipzig 1702.
2) Johann Eberhard Rösler, *De restitutione damni in vita et corpore dati*, Tübingen 1708.
3) Willem Gerard van Meel, *De legitima sui ipsius defensione seu moderamine inculpatae tutelae*, Leiden 1730.
4) Coelestin Christian Flottwell, *Dissertatio moderaminis inculpatae tutelae in genere et in primis imperantibus competentis vindiciae*, Königsberg 1757.

§. 277.

If *verbal* or *real injury*, §. 103, is inflicted upon a man and 1) there is still *doubt* whether his reputation was violated with malicious intent or blameworthily, the wronged man has the right to demand a declaration from the wrongdoer that he deems him to be a just man and in what he said or did had no intent to injure him, a declaration known as a DECLARATION OF HONOR. 2) If *the intention to injure is certain*, he has the right
252 to demand a sufficient indication of an intention to the contrary, §. 271, i.e. that the wrongdoer should declare that he regrets the injurious words or deed, a declaration called an APOLOGY. 3) In particular, if he was provoked with a verbal injury, that the other man should declare that his slander was a lie, a declaration known as a RECANTATION. *Nor* 4) *is it illicit* to repay injury with injury, according to the circumstances, by force of [the right to] equal esteem, §. 100, which is called *returning an injury.*

1) Gottlieb Schelwig, *Quid liceat pro fama*, Greifswald 1706.
2) Johann Eberhard Rösler, *Dissertatio de damno in fama et honore dato*, Tübingen 1710.
3) Gottlob Liborius Dathe, *Disputatio de famae vindicta Davidis erga Nabalem secundum ius naturae considerata*, Leipzig 1723.

§. 278.

If someone possesses without right that which is another's, be it a thing or any right, the proprietor has the right to demand possession of what is his from him, the RIGHT TO VINDICATE what is his, §. 120. So *vindication both of a thing and of a right that is one's own is licit naturally*.

253 Johann Eberhard Rösler, *De restitutione damni in bonis fortunae dati*, Tübingen 1710.

§. 279.

A man has become RICHER if he has more than he had before. He becomes RICHER WITH ANOTHER'S PROPERTY (corporeal or incorporeal) if what he has more is another man's property, and FROM ANOTHER'S PROPERTY if what he has more is profit obtained by means of another man's property. That by which a man becomes richer is his GAIN. So 1) *no man should become richer* from a wrong, nor consequently become richer *to another's loss*; neither with another's property, nor from another's property. 2) Since all gain that the possessor of what is another's own has from this possession is born from a wrong and therefore is a loss that must be restored, *to the owner vindicating his property the possessor is obliged to deliver as much as he is richer with* and *from the other man's property*. 3) He who gains to another man's loss has more than he used to; indeed if a
254 loss is posited, that which is someone's own is posited to be diminished, §. 53. From this it is clear that *he who sustains a loss has less than he would have had if he had not been wronged*.

Christian Gottlieb Schwarz, *De obligatione possessoris bonae fidei ad rem domino restituendam ex iurisprudentia universali*, Altdorf 1730.

§. 280.

A gain CEASES if, when we could probably obtain it, we are impeded from obtaining it. If in a ceasing gain a loss is conceived of, it is conceived of in a negative way and hence is called a NEGATIVE LOSS, as opposed to a POSITIVE (emerging) LOSS, by which someone actually has less than he had before. Emerging loss and ceasing gain together are called INTEREST, because it is of interest to the man who sustained the loss.

A *possessor in bad faith* blameworthily wrongs the owner from the moment he begins to possess in bad faith a thing that is another's, §. 129. Hence every act of
255 dominion that he performs in the meantime and every emerging loss and ceasing gain is imputable to him, §. 118 *Prol.* and 16. For this reason *the possessor in bad faith is obligated to the owner* not only 1) to restitute as much as he has become richer with and from the other man's property, and thus *to restitute the thing together with all his gain*; but also 2) *to restore all the owner's interest*, even if such possessor has not become richer from it or in any case no longer is, and therefore to restore all emerging loss and all ceasing gain *from the moment* when *he began to possess the thing in bad faith*.

* So the *possessor in bad faith* is obliged to give satisfaction to the owner if *through his fault the thing has deteriorated, been lost* or been destroyed; he is likewise

obliged regarding the *fruits of the thing* including those *that have been consumed*, indeed even the fruits that have not been had but that he could have had, i.e., the *fruits to be had*. And if the thing still exists, he is obliged *to restitute it with every incentive*, i.e., profit and use, that is to say: to restitute the thing with the existing fruits, and likewise to satisfaction regarding the fruits consumed and to be had and the rest of the ceasing gain.

256 §. 281.

A *possessor in good faith* on the other hand, who possesses a thing that is another's believing that he owns it, since he is the putative owner by force of rightful ignorance, *performs all acts of dominion by right* as long as he remains in good faith, and therefore up to that point does not injure the true owner nor cause an imputable loss, §. 129. For this reason *the possessor in good faith is no further obligated to the owner vindicating his property than in as far as he is still richer with and from the thing* once the true owner is known. So he is not obliged to give satisfaction to the owner for the deterioration or destruction of the thing or the true owner's other interest.

And it cannot be concluded in any way that the same would hold regarding *vindication of right*.

257 * This difference in natural law regarding possession in good and bad faith is expressed as follows by civil law: *the possessor in good faith is obligated based on the thing* only, while the possessor in bad faith is also obligated *based on the act* (which is morally wrongful).

** A possessor in good faith *moves to bad faith* as soon as he knows, i.e., begins to know, that the thing he possesses is another man's, and nonetheless declines to return it to the owner vindicating it, §. 130. So in as far as *a possessor in good faith* refuses restitution of the thing and the existing gain, he *is judged by the right of a possessor in bad faith from the moment of knowledge*, i.e., when the true owner becomes known to him.

§. 282.

If a *contract* is posited that was built on deceit or extorted with fear or wrongful force, *he who promised something because he was deceived or compelled with force is not obliged to keep his promises*. And if he kept them because he was misled or forced, the accepting party does not acquire that which was delivered, §. 181, so *such acceptant is obligated to restitution or, subsidiarily, to satisfaction to the other party*. If, therefore, the promised thing has been handed over, the acceptant becomes a possessor in bad faith, §. 129.

§. 283.

On the basis of a *valid contract* the promising party becomes a debtor and the accepting
258 party gains the right that he sought with regard to the promising party, that he should deliver, give, do what he promised. So if he does not pay his debt, in as far as he is guilty

he is also obligated to the creditor for his interest because the debt was not paid, and hence *is obligated to interest of delay*, §. 250.

§. 284.

In a *contract of exchange*, if one party blameworthily violates the contract, the wronged party has the right to demand delivery of what was promised, together with interest, or the right likewise not to deliver what he had promised in his turn, and consequently to recede from the contract, §. 72, 73. So *in this case the wronged party cannot be denied the right of option* (choice). For whether he prefers to compel the promissor to fulfill the contract or to recede from the agreement himself, he uses his right by force of natural liberty.

§. 285.

In a contract of exchange, where one gives or does in order to be given something in return, one would not give or do if nothing was given in return, §. 198, and consequently if the other party were not deemed to have the right to give. This intention of the parties as a tacit condition determines the mutual right and obligation based on the agreement, §. 194. So *if someone in his own name transfers another man's property to me with a contract of exchange, while I do not know that it belongs to a third party and think that it is the alienating party's, and the owner later vindicates his property*, the condition ceases under which I alienated what was my own by contract. In this case, therefore, *the transferring party is obliged to restitute to me what I gave in return, or subsidiarily to give me satisfaction and hence* deliver an equivalent of that which has been vindicated, i.e., *to deliver eviction.* DELIVERING EVICTION means restoring the loss sustained by another from an evicted thing (from the thing or from a vindicated right).

259

1) Enno Rudolph Brenneysen, *Dissertatio iuridica de praestatione evictionis in cessione nominis secundum principia iuris naturae et Romani*, Halle 1696.
2) The opposite view is taken by Christian Heinrich Breuning, *Disputatio iuris naturalis de praestatione evictionis iure naturali incognita*, Leipzig 1753.

260

TITLE II
THE WAYS TO END A DISPUTE

§. 286.

A DISPUTE (disagreement) *in the juridical sense* is an act by which several parties contradict each other on what belongs to each of them, i.e., it is a mutual contradiction regarding the same right falling to one; the parties to the dispute are called DISPUTANTS; the object regarding which they disagree is known as the OBJECT OF DISPUTE. So if Titius asserts that a certain right falls to him with regard to Sempronius and that Sempronius therefore has a certain obligation, but Sempronius denies this, then Titius and Sempronius are in a dispute. He who asserts against the possessor of a

right that that right falls to him, CLAIMS it (in the strict sense); so the claim to a right,
261 which is also *simply* known as a *claim*, *involves a dispute*, and the claimed right, which itself is also often called a claim, is a disputed right. An ACT TO another's PREJUDICE is an act by which another man's right is violated; he who contradicts another's act as an act undertaken to his prejudice PROTESTS (against another's act); so *between him who performs a certain act as rightful* and *another man who protests against it, there is a dispute*.

§. 287.

If there is a DISPUTE OVER A RIGHT THAT IS CERTAIN—of which it is certain that it falls to one of the disputants—and a man denies another's right that is certain and hence does not give the other what is his with certainty, his *wrongdoing* is *certain*; hence, all other things being equal, the other man gains *the certain right to violence and war*. For this reason in a dispute over a right that is certain the disputant whose right is disputed has the same rights against the other disputant as a wronged party against the wrongdoer, and consequently as a wronged party he rightfully uses violence against the other disputant until he stops wronging him; and therefore also until he acknowledges and admits
262 that the object of dispute belongs to the other and that he has no right to it whatsoever.

§. 288.

If, on the other hand, there is a dispute over a RIGHT THAT IS DOUBTED—of which it is not yet certain to which of the disputants it falls—and a man denies another's *right that is doubted* and hence does not give the other that which the other asserts he must be given, his *wrongdoing* is *uncertain* to that extent and consequently the other man's *right to violence* and *war* is likewise *uncertain*.

* Like a right, an *obligation* can also be either *certain* or *doubted*, indeed *an obligation corresponding to another man's right* to the extent that if the right is given the obligation is given, necessarily is *certain if* it corresponds to a *right that is certain*, and *doubted if* it corresponds to a *right that is doubted*. A *liquid debt* is a type of certain obligation, a *non-liquid debt* of uncertain obligation.

§. 289.

In as far as there is doubt about the object of dispute, to which of the disputants it
263 belongs, neither has more right than the other and the same doubt hinders both in the same way and favors both equally; as a consequence both enjoy the same and equal right with regard to the object of dispute. So if *such doubted right can be made certain*, i.e. it can *be proved*, §. 97, to which of the disputants it belongs, he who first rushes to use force, either without undertaking to bring proof or without leaving the other man enough time to bring proof, violates the other's equality of right, §. 73. From this it is deduced that *in a dispute over a doubted right the disputants are mutually obliged to try bringing proof before they can proceed to violence*.

§. 290.

If the question arises *on which of the disputants the burden of proof rests*, i.e. the obligation to bring proof, we must observe first of all that by nature no man is obliged to prove his own innate right, since it must be given to anyone as soon as he exists, §. 64. If, therefore, *there is a dispute* over an innate right of either of the disputants, *he who*
264 *bases himself on an innate right*, e.g., *on equality*, §. 73, *on natural liberty*, §. 77, on *being esteemed a just man*, §. 98, on *rightful ignorance*, §. 127, and so forth, *is not obliged to bring proof*. For this reason, if nonetheless there arises such doubt that proof is needed, *he who denies that* some *right* that is otherwise *innate falls to the other man is obliged to bring proof*. *Presumption* until *the opposite is proved militates for the innate right*.

1) I. I. S. [Johann Justinus Schierschmid], *Allgemeine Regel wer von den streitenden Partheyen bey einem Rechtshandel den Beweis zu übernehmen*, 2nd ed. Erlangen 1754.
2) Johann Wolfgang Trier, *Dissertatio juridica inauguralis de onere probandi negantibus incumbente*, Frankfurt (Oder) 1738.
3) Henricus Hermannus Meyer, *Dissertatio inauguralis de propositione negativa eiusque probatione*, Göttingen 1756.

§. 291.

If *there is a dispute over an acquired right*, as to whether it belongs to one of the dispu-
265 tants, and in particular also over an acquired right corresponding with an *obligation incurred* by the other disputant, the controversy and doubt that arise always concern some *act*—without which, after all, no right can be acquired nor any obligation incurred, §. 109.

§. 292.

The doubt that arises regarding an act is either 1) whether the *act* is *true*, i.e. exists, or 2), if the truth of the act is clear, whether it is *rightful*. Proving the existence or nonexistence of an act is called PROVING AN ACT, proving the rightfulness or wrongfulness of an act comes under *proving* (deducing) *a right*.

§. 293.

If the *existence of the act* is doubted, he who denies, once the dispute has arisen, that there was an act, either denies an act of his own by which he has incurred an obligation or another man's act by which the other has acquired a right.

A man who *denies an act of his own* by which he has incurred an obligation, bases
266 himself on natural liberty, an innate right, §. 77, so *he is not obliged to bring proof*, §. 290. A man who *denies another's act* by which the other has acquired a right, founds himself in rightful ignorance, likewise an innate right, §. 127, so *he is not obliged to bring proof*. For this reason, if *an act has to be proved, the burden of proof lies with the man who affirms the existence of the act* that is doubted (whether it is his own or another's).

§. 294.

If, on the other hand, the act has been established but doubt arises regarding the *rightfulness of the act*, then either the rightfulness of one's own act is asserted, or the wrongfulness of the other's act.

He who asserts that his act was rightful bases himself on being esteemed a just man, an innate right, §. 98, and therefore *is not obliged to bring proof. He who asserts that the other man's act was wrongful* thereby *denies* that the other has the right to good esteem, an *innate right*, and consequently denies something whose opposite the other man is not obliged to prove. *If*, for this reason, *the rightfulness of an act is disputed in such a way that there is need of proof, the burden of proof lies with the man who denies that another acted rightfully*, or (which is the same thing) *with the man who asserts that another* (be it the other disputant or any third party) *acted wrongfully*.

267 * So the *possessor* of a thing or right is not obliged either to prove his *right to possession* of a thing or right. *Any possessor is presumed to have the right of possession*. For this reason possession that cannot be proved to be wrong by another is the equivalent of rightful acquisition and is as good as the best title.

§. 295.

The wrongfulness of an act must be proved from natural law; the existence of an act can be proved *a posteriori* or *a priori*. *A posteriori* proof includes proof through 1) *visual inspection* or some other *experience*; 2) WITNESSES, meaning persons who are brought in to confirm some act; 3) a DOCUMENT, i.e., a text in which the act is recorded; 4) an *oath*, and so forth.

§. 296.

When that which was to be proved in a dubious case has been proved, the doubted right becomes certain: it has now been established with certainty to which of the disputants the right falls that was disputed so far. Because of this, *the disputant to whom the right has been proven not to fall is obligated to acquiesce, withdraw from the conflict and acknowledge the other's right, and cannot renew the same conflict*. Otherwise his opponent now has the certain right of a wronged party against the wrongdoer, §. 287.

268

A DISPUTE is said to be DECIDED if by applying the law to the act, a correct deduction has been made as to who has truth on his side, i.e., to which of the disputants the disputed right falls; for this reason, *once that which was to be proved in a dubious case has been proved, the dispute is decided*; the dispute being decided, *the claim* of the disputant who lost the case *is extinguished* and cannot be renewed.

§. 297.

As for the rest, in as far as the disputed right remains doubtful because bringing proof has been attempted to no avail, neither of the disputants has the certain right to maintain his own judgment, nor does either have the obligation to respect the judgment of others. Therefore *in a doubtful cause* 1) *neither* per se *has the right of the wronged party*

and *the right of war*, so that he might extort from the other what he claims; and 2) *his*
269 *own right* (even if it is *doubted*) *cannot be taken away from either if he is unwilling*. For this reason by force of natural liberty a *dispute over a doubted right* as such *can only be ended by mutual agreement of the disputants* and thus *by contract*.

Because, therefore, a DISPUTE is said to be SETTLED if it is ended by the disputants' agreement while the truth remains doubtful, in a doubtful cause (as such) *the dispute that cannot be decided must be settled*: the disputants have a mutual obligation to try settling the dispute before they resolve to take up arms over a doubtful cause. The way in which the disputants come to terms in breaking off such a dispute and *the way they settle it is the way the dispute is ended*, and *once it has been settled both parties are obligated to acquiesce* and *withdraw from the dispute; neither can renew it*.

§. 298.

Gratuitous settlement of a dispute is called an AMICABLE SETTLEMENT in particular, mutual settlement a TRANSACTION. So a transaction is made when something is prom-
270 ised by either side, §. 198, and hence can also be made when something is given or retained by either side. So *a dispute is ended by making an amicable settlement* or *a transaction*.

§. 299.

A contract by which the parties agree on respecting the judgment or sentence of a certain person is called a COMPROMISE; the man whom the disputants choose by the compromise to decide their dispute in as far as possible, an ARBITRATOR; the right conferred to the arbiter to decide the dispute, ARBITRAGE; the contract of the disputants with the arbiter by which they confer arbitrage on him, a RECEIPT (arbitration agreement), because in this way he receives arbitrage; and the arbitrator's sentence with which he determines how the dispute should be ended is known as a VERDICT. Because by force of natural liberty no man can claim arbitrage if the disputants are unwilling, but arbitrage cannot be forced upon any man either, *arbitrage is established by an agreement of the disputants with the arbitrator*. Hence for arbitrage to be established, a *compromise* and an *arbitration agreement* are needed. As for the rest, *the disputants are obligated* by force of contract to respect the *verdict* and *acquiesce in it*; so *once the*
271 *verdict has been given, the dispute is ended*, and the verdict either contains a decision, §. 296, or at least *in a doubtful cause is equivalent to one*.

If several arbitrators are established at the same time, a SUPERARBITRATOR can be added to them, to whom arbitrage falls under the condition that the other arbitrators disagree in their verdict.

1) Jacob Friedrich Ludovici, *Dissertatio juridica de effectu et obligatione laudi*, Halle 1711.
2) Georg Ludwig Böhmer, *De superarbitris vulgo von Obmannen exercitatio ex iure Romano canonico ac Germanico explicata*, Göttingen 1744.
3) Johann Christian Treitlinger, *Dissertatio juridica de superarbitro*, Strasbourg 1758.

§. 300.

Furthermore in a doubtful cause the disagreement can also be ended *by lot* if the disputants so agree, §. 297. LOT is the term for something from whose fortuitous determination the acquisition of a right is made to depend, i.e. it is a sign, determined fortuitously,
272 of what we must acquire. *If*, therefore, *the disputants agree to breaking off the dispute by lot, he who is indicated by lot acquires the disputed right and the other loses it*.

1) Wilhelm Christian Justus Chrysander, *Oratio de sortibus*, Halle 1740.
2) Friedrich August Junius, *De sorte remedio subsidiario caussas dubias dirimendi dissertatio*, Leipzig 1746.

§. 301.

What remains is that for a dispute to be ended *mediately*, there are *meetings* and *talks* of the disputants, and *negotiations*, §. 174, either in person or in writing, conducted either immediately or by mandataries, and the intervention of others in general, including mediators in particular.

A MEDIATOR is one who contributes his effort and counsel to settling the dispute of others; the act of a mediator as such is called MEDIATION. 1) The RIGHT OF MEDIATION (which itself is often called *mediation* as well) is born from an *agreement* of the *disputants* and the *mediator*, for by force of natural liberty no one can force his
273 mediation on the disputants, and no one can be coerced to undertake mediation. 2) On the basis of the disputants' intention, the *mediator* protects the interest of both parties and therefore must not favor one party over the other, that is to say: he must not be *partial*, but *impartial* (neutral). 3) *The disputants*, however, *are not obliged* to respect his opinion, and thus *to acquiesce in the mediator's sentence as to how the dispute should be ended*. Hence the mediator's task at least is to propose a way to terminate the disagreement, to offer conditions from both sides under which he thinks the dispute can be settled, to explore the disputants' judgments of them, to urge them to accept fair conditions that he or the adversary offers, to interpose his own judgment regarding the conditions offered from both sides, to dissuade from offering unfair ones, and indeed to reject them if they are offered. 4) But since the disputants are free to refuse or accept the mediator's proposals, and the dispute only ends once they have been accepted,
274 *appointing a mediator is not a way to end a dispute, but merely to hasten its end*. In as far as a mediator is chosen merely to help the disputants settle the dispute with his sentence as advice, he is called a MEDIATION ADVISOR.

§. 302.

Amicable settlement, transaction, decision and lot are *peaceful ways* to end a dispute: by them disagreements can be terminated without the use of violence and they are achieved by the disputants' consent, which can be obtained by means of talks, negotiations, mediators, mediation advisors. If, therefore, in a doubtful cause the disputant who risks having his right that is disputed taken away from him, offers a peaceful way to terminate the dispute and the means to it, or offers fair conditions to

end the disagreement, but the opposing party does not wish to agree to the offer, *the party making the offer has the right to force* the opposing party *to a transaction*, and hence *the right to make war for the sake of a transaction*, by force of the right not to have his right that is doubted taken away from him, §. 297, and by force of his right to security of himself and what is his own, §. 270.

275 §. 303.

Finally, if we take a war whose rightfulness is uncertain on either side, then *force is used and repressed*, the other party's *property* mutually *invaded* and one's own *defended*, things, rights and goods are taken and recovered, *with equally doubtful right* and so with *equal* right on both sides; hence the occupancies in war of either party will also be of doubtful right.

§. 304.

So as long as a war of doubtful right lasts, the doubtful cause also lasts, and therefore nor does the VANQUISHED ENEMY—the one who was forced to give up the fight, that is—lose his right for that reason. So *victory does not end a dispute*, unless the disputants have agreed to this outcome as a way of removing the disagreement. For this reason those ways in which war itself is ended, in the end are ways to end the dispute as well. This includes both the *death* of the other disputant, §. 242, and principally a contract by which war is ended, i.e., a PEACE PACT, §. 264. A pact that was extorted from the enemy
276 by rightful war—and a war over a doubtful cause is the equivalent of this—cannot be called wrongful; to that extent *there exists a pact extorted by force* (rightful force, that is) that is *valid* and *by which* for that reason a *dispute over a right that is doubted* is ended as well.

Part II

Family Law, Public Law and the Law of Nations

1

Book II

Universal Social Law, in Particular the Law of Domestic Societies

Section I
Universal Social Law in General

§. 1.

xix332 In Part I of this work we looked at the natural rights and obligations that obtain in the extrasocial or *natural state* of individual men. Now we come to the explanation of those which derive from the *social state*, §. 60 and 61, Part I. It should be repeated
2 from the *Prolegomena to Natural Law* here that if several people join forces to obtain some common, non-transient (or enduring) goal, from such a partnership or *association* a *society* is born. So a SOCIETY consists in the union of several people to pursue a common, non-transient goal, i.e., it consists in that enduring state of several people by which they strive to obtain the same goal with joint or united resources (forces, powers). The individuals thus united are called ASSOCIATES (society members) and the group of associates in a particular society is also named a *society*, §. 82, *Prol.* So men united into societies mostly so that it would be possible to pursue such goals as require the continuous use of resources through many successive actions, and without the help of others, §. 273, Part I, are either definitely impossible or quite difficult to obtain. And
xix333 so it happened that men, apart from that *universal society* of which anybody becomes a member through nature itself, §. 82 and 83, *Prol.*, formed many *particular societies*, §. 91, *Prol.*: these we will now explain, as regards their perfect and external natural rights and obligations.

3

TITLE I
THE SOCIETY IN GENERAL

Lucas Friedrich Langemack, *Das allgemeine gesellschaftliche Recht nebst der Politick*, Berlin 1745.

§. 2.

Now in every society there is thought for 1) *the common goal*, and thus for *the union of will* and *the common good*, for the obtaining of which all the associates join their

resources so that it will flow to all once it has been obtained; 2) *the union of* resources, as the means to the society's end, and hence the cooperation of all associates to give each other mutual help (assistance), §. 273, I, in all those things without which the goal of the society cannot be achieved; 3) *many social affairs*, i.e. affairs serving the society's goal, which the associates have to conduct, §. 1.

§. 3.

As for the rest, societies mostly differ as to the *goal* for which they are entered upon. Any SOCIETY'S WELFARE consists in the unimpeded progress toward achieving its
4 social goal, §. 85, *Prol. Every society*, taken as a gathering of associates, *is regarded as one person* in as far as it is considered generally, because all the associates with joint resources strive toward the same goal, §. 92, *Prol.*

§. 4.

The knowledge of the natural laws that have to be observed once the social state has been established is called UNIVERSAL SOCIAL LAW (natural social law, natural societies
xix334 law). Universal social law therefore is natural law applied to societies, and it teaches the natural rights and obligations that may be conceived once a particular society has been established.

§. 5.

A society can be considered either *internally* and by itself, in respect of *its associates*, or *externally*, in respect of *outsiders* (foreigners), i.e., non-associates: hence *universal social law* is divided into internal and external universal social law.

5 *Internal universal social law thus* hands down the natural rights and obligations that fall to the associates amongst each other, chiefly those which fall to them as such, which are called SOCIAL RIGHTS and OBLIGATIONS in the *strict* and *simple sense*, and differ from those which fall to the associates amongst each other even though they are only considered as men, because these rights and obligations are simply natural.

In the same sense, *a social law*, *social own*[1] and *social duty* are also used *strictly* if they were established only after the birth of the society, and were made such by its force; because in the wider sense, *a law*, *obligation*, *right*, *own* and *duty* are called *social* that can be ranged under universal social law in any way.

§. 6.

So we have to suppose a society whose associates *are obligated perfectly* amongst each other toward a common goal. In this society is established 1) the *obligation* of any
6 associate toward any fellow-associate to do the things that pertain to pursuing the social goal, and hence 2) *the right* of any associate that any fellow-associate do the things that pertain to achieving the social goal. As a consequence *in every society there*

[1] See I §. 53.

is established a certain social, mutual, positive obligation, and therefore also a certain social, mutual, positive right. The bond of rights and obligations among several people is called the JURIDICAL BOND, the juridical bond among associates in a society as such is the SOCIAL BOND (in a juridical sense). For this reason *in every society a certain social bond is established between all the associates.*

§. 7.

As a consequence, *any associate is obliged to further the common good*, and hence to omit what goes against the society's welfare, to engage in the things without which the social goal cannot be obtained, to apply remedies for it and remove hindrances; *but not more than he can*, §. 8, I.

xix335 Thus in as far as an associate is obligated to do what concerns the common good,
7 *he is obliged to choose the common good over his own* (private) *good*. Hence *the common good* and *the society's welfare* are called *the supreme law of a society.* From these social obligations the correlated social rights are understood.

§. 8.

If we take a *society composed* of *more than two* men, the social obligation of any single associate extends to several fellow-associates and to the whole society, while at the same time vice versa a social obligation of the whole society is conceived toward any single member. And so in such a society a certain social *right of the group as a whole with regard to the individuals* and of any *individual with regard to the group as a whole* is conceived.

§. 9.

A SOCIETY that is established with a pact is called VOLUNTARY (pact-based); one that
8 coalesces without a pact is NECESSARY (legal). Let us now take a voluntary society, since practically everybody belongs to one. As the foundation of the social right and obligation of a voluntary society has to be derived from a pact, *it is necessary for a voluntary society to be based on a valid pact*, because from an invalid pact no agreed
xix336 right or obligation is born. Because a society that is based merely on a presumed pact, or on a wrongful pact, cannot produce social right and obligation and thus is not a society internally and considered by itself, §. 5, 6, *a voluntary society must be established that is based on an explicit or tacit pact and that does not coalesce in order to pursue a wrongful goal*: a SOCIETY that is not illicit but LICIT, which is also called LEGITIMATE.

§. 10.

Thus in a pact-based society 1) both *the social obligations* and *the social rights must be measured* by the society's *pact* and *goal*, and therefore 2) any *associate is obligated to do the things he can to achieve the social goal, and* moreover also the things *on which*
9 *it has been specifically agreed that he will do them*. 3) Because however in an explicit pact the social rights and obligations that are gathered from the social goal can be

either restricted or extended in a special pact, while an explicit agreement nullifies a tacit agreement to the contrary, it follows that *in estimating the rights and obligations of voluntary societies one has to take into account primarily the pact, and the social goal merely in a subsidiary manner*, cp. also §. 194, I.

§. 11.

The next thing we have to consider here is a *society* as it is *originally*, i.e., coalescing from men who as individuals were in a natural state thus far. Once a society is established, a social state is established, and to that extent the natural state of every individual associate ceases with respect to his fellow-associates and his society. Hence *the natural liberty of the associates is* also *restricted in terms of the actions regarding which they have*
xix337 *incurred an obligation by force of the society entered upon.* In terms of the actions, on the other hand, in which they cannot be regarded as associates in the society, they still have their natural liberty and natural state. For this reason *in those matters in which they*
10 *cannot be regarded as associates, the associates in a society* with respect to each other *use purely natural law*—if, of course, a society is considered as it is originally.

§. 12.

If an associate wrongs a fellow-associate, the wronged party's right with regard to the wrongdoer must be measured by the pact and the social goal, §. 10. If the matter is considered abstractly, however, *the wronged party has the right versus the wrongdoer to coerce him or even to depart from the society*, §. 284, I.

Therefore *if an individual wrongs the group as a whole*, i.e., the entire society, *he can be coerced by the group as a whole, or excluded from the society; if* on the other hand *an individual is wronged by the group as a whole, the wronged party may coerce the group as a whole, or leave the society.*

§. 13.

