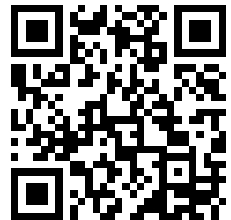

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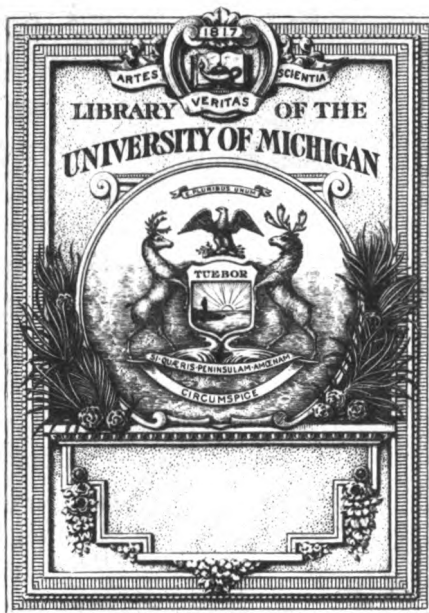
HUGO GROTIUS

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DE JURE BELLI AC PACIS LIBRI TR

PROLEGOMENA

Extract from the new translation of Hugo Grotius' *De Jure Belli ac Pacis Libri Tres* published by the Carnegie Endowment for International Peace in commemoration of the tercentenary celebration of the publication of the original edition.



THE GIFT OF
Mr. Lawrence Preuss

270

Publications of the
Carnegie Endowment for International Peace
Division of International Law
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THE CLASSICS OF INTERNATIONAL LAW

EDITED BY

JAMES BROWN SCOTT

Member of the Institute of International Law

President of the American Institute of International Law

DE JURE BELLI AC PACIS LIBRI TRES

BY HUGO GROTIUS

- VOL. I.** A Photographic Reproduction of the Edition of 1646, with a portrait of Grotius.
- VOL. II.** A Translation of the Text, by Francis W. Kelsey, with the collaboration of Arthur E. R. Boak, Henry A. Sanders, and Jesse S. Reeves, with a List of Authors and Works Cited prepared by Herbert F. Wright and James E. Dunlap, and an Index prepared by Herbert F. Wright.

*This volume with Vol. I constitutes
No. 3 of 'The Classics of Interna-
tional Law'. A list of the numbers
already published is given at the end
of this volume.*

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DE JURE BELLI AC PACIS LIBRI TRES

BY
HUGO GROTIUS
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VOLUME TWO
THE TRANSLATION

BY FRANCIS W. KELSEY

WITH THE COLLABORATION OF
ARTHUR E. R. BOAK, HENRY A. SANDERS
AND JESSE S. REEVES

OXFORD: AT THE CLARENDON PRESS
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PREFACE

THE invitation to prepare an English translation of the *De Jure Belli ac Pacis* by Hugo Grotius was extended to Mr. Kelsey by Dr. Scott, of the Carnegie Endowment for International Peace, in June 1918. At that time the opinion was quite general that the World War would probably last for two years longer; and it was thought that if the translation could be made ready before the peace negotiations should begin, the publication would be particularly opportune. The invitation was accepted with the condition that the work might be divided, in order to facilitate progress.

The preparation of the manuscript was well under way when the Armistice came, and during the subsequent peace negotiations the undertaking was allowed to lag. Then, too, near the close of 1919, Mr. Kelsey was obliged to go abroad on a scientific mission which involved an absence of two years from the United States. Hence the delay in publication, which has now become opportune by reason of the approaching tercentenary of the first publication of the *De Jure Belli ac Pacis* in 1625.

The translation, however, was made from the text of the edition published in Amsterdam in 1646, because it embodied the last revision of the author. In making the final draft for the printer, the translators have consulted the other editions published in the lifetime of Grotius and have had the advantage of consulting also the new edition of the text by P. C. Molhuysen, which was published in Leyden in 1919.

Of the translation it is necessary only to say that the aim has been to express the thought as Grotius might have expressed it if he had been writing in English rather than Latin. The previous translations into English, French, and German have been utilized; the one that has been found most useful is that by P. Pradier-Fodéré, to which an acknowledgement of special obligation is due.

In the division of the work, Mr. Kelsey is responsible for the translation to the end of Book I and for the final form of the remainder of the translation; Mr. Sanders made the first draft of the translation for Book II, chapters 1-20, and Book III, chapters 18-25; Mr. Boak made the first draft of the translation for Book II, chapters 21-6, and Book III, chapters 1-17. Mr. Reeves revised the entire manu-

script with special reference to the choice of the legal terms and phrases which would most clearly express the concepts of Grotius for readers of English to-day. In his translation of technical words he made reference to other works of Grotius, particularly the *De Jure Praedae* and the *Inleiding tot de Hollandsche Rechts-Geleertheit*, published in 1636. For *iustum* reference was made also to Voigt on *jus naturale, aequum et bonum und jus gentium der Römer*, Band IV, Beilage 10. Part of the manuscript was read also by Professor H. E. Yntema.