As for the rest, if an associate wrongs a fellow-associate in such a way that his act is contrary to the pact or the social goal, the group as a whole is understood to be wronged at the same time, and the wronged party has the right to demand help from the group against the wrongdoer, §. 2. Thus *the entire society will not only have the right,*
11 *but also the obligation to coerce or exclude the wrongdoer.*

§. 14.

xix338 *External universal social law* explains the natural rights and obligations that fall to a society's associates with respect to outsiders; consequently, here belongs whatever may be attributed to any individual associate or any society as a whole with respect to both individual foreigners and other societies and their individual associates.

§. 15.

Because associates work towards a shared goal with united resources and thus share the rights and obligations linked to such a goal and such use of resources, *a society is*

a moral person (mystical body, moral body), §. 92, *Prol.*, and foreigners both must and can regard it as such.

§. 16.

Furthermore, a society by force of origin *is a person* in the natural state with respect
12 to foreigners, therefore *free*, §. 77 and §. 96, *Prol.* and §. 11, and hence to be regarded as free by foreigners. For this reason *several* different *societies should by nature*, i.e., by force of origin, *be considered* several *free persons who amongst each other use purely natural law.*

§. 17.

Because a society that coalesces to pursue a wrongful goal, e.g., a band of robbers, is illicit by its own nature and from its very origin, §. 9, clearly betraying the intent to wrong, §. 270, I, *foreigners have the right*, based on the right of security, *not to allow a society that coalesces toward a wrongful goal to remain in existence, and hence the right to force* individuals and the group as a whole *to leave this wrongful union* so *that the society is dissolved.*

§. 18.

A legitimate society, on the other hand, with regard to foreigners has the rights that should be attributed to any free person, §. 16, including, as a consequence, the right to
13 self-preservation as a society and thus to preservation of its social union furthermore, the right to pursue its social goal by any actions, as long as they are not wrongful; the right to equality, the right to simple good esteem and the other absolute rights of the natural state. From that *the absolute rights of the society* are conceived, which of course arise together with the rise of the society.

§. 19.

Such a society just as much becomes the owner of the things it occupies; it acquires the things accessory to its property by right, and another's property by contract. From this the *acquired rights of a society* are understood.

§. 20.

Finally, a society that has been wronged, against a foreigner who has wronged it, has the right to coerce, the right to violence, to war, to indemnity, to defense, to prevention,
xix339 and the other rights of the wronged party with regard to the wrongdoer. In this way may be conceived the *rights of a society that has been wronged with regard to a* foreign *wrongdoer* and with regard to another society wronging it.

14 §. 21.

But just as a free society has purely natural rights, so it is also restricted by *purely natural obligations*. So it is obliged to grant any foreigner what is his, not to violate his rights by birth or his acquired rights, to stand by its promises, to pay its debts,

to compensate damage it has caused, etc. From this are conceived the *absolute obligations of a society* and the *conditional ones contracted either from a rightful or from a wrongful act*.

TITLE II
THE EQUAL SOCIETY

§. 22.

An associate's right to determine at will what a fellow-associate should do is called OVERLORDSHIP; the person to whom overlordship falls is the SUPERIOR (overlord). A SOCIETY with a superior, i.e. in which one of the associates has overlordship over a
15 fellow-associate, is UNEQUAL (ruled); if not, it is called EQUAL. If there is an overlord, there will be a SUBJECT (inferior) who is subject to another man's overlordship, i.e. depends on it, and SUBJECTION, someone's dependence on another man's overlordship, §. 74 and 75, I.

§. 23.

If a society is simply contracted from the beginning, all the associates have the same obligation and the same right to pursue the common goal, §. 6, and therefore all are equal, §. 70, I, no one has a prerogative, §. 72, I, no one has overlordship, §. 74, I and §. 22. Therefore such a *society* (and consequently *every* society, as is seen here, §. 9 and §. 11) *is equal by nature*, §. 22. Indeed, even if it is expressly agreed that one associate will have a right that the others lack, or that an associate will be obliged to do something the others are not bound to, the society can be equal nonetheless, because there exists a privilege that is not overlordship, and there exists a principal obligation that is not subjection.

16 §. 24.

xix340 Because in an equal society the associates have the same right and obligation, §. 23, *whatever must be done by the associates in an equal society for the sake of pursuing the common goal should be determined by common agreement* among them. In this common agreement of the associates consists the *will of the society* as one person.

§. 25.

In a society many affairs have to be settled, §. 2, but the agreement of all the associates to determine every single matter every single time cannot be required, or certainly is difficult to obtain; *the welfare of the society* therefore *requires that the things that must always be done in the same way to achieve the goal be determined by common agreement as soon as the society is contracted.* Thereby the *laws of the society* are made that are called *agreed* (pact-based), because they immediately restrict the associates by force of pact, §. 182, I. Such a *social law* with permanent binding force is named A SOCIAL LAW *in the stricter sense*.

17 *After these social laws* have been established at the moment the society comes into being, the following are mostly determined: *which principal and ordinary social affairs have to be arranged, and how*; but *also the valid way itself to agree* in the other affairs which have not yet been determined and will have to be determined at some point, depending on the circumstances.

§. 26.

For if in an occurrence something has to be done for the sake of the common good which has not yet been determined by this original agreement of the associates and the society's laws, it is again by common agreement that a decision on it must be made. This is mostly done with votes.

xix341 A VOTE (suffrage) is a declaration of an associate's will to the society, given in the matter that has to be determined by common agreement. If the vote declares a positive will, it is called an AFFIRMATIVE VOTE; if the will is negative, a NEGATIVE VOTE; if the will is conditional, a CONDITIONAL one; if the will is absolute, a CATEGORICAL
18 one. Moreover, since the VOTE is a declaration, it will either be EXPLICIT—be it WRITTEN or ORAL—or TACIT. This is determined by the various acts signifying the mind that is to be declared; it can even be determined by acts of omission, §. 88, I.

As for the rest, an associate's vote either in no way or in some way creates an obligation with regard to the society. The former is a DELIBERATIVE (consultative) VOTE, the latter a DECISIVE VOTE. The VOTES of those who are of the same opinion are called AGREEING, while the votes of those with different opinions are called DIVERSE (disagreeing).

§. 27.

That which is determined by voting is said to be DECIDED; hence that which has thus been determined is called a DECISION. *In an* EQUAL *society*, therefore, *the associates' agreeing votes decide*, §. 26, and to that extent *the vote of any associate in an equal society*
19 *is decisive*, §. 26. Decisions on those things that have to be done in the same way in any similar occurring case belong to a society's *laws in the stricter sense*, §. 25; they differ from decisions intended solely for a given case, whose binding force is temporary.

§. 28.

There is UNANIMITY if all votes agree; if the votes of the larger part of the society only agree, there is a MAJORITY; if it is only the smaller part, there is a MINORITY; and if there are as many agreeing as disagreeing votes, there is a TIE. For affairs to end and the society to survive, *it is of* the greatest *importance to any society that a majority of votes should decide*, i.e., that that which the larger part of the associates thinks is right should be considered the will of all, and thus that the smaller part is bound by the larger part. Because, however, in a pact-based society none of the associates is bound beyond his
xix342 consent, *the majority vote, if the matter has to be decided based on the pact alone, is not decisive, unless it was so agreed [i.e., that the majority vote would be decisive] between*

20 *the associates, expressly or tacitly.* Indeed *if one disagrees, all are understood to disagree, if that* was *agreed*.

In a similar way, should votes be *counted* or *weighed*? *How large a part* of agreeing votes should be decisive? Should only the votes of those *present* count, or those of the *absent* as well? In *case of a tie, should the vote of a certain person win*? Should the *voting-pebble of Minerva* apply, or should the matter remain as it is, etc.? Finally, if there are many disagreeing votes, will one have to go with that which *displeases less people* because it is impossible to go with that which pleases most people? All these matters should be judged on the basis of the agreed laws.

1) Johann Jakob Müller, *Disputatio de jure partis majoris*, Jena 1697, reprinted 1751.
2) Heinrich von Cocceji (Coccejus), *Disputatio iuridica inauguralis de eo quod iustum est circa numerum suffragiorum, ubi de calculo Minervae*, Frankfurt (Oder) 1705, and in vol. II of his disputations, p. 36.
3) Samuel Friedrich Willenberg, *Commentatio de votorum pluralitate non concludente, Oder: Daß nach den meisten Stimmen nicht allemahl der Schluß zu machen*, Gdansk and Leipzig 1750.

21 §. 29.

As for the rest, it is evident 1) *that all the laws of an equal society naturally are agreed*, §. 25; 2) that, since in general the social laws determine the means necessary to achieve the social goal, same §., *no society can survive without laws, and no [society's] welfare can be preserved without the protection of the laws*; 3) *that every single associate is subject to the society's laws*, i.e., bound to them, and therefore by their transgression violates the right of the group as a whole; 4) *that whosoever is received into a society, subjects himself to the society's laws*, i.e., explicitly or tacitly promises to observe them.

§. 30.

It is also clear that *any society* by force of its natural liberty *has the right to make social laws at will, and to rescind them, change them and make others* when it sees fit. To that extent, *although individuals are bound to the laws, the group as a whole however is placed above the laws*: since all the force of the pact depends on the agreement of the
22 pact-makers, §. 252, I, hence the force of the agreed laws also depends solely on the common agreement of the associates.

§. 31.

A SOCIETY which is entered upon for the days of one's life is PERPETUAL; that which is
xix343 entered upon for a certain time that is deemed to be shorter than one's life, is TEMPORARY. Consequently *the law of a perpetual society is that one will never leave the society*; and therefore *no individual may leave if the group as a whole does not wish it*, while on the other hand in a temporary society, once the agreed time has lapsed, this is

definitely permitted. *But the group as a whole* nonetheless *has the possibility to resolve the society by common agreement, even a perpetual one*, prec. §.

TITLE III
THE UNEQUAL SOCIETY

1) Valentinus Velthemius (Valentin Veltheim), *Jus imperii quaesitum*, Jena 1674, reprinted 1678.
2) Petrus van Visvliet, *Dissertatio juridica inauguralis de acquisitione originaria iuris in personas*, Leiden 1740.

23 §. 32.

The overlord has the right to obligate the subject to determine his actions as the overlord wishes, hence to his will, this way and no other; otherwise overlordship would be useless, §. 22. Since, however, another's will cannot be known unless it is sufficiently declared, §. 165, I, the overlord cannot obligate the subject unless by sufficiently declaring what he wants the subject to do. Therefore *the overlord* has *the right to tell another what to do, which in one word is called* AUTHORITY *par excellence*.

xix344 Because of this, *the subject* is obligated to arrange his actions toward the overlord's will, i.e., to do his superior's bidding (as he commands), that is, to OBEY him, *is obligated to obedience* (compliance).

§. 33.

Overlordship is a positive social right, §. 6, and the principal one; hence it takes precedence with regard to the subjects, §. 72, I, whose natural liberty ceases as regards
24 those actions over which the overlord as such has a right, §. 84, I.

§. 34.

The overlord as such *has the right to give* his subjects *laws*, §. 32, both regarding the things that always have to be done in the same way—the binding force of such laws is permanent—and regarding the things that must be done in an occurrence—the binding force of such laws is temporary, §. 25, 27. From this, however, also derives his *right to make the subjects comply with the given laws* (otherwise overlordship would be useless), and the *right to all means necessary to this end*, hence *also to all actions related to such an end*.

Because furthermore the overlord places an obligation on his subjects, not on himself, *the overlord* himself naturally *is not bound by the laws he has made*. Finally, since the overlord's laws have their force immediately from his will and choice, *the overlord* also has *the right to change and rescind* such *laws* made by him, and *to make others*.

§. 35.

As for the rest, since *the overlord's right* should be assessed *on the basis of the pact* from which it arises by nature, §. 9 and 11, and on the basis of *the society's goal*, §. 10, *the overlord is obligated to* pursue the goal of the society, hence he is bound to *use his overlordship for the society's welfare* and *to adapt the laws* that he makes *to the common good.* Indeed *to those matters on which a special agreement* has been *made between him* and *the subjects he is bound* as well, *by force of pact*, as though *to agreed laws*, *and he cannot rescind* or *change them against the subjects' will.*

§. 36.

xix345 If a *ruled society* is *perpetual*, §. 31, social overlordship and social subjection is perpetual as well, hence neither can the subject shake off his subjection against the overlord's will, nor can the latter abdicate his overlordship against the subjects' will; in a temporary one, on the other hand, this is possible by right, §. 31. So *he who subjects himself to another forever, renounces his* natural *liberty*, transfers it and *alienates it* in as far as he
26 subjects himself: on the other hand, *he who subjects himself to another for a time* merely *suspends the exercise of his freedom* for that time, as long as he is under overlordship.

§. 37.

Perpetual OVERLORDSHIP over all the actions of another is DESPOTIC; overlordship over certain actions only, be it perpetual or temporary, is TEMPERED. Hence an *unequal society* is understood to be either *despotic* or *tempered*, and *subjection* either *despotic* (complete) or *tempered*. Complete subjection is called SLAVERY; he who is enslaved, a slave; the slave's superior, a DESPOT. *A slave* thus *has nothing* at all *left of his natural liberty*, for if perpetual overlordship over all the actions of another is established, all the latter's liberty is taken away.

§. 38.

Many kinds of tempered overlordship can be conceived of, distinguished mostly by their goal. In general however it should be observed that *if one subjects one's self to*
27 *tempered perpetual overlordship, one's liberty* is taken away regarding those actions only over which he transfers the right to the overlord, hence *is* merely *diminished*, and *regarding the other actions he still has his liberty*, which consequently is *not full*, §. 84,
xix346 I, a part and remainder of his natural liberty. If one subjects one's self for a time, one's liberty, to put it succinctly, is neither taken away nor diminished, but is restricted in any case, §. 36 and §. 86, I. Because, however, the subjects are free regarding those actions over which the overlord has no right and are the overlord's equals by force of origin, §. 70, I, every *tempered unequal society should be regarded* as *an equal society with respect to the things that are not subject to the overlord's right.*

§. 39.

As for the rest, since no one is obligated beyond what is physically and morally possible, §. 31, I, neither the obligation of any subject, *nor* therefore any *overlordship*

extends to things that are physically impossible or *that go against divine law.* It is also self-evident that man's overlordship only extends to external free actions. Because furthermore all overlordship is constituted for the sake of the common good, §. 2,
28 and for that purpose the right to tell a subject what to do falls to the overlord, *overlordship*, although it consists in the right to determine the subjects' actions at will, §. 22, *by no means comprises the right to dispose of the subjects' life* and *substance* at will. And so *overlordship* as the right over persons differs from *dominion* as the right over things, and at the same time we understand the *natural limits of overlordship* viewed abstractly, from which we can also gather the *acts of overlordship* that are *illicit* in themselves.

§. 40.

xix347 If a subject does not fulfill his obligation to the overlord, he violates the overlord's right and wrongs him. Against a subject who wrongs him, the overlord has the right to force him to fulfill his obligation; against a malfeasant subject, i.e., one who wrongs with malicious intent, §. 117, *Prol.*, he also has the right to vengeance, §. 271, I. Vengeance of the superior on a subject is called PUNISHMENT *in the strict sense*, and *simply* so in the sphere of social law. So *the overlord by force of his overlordship has the right to*
29 *punish a malfeasant subject*, who hence is also *disobedient*, who with malicious intent refuses to obey, §. 32, as well as the *right to enforce observance of his laws with punishment*, so that [subjects] are deterred from transgressing the laws by the expected harm, §. 34. Punishment thus consists (if it is not taken to mean the act of punishing, but its effect) in the harm that a superior inflicts on an inferior for his misdeed. The right to punish is given so that the malfeasant subject will no longer want to or be able to do wrong, §. 271, I; it is also given to deter other subjects from wrongdoing, §. 34. The overlord, therefore, cannot punish inculpable acts; for blameworthy acts he can hold out the prospect of harm and inflict it, so that the guilty man and others will pay more attention to doing their duty, §. 271, I. and §. 34, but to a lesser degree than for acts with malicious intent. Such harm is usually ranged under *punishment* in the broader sense, and therefore *the right to punish* extends to all culpable and imputable wrongs by subjects.

30

Section II
Universal Law of Domestic Societies

§. 41.

A SOCIETY that has other societies for its parts is called COMPOSITE, otherwise it is called SIMPLE; but societies are always ranged under the simple ones if they can be such. Because the goal of universal social law is to understand *state law*, and a state is composed of families and the family in its turn is composed of the matrimonial, the parental and the master society, while these simple societies together with the family are ranged under the common name of *domestic societies*, §. 94 and 95. *Prol.*, we now have to consider UNIVERSAL LAW OF DOMESTIC SOCIETIES, which teaches the rights

and obligations that by nature obtain in the matrimonial, parental and master society and in the family.

31

TITLE I
MARRIAGE

§. 42.

xix348 A society of a man and a woman, entered upon to produce and bring up offspring (children), is called MARRIAGE (matrimony, conjugal society). Now TO BRING UP is to make sure that one who due to his tender age is still unable to perfect himself, becomes able to do so. So if a society between a man and a woman is created for some other reason, that is not marriage. The associates in a marriage are called SPOUSES; the male spouse is the HUSBAND, the female spouse the WIFE.

1) Giannandrea Irico and Don Diego Rubini, *Due dissertazioni sopra il fine primario del matrimonio*, Bergamo 1753.

Since producing offspring and raising it once it has been produced cannot but be reckoned among *God's goals*, all intercourse that is contrary these goals and therefore
32 all sex outside marriage, indeed all use of the genitals for the sake of mere pleasure, in one word: all *straying lust*, goes against the natural divine law.

§. 43.

Marriage by nature is a *voluntary society*, §. 9, that is *simple*, §. 41, and *equal*, §. 22. *On the basis of* an explicit or tacit *contract*, however, the husband can acquire the overlordship, and so the *wife* becomes the *husband's* subject.

§. 44.

Because a valid contract is thus required for a marriage to be valid, it follows that 1) if someone is *incapable of producing or raising offspring*, either by age or by some defect of body or mind, his *marriage is null and void*; 2) *if someone is deceived into entering upon marriage or is made to do so by wrongful force, he is not bound by the marriage*, but can, rather, exercise the right of the wronged party against the deceiver and the user
33 of force; 3) but *that such a defective marriage convalesces if the approval of the wronged party follows later*, §. 175, I, *note*.

1) Hieronymus Delphinus, *Eunuchi coniugium, die Capaunen-Heyrath*, Jena 1737.
2) Justus Henning Böhmer, *Dissertatio juridica de matrimonio coacto*, Halle 1717.

§. 45.

The CONTRACT by which marriage is entered upon is the MATRIMONIAL CONTRACT; from it can be distinguished the BETROTHAL, the contract regarding a marriage that
xix349 is to be entered upon. The start of a fulfilled matrimonial contract (the first climbing into bed) is named WEDDING; those who have entered upon a betrothal are called

FIANCÉS, SO FIANCÉ and FIANCÉE. Those who are united through a wedding are called SPOUSES, HUSBAND, WIFE *in the stricter sense* (§. 42). *If two contradictory betrothals have been celebrated, the first will have priority over the second, even if the second has been followed by a wedding*, §. 190, I.

§. 46.

34 If in a conjugal society there is just one spouse of either sex, the marriage is called MONOGAMY; if there are more of the same sex, it is POLYGAMY (*simultaneous* polygamy, to distinguish it from *successive* polygamy or deuterogamy). If in a marriage there are several spouses of both sexes, there is COMMUNION OF WIVES; if there are several of either sex only, it is either the marriage of one man with several wives, POLYGYNY (male polygamy), or of one woman with several men, POLYANDRY (female polygamy). A type of polygamy is BIGAMY, the marriage of one person with two of the other sex. BIGAMY can be either of one man with two women, BIGYNY (male bigamy), or of one woman with two men, BIANDRY (female bigamy).

Moreover, *marriage* can be either *perpetual* or *temporary*, §. 31.

Perpetual monogamy, entered upon for the CLOSEST UNION at the same time, i.e. for mutual assistance in all life's events, is *more perfect* than the other kinds of marriage: it is the origin of all fellowship in life: for it is found to be more suitable for obtaining
35 the primary goal of conjugal society, as is shown by experience and judged by reason.

* Nature abhors *polyandry*; *polygyny* is still found in a number of nations, and there used to be quite a few peoples who indulged in *communion of wives*.

1) Texts in which a case is made in favor of *monogamy* and against *polygamy*, or in which polygamy is defended, and in particular those concerning the fourfold *war* that arose over polygamy—the Ochino war, the Böckelmann or Böger war, the Leyser war and the Willenberg war—are copiously supplied by Meister in his *Bibliotheca iuris naturae et gentium* part III, under *polygamia*.[2]

§. 47.

The spouses are mutually obligated 1) *to everything that is necessary for producing and raising offspring*, §. 42, *and* 2) *to the other things on which they have agreed in particu-*
36 *lar. They are* therefore *obliged to bear the burdens of marriage together*, and hence also to procure the *necessaries of life* (sustenance) *to their progeny together*, so together to supply it with PROVISIONS, i.e., food, clothing and housing.

From this *conjugal fidelity*, §. 184, I, is conceived of, to which both spouses are bound and which is *to be measured from the contract and goal of the marriage*.

§. 48.

xix350 Those who enter upon marriage together usually pay the most attention to their future spouse's individual qualities; hence neither of the spouses should be deemed

[2] See Part I, "Introduction to Natural Law," note 11.

to have transferred the rights he or she transferred to the other by force of the matrimonial contract in such a way that he or she could transfer them to someone else at will and they would fall to that person as transmissible rights, §. 243, I. The parties to the contract are, however, not mutually bound beyond their consent and declared intention: as a consequence, either of the spouses should be deemed to have transferred only highly personal rights to the other. Hence it is also established *that matrimonial rights are highly personal, and* therefore also *that a spouse's obligations to his or*
37 *her spouse* as such *are highly personal, and* thus *that the conjugal bond*, §. 6, *is highly personal.*

§. 49.

The spouses in monogamy are obliged to grant the use of their bodies for producing offspring only to one another. For this reason *intercourse of* such *a spouse with an external person is wrongful* and contrary to the wedding vow. A spouse's sleeping with an external person with malicious intent is called ADULTERY; a man guilty of this is called an ADULTERER, a woman an ADULTERESS.

§. 50.

A LIFE lived in a domestic society, §. 41, is called DOMESTIC; the things and affairs that relate to the expedience of domestic life are DOMESTIC THINGS and DOMESTIC AFFAIRS, in one word the HOUSEHOLD; the management of the household is called DOMESTIC ECONOMY.

The spouses in a more perfect marriage, §. 46, *are obligated* at the same time *to help*
38 *one another in all events of life*; hence also *to live together* and *manage their household together*, and therefore *to have a shared domestic economy*. As a consequence either spouse is obliged to acquire and maintain domestic things and conduct domestic affairs as much as he or she can.

§. 51.

If conjugal fidelity is violated, and more in general, if one spouse is wronged by the other, the wronged party can use the right of coercion against the wrongdoer, or leave the matrimonial society, §. 12.

The latter is done through DIVORCE, which consists in the dissolution of the marriage during the spouses' lifetime. Thus *against an adulterer or adulteress the wronged party has the right to divorce*.

* *Controversiae circa iura divortiorum editis opusculis agitata et boni publici causa collectae atque coniunctim editae* (the controversies are between Johann Friedrich Kayser and his adversaries, such as Johann Michael Lange and Lüder Mencke),
39 third ed. Halle 1737. The other commentaries on this subject are enumerated by Meister, *Bibliotheca iuris naturae et gentium* part I, under *divortium*.[3]

[3] See Part I, "Introduction to Natural Law," note 11.

§. 52.

xix351 Because one could also conceive of *fidelity of betrothal*, §. 45 and 184, I, *the party wronged by its violation* likewise *has the right either to coerce the wrongdoer or to dissolve the betrothal.* The dissolution of a betrothal during the fiancés' lifetime is called REPUDIATION.

TITLE II
THE PARENTAL SOCIETY

1) Gotthelf Ehrenreich Becker, *De fundamento iuris patrii*, Leipzig 1686.
2) Johann Balthasar von Wernher, *De iure parentum et liberorum secundum legem naturae dissertatio moralis*, Leipzig 1698, and in his *Dissertationes iuris naturalis*, Wittenberg 1721.
3) Johann Eberhard Rösler, *Dissertatio moralis de imperio parentum in liberos*, Tübingen 1718.
4) Georg Christian Gebauer, *De patria potestate*, Göttingen 1750, ch. I.

40 §. 53.

If someone rightfully brings about something's existence, with the intention that it should be his, he acquires that which he causes to exist, i.e., that which he *produces*, §. 112, I. To that extent *whatever I produce by a rightful act of mine, becomes mine.*

Offspring gets its existence from its *begetting*, and thus from an act of the *parents*, i.e., shared by the father and the mother. Consequently the *parents have a right with regard to the offspring, son, daughter, children—an acquired right*. The parents' right with regard to their offspring as such is called FATHERLY AUTHORITY, or rather, if the wording has to be exact, PARENTAL AUTHORITY; because the right with regard to the offspring is not the father's alone, but is shared with the father by the mother, and thus by the parents.

§. 54.

xix352 The offspring is *human*: as a consequence, from birth it has at least the right to everything that can naturally fall to a man, the ultimate and supreme right because it
41 immediately springs from the divine law of self-preservation, which is the fount and foundation of all perfect law: the *right to preservation of its life* and *body*, §. 37, I, cp. §. 143, *Prol.* Therefore *the parents' right with regard to the children does not comprise the right to distribute them, nor the right to dispose at will of their lives and bodies*; and in general it cannot be conceived of as dominion, for offspring is not a thing but is human.

§. 55.

As a consequence *parental authority is merely a right with regard to the offspring's actions*, and therefore *the right to direct the children's actions* at will *in as far as such direction is consistent with their preservation.* Parents therefore have a positive right with regard to their offspring, §. 82, I.

§. 56.

So the *right to bring up* belongs to parental authority, §. 42. *Parents* thus *have the right to enable their children* to live well and happily, i.e., *to live the life of man by themselves*,
42 that is: to provide themselves with the things they need for their self-preservation, and to act according to the will of God; as a consequence, the right to bring up their children in religion, the sciences, the arts, and the means to pursue an honest livelihood for themselves.

xix353 *The parents' authority is not, however, restricted to the mere right to bring up*; rather it includes in general *the right to bring about that their offspring will suit* its *actions to the parents' will* and consequently also *to the parents' benefit*, in as far as the offspring's born right is not violated.

§. 57.

As spouses*, the parents are mutually obligated to bring up their offspring*, hence also to *feed it*, §. 42. Therefore *abandonment of an infant, denial of provisions,* and any action of a parent that *violates the body* of the offspring or *corrupts its mind* is a wrong.

To this obligation of the parents to bring up their offspring which (apart from that
43 moral obligation by which hey are more strictly obligated to God) they have to each other on the basis of the matrimonial contract, and which is positive, §. 82, I, corresponds the *positive right*, both *of the father regarding the mother* and *of the mother regarding the father, that they bring up the produced offspring as industriously as possible.* From this parental duty, however, no *positive right of the offspring with regard to the parents* can be deduced in the sense that the offspring would have some kind of strict right to demand of its parents that they furnish it with provisions and bring it up.

And to that extent the *upbringing* and in particular the *provisions* with which parents furnish their offspring, mostly in the first years of its life, *are not owed* to it *perfectly*; rather, once the offspring has gained mature judgment, it is obligated all its life to acknowledge all that with which its parents have provided it during those years of its weakness as a *pure favor from its parents*.

§. 58.

xix354 As for the rest, there is no society between parents and offspring until the offspring has
44 begun to have the use of its intellect: for before that, no action of the offspring can be considered free, and therefore no obligation for it to pursue some social goal can be considered either. But as the progeny is gradually equipped with the use of its intellect, so its obligation to suit its actions to the parents' will is also engendered gradually, §. 55. But since the offspring, being human, at the same time has the right to self-preservation, §. 54, and thus also to the means to it—a livelihood—, *in as far as the exercise of parental authority prevents the offspring from taking care of the necessities of life for itself, the parents are obligated to furnish their progeny with those.*

So in this way the connection between parents and offspring is conceived of with the goal 1) for the *parents*, that in return for the continuation of the offspring's upbringing, and once that is completed, in return for at least the offspring's keep, they are benefited

by its actions; 2) for the *offspring*, that in return for subjection to parental authority, it is perfected and fed. Since from this connection a *union* thus arises *toward achieving a composite* and in this respect *common goal*, §. 1, hence a society is conceived of between the parents (or father or mother alone) and their offspring, as such, which is called the PARENTAL SOCIETY, and specifically PATERNAL or MATERNAL, according as it exists between father alone or mother alone and the offspring.

45

* In the parental society the parents' primary goal is different from the offspring's primary goal, but nonetheless *the parents' intermediate goal coincides* with *the progeny's primary goal* and vice versa, and to this extent parents and offspring have the same goal, which in this case is common to them; and as parents and progeny are joined in order to achieve it, a society is created, §. 1. Such a *composite goal* can be seen in many other societies in a similar way.

§. 59.

The parental society coalesces without a contract and therefore it is 1) *legal*, §. 9, although various contracts may be added to it afterwards; 2) it can be *simple*; 3) it is *unequal*, for the parents' authority is overlordship, §. 55 and 22, and as a consequence the offspring's dependence also is subjection, which as such is called FILIAL SUBJECTION.

46

§. 60.

For this reason *parents* by force of their parental overlordship *have the right to tell* their children what they should do; *to obligate* them to adjust their actions to their parents' wishes; *to amass wealth through their work, to punish them if they are disobedient*, etc. Hence *children* cannot *obligate themselves* to another, *marry, leave the family*, etc., without their parents' consent.

xix355

§. 61.

Because *parental authority* is not restricted to upbringing only, §. 56, *it lasts, even though the offspring no longer needs upbringing.*

EMANCIPATION is the act by which the parents release their offspring from parental authority. So with the emancipation the parents renounce their authority and *the emancipated offspring passes over to the natural state*, becoming autonomous, §. 84, I. *The parents' consent to the offspring's wedding*, i.e. separate *household economy, takes away parental authority in as far as its exercise is* thus *rendered impossible*; and to that extent, such consent is a *tacit emancipation.*

47

§. 62.

The foundation of parental authority is the act of begetting, § 53; hence the foundation of filial subjection to the parents lies in the fact that the offspring owes its life or existence to the parents. Consequently, if the offspring does not owe its life to someone, it is not

under his parental authority either. Indeed, since the *offspring*, as a human being, with regard to outsiders is in a natural state and therefore enjoys natural liberty, *the offspring is not obliged to acknowledge anyone's parental authority but its parents*'. So the parents cannot transfer their parental authority at will; as a consequence, *parental authority is a highly personal right*, filial subjection a highly personal obligation, §. 243, I.

48 * Moreover it is of the greatest importance to the offspring whether the parent himself exercises parental authority or a third person. The overlordship of either parent is mitigated by that natural urge of στοργή,[4] the *fatherly and motherly love that is not found in a third person*.

§. 63.

I grant, however, that that small part of parental authority which is comprised by the mere *right to bring up* can validly be transferred by the parents and exercised by a third
xix356 person, since upbringing only aims for the perfection of the offspring, §. 42. From this stems the concept of TUTELAGE, which consists in the (vicarious) right to bring up in the parents' stead. The person to whom tutelage falls is called the TUTOR or TUTRIX; one who is brought up by a tutor is called a PUPIL; the society between tutor and pupil as such is called TUTELARY SOCIETY. *Tutelage and tutelary society* therefore *cease as soon as the pupil is able to live the life of man by himself*, because then he no longer needs bringing up, §. 56.

49 §. 64.

All parental authority over the offspring would be the father's alone if it weren't for the mother, whose common right the father is obligated to acknowledge, §. 53; vice versa this must be admitted of the mother as well. Hence *if either of the parents is dead, parental authority is the remaining parent's alone*, whether it is the father or the mother. *The deceased parent's right with regard to the offspring is transferred to the remaining one* (it accrues to him or her). Thus after the mother's death, the offspring remains under the *father's authority*, after the father's death under the *mother's authority*.

If both parents *are dead* the filial subjection of the offspring ceases and its natural state begins.

TITLE III
THE MASTER SOCIETY

§. 65.

Work serving the uses of domestic life, §. 50, is called HOUSEHOLD WORK. A subject
xix357 who is obligated to perform household work in return for provisions is a SERVANT,
50 his female counterpart a MAID. The superior of a servant or maid is the MASTER or

[4] "Parental affection."

MISTRESS. The society between the master or mistress and the servant or maid as such is the MASTER SOCIETY.

§. 66.

The master society 1) can be *simple* and 2) *is unequal.* Servant and maid are the *master's subjects* and their subjection as such is called *subjection to a master*; master and mistress are the *master overlords* and their overlordship as such is called *masterly overlordship* (masterly authority).

§. 67.

The master's right with regard to the servant and consequently the servant's obligation to the master is meant to effect *that the household work is performed by the servant in accordance with the master's will* and, consequently, *for the master's benefit. The servant's right* with regard to the master and, consequently, the master's obligation to the servant serves the purpose *that the master furnish the servant with provisions*.

51 §. 68.

Because the master society by nature is contract-based, §. 9, *the more specific* mutual *rights* and *obligations of master and servant are determined on the basis of the contract* by which the master society was established. So what kind of provisions, how much and in what way the master has promised the servant, and what kind of work, how much and in what way the servant has promised the master—that kind and quantity of provisions is what the master owes the servant, and that kind and quantity of work is what the latter owes the former, in the manner agreed. Such a contract is a *do-ut-facias contract*, §. 215, I, *toward a non-transient goal*, §. 1.

§. 69.

For provisions an equivalent may be substituted, §. 202, I, particularly *money*, §. 205, I. Hence it is indifferent whether the servant is promised provisions or a certain sum of money with which he can buy provisions, *a substitute for provisions*. In the latter case, the master society rests on a *letting-and-hiring contract for work*, §. 217, I, and the
52 money owed to the servant is *hire*, same §. I. Hence the SERVANT and MAID who are hired are called HIRELINGS.

§. 70.

A SERVANT is obliged to perform either all kinds of work, or certain types only; moreover, he owes work either for his entire life, PERPETUAL WORK, or for a certain period of time that is deemed to be shorter than his life, TEMPORARY WORK. A SERVANT who is obliged only to certain kinds of temporary work is FREER; one who is obliged to perpetual work, either all kinds or certain kinds only, is MORE RESTRICTED.

As for the rest, a servant who is obligated to perpetual work of all kinds is a slave, §.
xix358 37, and may also be called a HOUSEHOLD SLAVE in particular. The master of a slave is a

despot, §. 37, and is usually called the SLAVE'S OWNER in particular, and his authority over the slave OWNER AUTHORITY. The subjection of a household slave is slavery, §. 37, and is called DOMESTIC SLAVERY specifically; the society between the master and the household slave as such is despotic, §. 37, and is named OWNER SOCIETY in particular.
53 From this the concepts of the *female slave* and *female owner* are understood to arise as well.

§. 71.

The owner thus *has the perpetual right to enjoy all the benefits* that can be desired in domestic life *from the slave's work*, §. 70; hence also the *right to amass wealth by the slave's work*. For this reason *a slave can neither amass wealth for himself, nor obligate himself to others, nor shake off the yoke of slavery* without his owner's consent.

The act by which the owner releases a slave from his owner authority is called MANUMISSION. Since with the manumission the owner renounces owner authority, *the slave who is manumitted returns to the natural state* and becomes free. A manumitted slave is designated a FREEDMAN.

§. 72.

The CONSENT of a person who would not have consented had he not feared violence from another is FORCED (extorted); all other consent is VOLUNTARY.
54 SLAVERY that is based on the slave's forced consent is FORCED; slavery based on voluntary consent is VOLUNTARY. Hence also the slave is called a VOLUNTARY SLAVE in the latter case, in the former a LIABLE SLAVE, in one word a SLAVE-POSSESSION.

xix359 There is extorted consent that is valid, §. 304, I; hence *there is* also valid owner authority and *valid slavery* although it was *extorted*, for instance if a debtor who is unable to pay is reduced to slavery by his creditor in order to settle the debt with work performed, which is equated with goods. *By nature*, however, i.e. originally, §. 11, and if there is no wrong involved, §. 62, I, *no one subjects himself to* another man's *overlordship except by his* own *voluntary consent*, §. 76, I, hence *not to owner authority either, not* even *to masterly authority*. So *by nature* every *owner society* and even every *master society coalesces through a voluntary contract; if a wrong is posited,* however, *there is valid slavery*, although *it is* based on *a contract that was extorted by force; such slavery* however is *contract-based* too. And to that extent *every master society and* specifically every *owner society is contract-based.*

* From the infinite right of the wronged party with regard to the wrongdoer, §. 261,
55 I, by force of which everything is permitted, §. 265, I, can in fact be concluded—in accordance with the circumstances—*the right of the rightful victor*, and more generally *the right of the wronged party, to reduce the wrongdoer to slavery*; but from this it does not follow that there is *slavery* that is established without a contract and that therefore is *necessary* and *legal*, §. 9. For 1) this unilateral will of the victor does not yet bring about a society, because as long as the defeated party resists, no *union of wills and resources*, §. 2, can be conceived of; in fact precisely the opposite,

a *battle* of wills and resources, must be conceived of. 2) *The exercise of owner authority is physically impossible without the consent of the defeated party.* For a defeated enemy will never do as the victor commands, unless in as far as he prefers *compliance*, as the *lesser evil*, to further *coercion* by the victor and the risk of losing life itself, as the *greater evil*, i.e., in as far as he wants, and consequently in as far as he *consents*, at least *tacitly*. Therefore all *owner authority*, indeed all *social right*, and hence all *overlordship, if they stem from war and victory, suppose* a pact of the victor with the defeated by which mutual hostility is ended, therefore a *peace pact*, §. 304, I. So every *society of those who were at war thus far is pact-based*. Therefore
56 war and victory considered by themselves are not a *way of acquiring* owner authority, indeed not of acquiring overlordship or any social right, and therefore not a way of establishing a society, but only the *occasion* of all these things. From this it is
xix360 clear that *the right to reduce the defeated into slavery* does not yet include overlordship itself, but only *the right to obligate the defeated*, even by using force, to *consent to slavery*, and therefore to the victor's overlordship and owner authority.

§. 73.

Because of the diversity of the highly personal qualities that can be conceived of both in a master and in a servant, it is in the interest of both to choose this servant or master rather than the other; for this reason, those who enter upon a master society by a voluntary contract are thought to pay attention first and foremost to one another's highly personal qualities. And so the *master's overlordship over the servant and the voluntary slave* and *the right of the servant and the voluntary slave with regard to the master is highly personal*; as a consequence the correlated *subjection* and *obligation is highly personal* as well, and therefore *the bond of* every *voluntary master society* is *highly*
57 *personal*, §. 48. Therefore *the rights and obligations of such a mutual society do not become transmissible unless there is mutual consent, be it explicit or tacit.*

§. 74.

The condition of the *slave-possession*, however, is completely different. For when slavery is forced upon a defeated enemy, he is not free to decide whether he wants to choose an owner, and which one. Regarding the victorious enemy, however, intent on his own benefit most of all in establishing the slavery, we must not think that he spontaneously wants to obligate himself to more than can be concluded from the nature of slavery. Because the victor who reduces the defeated to slavery thus renounces his right as wronged party with regard to the wrongdoer, and does not promise the slave-possession anything in return for his work other than preservation and sustenance of life, he does not owe him anything beyond that, and consequently he does not act against an obligation contracted by this agreement if he transfers to another man that owner authority over the slave-possession that he acquired for himself by a contract
58 that was extorted by rightful force. For this reason, *the owner has a transmissible right over the slave-possession, although the slave-possession's right with regard to the owner* to furnish him with provisions *remains as a highly personal right*, §. 73, that cannot be transferred to another without the owner's consent.

1) Daniel Friedrich Hoheisel, *De mercatu corporum humanorum*, Leipzig 1720.

* Therefore, although a slave-possession cannot press another slave-possession upon his owner in his stead, the owner nonetheless is free to transfer his owner authority to another, even if the slave-possession does not want him to. *The difference in right* regarding voluntary and forced slavery must be sought in the difference in state between the voluntary and the forced slave before the owner society was entered upon. The voluntary slave was a free man, against whom the owner was *not permitted anything*; the forced slave, on the other hand, was an unjust enemy, against whom the owner as just enemy *was permitted everything* at that time. When *voluntary slavery* is established, it depends on *the discretion of the slave rather* than on that of the owner *to determine to what extent he wants to renounce* his *natural liberty*; in *forced slavery*, on the other hand, it depends *on the discretion of the owner rather* than from that of the slave *to what extent he wants to renounce his right of just enemy* with regard to an unjust enemy. Hence establishing
59 the *bounds of owner authority* regarding *voluntary slavery lies* most of all *with the will of the slave*, regarding *forced slavery with that of the owner*.

§. 75.

xix361 Since the owner amasses wealth through the slave, §. 71, it follows that *the owner acquires as much right over the offspring that* his *male slave begets with* his *female slave as the transmissible right that naturally falls to the parents.* He therefore acquires nothing but the *right of tutelage*, §. 63, and by no means owner authority, §.62. For this reason by the law of nature *the offspring of slave parents is not born a slave*, but only a *pupil of the owner* of his parents. Because, however, the slave's offspring has to be brought up at the expense of the owner, which one day has to be restituted by the offspring, *the owner has the right to demand work from the offspring until he is compensated for those expenses.*

§. 76.

Against a disobedient servant the master, against a disobedient slave the owner has the right of punishment, §. 40. A wrong that a superior does to his subject is specifically called a GRIEVANCE. So *with regard to a master or owner who does him wrong,*
60 *the wronged servant or slave has the right to demand that the grievance be removed; to support this, he has the right to deny him obedience when he commands, to resist if he assaults him, or to leave his house*, §. 12.

§. 77.

In ancient times there were, and there still exist today, *owners* who *deem it right* both *to deny their slave-possessions* and their children and entire posterity *provisions at will* and *to rob them of life* itself, so much so that they consider their slaves stripped of every human right and impossible to wrong, by the right of property, against which all is permitted. *Such slavery*, however, 1) *is not a society*, because it does not comprise

a common good, §. 2, *nor* 2) *can it be based on a contract*—for agreeing to a life that is permanently exposed to miseries that are the most dreadful of all evils is not an act of will but of madness—, 3) rather *it is a lasting war*: a state as far removed as possible from that between associates.

* No doubt this irrational custom derives from the captivity of defeated enemies, against whom all violence is rightful before a pact is made.

61

TITLE IV
THE FAMILY

§. 78.

Combine a conjugal society with a parental one, or with a master society, or a parental society with a master society, or conjugal, parental and master society together, and a composite society is born that is called a family. A FAMILY therefore is a society composed of a conjugal, parental and master society, or at least from two of these. The former is called a COMPLETE FAMILY, the latter an INCOMPLETE one.

§. 79.

The members or *associates of a family* are 1) the PATERFAMILIAS and MATERFAMILIAS—
xix362 for these, in a house, are the names for the same people who in a conjugal society are called husband and wife, in a parental society the father and mother, in a master society the master and mistress; 2) the sons of the family and the daughters of the family; 3) the servants and maids, male and female slaves, who as part of the family are called DOMESTICS.

62 §. 80.

The goal of the household society is composed of the goal of the conjugal, parental and master society, and hence *consists in the furthering of the achievement of the goal of every single society* from which the house is composed *through every single* other of these societies; in the *increase*, therefore, of every society's *welfare* through the others; and consequently, in the *one society being of help* and *assistance to the other*, and all the more *in* the one *not being a hindrance* to the other. Therefore *domestic welfare* also consists in the combined and hence mutually increased welfare of the conjugal, parental and master society.

For this reason, *if someone by his own consent becomes a member of a simple society* that is *part of a house, he becomes a member of the house* at the same time, and therefore *he obligates himself*, at least tacitly, *to further the welfare of the house and* its *other parts* as much as he can, and he is therefore understood to acquire *the rights corresponding to this obligation* as well. So, more generally: *whosoever is received into a society* that is
63 *part of a larger* society, *becomes a member of the larger one* at the same time, *acquiring the rights* and *obligations that obtain in it*.

§. 81.

The family necessarily is a composed society, §. 41, and a ruled society, §. 22.

§. 82.

The overlord (head) *of the family* is *the paterfamilias* and *materfamilias*, §. 66 and 59, who naturally *share domestic overlordship* with regard to *their children*, §. 53, *and*, in as far as a master society has also been created by their mutual consent, with regard to the *servants and slaves* as well. And *to that extent the domestic overlord is a moral person*, §. 92, *Prol.* It is possible, however, for domestic *overlordship* to fall *to the paterfamilias alone on the basis of a contract*, while it is to be exercised in part through him, in part through the materfamilias; indeed, *if the paterfamilias is lacking or failing*, all domestic *overlordship falls to the materfamilias alone*; consequently, if the paterfamilias is dead, all domestic overlordship devolves upon the surviving materfamilias as well, §. 64.

Subjected to domestic overlordship are the children of the family, §. 59, and *the domestic servants and slaves*, §. 66 and 70.

64 §. 83.

xix363 *The overlord in the house has* the right to direct at will the actions of the children of the family and of the domestics toward domestic welfare, §. 22 and 80, and hence *the right to further the welfare of the marriage* and *that of the master society* at the same time *through the children of the family, and* vice versa *to further through the domestics the welfare of the parental* and *the conjugal society* as well; *the right to make domestic laws*, §. 34, *and the right to punish disobedient children of the family and domestics*, §. 40, etc.

§. 84.

Finally, *from the mutual consent of the paterfamilias and materfamilias* to constitute a master society in the house derives *their mutual right, and therefore also their mutual obligation, to further the welfare of the household through the children of the family* and *the domestics*.

* We freely grant that once families had arisen, *the right to succeed without a will* and *by will* gradually came into use. Meanwhile, this right cannot be demonstrated in its entirety from the sole concept of the matrimonial, parental or even family society. So for it to be established, *contracts* were needed in the beginning; later on it became custom and a tacit family law all the more easily as it was more important to all the neighboring families that the legacy of the deceased parents of the family would not fall prey either to the slaves or to some usurper.

65

Book III

Universal State Law, in Particular Universal Public Law

§. 85.

Since man by a natural and primary impulse is driven to perfect himself, §. 5 and §. 73, *Prol.*, *the goal* or primary and supreme purpose *of all men is happiness; and in particular*, whenever of course one is not thinking of beatitude and life after death, *external happiness (prosperity)*, §. 24, *Prol.* Hence they seek *means of external happiness*; hence they are busy *preserving their external goods—which* they enjoy *for their external happiness*—and *increasing them* with ever more goods. As they endeavor to preserve these goods, they look for *security*, §. 134, *Prol.*; as they pursue their increase, they aspire as much as possible to an abundance of external goods, i.e., to SUSTENANCE.

66 Through *subordinate goals*—the means, as it were—the pursuit of external happiness drove individual men into societies, simple ones at first, then into families, then
xix364 the families into various larger societies again. But as they found these partnerships insufficient by far to obtain their goal, they finally started to strive for external happiness directly by joining forces, and they united to form the societies that are called *states*. Because this *society*, compared to the other larger societies formed to obtain some external good, by experience itself is found to be *more perfect* in appearance, it should be considered as such here, too.

§. 86.

A STATE (a republic in the *broad* sense of the word) is an unequal society of several families for the pursuit of external happiness. The associates in a state are called the CITIZENS, and they are either the *civil overlord* or the *civil subjects*. Foreigners, i.e.,
67 those who are not members of our state, are called ALIENS. "The PEOPLE" in the disciplines dealing with the state is sometimes used of the group of citizens, sometimes of the group of civil subjects of the same state, and it is also used more generally for the multitude of families that constitute an eternal body.

The science of the natural laws that must be observed once a state has been established is called UNIVERSAL STATE LAW; so this is nothing else than natural law applied to the state, and it focuses on deducing the natural rights and obligations that fall to men in a civil condition and therefore to citizens and states.

§. 87.

As social law, state law is divided into internal and external state law, §. 5. *Internal state law* teaches the rights and obligations of the citizens with respect to each other: hence it passes on the mutual rights and obligations either of the civil overlord and the civil subjects, or of the civil subjects with respect to each other; the first kind of internal state law is called PUBLIC (state) LAW, the second kind PRIVATE (state) LAW.

68 *External state law* teaches the rights and obligations of the citizens and the state with regard to foreigners. Foreigners are individual or moral persons and entire societies, big or small. More important than the others are the large societies that are eternal and free which are called NATIONS, §. 97, *Prol.* This gives rise to a specific kind of external state law that is called LAW OF NATIONS and passes on the rights and obligations of nations with respect to each other.

The most important part of internal universal state law is *universal public law*, that of external universal state law is *universal law of the nations*.

* * *

xix365 From those *authors* who have explained the entire universal law of the state, i.e. universal public law as well as universal law of the nations, in individual commentaries, the following are particularly worthy of note: Huber (1), Wolff (2), Burlamaqui (3), Rutherforth (4) and Vattel (5).

69
1) Ulrik Huber, *De jure civitatis libri tres*, 4th ed. with the *notes* of Christian Thomasius, Frankfurt and Leipzig 1708; the same with commentaries by Nicolaus Christoph von Lyncker, supplemented by Johann Christian Fischer, Frankfurt and Leipzig 1752.
   ——, *Institutiones reipublicae*, in Huber's *Opera minora*, Utrecht 1746, vol. I. p. 1.
2) Christian Wolff, *Jus publicum universale*, Halle 1748.
   ——, *Jus gentium*, Halle 1749.
3) Jean Jacques Burlamaqui, *Principes du droit politique*, Geneva 1751. Reprinted in the Low Countries under the author's name, and there is an English translation.
4) Thomas Rutherforth, *Institutes of Natural Law; being the Substance of a Course of Lectures on Grotius de Iure Belli et Pacis*, 2 vols., Cambridge 1754–56.
5) Emer de Vattel, *Le droit des gens, ou principes de la loi naturelle*, 2 vols., London [Neufchatel] 1758.

There is also a special *bibliography of state law* (1); the excellent use of this study to German public law has been elegantly shown by Steger (2).

70
1) [Johann Friedrich Wilhelm von Neumann], *Bibliotheca juris imperantium quadripartita, sive commentatio de scriptoribus jurium quibus summi imperantes utuntur, naturae et gentium, publici universalis et principum privati*, Nuremberg 1727.
2) Adrian Steger, *Dissertatio de iure naturae iuris publici Imperii Romano-Germanici principio*, Leipzig 1747.

71

Section I
Universal Public Law in General

§. 88.

Universal public law *teaches* the mutual natural rights and obligations of the civil overlord and the civil subjects, and therefore those most of all that fall to them as such, i.e., *civil rights* and *obligations*. Hence it is *natural law* applied to the civil overlord and civil subjects in their relation with each other; it passes on the *laws* that the civil subjects and the civil overlord by nature must observe with respect to one another, and therefore it explains the *juridical bond* existing between them, §. 6, and teaches the mutual *civil duties* of the overlord and the subjects.

* * *

The authors who have dealt with universal public law in particular books are mainly:
72 Sidney (1) and Locke (2), Englishmen, Böhmer (3), Fritschius (4) and Wolff (5), Germans, and Johansson (6), the pseudonym of a Swede.

1) Algernon Sidney, *Discours sur le gouvernement*, transl. Peter August Samson,
xix366 3 vols. The Hague 1702, 4 vols. Paris 1756.
[orig.: *Discourses Concerning Government*, London 1704 (1st ed. 1698)].
2) John Locke, *Two Treatises of Government*, London 1690, 5th augm. ed. London 1728. There are several French translations of this little work, but this one is better than the rest: *Du gouvernement civil* par Mr. Locke, trad. de l'Anglois, cinquieme edition exactement *revue* et *corrigée* sur la cinq. edition de Londres et augmentée de quelques *notes* par L. C. R. D. M. A. D. P., Amsterdam 1755.
73 3) Justus Henning Böhmer, *Introductio in ius publicum universale*, Halle 1710, 2nd corr. ed. Halle 1726.
4) Godofredus Ernestus Fritschius, *Ius publicum universale*, Jena 1734.
5) Christian Wolff, *De imperio publico seu jure civitatis*, Halle 1748.
6) Johan Martin Johansson (the true author is said to be Johan Montin [Johansson]), *Die bürgerliche Regierung nach ihrem Ursprunge und Wesen betrachtet*, transl. from the Swedish, Stockholm (Leipzig) 1750.

§. 89.

Because a state thus consists in an unequal society of several families for the pursuit of external happiness, the following are required for a state: 1) *several families*, without
74 excluding either other individuals living outside a family or other moral persons, i.e., entire societies, as members of the republic.

2) *External happiness* is required as the common goal and the common good of all the members of the republic. External happiness as common to all citizens is called public happiness; hence the unimpeded progress towards obtaining it is called public welfare, §. 3, and the good that regards all citizens public good. If some

larger society has formed in order to commit robbery and theft, it is so unworthy of the name of state that it is not even a legitimate society, §. 9.

xix367 3) *Overlordship* is required as the determined *means* by which the state's goal is to be pursued, hence it is called *civil overlordship* (civil authority, public overlordship). And thus the state is different from large societies that are equal and that have been formed for the pursuit of security or external happiness.

75 §. 90.

As for the rest, the *state is free* by force of origin, §. 16, and it is *more perfect* if the families, caring not only for their own happiness but at the same time for that of their offspring, establish a state that by their intention will remain as long as their offspring remains. And thus a state arises that is an *eternal society* (an immortal body), i.e., one in which the associates successively succeed one another, §. 97, *Prol.* Hence *the state is regarded as free* here, §. 11, and *as an eternal body*, §. 85; indeed even *as a society* continuously inhabiting a certain region of the world, in other words: *having a stable residence*, as we all know the more perfect states have.

§. 91.

A state is naturally formed with a pact that is called the PACT OF CIVIL UNION. Based on this pact, individuals are obligated by the group as a whole to further the public good, and the group as a whole by the individuals to take care of their security and
76 sustenance. Hence *neither party should do that which goes against public welfare*. In as far as in a state no such thing should be done, and hence the private good should come after the public good, *public welfare is* said to be *the supreme law of the state*, §. 7.

§. 92.

Since the goal of the state can be pursued in various ways and by diverse means, *if a state is established, the way in which public welfare should be furthered*, i.e., the specific means by which the state's goal should be pursued, *have to be determined*; this is naturally achieved by common consent of the citizens and hence, again, by a pact. And it is from this *more specific pact* by which the republic is structured that any *state receives* its *specific form*, which it does not yet have on the basis of the more general pact of civil union.

§. 93.

As the state by force of origin should be regarded as free, *all can agree on the form of*
77 *their republic as they like. Hence they have the right* to establish whatever they deem
xix368 necessary to that end, and therefore to determine at will what must be done consistently in the same way, i.e., *to make laws*, and also to decide what should be done in a specific occurrence.

§. 94.

Since, however, with the pact of civil union *power* is established at the same time, §. 86, *individuals subject themselves to the group as a whole,* in such a way that *whatever the group as a whole decides for the sake of public welfare, must obligate individuals as subjects*, and consequently they are bound to obey the group as a whole. Because of this, *civil power* by nature *has to derive from a pact* and by origin *lies with the people* as a proper right.

§. 95.

As the state is free by origin, the exercise of overlordship by the people over individuals is naturally independent of any other man's overlordship, §. 84, 85, I. A larger soci-
78 ety's overlordship, in as far as its exercise does not depend on any man's overlordship, is called SUPREME OVERLORDSHIP (supreme authority), and hence the OVERLORD to whom it falls is called the SUPREME overlord. For this reason *civil overlordship* by its origin and hence *such* overlordship *as originally falls to the people is supreme*. Thus by force of the *overlordship's being the highest* (supremacy) no act that regards the exercise of overlordship is subject to the right of any man, nor can it be invalidated by any man. Civil overlordship as supreme overlordship, i.e. as independent of another man's overlordship, is also called SOVEREIGNTY.

1) Johannes de Witt, *Dissertatio politico-juridica inauguralis qua disquiritur quinam vere habeant maiestatem in societate civili*, Leiden 1741.

§. 96.

xix369 If the order of a state is to be established, the group as a whole must agree among themselves on whether they want to keep civil overlordship to themselves or transfer it to a person, and how to transfer it; whether to one person or to several together; overlordship
79 as a whole, or divided; under certain conditions or without any condition; as something that can be transferred to certain others, or as something highly personal; whether they prefer to confer it only as regards its exercise, or as regards the substance itself.

§. 97.

He who exercises public overlordship in the state REIGNS the state; the exercise itself is the REIGN, and the person who has been given the reign by the people is the HEAD OF STATE. If the head of state's reign depends on the people (on the people's overlordship), not the head of state but the people is the civil overlord; if it does not, not the people, but the head of state is the civil overlord. And thus *he to whom overlordship has been transferred by the people to exercise it* is 1) *the civil overlord*: because by force of the transfer *overlordship falls to him independently of the people*, and therefore *by his proper right* and *in his own name*, 2) and the same man is *the highest* with regard both to foreigners, by force of origin, §. 95, and to the people itself that he reigns, and therefore *sovereignty* rests with him, §. 95.

80 §. 98.

Take the overlord of a state, as a person distinct from the people. Since civil overlordship is naturally acquired by a pact, §. 76, I, *the civil overlord has overlordship and sovereignty on the basis of a pact with the people*, which transfers overlordship to him and thus subjects itself to him. Which is why such an agreement is called PACT OF (civil) xix370 SUBJECTION *par excellence*. Because of this, 1) *the civil overlord has his sovereignty from the people, not immediately from God*; 2) *the overlord's right must be measured by the pact* both of union and of civil subjection *and by the goal of the state*, §. 35, and therefore by the will of the people when it transferred overlordship; 3) for his authority to be valid, a valid pact of subjection is required. He who appropriates overlordship without right is a USURPER OF OVERLORDSHIP: and therefore *he who on the basis of no pact of subjection, or one that is defective, appropriates civil overlordship is not a legitimate overlord but a usurper of civil overlordship*. The defect that is in the usurpation from the beginning, however, can be cured by the people's subsequent agreement, be it explicit or tacit.

81 1) On the controversy whether majesty comes immediately from God that was most vehemently fought between Masius and Thomasius, cp.:

Hector Gothofredus Masius, *Interesse principum circa religionem evangelicam*, Copenhagen 1687.

Christian Thomasius, *Freymüthige, lustige und ernsthaffte, jedoch vernunfft- und gesetzmäßige Gedancken oder Monathsgespräche* (...), Halle, December 1687.

Hector Gothofredus Masius, *Orthodoxia Lutherana de origine imperii divina et immediata*, Copenhagen 1688.

Christian Thomasius, *Vernünftige und christliche aber nicht scheinheilige Thomasische Gedancken und Erinnerungen über allerhand gemischte philosophische und juristische Haendel*, 2 vols., 3tes Hauptst., Halle 1723–24.

2) You will find the history of Augustin von Leyser's quarrel with the Wittenberg theologians and philosophers on the same subject in Leyser's preface to his *Meditationes de assentationibus iure-consultorum*, Helmstedt 1726, and also in the edition by Heinrich Gottlieb Francke, Helmstedt 1741, particularly 568 on the *Digesta*.