In the notes as well as the text the titles of many works cited by Grotius in the Latin form are translated into English. While this is contrary to current practice, it was thought that not a few readers who are unfamiliar with the works themselves would welcome such translations as suggesting the character of the treatises to which Grotius referred. In the List of Authors and Works Cited, at the end of this volume, the English form of the title is in all cases followed by the Latin form which Grotius used.

An Index to the translation appears at the end of this volume.

The translators regret that the scope of the undertaking did not permit the addition of foot-notes which should aim to throw light on Grotius' use of his sources, and thus to contribute to a better understanding of his method of work and point of view. Full references to the authors and works cited by Grotius will in most cases be found in the foot-notes in the edition of the text by Molhuysen; there still remain a good many references which thus far it has not been possible to verify. In this translation corrections of references given by Grotius, and additional references supplied by the translators, are set off by brackets. References to the Vulgate have been added where this differs from the Authorized Version.

The figures in heavy brackets inserted in the text and foot-notes indicate the beginnings of pages of the edition of 1646, which is photographically reproduced in Volume I.

A few other additions by the translators have been inserted in brackets.

THE TRANSLATORS.

UNIVERSITY OF MICHIGAN,
May 1, 1924.

[*The Title-Page of the Edition of 1646*]

HUGO GROTIUS
ON
THE LAW OF WAR AND PEACE
THREE BOOKS

Wherein are set forth the law of nature and of nations
Also the principles of public law

NEW EDITION

With the annotations of the author
Now much enlarged in consequence of his last revision
before his death

Whereto have been added also Notes on
THE EPISTLE OF PAUL TO PHILEMON



AMSTERDAM
THE HOUSE OF JOHAN BLAEU
1646

HUGO GROTIUS
TO THE MOST CHRISTIAN KING OF FRANCE
AND NAVARRE
LOUIS XIII

Most eminent of Kings : This work presumes to inscribe your revered name in dedication because of confidence not in itself, nor in its author, but in its theme. For it has been written on behalf of justice, a virtue in so distinguishing a manner yours that in consequence, both from your own merits and from the general recognition of mankind, you have received a surname truly worthy of so great a king ; you are now everywhere known by the name of Just no less than that of Louis. To the generals of ancient Rome titles drawn from the names of conquered peoples, from Crete, Numidia, Africa, Asia, and other lands, seemed the height of glory ; but how much more glorious is your title, by which you are designated as an enemy everywhere, and vanquisher always, not of a nation, or of a person, but of that which is unjust !

The kings of Egypt thought it a great thing if men could say of them that one was devoted to his father, another to his mother, still another to his brothers. But of how slight moment are such particulars in the case of your title, which in its scope embraces not only such traits but all else that can be conceived as beautiful and virtuous ! You are Just, when you honour the memory of your father, a king great beyond characterization, by following in his footsteps ; [iv] Just, when you train your brother in all possible ways, but in no way more effectively than by your own example ; Just, when you arrange marriages of the utmost distinction for your sisters ; Just, when you call back to life laws that are on the verge of burial, and with all your strength set yourself against the trend of an age which is rushing headlong to destruction ; Just, but at the same time merciful, when from subjects, whom a lack of knowledge of your goodness has turned aside from the path of duty, you take away nothing except the opportunity to do wrong, and when you offer no violence to souls that hold views different from your own in matters of religion ; Just, and at the same time compassionate, when by the exercise of your authority you lighten the burdens of oppressed peoples and of downcast princes, and do not suffer too much to be left to Fortune.

Such extraordinary kindness, characteristic of you, and as like to that of God as the limitations of human nature permit, constrains me as an individual and on my own behalf to offer to you thanks even in this public dedication. For just as the heavenly bodies not only flood the vast expanses of the universe but suffer their force to descend to each living thing, so you, a most beneficent star upon the earth, not content to lift up princes and to succour peoples, willed to become a protection and solace also to me, who had been badly treated in my native country.

In order to complete the sum of virtues comprised in justice, to your acts of a public nature we must add the blamelessness and purity of your private life, which are worthy to be admired not alone by men but even by the spirits of heaven. For how many of the common run of mankind, how many even of [v] those who have cut themselves off from the world, are found to be as free from all faults as you are, though you occupy a station in life which is beset on all sides with innumerable enticements to wrongdoing? How great a thing it is in the midst of affairs, among the crowd, at the Court, surrounded by men who set examples of wrongdoing in so many different ways, to attain to that uprightness of character which to others, even in seclusion, comes with difficulty, and often not at all! This truly is to deserve not only the name of Just but even, while you are still living, that of Saint, which the unanimous agreement of good men conferred after death upon your ancestors Charlemagne and Louis; ¹ this is to be in very truth Most Christian, not merely by a right inhering in your lineage but by a right inhering in yourself.