§. 99.

xix371 Because civil overlordship consists in the right to determine whatever is necessary for public welfare, it comprises various rights according to the differences in whatever is necessary, and hence *public overlordship* and sovereignty can be viewed as *a whole* 82 *composed of several parts*; therefore any particular right of sovereignty whatsoever and even of any public overlordship whatsoever is called a SOVEREIGN RIGHT. Sovereign rights are called *potential parts* of civil overlordship by some.[1]

[1] Pufendorf uses this term to refer to the powers or functions of the state. See his *De iure naturae et gentium*, book VII, ch. IV, mentioned by Achenwall above, I, p. 23. See Michel Troper, "Sovereignty," in the *Oxford Handbook of Comparative Constitutional Law*, ed. Michel Rosenfeld and András Sajó (Oxford: Oxford University Press, 2012), pp. 350–69, esp. 354.

Civil overlordship that is not diminished by any (potential) part of it is full; it is not full, on the other hand, if it is diminished by any part of it. *Civil overlordship as it originally falls to the people is full* by force of its natural liberty; *transferred* by the people *it may fall full* or *not-full to the person to whom it has been transferred*: for the right of such a civil overlord must be measured by the pact of subjection, §. 98.

§. 100.

Civil overlordship to whose exercise cleave particular obligations, i.e. whose exercise is restricted by certain conditions, is called limited (restricted); that which is not limited is called absolute (unlimited). *Civil overlordship as it falls to the people by force*
83 *of origin* and natural freedom *is absolute; transferred, however,* it may turn out *absolute or limited*, §. 98. Thus *if overlordship is simply transferred* by the people, it falls to him to whom it is transferred, and therefore *naturally to every civil overlord as supreme, full* and *unlimited public overlordship.*

As to the rest, not-full civil power can be absolute, and vice versa full civil power can be limited, or even limited for a certain part and absolute for the rest.

§. 101.

Suppose an overlord to whom public overlordship has been simply transferred, whether he be an individual or a moral person. In the pact of subjection with which the transfer is made, the people, and hence the individual citizens subjecting themxix372 selves and all of them as a group, promise the overlord obedience for the purpose that he take care of public welfare, §. 86; and therefore the civil overlord by accepting overlordship takes it upon himself to attend to public welfare by means of his reign,
84 and because of this obligation to which he agrees, the people transfers overlordship to him and imposes obedience to him upon itself. Therefore *from the civil overlord's obligation to attend to public welfare derives* his *right to command, and his people's obligation to obedience*.

§. 102.

Thus the civil overlord is obligated to the care of public happiness by means of the exercise of his overlordship, which care is called governance of the republic. Hence *he is obliged to apply remedies to public welfare, to remove hindrances, to preserve* as well as *augment external goods and the rights of individuals and the group as a whole*, and so also *to* protect *each and all of them*, i.e., to keep them safe from violence by others, *as much as possible.*

Public happiness *internally*, i.e., regarding citizens amongst each other, is called
xix373 internal, while it is called external if considered with regard to foreigners. By the same token *public welfare, security, prosperity, reign, and the governance of the republic*
85 are also distinguished into *internal* and *external*. To security pertains tranquility, a state free from fear of violence. *Public tranquility* consists in the tranquility of individual citizens and that of the citizens as a group: *internal* where a citizen does not fear violence from his fellow-citizen, and *external* where every individual citizen and the

entire body of the state do not fear violence from foreigners. *The care of both internal and external public happiness lies with the civil overlord.*

§. 103.

From this obligation of the civil overlord follows the *right of the civil subjects that he should indeed attend to public welfare*, not neglect it, let alone destroy it; *that he should*
xix374 *not abuse his reign for another purpose that is contrary to the public good*, for instance if he is merely intent on his own benefit, power and glory; *and that he should not refuse the subjects help* by which losses are restored to those who have sustained damage, succor is offered to the afflicted, security is lent to those in danger, disasters are warded
86 off, and the necessities and commodities of life are procured; *and* finally *that he should not deny his subjects access when they come to utter grievances or beg for protection.*

§. 104.

Since, however, supreme public power has been transferred to the civil overlord, §. 97, *the civil overlord has the right to* govern the republic *as he sees fit*. Hence if overlordship has been simply conferred upon him, §. 100, *he has the right to establish everything that in his opinion contributes to* the pursuit of *the public good*, and therefore *has the right to everything without which public welfare cannot be obtained*, or indeed *cannot be obtained in his opinion.*

Civil AFFAIRS that serve public welfare more closely are called PUBLIC; consequently they may concern external or internal welfare, §. 102, whence the former are called FOREIGN, the latter DOMESTIC. SOVEREIGN RIGHTS are called TRANSIENT (rights of parity) if they pertain to external reign, and IMMANENT (permanent, rights
87 of disparity) if they belong to internal reign. Therefore *the civil overlord* naturally *has the right to determine at will all domestic* and *foreign public affairs*: which, by whom, and how they should be managed; as well as *any sovereign rights*, be they *transient* or *immanent*, §. 100.

§. 105.

To this right of the civil overlord corresponds the subjects' *obligation* to *civil compliance*, §. 32, i.e., to obedience in the things the overlord tells them [to do] for public welfare. Hence *the subjects are obliged to submit* their *will* and *powers in those matters that he determines for the furtherance of the public good*, and therefore *to omit* what he forbids to that end and to *do* what he tells them to, *as much as they can.*

§. 106.

xix375 Civil *overlordship extends as far as public happiness does, and the overlord's obligation to attend to it*. Because of this, *in as far as public welfare demands it, he has the right* 1) directly *over all the actions of individual* and *all subjects*, and hence also *of civil societies*
88 whose members are civil subjects; 2) indirectly *over everything that is his subjects' own*, and therefore *over all their rights*, innate or acquired, both over persons and things, especially also *over the offspring of civil subjects*, §. 90, although that is not civil

overlordship by itself, §. 75, but becomes civil overlordship in the end by an explicit or tacit pact of the offspring; as a consequence also 3) over the region the people inhabits and in which it originally has overlordship, i.e., over the state's TERRITORY. From this the *territorial right of the civil overlord* is conceived of, a *supreme* and *a sovereign right* by its origin, §. 100.

From this extent of civil overlordship the *extent of civil subjection* is determined at the same time. In as far, therefore, as the subjects are under civil overlordship, they are deprived of their natural liberty, §. 33.

§. 107.

On the other hand, *civil overlordship must be restrained within the confines of public welfare*. Thus the public overlord cannot give orders that do not in any way contrib-
89 ute to furthering it, nor in general order that which is not under man's overlordship, §. 39; much more is he prohibited from ordering things that are obviously harmful to the republic.

So there are actions of civil subjects that are not subject to civil overlordship: ACTIONS THAT ARE CIVILLY INDIFFERENT (civilly irrelevant), §. 49, I, with regard to which the civil subjects retain their natural liberty. The remainder of natural liberty
xix376 that falls to the civil subjects as such is called CIVIL LIBERTY. Consequently 1) natural liberty is diminished by civil subjection, but not removed in its entirety, §. 38, 2) civil subjection is most different from slavery, and civil overlordship from despotic overlordship, §. 37, and from owner authority, §. 70.

1) Christian Erdmann Pfaffreuter, *Limitum quibus subditorum erga imperantes terminatur fides inquisitio generalis*, Leipzig 1705.
——, *Limitum quibus subditorum erga imperantes terminatur fides inquisitio specialis*, Leipzig 1706.
2) *Cato's Letters, or Essays on Liberty, Civil and Religious, and Other Important*
90 *Subjects,* 4 vols., 5th ed. London 1748. The authors of these letters, which were first published one by one from 1720 to 1723, are Thomas Gordon and John Trenchard. German translation titled *Cato* oder *Briefe von der Freyheit und dem Glücke eines Volkes unter einer guten Regierung*, 4 vols., Göttingen 1756–57.
3) Daniel Maichel, *De civitatum saluberrimo instituto deque summi imperii iustis limitibus*, Tübingen 1745.
4) Francis Gentleman, *Religious and Political Liberty: An Oration*, London 1754.

§. 108.

For the rest, if it is *doubtful whether that which the overlord of the state has determined agrees with public welfare* or not, *the assumption is in favor of the civil overlord*; not only because he who directs everything to the benefit of public welfare must be assumed
xix377 to grasp better than the other citizens what is conducive to it, but also because *the overlord has the right to determine at will*—according to how he uses it, of course—
91 *what contributes to* the furtherance of *public welfare*, §. 104, and therefore *the subjects are obliged to respect* his *choice* and *judgment*, §. 80, I, and hence *to obey in case of*

doubt. Hence also, *if proof is needed, the overlord does not have to prove his right, but the subjects have to prove the contrary.*

§. 109.

The pacts by which the state and its specific form are established are called FUNDAMENTAL PACTS (of the state); and because a contract creates a law between the parties, §. 182n., I, even if they are associates, §. 10, and the binding force of fundamental pacts becomes permanent, they are also called FUNDAMENTAL LAWS (of the state), §. 25. Thus there is no ordered state without fundamental laws, §. 29; among these fundamental laws are the general pact of union, §. 91, and more specific pacts by which both the person is determined with whom sovereignty should consistently rest, and the way civil power is exercised or acquired; and by which it is determined that civil overlordship
92 should fall to the civil overlord full or not-full, restricted or unlimited, and by which the pact of subjection is determined as well, §. 98.

Because the fundamental laws thus by force of pact obligate the group as a whole among themselves, and the people and the civil overlord mutually, §. 94, *the fundamental laws* and indeed *all laws that by force of pact are valid between the public overlord and the people cannot be rescinded or changed without the common agreement of those by whom they have been established*, i.e., by one party without the other's consent, §. 182, I. 252, I.

§. 110.

Since the specific form of any state follows from the determined way in which the goal of the state is to be pursued, §. 92, there are various forms of state, based on the varying determination of the person to whom public overlordship should consistently fall.

If the people retains public overlordship, a DEMOCRACY arises (democratic republic, people's republic, people's state); if the people transfers it to one man or single
93 person, a MONARCHY (monarchic state, principality); if it transfers it to several people
xix378 at the same time, an ARISTOCRACY (aristocratic republic). Aristocracy and democracy are both called REPUBLICS *in the strict sense* (cp. §. 86.), where the word is used of a state whose overlordship rests with a moral person. And *so states differ with regard to the specific subject of sovereignty*, i.e., the specific person with whom public overlordship rests, *by force of origin*, §. 97, 98.

Because in republics in the strict sense we find that civil overlordship falls mostly to the citizens who are *patres familias*, as heads of families, §. 82, be they many or few, the name of democracy is given to republics whose overlordship rests with a large part of the citizens who are *patres familias* (large of course compared to the smaller part, the other citizens who are *patres familias*). And so the state whose sovereignty by force of the fundamental law lies with one man, i.e. a single person, is a *monarchy*; if it lies with a few *patres familias*, it is an *aristocracy*; if it lies with all the citizens or at least with a large number of *patres familias*, it is a *democracy*.

94 He with whom the overlordship of a monarchy resides is called a MONARCH (prince). The group of men to whom the overlordship of an aristocracy jointly falls are

called ARISTOCRATS; and their society to govern the republic together is the COUNCIL OF ARISTOCRATS (supreme senate). The overlord of a DEMOCRACY retains the name of *people*, although it is mostly used as a *pars pro toto*. In a monarchy and an aristocracy on the other hand, *people* means the multitude of citizens in as far as it is distinct from the monarch or the aristocrats and hence comprises all the subjects as such, cp. §. 86.

1) Ulrik Huber, *De iure popularis, optimatium et regalis imperii sine vi et* a *sui iuris populo constituti*, in his *Opera minora*, Utrecht 1746, vol. I, no. 2. This work is directed against Jacobus Perizonius's *Oratio de origine et natura imperii imprimis regii a libero et sui juris populo simpliciter delati*, which was held at Franeker in 1689 and is added in the same volume, p. 37.

95 §. 111.

Having established all this, we will now consider more in particular the mutual *rights* and *obligations* of the public overlord and the civil subjects: 1) those which derive from the nature of the state and public overlordship regarded simply and in general, the whole of which makes up ABSOLUTE UNIVERSAL PUBLIC LAW; 2) those which are deduced from the specific constitution of the state and hence from the various particular forms and mutations of republics, the sum of which constitutes CONDITIONAL UNIVERSAL PUBLIC LAW; 3) those which can be conceived of given a citizen's wrongful act or wrongdoing, which are included in the WAYS TO PURSUE ONE'S RIGHT IN THE STATE.

96

Section II
Absolute Universal Public Law

1) Caspar Ziegler, *De juribus majestatis tractatus academicus, in quo pleraque omnia quae de potestate et juribus principis disputari solent, strictim exponuntur*, Wittenberge 1681.
2) Christoph Georg Jargow, *Einleitung zu der Lehre von den Regalien oder majestätischen Rechten eines Regenten*, 2nd corrected ed., Rostock 1757.

§. 112.

xix379 In this section we assume an ordered state, to whose overlord falls supreme public overlordship, §. 95, full, §. 99, and unlimited, §. 100, whether this overlord be the people itself or a single or moral person distinct from the people, §. 110: so that we can thus correctly deduce the mutual rights and obligations of the overlord and the civil subjects that can be garnered from the nature of the state and public overlordship viewed by itself, §. 100, and in particular everything that pertains to the internal reign of the republic, the immanent sovereign rights, §. 104.

97

TITLE I
ON LEGISLATIVE, EXECUTIVE AND OVERSIGHT POWER

§. 113.

Because the civil overlord is obliged to further public welfare by means of his reign, as much as possible, §. 101, *he has the right to everything without which the goal of the republic cannot be attained*, and hence *the right to establish everything at will for that purpose*, i.e., everything he deems relevant to the pursuit of the public good, §. 104.

For the public welfare to be in fact furthered by the public overlord, it is necessary 1) for him to determine what should be done by the subjects for the sake of the public good, i.e. to tell them what to do, and therefore to *make laws*, §. 34; 2) for him to make sure that his subjects in fact carry out his orders and that they abide by the laws that
98 have been made, and more generally, that his subjects fulfill their obligation; 3) for him to know everything in the state that may concern public welfare.

Since the overlord of the state is thus obligated to these things, §. 101, he also has a right to them, §. 104. As a consequence the following *belong to the sovereign rights*: 1) *the right to give his subjects laws*, LEGISLATIVE POWER (the supreme right to give laws); 2) *the right to effect that the subjects fulfill their obligation*, EXECUTIVE POWER (the right of supreme execution); 3) *the right to effect that he knows everything in the state which may concern public welfare*, OVERSIGHT POWER (the right of supreme oversight).

§. 114.

xix380 *The civil overlord* by force of the legislative power *can also determine the things his subjects should always do in the same way and hence make civil laws in the strict sense*, §. 25*, and [determine] whatever should be done in a specific occurrence*, §. 27.

99 Therefore 1) *every law of the public overlord, given within the confines of civil overlordship*, §. 39, §. 107, *is civilly* valid, as it produces an obligation for the subjects to whom it is given; 2) in as far as it cannot be known to the subjects without the declared will of the overlord, it is *positive*, §. 65, *Prol.*; and in accordance with the different kinds of declaration, it is *express* or *tacit*, §. 88, I. Because positive laws are not binding in as far as the subjects do not know them by no fault of theirs, §. 8, 16, I, 3) for them to be binding, they require *promulgation* (publication), an act by which those whom a law is meant to obligate are brought to knowledge of that law, §. 66, *Prol.*, and thus *such positive laws are binding* only *from the moment of promulgation* and *knowledge*.

And since such positive laws derive their force from the will of the public overlord as their maker, *the civil overlord is the highest law-giver*, §. 63, *Prol.*, in the state, and *the source of all civil laws whose force* does not already derive *from natural law* itself or *from*
100 *the pact* of the group as a whole or of the people with the civil overlord.

1) Karl Otto Rechenberg, *De norma legum iustarum ab iniustis discernendarum*, Leipzig 1711.

§. 115.

Because the overlord of the state has the right to direct everything to the end of public welfare *at will*, §. 104, to this extent he can not only give his subjects laws, but also

rescind and change them once they have been given; and hence substitute other laws for the ones that have been rescinded; extend a law to cases that so far were not covered by it; restrict a law as regards the cases that were so far covered by it; liberate (exempt) certain individuals from the obligation under a law that has been given; and hence also give certain individuals permission for acts that are contrary to a law that has been given. Complete rescission of a law is called its ABROGATION; the exemption of a certain individual from the obligation under a certain law in a specific case is called
xix381 DISPENSATION; if on the other hand it is not restricted to a specific case, it is called a
101 CONCESSION OF IMMUNITY. So to the sovereign rights belong the *right to abrogate laws* that were given to the subjects, the *right to change* them, and the *right to give dispensation* and *concede immunities*.

In a similar way the civil overlord in the interest of public welfare can also grant some citizens a right that the others lack; such a special right, conceded by the overlord to certain subjects, is called a PRIVILEGE. If someone has a privilege, the others are obligated to tolerate his using that right, and are bound not to undertake anything against it; so by the concession of a privilege a law is given to the others, and therefore the *right to concede privileges* belongs *to the sovereign rights*.

Since these sovereign rights are more closely connected to the *legislative power*, they are usually ranged under it.

§. 116.

Because the civil overlord declares his will by giving his subjects a law, and because he can determine his will in the interest of public welfare as he wishes, §. 104, if doubt
102 arises regarding his will as indicated by the words of the law, he can determine his will. Determining someone's declared mind (thought or will) is called INTERPRETING. The interpretation by which the mind of the speaker is determined in such a way that it contains more than what his words comprehend is called EXTENSIVE; that which contains less than what his words comprehend is called RESTRICTIVE INTERPRETATION. Because by interpreting a law either restrictively or extensively a new law is in fact given, the *right* to *extensively* or *restrictively interpret laws* given to the subjects belongs to the legislative power and therefore *to the sovereign rights*. For this reason the interpretation of such a law in case of doubt should be asked of the supreme overlord as the legislator; this INTERPRETATION of a law, provided by the legislator, is called AUTHENTIC.

§. 117.

xix382 Because by force of the *executive power* the overlord of the state has the right to make
103 the subjects fulfill their obligation, the *right falls to him to compel the subjects by force*, if necessary, *for that purpose*. And because the subjects are bound not only to the laws that the overlord has made by force of his overlordship, but also to the fundamental laws and to all laws that have been established in the state by the consent of the group as a whole or by a pact of the people with the public overlord, §. 109, the *executive power is extended to the fundamental laws and the other laws put in place by pact as well*, indeed even *to the natural laws*, both *external* and *internal, in as far as public welfare cannot be obtained without the observance of these laws*, §. 113.

§. 118.

The disposition of the overlord in as far as he is given due obedience is the AUTHORITY OF THE OVERLORD; the disposition of the law in as far as it is given due observance is the AUTHORITY OF THE LAW. For this reason the overlord by force of the executive power has the right *to gain authority with the subjects*, both *for himself* as overlord
104 and *for* his own and his state's *law*. This authority is brought about 1) with the *good* subjects as they recognize that *the overlord's character is alien to injustice and keen on public welfare*, and that the LAWS, especially those he made himself, are *just* and *useful to public welfare*, SALUTARY (beneficial): in which disposition of the laws consists their binding force or *internal virtue*, §. 42. *Prol*. 2) With the bad this authority is gained as they recognize that *the overlord has both the power* and *the constant will* to bring the
xix383 disobedient to do as they must by force and to punish them, and therefore recognize that the laws are armed with such force and such punishments that they are sufficiently deterred from transgressing them. In this disposition of the laws consists their *external virtue*. For this reason *the overlord* also has *the right to attach punishments of such nature and magnitude to his laws as are sufficient to prohibit their transgression.*

§. 119.

Because the public overlord also has *oversight power*, so that he may know whatever
105 concerns public welfare, it also follows from this—so that he can exercise both the legislative and the executive power rightly, i.e., in accordance with the public good, §. 113—that by force of the right of supreme inspection *none of the subjects can hide himself or what is his from the inquiring sovereignty*. Hence to the sovereign rights also belongs the *right* with regard to the inspected *acts and affairs of the subjects*, 1) to *approve* of them, i.e. to declare them civilly valid, in as far as they are found salutary or at least harmless to the republic: the RIGHT OF CONFIRMATION; 2) to *disapprove* of them and declare them civilly invalid in as far as they are found to be detrimental: the RIGHT OF ANNULMENT regarding the *acts and affairs of the subjects.*

106 **TITLE II**
THE RIGHT REGARDING CIVIL OFFICE AND DIGNITY AND REGARDING PUBLIC REVENUES

§. 120.

Since the general means to obtain the public good lies in the use of the republic's resources, and this is what the individual subjects' actions and work are primarily related to, from the civil overlord's obligation to further public welfare follows his *right*, belonging *to the sovereign rights*, *to demand work from his subjects* to further public welfare.

xix384 SOVEREIGN AFFAIRS are a type of public affairs, §. 104, the conducting of which falls to the highest overlord by force of his sovereignty. The task of conducting public affairs, in as far as it rests with a certain subject, is called CIVIL OFFICE, and the subject
107 with whom it rests a CIVIL OFFICIAL: civil office combined with the conducting of sovereign affairs is termed PUBLIC OFFICE; the person in public office is called a

PUBLIC OFFICIAL (servant of the republic). Since the civil overlord has the right to determine which civil affairs should be conducted by which of the subjects, and in what way, §. 104, one of *the sovereign rights* is *the right to confer civil office*, the RIGHT OF (civil) OFFICE; and because he cannot conduct all sovereign affairs himself, he also has the particular *right of public office*, and hence the *right to appoint public officials* and *servants of the republic*.

§. 121.

For this reason 1) civil and public *officials*, in order to further public welfare as much as they can, *are obliged to fulfill their office*; 2) whatever they *do by force of the office* entrusted to them, they do *in the name of the civil overlord* and *in dependence on his*
108 *will*, 3) and he has the right to prescribe them the procedure that has to be observed in their appointed office, and to force them to observe it, as well as the right to inquire whether they fulfill their office with due diligence, or negligently or fraudulently, §. 113.

And because a citizen charged with the administration of public affairs is called a PUBLIC PERSON as such, which is the opposite of a PRIVATE or non-public person, *civil* and *public officials* (and indeed the civil overlord himself, although he is by no means an official of the republic) *are public persons*; yet these public persons are also counted among the private persons, in as far as they are not regarded as public.

1) Johann Paul Kress, *Dissertatio inauguralis de iure officiorum et officialium*, latest ed. Helmstedt 1753.

xix385 2) Augustin von Leyser, *Minister principis delinquens, olim (...) tribus disputationibus, nunc iterata editione in lucem productus*, Wittenberg and Leipzig 1735. Also available in his *Meditationes ad Pandectas*: the first disputation, *De falsis delictis ministrorum principis*, esp. 570; the second one, *De veris delictis*, esp. 571; the third one, *De foro ministrorum principis delinquentium*, esp. 80.

109 §. 122.

That which is deemed more perfect than other things is said to EXCEL; the excellence of a person with regard to other persons is called DIGNITY. Since rights and especially overlordship should be regarded as perfections, *overlordship engenders the dignity of the overlord with regard to his subjects*, and if one is obliged to acknowledge a person as one's overlord, one is also obliged to acknowledge that that person's dignity is greater than one's own. Hence *the civil overlord is invested with the highest dignity in the republic*, §. 95.

Therefore *if the overlord invests a subject with public office, he at the same time confers* a dignity *upon him* that other subjects are obligated to acknowledge: *a civilly valid dignity*, a CIVIL DIGNITY.

So *among the sovereign rights* is *the right to confer* (civil) *dignities* and therefore the right to determine also the external acts by which other subjects are obliged to acknowledge that dignity, e.g., *titles* and *precedence*, §. 72, I, as well as the right to determine other symbols which those who are honored with civil dignity will have

110 the right to use, e.g., *a coat of arms, the insignia of knighthood*. But in order to prevent clashes between the various officials' dignities, the civil overlord has the *right to define the rank of* every *dignity*. Hence the highest overlord is called the *source of all civil dignities*.

§. 123.

Goods that belong to the state in any way are GOODS OF THE STATE; if at the same time they are in the estate of certain citizens, they are called PRIVATE; if not, PUBLIC. Private goods comprise not only goods that are in the estate of *individuals*, but also *the goods of civil societies*, §. 106, and chiefly those of *organizations*, i.e., of those civil societies that constitute eternal bodies, §. 90.

xix386 *The private goods of a monarchy* either belong to *the civil subjects* or to *the prince as a private person*, §. 121.

The goods of the state are also part of the state's resources and consequently their
111 use should, as another general means, serve to further public welfare, §. 120, and in particular the expenses that are necessary for the administration of the republic should preferably be paid from the goods; therefore *one of the sovereign rights* is a certain *right concerning the goods of the state* of any kind, public or private, belonging to individuals or to civil societies and organizations, viz. *the right to further public welfare by means of the state's goods*, and in particular *to collect from them* the expenses that have to be made for the administration of the republic, *the public expenses*.

1) Augustin von Leyser, *Meditationes de assentationibus iure-consultorum et doctrina de domaniis*, 3rd ed. by Heinrich Gottlieb Francke, Helmstedt 1741.

§. 124.

Someone's REVENUES are that which he acquires from his property, his rights or his work, especially yields and money. Hence 1) *the state's revenues* are either *private* or *public*, 2) the public revenues, which flow from the goods of the state, can flow either from public or from private goods.

A monarchy's public goods whose revenues are intended to sustain the prince's
112 house or COURT are called the CROWN GOODS (the crown's domain); if the revenues are meant for other public uses, they are referred to as PUBLIC GOODS *in the stricter sense* (the republic's estate in the stricter sense).

The complex of revenues intended for the uses of the court is commonly called the ROYAL TREASURY; that for other public uses the PUBLIC TREASURY. Thus the revenues from the crown goods are in the royal treasury, those from the other public goods belong to the public treasury.

As public revenues are necessary for public expenditure to be made, *one of the sovereign rights* is *the right to make sure that the public revenues collected equal the costs required to govern the republic*, i.e., *the right of public revenues* and *the right of public treasury; one of the prince's rights* in particular is *the right concerning the crown's domain* and *the right of the royal treasury*.

§. 125.

The republic's TAXES generally consist in that which the subjects are obliged to deliver (give or do, §. 170, I.) for the sake of public welfare, in particular public expenses in
113 as far as they have to be borne by the subjects. TRIBUTES are whatever the subjects contribute toward public expenses from their estate; most of all *the money* that is demanded of the subjects to that end is designated by this term. Because the subjects are obliged to pay the republic's taxes and pay for public expenses, §. 105, 123, *one of the sovereign rights* is *the right to impose taxes* and *to exact tributes* from the subjects in accordance with the measures of each subject's resources, as much as is sufficient for public expenses, in one word: *the right of tribute*.

TITLE III
JUDICIAL POWER AND THE RIGHT OF ARMS

§. 126.

xix387 The aim of the republic is primarily connected with *public security*, and therefore also with *public tranquility*—"public" meaning those of individual citizens and of the group
114 as a whole, §. 89—, entrusted to the care of the civil overlord; as a consequence *one of the sovereign rights* is the *right of public security* and *tranquility*. Therefore, as regards internal security, §. 102, *the right falls to the civil overlord* 1) *not to allow* one subject *to wrong* another subject, *to inflict violence on or strike fear into* another, *nor to allow one who thinks he has been wronged to violently pursue his own right*; and likewise 2) *the right to ensure that every subject is granted his right*, so that hence he may obtain what another owes him, so that losses sustained may be restored and injuries may be avenged upon those who committed them, §. 271, I.

§. 127.

Because of this, another *one of the sovereign rights* is *the right to decide in individual subjects' disputes*, §. 296, I, which in general is called JURISDICTION and, in as far as it falls to the sovereignty, SUPREME JURISDICTION or JUDICIAL POWER. And since the person to whom jurisdiction falls is called a JUDGE, *the civil overlord is the highest judge of the individual subjects*.

115 Since a decision cannot be made without knowledge of the case, §. 296, I, and a decision is needed to give everyone his own, the judicial power comprises *the right to know* the individual subjects' *cases under dispute*, *to pass judgments* by which they are decided *and to carry them out*, and therefore to force the party who lost to deliver what he must deliver according to the sentence passed, if he is unwilling to do it of his own accord.

§. 128.

The person to whom jurisdiction falls in the name of the civil overlord is called a SUBORDINATE JUDGE, and henceforth *simply* a judge; his subordinate jurisdiction

is a public office, §. 120. Hence *one of the sovereign rights* is *the right to appoint judges*. The measure of their power of jurisdiction is determined by the mandate they received from the state's overlord; regardless of that measure, all of it is subordinate to the sovereignty. *The civil overlord,* therefore, *is the source of all jurisdiction in the state*.

116 §. 129.

xix388 Moreover, public security and tranquility cannot be obtained unless there exist such powers in the state as are sufficient to overcome the force that the state has to fear from anywhere; therefore *one of the civil overlord's, i.e., of the sovereign rights* is *the right to muster powers that are sufficient to that end,* hence *the right to prepare cogent means that are sufficient to protect public security, to have them in a permanent state of readiness* and to use them whenever necessary, hence also to overcome any resistance that may oppose the rightful force of the civil overlord. This right falling to someone to have at hand cogent means sufficient for his security is usually called the RIGHT OF ARMS in general and falls under the RIGHT OF WAR, because from a force opposed to someone else's force, there arises war, §. 264, I. Therefore *the right of arms does not fall to the subject citizens* by themselves, §. 126, *but* to the group as a whole, i.e., *the people*, in as far as it is free, *for the purpose of its security; transferred, it falls to the overlord for the purpose of the republic's and his own security*.

117 **TITLE IV**
THE RIGHT REGARDING PUBLIC HAPPINESS

§. 130.

On the overlord of the state rests the care of *public sustenance* which *par excellence* is called *public happiness*, so that the state may abound in all external goods as much as possible, thereby becoming more perfect every day, §. 85, 86; therefore *one of the sovereign rights* is *the right to perfect the state.* The republic thus becomes all the more perfect as the number of citizens is greater; as everyone is more useful to the state through his wisdom, virtue, diligence and wealth; as the authority of the laws and the civil overlord is greater; as the unity of all the citizens in terms of their will and resources is greater; indeed, as the harmony among all the persons, actions and things comprised by the
118 state toward furthering public welfare is greater: therefore from these sources flow a good many particular rights that belong to sovereignty.

xix389 * Among these, for instance, is *the sovereign right to receive foreigners* into *the state and to prevent emigration; the right of highest tutelage; the right to determine the price of goods and services* that are necessary in civil life; *the right regarding schools, universities and teachings; the right regarding agriculture, crafts, trade, money and public roads; the right to establish civil societies* and to organize them for the benefit of public welfare; the right to *found farms, towns and cities*; the right to limit the use of the estate of individuals for the sake of public welfare, etc.

§. 131.

In general, the civil overlord has the task and therefore the right to arrange all domestic public affairs, §. 104, even the less important ones, in such a way that they further public welfare as much as possible, §. 102. The determined way to conduct these less important public affairs, in as far as it is arranged to serve public welfare, is called POLICY; for this reason, *one of the sovereign rights* is *the right of policy.*

119

TITLE V
THE RIGHT REGARDING RELIGION AND THE CHURCH

1) Hugo Grotius, *De imperio summarum potestatum circa sacra*, Paris 1647. On this book cp. Meister's *Bibliotheca iuris naturalis et gentium*, part III, p. 153.[2]
2) Samuel von Pufendorf, *De habitu religionis Christianae ad vitam civilem*, Bremen 1687, and with Johann Paul Kress's commentary, Jena 1702.
3) Just Karl Wiesenhauern, *Grundsätze des allgemeinen und besondern Kirchen-Staatsrechts der Protestirenden in Teutschland*, Frankfurt and Leipzig 1749.

§. 132.

A determined way to worship God is called RELIGION; a society that was started to worship God in that way, hence a society of people devoted to the same religion is
120 called a CHURCH (church society). Someone who worships God tries to please God in order to obtain the highest happiness. Therefore it is necessary for him to have some knowledge of God and of the means to please Him. Hence once a certain religion has been established, some propositions on God and His will are set which he who adheres to this religion holds true: the RELIGION'S DOGMAS. Therefore it belongs to the core of the church both to strive for knowledge of God and His will and, in accordance with
xix390 this knowledge, to direct free acts toward God's pleasure. Acts that pertain to religion rather closely are RELIGIOUS ACTS, while non-religious acts are called SECULAR ACTS. *A religious act* is either *internal* or *external*, §. 1, *Prol.*, and furthermore it is either an ESSENTIAL ACT, whose opposite goes against divine will as a dogma of the religion, or an ARBITRARY one, whose opposite goes against it less. Hence *the affairs of the church* are also either *religious* (church affairs in a stricter sense) or *secular*; the religious ones are either *essential* or *arbitrary* (indifferent, with respect to a certain religion of course).

121 §. 133.

Our churches all preach a POSITIVE RELIGION, whose dogmas cannot be known without faith; they deem it REVEALED especially, disclosed specially to men by God, §. 64, *Prol.* Hence they hold true certain propositions about God and His will that are unknown to reason which *par excellence* are called *dogmas of the faith*, the foremost

[2] See Part I, "Introduction to Natural Law," note 11.

among them being the *dogma on future eternal life* and on the *greater happiness of the pious* and the *greater unhappiness of the impious* after death.

§. 134.

In as far as it does not depend on a man's discretion to judge false what he judged true thus far and vice versa, judgment on God and His will, and consequently *the assent* and particularly *the faith* a man has in the dogmas of a revealed religion, *is not among the free actions*, §. 7, *Prol.*; therefore it *is free from obligation* and consequently also from coercion, contract, overlordship, law and punishment.

122 And because it is given to no mortal to know the internal acts of another's mind as such, and so no one can judge another man's internal matters, all *internal acts*, and therefore *also religious acts* in as far as they are *internal, refuse human law* and *human overlordship*.

Finally, because an obligation to God is infinitely greater than an obligation to men, and therefore if they conflict the latter must be ignored so that the former may be fulfilled, §. 31, I, it follows that *no one can be obligated by another to do what goes against God's will, religious dogma* and *his faith*. To this extent *human law* and *human overlordship does not apply to external religious acts* that are *essential* either.

1) Gerard Noodt, *Dissertatio de religione ab imperio jure gentium libera*, Leiden 1706. The French translation by Jean Barbeyrac is found in the latter's *Recueil de discours sur diverses matières importantes*, Amsterdam 1731.

123 §. 135.

A religious act that is not subject to human law and consequently not to human overlordship either is called A MATTER OF CONSCIENCE: therefore 1) the *assent* to and *faith* in religious dogmas, 2) internal *religious acts*, and 3) all *essential* religious acts and xix391 hence *essential church affairs are matters of conscience*, §. 134. Because, as we saw, no one has the right to force another in matters to which he cannot be obligated, *violating [another's] conscience* and *claiming overlordship over another's conscience is wrong*. And so it becomes clear wherein consists *liberty of conscience, not to be violated by anyone nor subject to overlordship*.

1) Justus Henning Böhmer, the preface "De iure circa libertatem conscientiae" to vol. 2 of *Ius ecclesiasticum protestantium*, [3rd ed. Halle 1732].

§. 136.

Now let us consider the church as a civil society. The overlord has civil overlordship over all civil societies and their individual members, §. 106; therefore, *every church* 124 as a civil society *and its individual members are under civil overlordship*, and thus to *legislative and judicial power, the right of tribute*, and so forth. For this reason *the sovereign rights* also comprise both *the right to guard against the church's harming* the republic, and *the right to effect that the republic's welfare be furthered by the church*,

§. 102, 101, and as a consequence *the right to determine* all *church affairs toward public welfare* at will, in as far as 1) *they concern public welfare and at the same time* 2) *are susceptible of overlordship*.

§. 137.

Consequently 1) *church matters,* both *the secular* and *the religious ones that concern public welfare* and at the same time are *arbitrary*, §. 132, are subject to civil overlordship, §. 136.

2) And since liberty of conscience is not to be violated by anyone, §. 136, a church society's *matters of conscience are not subject to civil overlordship*, and therefore the overlord does not have the right to order or forbid a church's members anything concerning
125 these matters; nor, as a consequence, to punish them as transgressors of such laws. *Matters of conscience*, however, *are* nonetheless *subject to the right of supreme inspection* in as far as possible, so that the overlord may decide whether they really are matters of conscience, §. 114; and then, *to the extent that* dogmas of faith and essential religious and church affairs are found *to harm the republic, they are subject to the overlord's right to exclude from the state those who adhere to a religion harmful to the republic* (which is always false), as hindrances to public welfare, §. 102 and 136.

3) *Church matters that are civilly indifferent* (irrelevant) *are not subject to civil overlordship*, or rather in these matters *the church* as a member of the state *has civil liberty*, §. 107. *Nor can* even *the overlord exclude a church or its members from the state because of such affairs*, because in as far as they are civilly indifferent, they do not damage the republic in any way. *These affairs* however, like all affairs, *are subject to the right of supreme inspection, so that* the overlord *may decide whether they are really such* as they are said to be.

126 1) Johann Franz Buddeus (Budde), *De concordia religionis Christianae et status civilis*, Halle 1701, augm. ed. with four other essays 1712.
2) Christian Thomasius, *Historia contentionis inter imperium et sacerdotium breviter delineata usque ad seculum XVI.*, Halle 1722.
3) Johan Nelander, *De religione reipublicae noxia*, Lund 1748.

§. 138.

xix392 Since there are, however, many church affairs that can sometimes be regarded as irrelevant and sometimes as definitely relevant to public welfare, depending on the circumstances—*if the overlord of the state and the members of a civil church disagree as to whether a* certain *affair of the church is irrelevant or concerns public welfare, in case of doubt the assumption is in favor of the civil overlord*, §. 108; therefore his choice must be upheld, until the contrary is excellently proven by the church.

127 * Among these are, for instance, *laws regarding arbitrary affairs* established by common consent of the church members, *the appointment of ministers of the church, the synods* and *councils, church rites, the place* and *time* and other *manner of worship*, *the acquisition of church estate* and its *use* and *management*, *the*

excommunication of heretics, and other things; which *in a small church* can be regarded as irrelevant more easily, but *in a big one*, according to the given circumstances, often definitely concern public welfare.

§. 139.

So we conceive of three grades of rights that fall to the civil overlord regarding his subjects' religion and the civil church:[3] 1) *the lesser grade*, the right of supreme inspection into religion, *the right of religious inspection*; 2) the *middle* grade*, the right to guard* against the church's being in the way of the republic, and specifically the *right of exclusion*, and therefore the right *to decree the emigration* of those who adhere to a religion that is harmful to the republic and follow a church devoted
128 to such a religion; 3) *the greater grade, the right to direct* the church toward public welfare, which comprises civil overlordship over the church in the proper sense, *religious overlordship*.

* From *the right* 1) *of religious inspection* derives, e.g., the sovereign right to *confirm the creed of the church*, i.e., the text containing the dogmas of the faith; and the *liturgy*, containing the holy rites or solemn religious acts; as well as the ministers elected by the church, etc.

From the right 2) *of exclusion* derives the sovereign right to oblige such subjects to emigrate, even by proposing punishment.

From religious 3) *overlordship* stems also the sovereign right to *appoint ecclesiastic judges* to pass judgment in church matters in his name.

1) Louis Isaac de Beausobre favors the opposite opinion and attributes too much power in religious matters to the prince in his *Dissertatio de nonnullis ad ius hierarchicum principum pertinentibus*, Frankfurt (Oder) 1750.

129 §. 140.

These rights with regard to the church fall to the civil overlord in any case, whether *he be a member of that church or not*.

For the rest, 1) if the civil overlord is a member of the church, the state of such a church will be more flourishing and the church will emerge a *public college*, i.e., a civil society approved by the public overlord and invested with privileges and immu-
xix393 nities. If such a church is an *equal college*, the overlord will at the same have the right to vote in the gathering of the church as a member, §. 27; but if it is *unequal*, either the overlord of the state will also be the ecclesiastic overlord at the same time, or someone else will, and then as a consequence the public overlord consequently will be under that person's ecclesiastic overlordship. In the latter case *pacts are needed* by which *the*

[3] The 1934 *Akademie-Ausgabe* corrects to "the church as a civil society," following the 1781 edition; but cp. "civil church" in §. 138.

limits of either overlordship (the civil and the ecclesiastic) *are precisely determined, lest the republic come to harm from a conflict between the two*—and preventing that is both an obligation and a right of the civil overlord, §. 102, 104.

130 2) If, on the other hand, the civil overlord is not a member of a certain church existing within the state, but adheres to a foreign religion and church, then the mutual and certain rights of overlord and church must also be established by pacts. For since the overlord and the church are thus drawn into opposing camps, we find that from the mutual mistrust so many disputes and such controversies arise concerning the limits of public overlordship and the church's freedom that are so bad for public tranquility that it has been sufficiently proved that the republic and the church absolutely cannot coexist without such pacts.

Once such pacts are in place, however, *positive rights* and *obligations* between the overlord of the state and the church arise, on which we cannot dwell in universal public law.

131

TITLE VI
THE RIGHT REGARDING THE EXTERNAL ADMINISTRATION OF THE REPUBLIC

§. 141.

Since it belongs to the civil overlord's task to further public welfare also with respect to foreigners and other nations and he therefore has the right to determine at will anything that concerns the external administration of the republic, §. 104, it follows 1) that *the civil overlord*, in as far as the people's right has been transferred to him, *conducts whatever business he conducts with foreigners for this purpose* both *in his own*, §. 97, *and* at the same time *in his people's right* and *name*, so as its *mandatary, representing the people* and *the state*, §. 221, I, *and that the people is* therefore *understood to consent to the acts of the public overlord*, §. 222, I and 105.

From that, however, it also follows 2) that *whatever the civil overlord tells his subjects to do for the sake of external welfare, they have to do*, §. 105.

132 §. 142.

For this reason, *one of the sovereign rights* is the right to *start deliberations, conduct negotiations*, §. 174, I, and *make pacts with foreign nations* for the sake of public welfare; and therefore also *the right* both *to amass wealth for his state* and *to oblige it to another nation on the basis of such a pact*. A pact sanctioned between two nations is a PUBLIC PACT (public convention), a public pact of alliance is called a TREATY. Because the xix394 public overlord thus represents his state and people, §. 141, a pact that the civil overlord has made with a foreign nation *is a public pact*, and if it is a pact of alliance, *a treaty*; and therefore *one of the sovereign rights* is the right to sanction public pacts and treaties or *the right of public conventions* and *the right of treaties*.

§. 143.

Because deliberations, negotiations and pacts with foreign nations belong to the public and sovereign affairs, §. 120, if the civil overlord appoints subjects who must conduct
133 public affairs with a foreign nation in his name and therefore also in the nation's name, such subjects will become public officials and servants of the republic, §. 120. A subject sent to another nation by his own nation (which he obeys) in order to conduct public affairs is called an ENVOY. For this reason *one of the sovereign rights* is *the right* 1) *to send envoys,* for this falls under the right to conduct negotiations and make pacts with foreigners and under the right of public office, §. 120; 2) *to receive envoys* sent to him by other nations and to *conduct* negotiations *and sanction public pacts* with them, in other words *the right of embassy*.

§. 144.

By force of its natural liberty the people has the right of war against foreigners who wrong it, and the whole of the people is obliged to keep the individuals safe and hence also to pursue individuals' rights against foreigners and other nations. Therefore *the civil overlord has the right of war* against other nations, which belongs *to the sovereign rights*. And
134 this war that is waged with another nation by right of the state, is commonly called *public war*.

The persons appointed by the overlord to wield the force of war are called SOLDIERS, the society of soldiers THE MILITARY; the whole of mobile goods meant chiefly for the uses of war, the APPARATUS OF WAR. Hence to the right of war as a sovereign right belongs *the right to recruit soldiers, to set up the military*, the right *to build an apparatus of war* both *for use on land* and *at sea*; and therefore also *the right to arm the soldiers*, the *right to build strongholds* and *strengthen* them *with defensive works*, and so forth. The military most of all serves to protect external security, but the civil overlord can also by force of his executive power use it, if necessary, to force disobedient subjects to fulfill their obligation and to protect internal security and tranquility, §. 117, 129.

As for the rest, because the right of public pacts belongs *to the sovereign rights*, §.
135 142, the same is true of the right to sanction peace pacts, with which war is ended, §. 304, I; this is called *the right of peace* and is also known as *the right of public peace*.

xix395
1) Johann Franz Buddeus (Budde), *Dissertatio politico-moralis de officio imperantium circa conscribendum militem*, Halle 1700, and in his *Selecta iuris naturae et gentium*, Halle 1704, p. 443.
2) Henricus Bodinus (Heinrich von Bode), *Dissertatio iuridica de obsequio militum in defendendo praesidio*, Halle 1701, reprinted Halle 1739.

TITLE VII
THE EMINENT RIGHT

§. 145.

A good belonging to one or more citizens can be distinguished from a good belonging to the group as a whole, like in general in any society an individual's good can be

distinguished from a common good, §. 7; and then the former is called a private good,
136 the latter a public good in the stricter sense (cp. §. 89.). A PUBLIC GOOD therefore, as opposed to the good of individuals, is that which belongs more closely to the group as a whole than to some individual citizens; a PRIVATE GOOD on the other hand is that which belongs more closely to one or more individual citizens than to the group as a whole. The one can also be called *the good of a part*, the other *the good of the entire state*. And in the same sense *public happiness, security, tranquility* and *welfare* is also divided into *public in the stricter sense* and *private*.

Because the civil overlord is obligated to pursue the good of individual citizens and of the citizens as a group, *as much as he can, one of the sovereign rights* is *the right to prefer a greater good* to a lesser in a conflict between certain goods of the state that have to be obtained, and hence *to ignore a private good if a public good cannot be obtained otherwise*. On the other hand, in as far as a private good can coexist with a public good,
xix396 the overlord may not decide anything against the welfare of individuals and hence take away from them the right they seek.

137 1) Christian Wildvogel, *Tractatus iuridicus de bono publico, an et quomodo princeps bonus bonis privatorum praeferre debeat*, Jena 1696.
2) Christian Ludwig Stieglitz (Stigliz), *Disputatio iuris gentium publici de iure imperantium in ius quaesitum subditorum*, Leipzig 1713, reprinted Leipzig 1748.

§. 146.

A state of the republic in which the preservation of the entire republic or the larger part of it cannot coexist with the preservation of one or more subjects is called an *extraordinary state* of the republic, §. 143 *Prol.* For this reason, *one of the sovereign rights* is the *right to neglect the preservation of one or more* subjects *if the entire republic* or *the larger part* of it *cannot be preserved otherwise*. This right is called the EMINENT RIGHT (of the sovereign). *The eminent right* therefore *has no place except in case of necessity*, when its use is the only means to preserve the entire republic or the larger part of it. Because the extraordinary state of the republic and the case of necessity
138 thus contain the reason from which the eminent right is understood, this justifying reason, §. 261 I., or the principle *par excellence* of the eminent right is called *reason of state*. Hence *among the sovereign rights* are also the types of eminent right: 1) the right
xix397 to dispose of the property of some subjects in case of necessity, EMINENT DOMAIN; 2) the right to dispose of the persons themselves of some subjects in case of necessity, EMINENT POWER. All *eminent right* stems from the pact and thus from the agreement of the citizens, single and as a group, §. 91: so it is a true right, which must not be confused with the mere privilege of necessity, §. 145 and 146 *Prol.,* attached to the civil state.

1) Johann Christoph Becmann, *De dominio eminenti*, in his *Meditationes politicae*, Frankfurt (Oder) 1672, pp. 157–64; and on the same subject in his *Politica parallela* (published together with the *Meditationes*), pp. 174–80.

2) Jakob Andreas Crusius, *De dominio praeeminenti principis et reipublicae in subditos eorumque bona ac ius quaesitum*, pp. 1–124 in his *Opuscula*, Minden 1668.
139 3) Wilhelm Leyser, *Dissertatio pro imperio contra dominium eminens*, Wittenberg 1673, containing the texts concerning the controversy between Leyser and Johann Friedrich Hornius on this subject, cp. Meister, *Bibliotheca iuris naturalis et gentium* part I, p. 150.[4]
4) Anonymous, *Tractatus variorum de ratione status*, s.l. 1692.
5) Immanuel Weber, *Ex jurisprudentia universali schediasma de recta pacis tempore bellique ratione status exotericum*, Giessen 1700. Other texts on this subject can be found in Meister's *Bibliotheca iuris naturalis et gentium* part III, p. 133, and in Caspar Thurmann's *Bibliotheca statistica*, Halle 1701, in the list of authors on reason of state, princes' servants, counselors, ambassadors and crown goods.

§. 147.

In a republic, however, the welfare of all citizens should be furthered commonly, and all have a common obligation to bear the burdens of the republic, §. 91, 89; therefore the overlord of the state is obliged to support with public assistance when the necessity ceases, as much as he can, those on whom he, on the basis of the eminent right, has laid
xix398 the main burden as a case of necessity arose. He consequently has *the right*, belonging
140 *to the sovereign rights, to bring the other citizens to a united effort to support those who have borne* such a *main burden*, and therefore also *to compensate them for the damage that they have suffered as a consequence of the eminent right.*

1) Cornelis van Bynkershoek wrote "De dominio eminenti et de refundendo pretio eorum, quae iure eius dominii occupantur" in his *Quaestiones iuris publici* bk. II ch. 15, p. 290 [multiple editions from Leiden, e.g., 1737; Achenwall does not specify].

141

Section III
Conditional Universal Public Law

§. 148.

Conditional universal public law is about deducing the mutual rights and obligations of the civil overlord and the civil subjects that can be garnered from the specific constitution of the state, §. 111, and hence from the various specific forms and mutations of republics, and consequently are understood if certain fundamental pacts and fundamental laws are given, §. 109.

[4] See Part I, "Introduction to Natural Law," note 11.

TITLE I
MONARCHY

§. 149.

142 In a monarchy public overlordship rests with the monarch or prince: an individual, §. 110, to whom the people has transferred overlordship for him to exercise, §. 97. For this reason the *prince's right* as prince must be measured by the will and the intention the people had when it transferred overlordship to him, and therefore it *must be measured by the pact of subjection, the fundamental laws*, §. 109, *and the goal of the state*, §. 98.

§. 150.

Sovereignty implies supreme civil overlordship, §. 95, and therefore also the highest dignity in the state for him to whom sovereignty falls, §. 122. Hence this highest dignity in the state, in as far as it resides with an individual, is usually called PERSONAL SOVEREIGNTY; and in this respect sovereignty taken as supreme civil overlordship is commonly called REAL SOVEREIGNTY. So real sovereignty falls to the people by force of origin, §. 95; if the people establishes a monarchy, real sovereignty is transferred to the prince, and at the same time personal sovereignty is imprinted upon him, and as a
143 consequence the *monarch* (the monarch *of a free state*, as every state is supposed to be by force of origin, §. 90) *is naturally invested* not only *with real*, but also with *personal sovereignty*.

And on the same grounds the prince has full natural liberty both with respect to
xix399 foreigners and with respect to the people he commands, §. 97; and therefore he is not bound by the laws that he by force of his overlordship gave to his subjects, §. 34, and to this extent the prince can be said to be outside the law: with respect of course to those civil laws of which he himself is the maker and law-giver, §. 114, whereas to the fundamental laws he is indeed completely bound, §. 109.

1) Henricus Ludovicus Wernherus (Heinrich Ludwig Wernher), *Disputatio politico-moralis de statu summorum imperantium exlege*, Leipzig 1704.
2) Daniel Friedrich Hoheisel, *De principe legibus soluto*, Halle 1720.

§. 151.

Because a free monarchy is most often called a *kingdom*, and its prince is thus called
144 *king*, the sovereign rights that fall to the monarch are known as *royal rights*. If public overlordship has been simply conferred to the prince so that he consequently has full and absolute overlordship, §. 100, *all the sovereign rights* without exception *must be ranged under the* monarch's *royal rights*; *and he can exercise all of them in the interest of public welfare entirely at will*, because of course there is no particular fundamental law by which either any royal right could have been taken away from him or its exercise somehow restricted. In a *monarchy*, therefore, *whose overlordship has been simply transferred* to the monarch, *one man has as much power as the entire people by force of origin*, §. 95, 99, 100. And *with such a monarch* is *the summit* and *fullness of* (civil) *authority*, and therefore *overlordship undivided* and *unlimited*.

§. 152.

If on the other hand the people only gives the prince overlordship that is not full, or
145 limited, *the prince* 1) in as far as his *overlordship* is *diminished, lacks some sovereign right* or *rights*, §. 99, and therefore *can in no way exercise them as royal rights*; 2) in as far as his *overlordship* is *limited*, he himself is constrained by a certain condition in the
xix400 exercise of some sovereign right or rights, and therefore *he cannot exercise them in a way contrary to that determined by the fundamental laws*, §. 100, 109, although they are royal rights.

Hence whenever it is in the interest of the republic that a sovereign right of the first kind be exercised, or, as regards the exercise of a sovereign right of the second kind, that the determined way be abandoned, then the *prince naturally needs the agreement of the people*. So *to the extent that the people has conferred overlordship* to the prince *on this condition that in certain matters he cannot decide without the added agreement of the people*, or *exercise a certain royal right beyond the determined measure*, to that extent *the people* has a *share in civil overlordship* or SHARED OVERLORDSHIP
146 and hence a *share in the governance* of the republic, §. 97, or SHARED GOVERNANCE in a monarchy whose overlordship falls to the monarch with a not-full or restricted right; and to that extent also, the *people enjoys natural liberty* and *equality with the prince*, §. 38.

§. 153.

Because, however, the agreement of the people, i.e. of the group as a whole, is quite hard to obtain, the people has in most cases transferred its right to some council or councils; such a council, to which falls the shared governance independently of the prince, is called the COUNCIL OF STATES OF A MONARCHY, while the individuals who enjoy the decisive vote in such a council are called the STATES OF THE MONARCHY. The legitimate gathering of these states in order to exercise the shared governance is called the ASSEMBLY of the *monarchy*.

And so it is clear that in as far as it is a *monarchy whose overlordship* falls to the prince *not-fully* or *in a limited way*, it cannot exist *without states* and an *assembly*; it
147 is also clear that in it, the *prince and the states* taken *together have full and absolute sovereignty*.

§. 154.

For the rest, because it depends on the choice of the people how it wishes to transfer overlordship, §. 96, *if the people confers limited or diminished overlordship to the prince, it can* also *add various conditions to the pact of subjection,* so that he is more strongly bound to contain his overlordship within the determined bounds and to *abide by the additions by force of pact*, §. 194, I.

Immanuel Weber, *Disputatio de regnis sub lege commissoria delatis*, Giessen 1715.

§. 155.

xix401 Since by force of the pact of subjection the prince takes it upon himself to exercise overlordship, and the people transfers to him the right to exercise overlordship, *the prince can neither abdicate overlordship without the agreement of the people, nor can he be deposed by the people against his will*, §. 182, I.

148 §. 156.

Because furthermore in a monarchy overlordship rests with one man, and as a consequence the other individual citizens are placed under him whoever they may be, *the prince's public overlordship is* naturally *extended to* those persons who belong to his *family* as well, *in as far as these persons can be regarded as citizens*.

§. 157.

Finally, since acts of the prince as prince—those pertaining to the exercise of overlordship, i.e., *royal acts*—are distinguished from his other, i.e., *private acts*, and with regard to his private affairs and private acts the prince should not be viewed as overlord but as a private person, §. 121, *the prince's public overlordship is not extended to his private acts*. It does not, however, follow that the prince in his private acts is bound to the positive civil law that private individual subjects use among themselves, because the prince is naturally freed from the laws he has given the subjects by force of his overlordship, §. 150.
149 Rather, if this matter is considered by itself, it should be added that *the prince by force of his full natural liberty*, §. 150, *uses natural law in his private acts* and *affairs*.

1) Michael Heinrich Gribner, *Delineatio iurisprudentiae privatae illustrium*, ed. Johann Benjamin Reisig, Göttingen 1736.
2) Burkhard Gotthelf Struve, *Iurisprudentia heroica*, ed. Johann August Hellfeld, 7 vols., Jena 1743–53.
3) Iohannes Fridericus Wilhelmus de Neumann in Wolfsfeld, *Meditationes juris principum privati*, 9 vols., Frankfurt (Main) 1751–56.

150 **TITLE II**
THE WAYS TO HAVE MONARCHIC OVERLORDSHIP

§. 158.

xix402 Because public overlordship originates from a pact—that which originally falls to the people, from the pact of civil union, and that which falls to the person to whom overlordship was first transferred by the people, from the pact of subjection, §. 98, and therefore all overlordship—by origin *the way to acquire public overlordship* generally *consists in a pact*.

In particular, if the people decides to transfer overlordship to one man: by nature it depends on the will and voluntary consent of the people and hence on election by the people to whom it wants to transfer overlordship, but on the will of the person to

whom overlordship is offered whether he wants to have it, and therefore *monarchic overlordship by force of origin is acquired by election by the people,* which is brought about by a decision, §. 27, *accepted by the person elected*.

151 §. 159.

Because, however, the right of the elected monarch is most personal by nature, §. 73, it is understood that *upon his death overlordship goes back to the people* and that hence *it depends on the people's discretion whether it wants to elect another prince or establish a different form of republic.*

And since the state is an immortal body, §. 90, while individual princes are mortal, if the state has to be structured, the people must decide who, upon a prince's death and more in general if a prince is lacking or failing, should succeed to civil overlordship, and how. Since the people can thus by force of origin decide at will on the way of succession to overlordship, §. 9, *that way of succession to monarchic overlordship* is *legitimate which is established by consent of the people and hence by fundamental law*, and therefore there are as many possible ways to legally succeed as can be conceived of.

§. 160.

A MONARCHY in which if a prince is lacking or failing the successor must always be
152 elected is called ELECTIVE ; one in which another simply succeeds in the place of the lacking or failing prince on the basis of a certain law, without election, is called HEREDITARY (successory); and one in which the successor succeeds by a certain law and without election, but the added consent of the people is required at the same time, may be called a MONARCHY OF MIXED SUCCESSION.

Because the *way to acquire* public *overlordship* is distinguished from overlordship itself as a different thing, 1) *it changes nothing in overlordship itself*, so that indeed in the diverse ways to acquire overlordship, the same supreme, full, unlimited overlord-
xix403 ship or its opposite can be acquired, and vice versa in one and the same way diverse [forms of] overlordship can be acquired; 2) the *monarch*, invested with no matter how supreme, full and unlimited an overlordship, nonetheless *cannot determine the way of succession at will, or once it has been determined by fundamental law he cannot change it*: for the way to acquire overlordship is not part of overlordship and does not pertain to its exercise.

153
1) Johann Werlhof, *Exercitatio academica de electione et successione in regnis*, Helmstedt 1687.
2) Georg Paul Rötenbeck, *De variis regna consequendi modis*, Altdorf 1706.
3) Johann Jacob Moser, *Specimen iuris publici Europaei novissimi de iure et modo succedendi in regna Europae speciatim in regnum Bohemiae*, Frankfurt (Oder) 1739.

§. 161.

So when in a monarchy the prince is lacking or failing, the throne is vacant until another is elected, and this state of a monarchy in which the throne or royal seat is

empty, i.e. the state of a monarchy if the prince is lacking or failing, is called INTERREGNUM. So *while the interregnum lasts it depends on the will of the people whether it prefers to exercise overlordship in the interregnum through itself or through a certain other or others.* He to whom the right falls to govern the republic in the name of the people during the interregnum is the VICEGERENT of the monarchy (kingdom, principality, empire). Therefore the vicegerent of the kingdom is the head of state who has been
154 given a mandate to reign, §. 97, and thus purely an administrator of the republic and a *public official*, §. 120, his *office* is naturally *temporary*, lasting until a new king is elected, and *his rights should be measured from the fundamental law.*

§. 162.

Since originally the right to transfer overlordship rests with the people, §. 96, *the people can reserve to itself the right to elect a succeeding prince*, or *simply transfer it to a certain other* or *others*, or *give one or more people a mandate for it*, or *establish certain laws of election* by which, e.g., the eligibility of a person and the time and manner of election are determined. In this case an ELECTION made in accordance with the laws established regarding the election of a prince is LEGITIMATE, *and if a king was elected illegitimately the people is not obliged to recognize him*.

§. 163.

An election cannot be effective except in as far as it contains a pact whose parties are
155 the electing people that confers overlordship and the person who accepts the overlordship conferred upon him by the election, §. 98. For this reason, *before the election is completed, the person who is to be elected has no right to overlordship.* 2) *In any election the electing people may establish new laws which the future prince is obliged to follow in the exercise of overlordship*; such laws, prescribed to the elected in the conferring of overlordship, are called ELECTION AGREEMENT. 3) *The elected is free to accept or refuse the overlordship conferred upon him under such laws.* 4) *If he accepts, he acquires overlordship by that very fact, but it is bound to the election agreement as to a fundamental law*, §. 109.

§. 164.

xix404 Because in an elective monarchy the right to elect a successor does not fall to the prince but to the people or to those to whom the people has conferred it or given a mandate for it, and therefore the exercise of the right is naturally independent of the will of the prince, *the prince can neither hinder the election of a successor*, which may be under-
156 taken while he is still alive and still rules, *nor force a successor upon the people. He who is legitimately elected as the successor of the ruling prince is the heir*, §. 236, I, *to the monarchy*, and *his right to exercise overlordship commences at the moment when his predecessor's right ends.*

1) Carolus Gottlieb Weidlich, *Dissertatio iuris naturalis et gentium de iure principis in regno electivo circa prospiciendum reipubl. [reipublicae] successorem*, Leipzig 1729.

§. 165.

If a hereditary monarchy is to be established, *laws have to be made* by which persons suitable for the throne are defined and the way to succeed is determined, *so that the successor is certain and troubles are thus prevented*. Such *laws of succession* therefore, naturally made by agreement of the people and accepted by the monarch as soon as overlordship is conferred upon him, *mutually obligate the people and the monarch and all those who subsequently acquire the right to succeed to* overlordship *by force of pact,* and hence they *belong to the fundamental pacts and to the fundamental laws.*

157 §. 166.

For this reason, the person who if the prince lacks or fails in a *hereditary monarchy* is the *successor* based on the law of succession, does not need the people's fresh consent, and thus *succeeds by his right itself*: and therefore—although he is bound to the fundamental laws, which are still in use—*the people cannot constrain him with new obligations or an election agreement against his will*. This applies *as long as there is someone who, by force of the law of succession*, has *the required right to succeed. If* however such a person *is no longer at hand*, *the law of succession loses its efficacy*, and the *right of the people is revived* to change at will both the form of the republic and the law of succession, etc.

§. 167.

In a *monarchy of mixed succession, he who is called to succeed to overlordship by a certain law*, if the case occurs, cannot be passed by or rejected at will by the people; but *if he suffers from a manifest incapacity* or even r*efuses to accept a new election agreement*
158 *from the people, the people is* not *obliged to recognize him as the succeeding prince*, §. 160.

§. 168.

In a *hereditary monarchy*, if the right to succeed is restricted to the first acquirer's offspring, this SUCCESSION which obtains is called HEREDITARY BY RIGHT OF FAMILY; if on the other hand it depends entirely on the predecessor's arrangement, such a SUCCESSION is called PATRIMONIAL.

§. 169.

xix405 A PATRIMONIAL MONARCHY is a monarchy of whose overlordship the monarch can dispose like patrimony, §. 236, I, and hence such a *prince* himself is called *patrimonial*. If he can transfer to another and thus alienate only the overlordship as he wishes, the PATRIMONIAL MONARCHY is IMPERFECTLY *so*; if he can divide the territory together with the overlordship between several people at will (divide the overlordship into
159 *subjective parts*), it is PERFECTLY *so*. Hence the *patrimonial monarch* himself is either *perfectly* or *imperfectly* so. A non-patrimonial MONARCHY is called USUFRUCTUARY, and its prince a *usufructuary prince*.

Since the prince's right is highly personal by nature, §. 73, every *monarchy is elective by nature* and therefore *not hereditary, much less patrimonial, but rather usufructuary*.

But a monarchy can least of all be thought of as perfectly patrimonial by nature. For because its defense against force from outside belongs to the primary goal of the republic and has been established by the pact of union, while on the other hand dividing the territory, together with the overlordship, into several parts and hence dividing the state into several particular states is diametrically opposed to both this primary goal and the pact of union, *the people is in no way understood to have transferred the overlordship to someone unless under the tacit condition that it remain undivided*, so that indeed *all overlordship is indivisible* (into subjective parts) *by nature*.

160 §. 170.

In a *patrimonial monarchy the successor acquires overlordship through the arrangement made by his predecessor*, so that the people's consent is not needed; hence *the people cannot* subsequently *exclude or pass by the successor* or *constrain him with a new election agreement*, §. 166.

So *if the prince passes away not having nominated a successor and there is no fundamental law by which, for want of an arrangement, someone else succeeds, no one has a right to overlordship anymore*; as a consequence, the people reverts to natural liberty
xix406 and can establish new fundamental laws as it wishes, also regarding future succession to overlordship.

§. 171.

In a *monarchy* that is *hereditary by right of family*, a family is at hand from which a successor has to be admitted right away, the REIGNING DYNASTY. Therefore a *law has to be established on the order in which anyone from the reigning dynasty must succeed*, §. 156, and *the next in line becomes successor* to overlordship *by his right*
161 *itself*. And because the reigning dynasty's right of succession originates from the agreement between the people and the first acquirer, §. 159, *the third successor* from the reigning dynasty, the fourth and *those who come after him do not derive their right from the one they* immediately *succeed*, but only, through their predecessors, *from the pact* and *the providence of their ancestors*, i.e., the first acquirer with the people.

For the same reason a *law of succession* that was established by such a pact *cannot be changed by either the people or* some *successor without the consent of those who belong to the reigning dynasty* as the ones for whom right is sought there, §. 165.

If the reigning dynasty is extinguished the people once again *becomes autonomous and hence it can establish a new mode of overlordship* and *form of republic with new fundamental laws, or look for another family to reign it by the old right.*

1) Johann Franz Buddeus (Budde), *De successionibus primogenitorum*, Halle 1695, and in his *Selecta iuris naturae et gentium*, Halle 1704, pp. 149–92.
2) [Gottlieb Samuel Treuer], *Untersuchung nach dem Recht der Natur wie weit ein*
162 *Fürst Macht habe, seinen erstgebohrnen Printzen von der Nachfolge in der Regierung auszuschliessen*, s.l. 1718.

§. 172.

For the rest, since it can happen in any monarchy that the prince is under age or is prevented from governing the republic by some other cause, and that therefore guardianship of the prince and vicarious government of the republic is needed, *in a monarchy a law has to be made on the guardianship of an under-age prince* and *the vicarious government of the republic if the prince is unable*, to the observance of which law both the people and the prince are bound as if to a fundamental law.

1) Johann Nikolaus Hertius, *Dissertatio de tutela regia sive regnis sub tutela constitutis*, Giessen 1682.

§. 173.

Finally, it is in the interest of a monarchy that a way be defined to end the controversies that may arise from succession to overlordship if several persons claim the greater
163 right of succession, i.e. if there are RIVALS (pretenders) FOR THE CROWN, due to doubts that may have arisen over the order of succession or the predecessor's arrangement
xix407 or the election. So *a law has to be made regarding the way to end such quarrels*, which should be ranged under the fundamental laws, e.g., that the reigning prince or the people has the right to decide in the matter of rivals for the throne—depending on whether the people transfers this right, which falls to the people, to the prince together with the overlordship, or reserves it to itself alone.

If there is no such law by which a conflict between rivals for the crown can be resolved, *the rivals for the crown*, by force of natural liberty, §. 150 and §. 90, *use purely natural law among themselves and with regard to the people*, and so no mortal has the right to resolve this quarrel by judiciary power. *The people*, however, lest it be itself extinguished by a war between the rivals for the crown, *may without wrongfulness have recourse to the privilege of necessity* and *recognize of its own accord either of the rivals, or deliver itself to the victor and exclude the other*, §. 145 *Prol.*

1) Gottfried Achenwall, *Dissertatio de jure in aemulum regni vulgo praetendentem*, Marburg 1747.

164 **TITLE III**
THE OTHER FORMS OF REPUBLIC

§. 174.

Overlordship in a *democracy* or people's republic is with the people, i.e., with the group as a whole or in any case with the greater part of the *patres familias* of the state, §. 110. Since we have gone into overlordship falling to the group as a whole by force of origin above, *let us* now *take a democracy*, as there are quite a few nowadays, *whose overlordship rests with a part of the group only* and should thus be regarded as *transferred by the group as a whole*, §. 96. A meeting of those to whom, taken jointly (or collectively), overlordship falls in such a democracy, can be called the PEOPLE'S COUNCIL

or CONGRESS, to distinguish it from "the people" used for the group as a whole. For
165 this reason in a democracy *public overlordship by nature falls to the people's council* (if it was transferred simply) as *supreme, full* and *absolute* overlordship, indeed *together with the right to exercise overlordship every right of the people as a whole usually falls to it*, which therefore should be assumed here as well. Hence the *people's council* is called *supreme* (highest, §. 95), *and sovereignty falls to it*, §. 95.

§. 175.

Because the right of the group as a whole has thus been transferred to the people's council, *any and all citizens are under its overlordship*, i.e., all the citizens viewed as individuals, and therefore *also all individuals who are members of the supreme council*. For this reason, *in a people's republic no individual is free*, §. 84, I, while on the other hand in it *the people's council is free* with regard both to *foreigners* and to *itself*, i.e., to its own state.

§. 176.

xix408 Because, therefore, the people's council is free and has every right of the group as a whole, §. 175, 174, the people's council can decide at will regarding all public affairs,
166 and on its will alone depend: determining how overlordship should be exercised, how succession should work in the supreme council, and making, rescinding and changing fundamental laws, §. 96, 109.

§. 177.

And because the right of the members of the people's council is equal by nature, *it is by* their *common agreement that decisions have to be made in public affairs and that laws have to be made and rescinded*, and *what should be done in an occurrence* has to be completed *with common deliberations, votes* and *decisions*, §. 26, 27. The meetings of the people's council for handling public affairs are called PEOPLE'S ASSEMBLY; so *the people's congress can conduct public affairs* that it wishes to conduct *on its own only in a people's assembly.* In order to avoid discord, it must be defined by common agreement of the people's council and hence *by fundamental law*, who exactly should have the right of assembly, i.e. a vote in the assembly, what should be considered as the will of
167 the entire council, in what place, time and manner the council should be convened, votes should be cast and counted, decisions reached, and so forth.

§. 178.

Because democracies are usually organized in such a way that all the members of the supreme council cannot convene every day, *it is necessary that the governance of the republic be entrusted to one or certain persons*, i.e., that a mandate be given for public reign regarding daily and urgent affairs and the execution of fundamental laws and the conclusions of the supreme council. And *consequently* either an individual *is appointed head of state*, §. 97, who is purely an administrator of the republic and a public official, §. 120, or *a council of certain persons to whom overlordship falls jointly* as *a public office*, and hence to be exercised in the name of the supreme council and the entire people,

and as depending on the supreme council. So the *authority* of such a head of state and
168 subordinate council should be judged from the will of the supreme council and the goal of the state. From this it is also clear that in a democracy the *exercise of overlordship* regarding the things that are not entrusted to the head of state and the subordinate council, as the supreme council has reserved it to itself, *is restricted to a certain place* and *time*, namely to the people's assembly.

§. 179.

For the rest, every existing *democracy* is *hereditary* in the sense that the right of assembly clings to certain families or to the possessors of certain estates, so that the descendants of certain *patres familias* who were members of the supreme council and the successors to certain estates whose possessors were members of the supreme council successively succeed in their place. In general *the way of succession to the right of assembly should be judged from the fundamental law*, which should be established by agreement of the supreme council itself, in as far as it has the right of the group as a whole.

169 §. 180.

xix409 In an *aristocracy* or aristocratic republic, overlordship falls to certain aristocrats taken as a collective, or the *council of aristocrats*, §. 110, a moral person to whom the people has transferred *public overlordship*, *which* therefore *by nature falls to the aristocrats* as *supreme, full, absolute overlordship*, §. 100. From this it is clear why such a council is called *supreme senate*, §. 65, *and that sovereignty falls to it, and that the supreme senate by nature has as much power as the whole people.*

§. 181.

In an aristocracy, therefore, any and all citizens are under the supreme senate's overlordship, as are all the other societies, members of the state, and even all the individual aristocrats; consequently *in an aristocracy no individual is free, nor is any body free that is different from the supreme senate, while the senate itself is free with regard to*
170 *both foreigners and its own* state. And since the people's right was transferred to it, *the supreme senate represents the people.* But because the aristocrats only as a collective have the right that a monarch naturally has on his own, by natural reason *the dignity of a monarch is greater than the dignity of the individual aristocrats.*

§. 182.

Because, if an aristocracy has to be set up, the people by force of its original liberty can determine the form of the republic at will, defining the following depends on its will alone: *how large the number of the aristocrats should be, who exactly can be aristocrats, how they should be installed,* whether *their reign should be temporary* or *perpetual,* whether *successors should be elected,* whether *a certain law of succession should be instituted*, if *the aristocrats' right should be* restricted *to certain families* or *to the possession of estates* or *to another quality of a person.* On these matters *laws have to be made*, which have the force of fundamental laws.

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§. 183.

As upon conferring public overlordship *such laws are* thus *agreed* between the people and the aristocrats, and hence *added to the pact of subjection*, §. 98, *the supreme senate is bound to them by force of the pact* with the people, and as a consequence *cannot rescind* or *change them without the people's consent. If*, however, *overlordship together with every right of the people is simply transferred to the aristocrats, the senate*, just like a people's council, §. 174, *can make, abrogate* and *change the fundamental laws itself, as it wishes.*

§. 184.

An ARISTOCRACY is HEREDITARY if the right to vote in the supreme senate clings to certain families or with the possessors of certain estates; ELECTIVE if the right to vote must always be acquired by election by the supreme council, or by the people, or by
xix410 those who have the right of the people; OF MIXED SUCCESSION if it is elective, but in
172 such a way that eligibility is restricted to certain families or to the possessors of certain estates.

§. 185.

If in an *elective aristocracy* the right to choose succeeding aristocrats does not fall to the supreme senate itself, but to the people or to others to whom the people gave it, while on the other hand the individual aristocrats or at least their entire council is not under the people's overlordship, such a form of republic is aristocratic and must be judged by the law of aristocracy, although it seems a democracy. And such a republic, in as far as it appears not to be one, may be called a *crypto-aristocracy*.

§. 186.

A composite form of republic, combining monarchy, aristocracy and democracy, or at least two of them, does not exist, since a whole cannot be composed from conflict-
173 ing parts, §. 150, 175, 181. There does exist a form of republic that in some respects comes closer to monarchy, in some to aristocracy, in some to democracy, or at least has something of two forms of republic; it is called a MIXED REPUBLIC. The form of a mixed republic originates from the division of public overlordship into potential parts, §. 99, and its limitation, while both acts depend solely on the will of the people, §. 96. Because, therefore, both the division and the limitation of overlordship can be executed in various ways, according to the people's choice, *mixed forms of republic differ in several ways*, and *the form of each has to be defined by fundamental laws*.

1) Gottlieb Samuel Treuer, *Dissertatio qua logomachiam de civitatibus mixtis in iure publico obviam discutient (...)*, Göttingen 1742.

§. 187.

So *in a mixed republic there are several persons*, either individual or moral, *to every one of whom falls a certain part of the overlordship,* either *as their own* or as *common, inde-*
174 *pendently* of each other; hence there are *several individuals* or bodies, who *are equal* among each other and *free* regarding the part of overlordship that falls to each of them. For this reason *in a mixed republic those among whom overlordship has been divided, even shared overlordship,* only *jointly have full and absolute overlordship.*

§. 188.

And since in one mixed republic the greater part of overlordship may fall to one person, in another to the aristocrats, and in yet another to the people, a mixed republic
xix411 in the first case is usually called a MIXED MONARCHY, in the second a MIXED ARISTOCRACY, and in the third a MIXED DEMOCRACY, because it comes closer to this or that form of republic. And so PURE MONARCHY, ARISTOCRACY AND DEMOCRACY should be distinguished from these mixed forms if, for instance, undivided or full and absolute overlordship rests with one person, with the supreme senate or with the people.

175 §. 189.

Finally, it is immediately clear that also *from several republics one body may be composed* by means of a pact by which one has to abide. Therefore if several states coalesce in such a way that afterwards they all recognize the same shared public overlordship, *from several states there arises a single state.*

§. 190.

If on the other hand several states combine to form a certain eternal society, §. 90, while reserving public overlordship to each one of them in matters that do not regard the agreed common goal, there arises a BODY OF FEDERATED REPUBLICS (a system of allied or Achaeic republics). *The federated republics* thus *remain states, different with regard to one another*, but *connected by mutual rights* and *obligations which should be measured by the pact of union*, which should be ranged under the public pacts, §. 142,
176 and constitutes a fundamental law of union. But nonetheless the federated republics should be regarded as *one body with respect to the agreed goal* and *with regard to foreigners*, a body that *is free by nature* and to which fall the sovereignty that the single republics have and the rights of a nation, §. 87.

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Section IV
The Ways to Pursue One's Right in a Republic

§. 191.

If a civil subject violates the right of another and hence does not fulfill his obligation, his act is wrongful and a wrong, §. 52, I. A subject's act with malicious intent or misdeed,

§. 52, I, is called an OFFENSE (crime *in the broader sense*), and in particular this name is usually given to a breach with malicious intent of a *penal law*, i.e., of a law to which an explicit punishment in case of disobedience has been added, in other words, a law that is strengthened with a *penal sanction*. A subject's blameworthy act, in particular one committed against a penal law, is called a QUASI-OFFENSE. *An offender*, therefore, *can* only *be a malfeasant subject*, i.e., *guilty of an act with malicious intent.*

1) Regnerus Engelhard, *Versuch eines allgemeinen peinlichen Rechtes aus den Grundsätzen der Weltweisheit, und besonderst des Rechtes der Natur hergeleitet*, Frankfurt and Leipzig 1756.

178 §. 192.

An offense with which the right of the group as a whole or the civil overlord is violated more closely, in other words: that is immediately committed against the republic or
xix412 the public overlord, is a PUBLIC OFFENSE (crime *in the stricter sense*)*;* otherwise it is a PRIVATE OFFENSE, to which therefore belong all offenses with which loss is caused to or injury inflicted upon a private person.

§. 193.

The overlord of the state, because of his care for public security and by force of his executive power, has the sovereign right to effect that every one of his subjects gives each his own, §. 126 and 117, and therefore *the public overlord in general has the right of violence against every subject who does wrong, by which the wronged party*, whoever he be, *should be defended against the subject who does him wrong, and be rendered uninjured* and *secure*, §. 126.

§. 194.

In particular, the overlord has the *right to punish offenses*, i.e., offending subjects, *so*
179 *that they will not want* or, subsidiarily, *will not be able to offend any longer*; indeed, even *the right to punish quasi-offenses*, so that the guilty become more intent on doing their duty, §. 40. *The right to impose punishment on the subjects*, in as far as it falls to the overlord by force of his public overlordship, belongs *to the sovereign rights*; and since it is in the republic's interest for offenses not to be committed, *the overlord has the right to punish even to avert offenses.*

1) Andreas Adam Hochstetter, *De iure poenarum liber singularis*, Tübingen 1706 and 1710.
2) On the objectives of civil punishments, cp. Augustin von Leyser, *De ultimo supplicio*, Wittenberg 1746, in his *Meditationes ad Pandectas* esp. 649, vol. X, pp. 367–78.
3) Johann Gottlieb Gonne, *Besondere Anmerkungen von dem Zweck der Strafen in bürgerlichen Gesellschaften*, in *Erlangische gelehrte Anzeigen* 1744 n. 10. p. 73ff.

§. 195.

Since offenses are susceptible of various degrees and the goal of punishment sometimes requires a greater, sometimes a lesser punishment, and indeed public welfare may at times require remission of punishment, one of *the sovereign rights* is *the right to inflict a lesser or greater punishment upon offenders*, and hence to *exacerbate* or *mitigate* the established *punishment* according to the circumstances of public welfare, or even to completely *remit* it, which last right is called the RIGHT OF PARDON.

1) Cornelis van Bynkershoek, "Ut solius principis est crimina remittere, sic eius solius esse videtur, criminum impunitates publice promittere," in *Quaestiones juris publici* bk. II, n. 16, p. 299.

§. 196.

If we suppose an offense that 1) has caused loss to some private person 2) and violated a penal law at the same time, *the overlord has the right* 1) *to make the offender restore the loss* to the person who sustained it, 2) to *inflict* upon him the *punishment* prescribed by the law. Hence in such offenses *the offender is* said to *be bound* to both *private* and *public satisfaction*.

If in this case the overlord exempts the offender from punishment by force of his right of pardon, this does not, however, by itself mean that at the same time he exempts him from the obligation to compensate for the loss caused. *With regard to private satisfaction, the wronged private party* has *a right that the overlord cannot take away against that party's will.*

§. 197.

As to the harm that the overlord inflicts upon an offending subject as he punishes him, one can think of various kinds. The greatest, apparently, is capital punishment; this right of the highest overlord to inflict capital punishment upon an offending subject is called the RIGHT OF DEATH (of the sword, by some also the *right of life and death*).

Since there are crimes which, either because of the atrocity of the act or because of the extremely bad example, give rise to serious danger threatening the republic that has to be averted by exterminating the offender, one of *the sovereign rights* is *the right to punish offenders with death*, in other words *to inflict capital punishment upon them, the right of death.*

1) Johann Eberhard Rösler, *De iure summorum imperantium in vitam civium*, Tübingen 1714.
2) ——, *Stricturae selectiores de juribus quibusdam potioribus summorum imperantium*, Tübingen 1715, *quaestio tertia*.

§. 198.

Since the right to punish can only be exercised against offenders but no one should naturally be presumed to be an offender, §. 98, I, *no one should be punished* either,

unless the offense has been sufficiently proved, i.e., unless it is proved that such an act exists, which can be imputed to such an offender as an offense, §. 14, I. Because of the same presumption and in order to bring out the truth of the offense with all the more certainty, every offender should be allowed to present what he thinks can contribute to his discharge; and therefore *no one can be condemned unheard* and *undefended*.

183 §. 199.

xix414 Because, finally, it is the overlord's responsibility to take care that no offenses be committed and that those committed be punished, *the public overlord has the right to the means without which the truth about an offense cannot be known*, and therefore *the right to inquire into offenses*, in one word: *the right of inquisition*. The overlord can also, however, sometimes exempt the suspect of a perpetrated offense from inquisition, i.e. *abolish inquisition*, for the sake of public welfare. Because no punishment can be imposed once inquisition has been abolished, §. 198, *abolition* in fact *implies remission of punishment in a dubious offense*, and therefore *the right of abolition* belongs *to the right of pardon*, and hence *to the sovereign rights*, §. 195.

§. 200.

Since there are rights that fall to individuals with regard to the group as a whole, and hence also with regard to the overlord, upon whom overlordship has been conferred by the group as a whole, §. 91, 103, *individuals are wronged by the overlord to whom over-*
184 *lordship has been transferred if he does something that goes against the right of individual subjects*. Because, however, individuals are bound both to the pact of subjection and to the pact of union, *the wronged individual* cannot *pursue his right beyond the extent to which it does not violate the pact of union*.

§. 201.

Since by force of the pact of union every individual is thus bound by the group as a whole not to disturb public tranquility, §. 91, *every individual who considers himself wronged is* also *obligated to abstain from all violent pursuit of his right against the public overlord*. In addition, in case of doubt the assumption is on the side of the overlord's right, §. 108; indeed the overlord, if something was done against the right of a single subject, should be deemed to have acted from ignorance or by mistake rather than deliberately, and to want to remove the wrong as soon as he knows its cause.

§. 202.

As a consequence *the individual subject who has been wronged* by the overlord *has the right to take care of his private welfare only by peaceful means, pleading letters, humble*
185 *exposition of his grievances.* After these have been tried in vain, however, *he will act more rightly by leaving the state than by arrogating to seek his private benefit by using violence and disturbing public tranquility.*

§. 203.

xix415 *If the right of the group as a whole is violated* or *a prominent part of the people is wronged by the overlord, the wronged* citizens for the sake of public tranquility and welfare *are bound* by force of the pact of union *to leave no peaceful means unattempted before they start to use force against the badly-reigning overlord* and thus in fact to rage against their own flesh.

So this is not a right of the overlord but an obligation of the subjects as associates in the pact of union amongst each other, by which it is brought about that *the people cannot pursue its right against a wrongdoing overlord by violent means, unless the overlord sinks to such a degree of wrongs that the danger threatening the republic from his*
186 *continued and tolerated injustice exceeds the danger that is to be feared from the people's taking up arms against him.*

§. 204.

A prince who with manifest intent exercises his overlordship toward the destruction of the republic is called a TYRANT, and following that also a TYRANT BY THE EXERCISE *of such*, to distinguish him from a TYRANT BY *such* TITLE, i.e., a usurper of monarchic overlordship, §. 98; the reign of a tyrant as such is called TYRANNY. *The people can* therefore *resist a tyrant and coerce him to abstain from tyranny* and to restrain his reign within the bounds of public welfare; or, subsidiarily, *it can withdraw from the pact of subjection* and depose the tyrant, which happens by *dethronement*.

§. 205.

A prince who because of his tyranny has been thrown from the throne ceases to be overlord, but does not for that reason at the same time cease to be a person in the state
187 of natural liberty. A people that has shaken off a tyrant's yoke ceases to be subject to him, and therefore with regard to the tyrant reverts to its state of natural liberty.

Hence if *a tyrant* and *a people vindicating its liberty* take up arms against one another, they *become enemies, war arises*, and *the right of the people* that wages war against the tyrant *must be judged from the right of a just enemy against an unjust one.*

§. 206.

xix416 Once we have understood this, it is obvious that one should not agree with 1) *the Machiavellists*, who think that *the people with regard to the prince is bound to purely passive obedience*, and that *the prince has such a right to inopposibility that he cannot commit injury*[5] *against his people in any way*, 2) nor with *the monarchomachs*, who think that *the prince can be punished by the people for injustice committed against his subjects*. The opinion of the Machiavellists, MACHIAVELLISM, is flawed, as is that of the monarchomachs, MONARCHOMACHISM; this conclusion follows from the aforementioned principles, §. 103, 205.

188 1) The trailblazer of the *Machiavellists* is Niccolò Machiavelli, whose treatise *Il principe*, first published in 1515, is replete with these principles. Machiavelli's followers are, among others:

[5] See I §. 67n.

Caspar Schoppe in *Paedia politices,* Rome 1623, new ed. by Hermann Conring Helmstedt 1663, and

Thomas Hobbes, whose *Elementa philosophiae de cive* and *Leviathan* we mentioned above, part I, p. 23.

2) The principal leaders of the *monarchomachs* are:

George Buchanan in his dialogue *De iure regni apud Scotos*, first published in Edinburgh in 1580;

Stephanus Junius Brutus in *Vindiciae contra tyrannos seu de principis in populum populique in principem legitima potestate*, first published 1580;

Jean Boucher in his *De iusta Henrici III. abdicatione e Francorum regno*, Lyon 1591;

189 [William Reynolds] writing as Guilielmus Rossaeus, in his *De justa Reip. [Reipublicae] christianae in reges impios et haereticos auctoritate*, Antwerp 1592;

Juan de Mariana in his three books *De rege et regis institutione*, Toledo 1599;

John Milton in his twofold defense of the regicide of King Charles I of Great Britain [*Defensio pro populo Anglicano*, London 1652; *Defensio secunda*, London 1654]; cp. [Von Neumann,] *Bibliotheca juris imperantium*, p. 118ff.[6]

§. 207.

In an *aristocracy*, if some of the aristocrats usurp the highest overlordship with the exclusion of the others, such a state of aristocracy is called an OLIGARCHY (in a bad sense, oligocracy, dynasty). When in a *democracy* everything is done without order and in an unruly crowd, such a state of democracy is an OCHLOCRACY.

xix417 Since with an oligarchy the sovereignty of the council of aristocrats is violated, and with an ochlocracy the tranquility of the people's republic is disturbed to the highest degree, while the individual aristocrats are subjects of the supreme council, §. 181, 190 and likewise the individuals from the people are subjects of the entire people or of the people's council, §. 175, it follows that *those who exercise oligarchy* or *throw the republic into ochlocracy become offenders*, §. 191, *guilty of a public crime*, §. 192, namely aristocratic or people's lèse-majesté, and hence *may be* rightfully and deservedly *punished by the aristocratic* or *democratic supreme council*.

UNIVERSAL PRIVATE LAW, Which Has No Place in Natural Law

§. 208.

1. Now we would have to proceed to *universal private (civil) law*, which comprises the natural rights and obligations of civil subjects with regard to each other, §. 87, mostly those which should be attributed to them as civil subjects, and hence it teaches the natural laws that should naturally be observed by civil sub-

[6] See II, §. 87.

jects among each other and the juridical bond between them, and explains their mutual civil duties.

191 2. And we could easily deduce many propositions here, having recourse to 1) purely natural law, 2) universal social law, 3) universal household law, and 4) universal state law in general: for from the principles of these disciplines, applied to the state of civil subjects, many universal private laws derive.

3. If you look into this more closely, though, you will be convinced without difficulty that *in* such *private law no new and determined rights and obligations can be universally established*.

4. Of course a civil subject's obligation to a fellow-subject is an obligation of a civil subject either as such or not as such. The latter obligation we can call a NATURAL xix418 OBLIGATION in a slightly broader sense; the former, in a stricter sense, a CIVIL OBLIGATION; what the related *civil right* and *civil own* mean in this sense is easily grasped.

192 5. The civil subjects' mutual natural obligations and rights do not belong to universal private law in the proper sense, i.e., in as far as it is distinguished from other kinds of natural law; and if they are ranged under it, they nonetheless contain nothing new. And to that extent, universal private law would only be a repetition of the things that were handed down in the higher disciplines of natural law.

6. So for universal private law to merit special attention, it would have to be possible to elicit many observations that are strictly civil and universally valid from the principle: *a civil subject should give every fellow-subject what is civilly his*. But that it would be possible to deduce such obligations that are universally valid, in other words universal: so far I do not see it.

7. Of course this *civil obligation* generally consists in the subjects' obligation to further their fellow-subjects' welfare *by means of civil overlordship*, §. 89; as a consequence, it is an obligation to do whatever the highest overlord commands 193 his subjects to further their fellow-subjects' welfare. So *for this general* and *undetermined obligation to be made into a* specific *obligation* in a certain state—one that is *civilly valid* and could therefore be called certain and determined—a certain act of civil overlordship is required by which this obligation is imposed, in other words: *a positive law* of the overlord *is required*, §. 114. Such a law *realizes* the subjects' civil obligation toward each other, which before a law is made is only *purely possible*.

8. Consequently every determined civil obligation is based on a positive law and therefore there are no universal determined civil obligations, nor, as a consequence, is there universal private law.

9. I would like you to observe that the subject's obligation with regard to the fellow-subject to further his welfare is an *obligation to an end*, which general end can be obtained by *many means*. From those various means the overlord has the 194 right to determine this or that as the means. Through this determination, finally, which is made by the civil overlord via his positive law, a determined obligation of the subject toward his fellow-subject is created: before there is a civil law, there is no determined obligation present.

10. Indeed because the subjects' civil obligation arises from the *pact* with which they obligate themselves amongst themselves to mutually further common welfare by means of civil overlordship, i.e. *in as far as* there will be *positive laws* of the overlord to this end, they are not bound to further mutual welfare beyond this consent either, and therefore not beyond the positive laws. For this reason *all determined civil obligations of the subjects are positive obligations*, there are no universal ones, and *universal private law does not exist.*

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Book IV

The Universal Law of Nations

§. 209.

xix419 A state that is free with respect to outsiders—indeed more generally every larger and eternal free society, in as far as it is regarded as one person—is called a NATION, §. 87. The UNIVERSAL (natural) LAW OF NATIONS is natural law applied to nations among themselves, §. 97, *Prol.* So the universal law of nations teaches the natural laws that should be observed by nations with regard to each other, it hands down the rights and obligations that naturally fall to a nation, it explains the natural mutual duties of nations and also the transient sovereign rights, §. 104.

Among the authors who have explained the universal law of nations in monographs,
196 the following stand out: Zouch (1), Textor (2), Glafey (3), Ickstatt (4), Wolff (5), and Vattel (6).

1) Richard Zouch (Zouche), *Juris et judicii fecialis sive juris inter gentes et quaestionum de eodem explicatio*, Oxford 1650.
2) Johann Wolfgang Textor, *Synopsis iuris gentium*, Basel 1680.
3) Adam Friedrich Glafey, *Das Völker-Recht nach dem Rechte der Vernunft betrachtet*, 3rd augm. ed. Nuremberg, Frankfurt and Leipzig 1752.
4) Johann Adam von Ickstatt, *Elementa juris gentium*, dissertation defended by Carl von Colloredo, Würzburg 1740.
5) Christian Wolff, *Jus gentium methodo scientifica pertractatum, in quo jus gentium naturale ab eo, quod voluntarii, pactitii et consuetudinarii est, accurate distinguitur*, Halle 1749.
6) Emer de Vattel, *Le droit des gens*, see p. 25 above.

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Section I
The Universal Law of Nations in General

§. 210.

Since a nation is 1) a society, 2) a free one to be precise, §. 209, any nation whatsoever with regard to another nation is a moral person in a natural state, §. 16, and consequently
xix420 *several nations amongst each other should be considered as many free persons.* For this

reason *nations use purely natural law*, i.e., they enjoy the rights and are bound by the obligations that naturally fall to persons in a state of natural liberty, §. 16.

§. 211.

To be numbered among the nations are: every *free monarchy*, *aristocracy* and *democracy*, §. 110, and more generally every *larger* and *eternal free society*, be it a *despotic* society,
198 §. 37, or a body of *federated republics*, §. 190, indeed in a certain way even *a subordinate republic*, to the extent that it cannot be regarded as subordinate. For this reason, the law of nations can be applied to all these larger societies, either in all things or in some.

§. 212.

Furthermore *a people*, to which the highest public overlordship falls by force of origin, §. 95, *is a nation*, §. 209; moreover, however, any *supreme overlord*—be it *civil* or *despotic*—, *any monarch, council of aristocrats* or *people's council*, indeed also *the head of state represent their nation*, in as far as they have the transferred or entrusted right of the people, §. 141, and hence the transient sovereign rights fall to them, to be exercised in the name of the people. It follows that to that extent, *the law of nations can also be applied to the overlords of nations* and *the heads of states.* In a certain sense this should even be admitted regarding overlords and heads of subordinate states, §. 211.

199 §. 213.

Since the universal law of nations is a species of natural law in general and a cospecies[1] of purely natural law, it has its more general principles in common with these disciplines, and therefore *the universal law of nations does not differ from natural law in general and purely natural law as to its more general principles.* On the other hand, the more general principles of natural law in general are applied to individuals in purely natural law, while in the universal law of nations they are applied to whole nations, and the individual and the nation differ in essence, nature and state, and from this difference many different conclusions are drawn: for these reasons *the universal law of nations* differs *from natural law in general* and *from purely natural law in its special subject* and *its conclusions*.

As to the rest, the natural law of nations, like the purely natural law of individuals, is *eternal, unchangeable, universal* and *necessary law*, §. 47, I.

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Section II
The Absolute Universal Law of Nations

§. 214.

Because nations use purely natural law amongst each other, §. 210, any *nation* whatsoever *has a right with regard to its own preservation* as a person and *with regard*
xix421 *to its own rightful actions*, §. 64, I. For this reason *all nations*, if they are considered by

[1] See I §. 1.

themselves, i.e., in their original state, *have the same rights and the same obligations*, §. 69, I, and thus are *all equal*, such that none has more right than another, §. 70, I, 71, I, much less has overlordship over another, §. 75, I; all are *free* and mutually independent, §. 77, I, *equipped with the right to perfect themselves and amass wealth*, §. 81, I, as well as with *the right to good esteem*, §. 97, I, 98, I; *nor are they mutually bound unless by negative obligations; nor*, therefore, *do they have any reciprocal rights except negative ones*, §. 82, I.

201 §. 215.

Because a nation is composed of many families and other persons who have formed a society on the basis of a pact of civil union, §. 89, 91, *to the preservation of the nation pertains the preservation of the members of the state as individuals* and *as a group* as well as *the continuation of the civil union.*

For this reason *a nation by force of its right of self-preservation*, §. 214, *has the right* 1) *to preservation of all the members of its state as individuals and as a group, the highest overlord* and *the subjects, the families* and other *civil societies* and *organizations*, and hence the right to *protect their lives, bodies, property and rights* of any kind; 2) *to the continuation of the civil union, the form of the republic, the fundamental laws*, and the whole *bond of rights* and *obligations between the overlord and the subjects* and *between the subjects among themselves.* And *this right of a nation* with respect to another nation *also* is *obligatory* with respect to the nation itself, because it derives from the pact of union by which the group as a whole is bound by the individuals,
202 both to protect them, §. 91, and to guard the perpetuity of the civil union, §. 90.

§. 216.

By force of this right to self-preservation *a nation* also *has the right to avert from itself* any *danger of destruction*, §. 270, I. The destruction of a nation does not only consist in the destruction of all or at least most of its citizens, but also in the annulment of the civil union, §. 215.

§. 217.

Indeed if *a nation is thrown into an extraordinary state* where it cannot avoid destruction without neglecting a duty to another nation, that *nation will enjoy the privilege of necessity*, §. 145, *Prol.* For this reason *a nation has the possibility not to fulfill its obligation to another nation* in case *of necessity* if no other means of avoiding its destruction is at hand, §. 143, *Prol.*, and hence in order to prevent the destruction of all or most of its citizens or the dissolution of the whole civil union, §. 216.

203 §. 218.

Because a nation is a free person, §. 209, and has the right to protect the rights of its citizens, §. 215, *it has the right not to tolerate* 1) *another nation interfering with its reign and public affairs*, 2) *its citizens and subjects being disturbed* or *hindered in* their *rightful actions* and *private affairs.* And thus it is clear that not only the public affairs of a nation,

but also the rightful actions and private affairs of individuals can be numbered among
xix422 the rightful actions of a nation. Moreover this right of a nation regarding its public affairs and the private affairs of its citizens is all the stronger because it rests upon the obligation of the group as a whole toward the individuals to protect the individuals' rights and the liberty of the state, §. 215.

§. 219.

Because by force of its natural liberty a nation is independent of another nation's overlordship, §. 214, *among nations there is no place for superiors, obedience, judges, jurisdiction or punishment*, and *it is wrong for a nation to have another nation as its slave*.

204 §. 220.

Because furthermore a nation has *the right to* good *esteem*, and nations are *equal* in esteem, §. 214, *no nation can demand honor or precedence from another*, §. 101, I. Nor are *greater power, higher virtue, a better cultivation of arts* and *sciences, a purer religion, a more excellent form of state, a more ancient republic, multiplied sovereignty* based on a plurality of peoples or kingdoms, higher *honor bestowed by other nations*, and other things of that kind, in any way *valid toward establishing a right of precedence. A nation* also *has the right to protect the good reputation of its individual citizens*, §. 215.

§. 221.

Since public overlords, to whom overlordship has been conferred, represent their nation, §. 214, any *overlord must regard the overlord of another state as his equal*, as in the other rights so also with regard to esteem. So if someone in word or deed declares
205 the contrary, and consequently if he does something that verges toward contempt or insult of another state's overlord, he commits an injury[2] against that overlord and his nation.

§. 222.

Consequently, *if* some *nation gives its overlord a particular title*—which any nation may do at will, by force of its natural liberty—*it cannot*, however, *demand that other nations give him that title as well.* On the other hand, if by making a pact it obtains from another nation that such a title be given, the pact has to be honored.

§. 223.

Finally, since a nation has the right to perfect itself and the right to amass wealth in as far as it can be done without injury to another, §. 214; *it* also *has the right to increase its power*, and therefore the right to all those things with which it can increase its power

[2] See I §. 67n.

206 without injury to another nation; indeed even *the right to protect its* individual *citizens in the affairs with which they try, in ways that are naturally allowed, to acquire and obtain for themselves whatever pertains to sustenance*, §. 215.

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Section III
The Conditional Universal Law of Nations

TITLE I
A NATION'S DOMINION AND TERRITORIAL RIGHT

§. 224.

xix423 Since a nation has the rights of a free person, §. 210, *a nation* by nature *is the owner of the things that are its own*, §. 137, I, *and has the right to have their accessories as its property*, §. 149, I, as it has the right to *occupy ownerless things*, §. 113, I, and *to acquire that which is another's by contract*, §. 168, I and §. 19.

§. 225.

A nation thus by force of the dominion that it has to the things that are its own *has the proper right* 1) *to have the usufruct of the things that are its own*, 2) *to dispose of them at will*, 3) *and to possess it*; as a consequence it also has *the right to exclude any other*
208 *nation from any use, disposal, retention and possession of the things that are its own*, §. 143, I; 144, I.

As the things that are a nation's own, however, should be counted not only the things that belong to the group as a whole, but also in a certain way the things of the individual citizens and consequently all the things in the estate either of the highest overlord or of certain civil societies or of individual subjects. For since the group as a whole can direct the things belonging to individuals to the furtherance of public welfare, §. 106, and therefore use them in a certain way and dispose of them to the exclusion of foreigners, while also having eminent domain over the things belonging to individuals, §. 146, and moreover is obliged to protect the rights of individuals, §. 215—and hence a nation has the right not to tolerate any of its citizens being hindered by another nation in the exercise of dominion, and consequently also the right to exclude another nation from the use, disposal and possession of these things—the things belonging to individuals in a certain way cannot be denied to be the things belonging to the nation, and to that extent *a nation*
209 *with regard to other nations has dominion over the things belonging to individual citizens.*

§. 226.

Hence *the region* of the world *that a certain nation originally inhabits, with that which is in it*—the region, consequently, in which it originally has overlordship, i.e., the *nation's territory*, §. 106—is in the nation's dominion as well, §. 225.

From which it can be concluded that 1) *no nation can enter another's territory*, or pass through it, or *stay* in it, or *have any kind of benefit from it*, even if it be harmless,

except with the consent of the nation that is the owner of the territory; 2) hence *it depends on the will of the nation under which conditions it wants to grant foreigners passage*
xix424 through its territory, *a stay* in it, *or any use of it*; 3) he who has public overlordship in the territory, also has dominion over it, that is: *the civil overlord is the owner of the territory*.

210 §. 227.

Because a nation can use vacant places enclosed in its territory, to the exclusion of foreigners, physically and legally, §. 108, I, it will have the dominion over such places if it wishes, §. 112, I, and consequently it will be able to exercise overlordship in them as well. Now regarding this wish of the nation there can be no doubt, since it is greatly in its interest that no place be found within the borders of its territory in which it does not hold dominion and overlordship with regard to foreigners. For this reason, if a state coalesces in such a way that in a certain region, being the nation's stable residence, a territory arises and enclosed within its borders there are empty places, *such empty places, and that which is in them, are understood to be subject to the nation's dominion and overlordship*, and therefore *such places must be regarded as occupied by the nation*, §. 113, I. So in this sense *whatsoever is in the territory belongs to the territory* (in as far as possible), and therefore *is presumed to belong to the territory until the contrary has proved true*.

211 §. 228.

A nation as owner of its territory also acquires its accessories *by right of accession*, §. 224, and thus *by right becomes the owner of the natural* and *effort-related fruits* of the territory and of *the fortuitous accessories* as well, §. 151, I and 153, I. Indeed a nation *can* also *acquire things that are another's which accede to its territory by the right of putative accession*, e.g., lost and shipwrecked things; but they have *to be restituted to* their true *owner as soon as he becomes known to the nation*, §. 155, I.

§. 229.

Because it is of the greatest interest to a nation that there be no one in its territory who is not subject to the supreme overlordship, and it depends on a nation's will under which conditions it wants to allow an alien to pass through its territory or stay in it, §. 226, *a nation is understood to grant aliens transit through its territory and a stay in it* (without prejudice to natural law or a declaration to the contrary) *only in such a*
212 *way that aliens are under the territorial overlordship and laws as long as they are in the territory.* So *whoever is in a territory is under the territory*, that is: is subject to the territorial owner's overlordship, and aliens are temporary subjects for as long as they stay in the territory; as a consequence, *whosoever is in the territory is presumed to be under the territory until the contrary is proven.*

1) Friedrich Wilhelm Pestel, *Iustitia et benignitas legum Germanicarum erga peregrinos examinata*, Rinteln 1754.

§. 230.

Thus it is clear from what has been said that a *territory* does not only comprise the land and the places that are actually inhabited by a nation, but that the following also belong to the territory (in as far as that is possible): anything that is contained within
xix425 the borders of these places, the whole tract of lands and waters; anything that is found over and under this tract, the whole *region*; anything that exists or comes into
213 being in it, either *by the beneficence of nature*, such as forests, mountains, meadows, also fallow and deserted places, brooks, rivers, lakes, marshes, seas, with their accessories, e.g., animals, wild beasts, birds, metals, minerals, fruits of the earth, fish, etc.; or anything that *industry* of men has produced in the territory, for instance fields, gardens, vineyards, buildings, villages, forts, cities, etc.; or whatever came into being in the territory or was brought into it *by chance*.

§. 231.

Because a nation furthermore has the right to occupy, §. 224, *a nation acquires dominion over the things it occupies*, if only the thing is 1) physically tangible, 2) ownerless, and 3) in fact seized with the intention of owning it, §. 114, 115, I.

Regarding the first point: since a nation's power is greater than that of individuals, a nation can also occupy *a greater tract of earth and more things at once* than private individuals can. *The ocean* however *will remain ownerless*, and hence *free* (from any
214 nation's overlordship) *as long as one nation's might does not suffice to exclude all others*.

From the second point it is clear *that land that is inhabited by another people cannot be occupied*, even though that people is wild and uncultivated, without laws or civil reign, lacking all knowledge of Divinity and all morality, and because of its ignorance and lack of civilization does not know how to use the highly fertile soil and numerous other resources, thus denying mankind the use of its resources.

From the last point it is evident that *occupying is done not with the mind only, but at the same time with the body.* So if a nation declares, for instance, that it wants to occupy a certain tract of fallow land, but then another nation is the first to take it, it is crystal clear that it is the latter nation that has taken it into possession, not the former. Therefore it is also true that a *nation only acquires as much as it has occupied with clear signs.*

* On the *freedom of the seas*, as opposed to *overlordship over the seas*, there is much controversy.

1) The *freedom of the seas* is affirmed by Hugo Grotius in his *Mare liberum sive de*
215 *iure quod Batavis competit ad Indicana commercia dissertatio*, first published anonymously in Leiden in 1609. Among Grotius's followers are Johannes Isacus Pontanus, Dirk Graswinckel, Johann Gröning and others.

2) *Overlordship over the seas* is defended by:

   John Selden in the work *Mare clausum sive de dominio maris libri duo*, first published in London in 1636. Selden is followed by various *English, Spanish, Italian and German* writers.

Cp. Joachim Hagemeier's collection *De imperio maris variorum dissertationes*, Frankfurt (Main) 1663.

3) An *intermediate view* is taken by Theodorus Graver in *Dissertatio juridica inauguralis de mari natura libero pactis clauso*, Utrecht 1728.

xix426 On the authors of maritime law, cp.:

Johann Albert Fabricius, *Hydrotheologie*, Hamburg 1734, p. 243ff.

216 §. 232.

Since a thing that is occupied passes into the dominion of the occupant, who can exercise all rights over a thing that is his own as he wishes, §. 136, I, *a nation* can also exercise overlordship *in an occupied place,* such as an island or a part of the sea adjacent to land; indeed *it is understood to want to exercise overlordship*, §. 227, and therefore *a place that is occupied by a nation becomes part of its territory*, §. 226.

§. 233.

If a nation relinquishes a certain place subject to its dominion, e.g., an island that was uninhabited thus far, *such a place ceases to be its own* and as a consequence also *stops being a part of the territory of the nation that relinquishes it, and becomes an ownerless thing, open to anyone who occupies it,* and *if it is occupied by another nation it becomes subject to this nation's dominion and territorial right*, §. 159, I and §. 232.

Because a *presumed dereliction*, however, is in fact fictitious and hence does not cause the party against which it is presumed to lose its right, §. 166, I, there is no place for *prescription* in the law of nations, §. 241, I.

217 1) The opposite view is supported by Johann Wolfgang Kipping in his *Commentatio de usucapione iuris publici*, Helmstedt 1738.

§. 234.

Finally, since anyone can dispose of a thing that is his at will, §. 143, I, *a nation*, too, *has the right to establish a certain right for another nation* or *for its citizens in its territory*, and hence to *pledge* part of its territory or to *establish servitude* in its territory.

1) Nicolaus Hieronymus Gundling, *Schediasma de jure oppignerati territorii secundum jus gentium et Teutonicum*, Wittenberg and Leipzig 1741.
2) Johann Heinrich Feltz, *De juris publici servitutibus sive de juribus in alieno territorio*, Strasbourg 1701, reprint 1737.
3) Christophorus Joannes Conradus Engelbrechtus, *De servitutibus iuris publici*, Helmstedt 1715, and with a preface by Christian Gottlieb Buder, Leipzig 1739.

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TITLE II
PUBLIC-PACTS LAW

§. 235.

A nation has the right to make pacts, and *by making a pact* both *to acquire* and *to alienate* and *to obligate itself*, §. 168, I. 169, I, and consequently also *to make* pacts
xix427 with another nation, i.e., *public pacts*, §. 142. *Under a nation's pacts*, however, also fall *the private pacts of* its *individual citizens* that were made with another nation or with private persons of another nation as such, in as far as the group as a whole is obliged to the individuals to protect their rights, §. 91 and 215, and therefore also the rights acquired by pact with regard to foreigners; for this reason, the latter have the right to the same. To this right of the one nation corresponds the *obligation of the* other *nation not to allow any of its citizens to break his word to foreigners, but rather to make sure* that *everyone of its people fulfills his contracted obligation toward a foreigner as much as possible.*

219 §. 236.

In as far as *the civil overlord* upon whom overlordship has been conferred, and specifically the *prince has the right of his nation* or people, *a pact of the public overlord* as such *falls* not only under the nation's agreements, but also *under the public agreements*, for one of the sovereign rights is the right of public pacts, §. 142: and thus to that extent *a nation is obligated on the basis of its overlord's promise*, and on the basis of his *acceptance the nation acquires.*

§. 237.

If on the other hand *a prince, who* by force of fundamental law *cannot make public pacts without the people's consent, in his nation's name makes a pact with another nation while that consent is lacking,* such an *agreement of the prince* in as far as it is public, i.e. in as far as it concerns his state, is invalid, §. 167, I, and to the extent that he intends to obligate his nation through it, *defective*, §. 181, I, *and* as a consequence *it can only become valid through approval by his people*, or those to whom the people has conceded that right, §. 175, I, note.

220
1) Heinrich von Bode, *Disputatio iuridica inauguralis de contractibus summarum potestatum*, Halle 1696, reprinted Halle 1748.
2) Georg Adam Struve, *Commentatio de contractibus principum*, reprinted Jena 1745.
3) Henricus Andreas Waltherus, *Selecta quaedam iuris naturae et gentium de contractibus summorum imperantium*, Giessen 1728.

§. 238.

A (public) SPONSION is a pact by which someone in the name of a nation promises something to another nation who is not equipped with this right. *A sponsion* therefore *does not have force of pact with regard to the nation in whose name it is entered upon,*

unless it is approved by that nation. The pacts of a prince that we discussed *in the preceding* §. *are mere sponsions.*

1) Christian Thomasius, *De sponsione Romanorum Caudina*, Leipzig 1684, and in his *Dissertationes juridicae*, Leipzig 1695, diss. 6, p. 428.
2) ——, *De sponsione Romanorum Numantina*, Leipzig 1688, and in his *Dissertationes juridicae*, Leipzig 1695, diss. 14, p. 976.

221 §. 239.

xix428 Sacred *in the law of nations* is the word for that whose violation goes against the public or common welfare of nations to a greater degree. Since it is thus of the highest importance to nations that public pacts, since they are struck for the sake of the public good, are not violated, *public pacts are sacred*, and hence *public faith*, §. 184, I, *should be held sacred by nations.*

1) Gottlieb Samuel Treuer, *De auctoritate et fide gentium atque rerumpublicarum commentatio*, Leipzig 1747.
2) Cornelis van Bynkershoek, "De servanda fide pactorum publicorum, et an quae eorum tacitae exceptiones?" in his *Quaestiones iuris publici* pt. II. ch. 10, p. 251.

§. 240.

Since a nation is an eternal body, §. 90, *a nation remains the same moral person* with regard to foreigners, *although the head of state may change*, or *the form of the republic*,
222 or *the way to exercise* or *have public overlordship*, and so forth. For this reason, *a nation's rights and obligations that were acquired through a public pact, viewed by themselves, are not annulled by the death of the king, a change in the form of republic*, or *a change in the way to exercise overlordship*, and so forth. Because of this, *public agreements* themselves are called *eternal* (perpetual, Grotius calls them *real*), and therefore *public agreements are eternal by nature*, meaning that they obligate not only the present nation and prince, but at the same time also the nation's entire posterity and all the prince's successors, while the right that is sought on the basis of a public pact likewise passes to them also.

A public agreement can, however, by explicit or tacit *consent of the nations making the pact, be temporary*; this is also true of a *personal public pact of the prince*, i.e., a pact by which the prince acquires a non-transmissible right or obligation; just as such an *agreement can be rescinded by mutual disagreement*, and hence *the mutually acquired rights* and *obligations can be annulled at will*, §. 252, I.

223 §. 241.

Because a treaty[3] is a pact of nations by which they enter into a society, §. 142, *treaties contain non-transient guarantees*, §. 1, that will last either forever or for a certain time only; hence *treaties* are either *eternal* or *temporary.*

[3] Achenwall uses the word *foedus* in a specific sense, for a treaty of federation (a word that derives from *foedus*, of course).

§. 242.

xix429 An UNEQUAL TREATY is an eternal treaty that is combined with a decrease in supreme overlordship or natural liberty of either of the federated nations; if this is not the case, it is EQUAL. For *nations that conclude an unequal treaty become unequal in dignity*; hence the nation whose overlordship or liberty is diminished by the force of the concluded treaty is called *the less worthy party*, while the other is called *the worthier party. Nations that are joined by an equal treaty*, however, *remain equal.*

1) Georgius Adolphus Schuberth, *De foederibus inaequalibus*, Leipzig 1715.

224 §. 243.

For greater solidity, oaths and various securities may be added to public pacts and treaties, §. 224, I; in pacts of nations security is usually provided specifically with a guarantee. Now a GUARANTEE (guaranty) among nations is a public agreement by which a nation promises another nation military assistance for safety from a wrong it may have to fear from another nation, and therefore help against him who will try to take away some right from it. Hence a guarantee can also be ratified as if it were an accessory agreement, for security that the public promise will be kept. A pact provided with a guarantee, i.e., one for whose keeping security has been provided with a guarantee, is called a GUARANTEED PACT.

1) Friedrich Ludwig Waldner von Freundstein, *De firmamentis conventionum publicarum*, Giessen 1753.

§. 244.

A guarantee, therefore, *differs from suretyship* for another nation, for in the latter a
225 promise is made that one will deliver that which the other nation owes, if the latter itself fails to deliver it, §. 228, I. *A surety* therefore *is bound to more than a guarantor*. And since no one can take away another's right, *a guarantee is not understood to have been given unless without prejudice to a third party's right.*

1) Johann Christoph Wilhelm von Steck, *De guarantia pactorum religionis ergo percussorum exercitatio*, Halle 1756.

§. 245.

A HOSTAGE is a person who is given as security for what is owed, i.e., that a pact will be kept or that which is owed will be delivered. So security that public agreements will be fulfilled can also be provided by giving hostages, §. 243. Of course *he who accepts a hostage acquires the right to retain him until what is owed has been delivered, and therefore also the right to guard him as long as is sufficient, so that he cannot flee*.

1) Christian Ferdinand Harprecht, *Jus in rempublicam obsides deserentem strictim delineatum*, Tübingen 1749.

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TITLE III
THE LAW OF EMBASSIES

xix430 *Authors* on the law of embassies *are enumerated* by Jean Barbeyrac in his preface to the French translation of Cornelis van Bynkershoek's *De foro legatorum* added to the new edition of Abraham de Wicquefort's *L'ambassadeur et ses fonctions*, Amsterdam 1746, vol. II; and by Meister in his *Bibliotheca iuris naturae et gentium*, part II, p. 2ff.[4]

§. 246.

An AMBASSADOR (envoy) is a person sent by a nation that he obeys to another nation for the sake of handling a public affair, §. 143. An ambassador therefore is 1) *a mandatary of the nation that sends him*, and consequently he *represents his nation* as his mandate-giver with respect to the affair entrusted to him, §. 221, I; this state of the ambassador (in as far as he represents the nation that sends him) is called his REPRESENTATIVE (representational) CHARACTER. An ambassador 2) is a *public official of the nation that sends him*, and therefore as ambassador he does not act in his own name, but in another's, and dependently on his nation, §. 121.

227

§. 247.

Since an ambassador is the mandatary of the nation that sends him, prec. §., regarding the public affair entrusted to him he enjoys the same rights and is bound to the same obligations that the nation sending him would have if it were to handle the matter itself, both with regard to the nation to which he is sent and with respect to any third nation, §. 222, I. And in this sense it can be affirmed that *an ambassador's representative character extends over the entire world.*

1) Heinrich von Cocceji (Coccejus), *De repraesentativa legatorum qualitate*, Heidelberg 1680.
2) Johann Eberhard Rösler, *Dissertatio de juribus legatorum ex jurisprudentia naturali demonstratis*, Tübingen 1713.

§. 248.

xix431 Because by nature it is a purely facultative matter, and by force of natural liberty it should be left to anybody's choice whether he wants to be at the disposal of others, lend his ear to requests, speak with another, deliberate, handle affairs, make pacts, etc., §. 80,
228 I, *by nature we do not have the right to force anyone—nor*, therefore, *does anyone have the obligation—to allow us to set out our wishes to him or request anything from him, except in as far as we have no other means to protect our right*; there is such an example, §. 135, I and §. 289, I.

For this reason, *by nature* it also depends *on a nation's will whether it wants* to ADMIT AN AMBASSADOR sent to it *or not*, i.e., allow him the possibility to set out to it the matter entrusted to him. Hence *if it refuses the ambassador, it does not act wrongfully*

[4] See Part I, "Introduction to Natural Law," note 11.

toward the nation sending him, nor is it obliged to give that nation the reasons for its refusal, §. 80, I.

§. 249.

Since a nation is the owner of its territory, §. 226, *it* also *naturally depends on a nation's will whether it wants to keep an ambassador*—whether he be sent to it or to another nation—*out of its territory, or allow him access, stay and transit*, §. 226.

For this reason, *a nation's obligation to admit the ambassador of another nation or*
229 *allow him transit* and *stay in its territory* ultimately *should naturally be sought* from its consent, and therefore *from a pact*. At the same time it is clear from this *that a nation can dictate to* another nation's *ambassador the manner and conditions under which it wants to allow him access or transit*, §. 226.

§. 250.

Credentials are the letter that the nation sending him gives to an ambassador for the nation to which he is sent, and in which it declares him to be its ambassador to that nation. *An ambassador must be provided with credentials in as far as a nation otherwise could not be certain of the will of the nation sending him. Once the credentials have been handed over and accepted, a nation is obligated to recognize the ambassador sent to it as such*, i.e., as mandatary and representative of the nation sending him, §. 246. And since by accepting the credentials the nation consents to the admission of the ambassador sent to it, *once the credentials have been accepted the ambassador has the right to admission*.

230 §. 251.

The right of passage is the right to go here and there safely, and a letter of safe conduct is a letter in which someone is granted the right of passage. Because any
xix432 nation is the owner of its territory, *an ambassador cannot pass through the territory of another nation and stay there without being granted the same*, §. 249. But *once a letter of safe conduct has been given by the nation and accepted by the ambassador or the nation sending him, he has the right to this* by force of pact.

1) Gottfried Achenwall, *Dissertatio iuris gentium de transitu et admissione legati ex pacto repetendis*, Göttingen 1748.

§. 252.

Since the right to an end at the same time comprises the right to the means, as long as they are not illicit in themselves, *an ambassador who is granted admission and the handling of a public affair*, at the same time *is conceded the right to everything that is necessary to handle the public affair. To this right corresponds the obligation of the nation to which the ambassador is sent* 1) *not to hinder the ambassador in matters without which he cannot handle the public affair*; 2) not to allow his being hindered in these by
231 anyone else in its territory, and therefore *to protect him*, §. 102.

§. 253.

An ambassador by force of his mandate *has the right to conduct the affair entrusted to him in the name and right of his nation*, and therefore, since a nation is free, *independently of the other nation.* Since *the nation admitting the ambassador* consents to this, §. 248, *it is* also *understood to consent to the ambassador's having the right, independent of it, to everything necessary to fulfill this task, and to every action that regards the public affair* either directly or only indirectly. For this reason, *an admitted ambassador, regarding the public affair entrusted to him*, and *regarding everything without which he cannot conduct this affair*, and *regarding all the actions related to it, by nature is not subject to the overlordship and territorial right of the nation to which he has been sent*.

To that extent, *an admitted ambassador* together *with his* RETINUE—i.e., the persons whose service he uses in accomplishing his mission—, *with* his *furniture* and *equipment*,
232 and *with the building* in which he lives, *cannot be regarded as having the status of a private alien, and* consequently cannot be regarded *as having the status of a temporary subject*, inasmuch as *it can exist together with the nation's right to self-preservation and public security, which the nation in no way renounces.*

§. 254.

Likewise, *if a nation allows an ambassador transit, it is understood* at the same time *to allow the ambassador*, with respect to the things related to the public affair entrusted to him, *with his retinue* and *equipment* and *lodgings*, to be immune from its overlordship and territorial right, and therefore *to be exterritorial to that extent*, §. 253.

§. 255.

xix433 Since, however, any nation is at liberty to dictate conditions to an ambassador under
233 which it wants to allow him access and transit, §. 249, *an ambassador is restricted by the conditions added to his admission or letter of safe conduct and to those that are understood to be tacitly included.* And so it becomes clear *how an ambassador's exterritoriality can be restricted and diminished*.

§. 256.

If an ambassador is wronged, the nation sending him is understood to be wronged itself *in the person of the ambassador*, not only in his quality as its subject, §. 246, but at the same time as its mandatary and its public official as well, who administers a sovereign affair in the name and right of the nation, §. 246, 120. From this it is clear that an ambassador has *inviolability* to a higher degree, and *sanctity*, §. 239; this sanctity is usually assigned specifically to him to the extent that he is immune from the other nation's jurisdiction, §. 253.

1) Ioannes Schleusingius, *Dissertatio juridica de legatorum inviolabilitate*, Leipzig 1690, reprinted Wittenberg 1743.

2) Two *observationes*, one *de inviolabilitate legatorum in genere*, the other dealing with the same right in particular, in *Observationes Halenses* vol. IX, pp. 272–355.

234 3) Johann Lorenz Fleischer, *De iuribus et iudice competente legatorum*, Halle 1724.

§. 257.

Since, however, no one is bound to the unknown, *before it becomes known* to a nation *that this person* who lives in its territory *is an ambassador, it is not obligated to regard him as exterritorial and sacred* in the strict sense, *but rather with the right of a private alien*, and consequently *it can regard him as a temporary subject*, §. 229.

§. 258.

Because whatever an ambassador does as mandatary of the nation that sent him is understood to be done by that nation itself, §. 247, *an ambassador's pact that has been struck with another nation by force of his mandate is a public agreement*, §. 142; as a consequence *whatever an ambassador promises in the name of his nation* in such a pact, *the nation sending him is obligated to deliver*, and *whatever* on the other hand *he accepts in the name of his nation, the nation sending him acquires*, §. 222, I.

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Section IV
The War Law of Nations

§. 259.

xix434 *A wronged nation has the right to violence against a nation wronging it*, §. 259, I and 210. Now a nation is wronged by another nation not only 1) if a right that directly belongs to the nation as a whole is violated by the other nation as a whole, but also 2) if a nation as a whole does not give an individual member of another nation what is his, §. 215, and indeed even 3) if some individual from a nation wrongs an individual citizen of another nation, in as far as its citizen's deed can be imputed to the nation, e.g., by approval or ratification, §. 31 *Prol.*

§. 260.

Acts with which only certain persons or goods of a nation are taken or held by another nation to restore a loss are called REPRISALS. In particular the capture and detention of certain persons of another nation done by a nation in order to achieve satisfaction
236 regarding violated right is called ANDROLEPSY. *A wronged nation has the right to reprisals and androlepsy against the nation wronging it if a milder means does not suffice to obtain its right*, §. 259, I.

1) Nicolaus Christoph von Lyncker, *Dissertatio de iure repressaliarum iurisque gentium et civilis qua illud convenientia et disconvenientia*, Jena 1691, reprinted Jena 1747.

2) Ludwig Martin Kahle, *Commentatio iuris publici de iustis repressaliarum limitibus tum a gentibus tum a statibus S. I. R. G. observandis*, Göttingen 1746.

§. 261.

I RETURN A RIGHT if someone decides to use a certain right with regard to me, and I use the same right with regard to him, that is to say: if someone takes action with regard to me as though it were rightful, and I take the same action with regard to him. *By nature* everyone *has the right to return a right against another*, §. 72, I. For this reason, not only does one have the right, if someone denies one a duty of charity, to deny the other
237 person the same thing in turn—a return that is called RETURN OF AN INEQUITABLE
xix435 (grievous) RIGHT; but also, if someone denies one a duty of necessity, to deny it in turn—a return that may be called RETURN OF A WRONGFUL RIGHT, i.e. of a spurious right, which is falsely alleged to be a right. This *right to return a wrongful right should be classed among the rights of a wronged party with regard to the wronging party*, since denying a duty of necessity belongs to the wrongs.

For this reason *a nation* likewise *has the right to return a right* to another nation, §. 210. Hence *the right*, be it *grievous or wrongful, that a* certain *nation claims against the citizens of another nation, may by the same right be used by the latter nation against the citizens of the former.* In particular the right to return a wrongful right should also be classed among the rights of a wronged nation.

1) Karl Otto Rechenberg, *Vindiciae iurium reipublicae et fisci in doctrina retorsionum*, Leipzig 1726.
2) Johann Gottfried Bauer, *Meditationes de vero fundamento quo inter civitates nititur retorsio iuris*, Leipzig 1740.

238 §. 262.

A war waged between nations is called a PUBLIC WAR; one between private persons in their own name a PRIVATE one; and one that is part public, part private, a MIXED one. *A wronged nation has the right to public war in as far as it cannot otherwise obtain its right*, §. 259, I.

Public war differs in degree from *reprisals, returning a wrongful right* and similar violent acts and ways to act, in the same way as the highest degree of its kind differs from a lower one: for war is not restricted to certain acts of violence only, but involves the intention to *use all force necessary* against the other party.

1) Stephan Waga, *Dissertatio de iis quibus jus belligerandi competit*, Wittenberg 1739.

§. 263.

Because a wrong is a cause that justifies war as a necessary means to protect one's right—whether the wrong has been done, is actually being done or is imminent—*a*

xix436 *war* of nation against nation *is rightful with regard to the end if its end is the nation's*
239 *indemnity, defense* or *security*, §. 267, I.

1) Johann Peter von Ludewig, *Thema inaugurale de iuris gentium laesione*, Halle 1741.

§. 264.

And since a wrong is the only cause to justify war, *a war is wrongful that is waged on grounds of profit alone* and on the basis of *rhetorical arguments alone*, since these are derived from profit; or *to persuade another nation to embrace our religion*. Hence *starting a war against a nation because of idolatry, atheism and other crimes against God*—a *punitive war,* as it is called—*is forbidden.*

1) Ernst Christoph Arnoldi, *Dissertatio iuridica de iure convenientiae in specie quoad ius privatum et civile, et circa ius publicum*, Giessen 1742.
2) Johann Schmidt, *Exercitatio moralis de bello punitivo*, Leipzig 1714.

§. 265.

Because of this, *a nation's growing power* and *dominance by themselves are not justifying causes for war either; accidentally*, however, *they may turn out to be* so, *if*
240 *they are combined with an imminent wrong*. Such GROWING POWER and DOMINANCE is commonly called FORMIDABLE. And *this has to be gathered from acts*, e.g., if a nation provokes or oppresses a neighboring nation with wrongful warfare. So *against a nation whose growing power* or *dominance is formidable, one is allowed to take up arms in order to avert wrong* and *to gain security for one's self for the future*, §. 263.

§. 266.

EQUILIBRIUM BETWEEN NATIONS is the relative state of several nations in which the dominance of one, or the joint power of several, is equaled by the joint power of the others. *The conservation*, therefore, *of the equilibrium between nations in itself is not a justifying cause for war; it may become one, however, if the dominance of one nation* or *that of several combined endeavors with manifest intention to subjugate other nations*, or *to disturb their security with wrongful warfare*, prec. §. And to that extent that which we have shown to be allowed against a nation's formidable dominance, prec. §., is allowed to protect the equilibrium between nations.

1) Johann Georg Neureuter, *Specimen juris naturae de justis aequilibrii finibus*, Mainz 1746.

241 §. 267.

xix437 Acts by which a nation expressly declares to another nation that it wants to pursue its right against the other by war is a DECLARATION OF PUBLIC WAR. Because for the rightfulness of public war it suffices that a nation has been wronged and cannot obtain its right unless by war, §. 262, *a declaration of war*, to be made either by an ambassador

or a messenger or in writing, *is not necessary* in the sense that a war started without a preceding declaration must simply be called wrongful for that reason.

1) Johann Jakob Müller, *De iure feciali*, Jena 1693.
2) Johann Konrad Löhe, *Specimen academicum de indictione belli*, Altdorf 1754.

§. 268.

In a public war, a nation is a nation's enemy: hence *any and all citizens and subjects of either warring party are* mutual enemies and *enemy persons; all* goods *that belong to the*
242 *warring nations and their individual citizens and subjects and* their *entire territory* are *enemy goods*.

The act by which the highest overlord explicitly declares to his subjects, or to other nations as well, that he has taken up war against a certain nation, is called an ANNOUNCEMENT OF public WAR. From this it is readily understood *that making an announcement of war to the subjects is necessary in any case.* Which, *depending on the circumstances, is* also *true of making an announcement of war to other nations.*

§. 269.

Since a nation is a free person, *in a rightful war a nation has the right to all forceful means necessary to obtain its right*, §. 259, I, *and hence an infinite right with regard to the nation wronging it*, §. 261, I, and *in case of doubt it should be left to its judgment what it deems necessary to attain its right*, §. 262, I.

§. 270.

For this reason, *a nation* in a rightful war *has the right to use as much force as is sufficient*
243 *to overcome the resistance of the unjust enemy, to diminish its powers, and to persuade it to give up its resistance and end the war.*

Moreover, since all damage to the just enemy that originates from the war can be imputed to the unjust enemy as loss caused by it, which it is obliged to restore, *the unjust enemy* consequently *is obliged to restitute the goods taken away in wrongful war*, or, subsidiarily, *to provide an estimate, to give satisfaction for the restitution of the irreparable damage*, if it has caused any, and *to pay the expenses made for rightful war* by the other; also *the force of the nation* waging a rightful war *that is necessary to achieve this is rightful.*

xix438 And *this right lasts*, and *it is* therefore *permitted to continue the war, until* the nation waging a rightful war *has obtained its right*, and therefore *until its adversary offers fair peace conditions*, or *accepts these once they have been offered*; and subsidiarily until *a peace pact is extorted from it after it has been* thoroughly *defeated.*

244 §. 271.

Since *for the attainment of these goals* the right of the just enemy is infinite, §. 269, to that extent *every means to harm will be rightful*, whether *evident* or *hidden*, §. 262, I, *whatever the time* and *whatever the place* it is inflicted, as long as no right of a third

party is violated. And hence all ACTS OF WAR *will be rightful*, i.e. all acts undertaken in whichever way for the sake of war, as will all WAR OPERATIONS: acts of war by which violence is actually inflicted upon the enemy or his goods, or closer preparations are made to either inflict or avert violence.

§. 272.

To this end, therefore, *the nation waging a rightful war has the right to attack enemy persons*—i.e., belonging to the nation that is the unjust enemy—, *capture them,* and *kill them if they resist.*

And therefore it also *has the right to use deceit* (as long as it is not employed in contracts, §. 179, I.), including simulation, dissimulation, falsiloquy, ambushes, etc.;
245 moreover, *to use poison*, STRATAGEMS (which are unexpected acts of war, consisting both in deceit and in force); SPIES, who stay with the enemy in secret in order to find out and pass on what the one enemy should know about the status and intention of the other; and ASSASSINS, who are hired to kill the enemy from an ambush.

1) Johann Georg Scherz, *Dissertatio academica de dolo in hostem licito*, Strasbourg 1703.
2) Christian Karl Stempel, *Dissertatio politica de strategematibus in bello licitis*, Wittenberg 1713.
3) Wilhelm Hieronymus Bruckner, *Disputatio inauguralis iuridica de exploratoribus*, Jena 1700, reprinted 1746.

§. 273.

To that end he who wages a rightful war *clearly has a right with regard to enemy goods* as well, and therefore a right *to bring them into its power* both *by open force* and *by using deceit* and *stratagem*. From this it is understood *to which extent* OCCUPANCY IN WAR *is permitted*, i.e., an act by which one enemy brings the other's goods into its power;
246 CONFISCATION of enemy goods, which in the stricter sense denotes taking them away violently; and specifically PILLAGING, confiscation of movable goods from the enemy locations where they are kept, and the *taking* of fortresses; indeed also the DESTRUCTION of enemy goods, i.e., an act by which they are corrupted or destroyed.

Hence such a warring [nation] also *has the right to bring enemy territory into its power*, and *to demand* from defeated enemies *labor and other achievements* which, in as far as they consist in giving, are usually called *military tributes.*

§. 274.

xix439 Because the just enemy acquires dominion of the enemy goods brought into his power, §. 266, I, *whatever a nation occupies, confiscates or pillages in rightful war accrues to it*, as do all SPOILS, which consist in movable goods taken from the enemy by soldiers; from this the concept and rightfulness of *taking spoils* is clear as well.

In a similar way *he can* also *acquire overlordship over vanquished and captured*
247 *enemies by a pact struck on this subject, which must be respected*; for *decisive victory* and

capture of the enemy alone does not suffice to acquire overlordship over him, §. 72, indeed *captivity alone does not free one from enmity*, §. 304, I.

§. 275.

Furthermore, because a nation waging a rightful war has all the rights of a just enemy, §. 259, *a nation in a rightful war* also *has the right to seek help in war*, §. 274, I, *and allies*, and hence *to make treaties of war*, §. 142. *A third nation that helps the just enemy in the war becomes a just enemy* itself; if it helps *a nation waging a wrongful war, it must be* itself *regarded as an unjust enemy*, §. 274, I.

1) Heinrich von Cocceji (Coccejus), *Disputatio iuris gentium publici de iure belli in amicos*, Frankfurt (Oder) 1697.

§. 276.

As for the rest, by force of natural liberty any *nation should be permitted to remain neutral in a war between other nations*, and so any nation *has the right to neutrality*, §. 275, I. And since such a nation is the owner of its own territory, to which no one can
248 claim a right, §. 226, *no nation*, no matter how rightful its war, *may pursue its enemy or take his goods in peaceful territory*, i.e., in the territory of a neutral nation.

1) Christian Gottfried Franckenstein, *Dissertatio prior de his qui neutras in bello partes sequuntur*, Leipzig 1687.

§. 277.

In as far as all coercive means are allowed against an unjust enemy, §. 269, *a nation waging a rightful war* also *has the right not to deliver that which it owes the enemy based on a contract entered upon before the war*, and *to confiscate once more that which it has delivered by such a contract*. And thus *a just enemy* and *a nation in a rightful war naturally is not obligated by contracts upon which it entered with the unjust enemy before the war started.*

xix440 *If*, however, *the nations agreed that even in case of war a contract must be valid, it will be valid*: for then the promissor has renounced beforehand his right to withdraw from the contract, which could fall to him at some point after a war against an unjust enemy has begun; and therefore he will be obligated to honor it.

249 §. 278.

War pacts are pacts that are made between warring parties while the war lasts, that is to say: the war is not ended by them. Since pacts must be honored, *war pacts must be fulfilled* as well. An enemy, even an unjust one, does not stop being human and still partakes in human rights, and hence also in the right to accept promises; while even a just enemy, in as far as he promises an unjust enemy something by contract, renounces his right with regard to the unjust enemy, §. 277. Furthermore pacts between nations are inviolable and to be held sacred to a higher degree, and the given word of one nation to another must not be betrayed, §. 239; indeed if it were betrayed, peace

itself—for whose sake the right of war is in fact given—would be very much delayed and war would be protracted without necessity and therefore without right. For these reasons, *anything that is promised to an enemy, even an unjust one, by an enemy, even a just one, through* an otherwise valid *pact, must be delivered to him*. This obligation is strengthened by the obligation of the group as a whole to the individuals to bring an
250 end to war, deadly with so many disasters, the sooner the better, and hasten bountiful peace in any way possible, §. 91.

1) Joachim Johann Rango, *Disputatio juridico-politica inauguralis de fide bellica*, Leiden 1694, augm. ed. Rostock 1698 and Helmstedt 1746.
2) Jacob August Franckenstein, *De dolo in bellis illicito*, Leipzig 1721.

§. 279.

A TRUCE is a war pact by which all acts of war from both sides are suspended for a certain time. Because in this agreement it is the warring parties' intention that both should abstain from all use of force during the agreed period, but once this period has ended there will once more be room for hostilities from both sides, it follows that *a truce during the agreed period provides security for persons as well as goods of both parties*, and that *once a truce has been made, all violence of war ceases temporarily—*
251 hence a truce is also called a *universal war pact*. Nonetheless *a truce does not end a war*, not even if it is agreed for a longer period.

1) Konrad Samuel Schurzfleisch, *De induciis*, Leipzig 1668.
2) Johannes Strauchius, *De induciis bellicis*, in his *Dissertationes academicae quinque*, Braunschweig 1662, and separately Leipzig 1648.

§. 280.

The other *war pacts* are *particular war pacts*, by which the violence of war is suspended either completely or temporarily with regard to certain things, places, persons or affairs. These include war pacts conceding *safe passage*, §. 251, or a SAFEGUARD, i.e., the immunity of certain persons or things from the violence of war; moreover the
xix441 ARMISTICE, a pact by which the acts of war are suspended on both sides in order to pursue some business that can be finished in a relatively short time; the PACT OF SURRENDER, by which a certain place is agreed to be handed over to the enemy or certain persons to give themselves up to the enemy; a *pact* to *redeem* or *exchange prisoners*
252 from both sides; a type of this is the RANSOM *contract*, in which a price is agreed on that must be paid for the release of prisoners. All these pacts and their conditions must be respected.

§. 281.

A public war is ended by a *peace pact*, §. 304, I, which comes under the pacts of subjection if by it a defeated nation submits to the overlordship of a victorious nation, §. 98; if not, it is an agreement between two nations and hence a *public pact*, §. 142; this includes the *unequal treaty* that is established by a peace pact, §. 242.

A peace pact, in as far as there are no obstacles to its validity, §. 168, I, *must be held sacred from both sides*, §. 239, as an *eternal agreement*, §. 240; and since it is called BREAKING THE PEACE if a peace pact is not honored, *peace must not be broken*.

1) Andreas Elias Rossmann, *De exceptionibus juris gentium in negotio pacis*, Halle 1738.

253 §. 282.

By making peace, the warring parties end the dispute that gave rise to the war by mutual consent, or in any case renounce the right to pursue their disputed right by armed force in the future—otherwise what had been agreed would not be peace but a truce, §. 279; therefore *once peace has been made it is forbidden to resume war for the same cause and dispute for which war was waged earlier.*

§. 283.

As for the rest, *most disputes between nations involve a right* that is *doubted* in some way at least, even after both sides have undertaken to bring proof; *to that extent* by force of natural liberty *both disputants must be allowed, by the opposing party as well as by other nations, to follow their own judgment*, §. 297, I; *a third nation* certainly *has no right whatsoever to decide the disagreements of other nations at its own discretion*, §. 297, I.

254 §. 284.

Therefore most *disputes between nations* can only be ended *by mutual agreement of the disputants*, as it occurs in *amicable settlement*, §. 298, I, *transaction*, §. 298, I, *verdict*, §. 299, I, and *lot*, 300, I; and for that purpose *envoys can be sent, meetings and negotiations initiated, and mediators and mediation advisors can be brought in*, §. 301, I.

§. 285.

Now if in a doubtful cause the other nation offers a peaceful way to end the dispute with fair conditions, but the other refuses to agree to the offer, the party making the offer has the right to war against the opposing party in order to receive satisfaction from it, at least in part and in some way in a doubtful cause, and therefore *the right to compel the opposing party to a transaction by force and war*, §. 302, I.

§. 286.

xix442 Because most disputes between nations and hence most public wars thus arise from a doubtful cause, §. 283; and furthermore, if between nations who do not acknowledge
255 a common judge, it had to be determined precisely according to the laws of natural law who had the truth on his side in a dispute and how much was owed to him both because of his right that was disputed and because of the war born from that, the matter would never come to an end—therefore experience shows that *there is no other means to terminate a dispute between warring nations than their ending the matter by*

mutual agreement alone, leaving in doubt the rightfulness or wrongfulness of the causes of war as well as of the acts committed by both sides in the war. For this reason every *peace pact* as a public agreement *is naturally understood to be concluded in the way of a transaction*, §. 298, I and §. 285.

§. 287.

Amnesty is the sanctioned eternal oblivion of the injuries committed and received on both sides. Since warring nations once they have made peace cannot resume war over the same cause they waged the war over, §. 282, and indeed are done with the injuries
256 committed or received earlier on both sides, §. 286, it is clear that *a peace pact naturally comprises amnesty regarding external acts*.

1) Heinrich von Cocceji (Coccejus), *Disputatio juris gentium de postliminio in pace et amnestia*, Heidelberg 1691, reprinted Frankfurt (Oder) 1712.
2) Wolf Ehrenreich August von Klüx, *De amnestia*, Leipzig 1736.

§. 288.

If some thing must be given or returned to the other party once the peace has been made, it must be handed over as it is at the moment of sanctioning the pact, since on the basis of the pact the right of the acceptant commences immediately, §. 193, I and therefore *it is not permitted to deteriorate or corrupt it before it is handed over.* So such a *thing must also be handed over with all the rights connected with it* and *with all the fruits and other accessories as of the day the pact is completed.*

Emendations to the Latin Text of Part I[1]

§. 7, l. 9: *in qua* should be *in quam*
§. 12, l. 4: *liberae* should be *libera*
§. 21, l. 2: *secundam* should be *secundum*
§. 30, l. 2: *cogitionis* should be *cognitionis*
§. 81, l. 7 (p. 69, l. 4): delete comma after *quilibet*
§. 87, l. 6: *homini* should be *homine*
§. 94, l. 2: *laedenti* should be *laedendi*
§. 94, l. 4–5: *eo, quod suum est, priuetur* should be in italics
§. 97, last line: *indicium* should be *iudicium*
§. 101, l. 1: *qua* should be *quo*
§. 102, l. 1: *qua* should be *quo*
§. 102, l. 3: *vituperium* should be in small caps instead of italics
§. 106, l. 3: *positae perceptibiles,* should be *positae, perceptibiles*
§. 107, l. 3: *AD* should be lower case
§. 127, l. 8: *adque* should be *atque*
§. 133, last line: *ess* should be *esse*
§. 154, l. 11: *suiiciuntur* should be *subiciuntur*
§. 156, l. 5: *iuti* should be *iuri*
§. 169, l. 7: *pactitum* should be *pactitium*
§. 170, l. 5: *sue* should be *siue*
§. 175, l. 4–5: *continet continet* should be *continet*
§. 185, l. 3: *Non* should be in italics
§. 186, antepenultimate l.: *ius non-personale* should be in small caps, not italics
§. 205, l. 6: *subveniri* should be *subvenire*
§. 211, l. 12: *Iure tamen Naturali* should be *Ius tamen Naturale*
§. 215, l. 3: *quid* should be *quod*
§. 216, l. 9: *emtor* should be *venditor*
§. 219, l. 19: *promittur* should be *promittitur*
§. 222, antepenult. line: after *intra fines* supply *mandati*
§. 227, l. 5: *id* should be *in*
§. 230, l. 3: *adseruatio* should be *asseueratio*
§. 232, l. 3: *cretior* should be *certior*
§. 234n2, l. 6: *iurato* should be *iuramento*
§. 241, p. 216 l. 10: *si bona* should be *2) si bona*
§. 241, p. 217 l. 7: *et aliud* should be *2) et aliud*

[1] See "Remarks on the Translation," p. xxxiv.

§. 241n1, l. 2: delete *fieri*
§. 241n1, l. 3: delete *simul atque*
§. 245n3, l. 2–3: *ca-* should be *ca-sum*
§. 249, p. 227 l.1: *docere* should be *facere*
§. 258, l. 9: *ea* should be set in roman
§. 264, l. 5: *si* should be *se*
§. 267, l. 3: delete *si*
§. 277, l. 10: poeniter should be poenitere
§. 281n2, l. 7: the first *ex* should be in italics
§. 294, last line: *incumbit probatio* should be in italics
§. 301, p. 273 l. 15: *aeque* should be *aequae*

Topical and Chronological Concordance[1]

Frederick Rauscher

This chart correlates the topics in Gottfried Achenwall's *Ius naturae* (1763) with the content of the *Naturrecht Feyerabend* lecture notes (1784) and with various Reflections Kant wrote inside his own copy of the Achenwall book and in other places.

The Achenwall book contents column includes the paragraph numbers (§§) of the original text, which are reproduced in the *Akademie-Ausgabe* (19:325-442). The Reflections include reference to these paragraph numbers and to the original page numbers. Note that the paragraph numbers restart with the second volume, which is also the only volume Kant's copy of which survived to be included in the *Akademie* edition.

The Feyerabend division headings are retained even when inaccurate; pages in that column refer to the *Akademie* edition pagination. Kant skipped over some divisions in Achenwall in their entirety and sometimes discussed a single topic in more than one place. His introduction covers material not in the Achenwall text at all, such as the idea of human beings as ends in themselves and the absolute value of freedom. Still, for the most part Kant's discussion adheres to the outline provided by these headings.

The Reflections are presented in two columns: those directly written in Kant's copy of Achenwall's book or assigned by Adickes to the section of Reflections on Philosophy of Right are in the third column, while other Reflections are assigned to an appropriate topic in the fourth column.[2] In many cases the content of the Reflection does not neatly fit into only one topic. The Reflections identified in the *Akademie* edition as "general" rather than correlated with particular sections in Achenwall are placed here with the "Introduction".

In this chart the Reflection numbers are printed with variations in italic, bold, and underlining in order to reveal their rough chronological order. This table provides only the *initial year* of what Adickes considered the most plausible period in his system; thus, a Reflection in the "1772-1774" category might have been written years later if the range indicated in the heading for that Reflection extends past 1774. Refer to particular

[1] The series editors and the editor of this volume are grateful to Frederick Rauscher and Cambridge University Press for their permission to reprint this helpful concordance and the introductory text here. Note that there are some minor adjustments and that the titles in the left column are taken from the translation in the present volume. The original concordance was published in Immanuel Kant, *Lectures and Drafts on Political Philosophy,* edited by Frederick Rauscher, translated by Frederick Rauscher and Kenneth R. Westphal (Cambridge: Cambridge University Press, 2016), pp. 386–95.

[2] Please note that only those Reflections are included in the concordance that appear in Frederick Rauscher's selection from Kant's drafts on political philosophy.

Reflections to determine the range of the possible ending dates. Bold Reflections date after the Feyerabend lectures. Although the French Revolution occurred in 1789, Adickes' dating classifications did not have a separate class of Reflections from 1789, so any Reflections dated 1788 or later and even a few earlier that might range over the entire 1780s could be responses to the French Revolution. There are only a handful of Reflections after 1790 because Kant no longer taught his Natural Right course and the notes that have survived are drafts for his published work in that decade.

Rough chronological order based on initial date given for each Reflection:

1764-1771
1772-1774
1775-1779
1780-1784
1785-1787
1788-1790
1791-1799

Achenwall ***Natural Law*** **(1763)**	**Feyerabend Natural Right (1784)**	**Reflections from section on Philosophy of Right**	**Reflections from other sources**
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