But while no aspect of justice is foreign to you, that nevertheless with which the matter of this work is concerned—the principles underlying war and peace—is in a peculiar sense your province because you are a king, and further, because you are King of France. Vast is this realm of yours, which stretches from sea to sea, across so many prosperous lands so great in extent; but you possess a kingdom greater than this, in that you do not covet kingdoms belonging to others. It is worthy of your devotion to duty, worthy of your exalted estate, not to attempt to despoil any one of his rights by force of arms, not to disturb ancient boundaries; but in war to continue the work of peace, and not to commence war save with the desire to end it at the earliest possible moment.

How noble it will be, how glorious, how joyful to your conscience, when God shall some day summon you to His kingdom, which alone is better than yours, to be able with boldness [vi] to

¹ [The reference is to Louis IX, who died near Tunis in 1270, while engaged in a Crusade, and was canonized in 1297.]

say: 'This sword I received from Thee for the defence of justice, this I give back to Thee guilty of no blood rashly shed, stainless and innocent.' Hence it will come to pass that the rules which we now seek to draw from books will in the future be drawn from your acts as from a complete and perfect exemplification.

This will be a very great achievement. Yet the peoples of Christian lands are so bold as to ask of you something further, that, with the extinction of warfare everywhere, through your initiative peace may come again, not only to the nations but also to the churches, and that our time may learn to subject itself to the discipline of that age¹ which all we who are Christians acknowledge in true and sincere faith to have been Christian. Our hearts, wearied with strifes, are encouraged to such a hope by the friendship lately entered into between you and the King of Great Britain, who is most wise and singularly devoted to that holy peace; a friendship cemented by the most auspicious marriage of your sister.² Hard the task is by reason of partisan passions, fired by hatreds which blaze more fiercely day by day; but no task except one fraught with difficulty, except one that all others have given up in despair, is meet for so great kings.

May the God of Peace, the God of Justice, O just king, O peace-making king, heap upon your Majesty, which is nearest unto His own, not only all other blessings but with them also the distinction of having accomplished this task. MDCXXV.

¹ [The period of the Early Church, before there was a division into sects.]

² [In December 1624 Richelieu arranged a treaty of marriage between Henrietta Maria, sister of Louis XIII, and Charles, son of James I of England. James died in March 1625. In the following June Henrietta came to England and was married to Charles I.]

PROLEGOMENA
TO THE THREE BOOKS
ON THE LAW OF WAR AND PEACE

1. THE municipal law of Rome and of other states has been treated by many, who have undertaken to elucidate it by means of commentaries or to reduce it to a convenient digest. That body of law, however, which is concerned with the mutual relations among states or rulers of states, whether derived from nature, or established by divine ordinances, or having its origin in custom and tacit agreement, few have touched upon. Up to the present time no one has treated it in a comprehensive and systematic manner; yet the welfare of mankind demands that this task be accomplished.

2. Cicero justly characterized as of surpassing worth a knowledge of treaties of alliance, conventions, and understandings of peoples, kings and foreign nations; a knowledge, in short, of the whole law of war and peace. And to this knowledge Euripides gives the preference over an understanding of things divine and human; for he represents Theoclymenes as being thus addressed:

For you, who know the fate of men and gods,
What is, what shall be, shameful would it be
To know not what is just.

3. Such a work is all the more necessary because in our day, as in former times, there is no lack of men who view this branch of law with contempt as having no reality outside of an empty name. On the lips of men quite generally is the saying of Euphemus, which Thucydides quotes,¹ that in the case of a king or imperial city nothing is unjust which is expedient. Of like implication is the statement that for those whom fortune favours might makes right, and that the administration of a state cannot be carried on without injustice.

Furthermore, the controversies which arise between peoples or kings generally have Mars as their arbiter. That war is irreconcilable with all law is a view held not alone by the ignorant populace; expressions are often let slip by well-informed and thoughtful men which lend countenance to such a view. Nothing is more common than the assertion of antagonism between law and arms. Thus Ennius says:

Not on grounds of right is battle joined,
But rather with the sword do men
Seek to enforce their claims.

¹ [xix] The words are in Book VI [VI. lxxxv]. The same thought is found in Book V [V. lxxxix], where the Athenians, who at the time of speaking were very powerful, thus address the Melians: 'According to human standards those arrangements are accounted just which are settled when the necessity on both sides is equal; as for the rest, the more powerful do all they can, the more weak endure.'

Horace, too, describes the savage temper of Achilles in this wise :

Laws, he declares, were not for him ordained ;
By dint of arms he claims all for himself.

Another poet depicts another military leader as commencing war with the words :

Here peace and violated laws I leave behind.

Antigonus when advanced in years ridiculed a man who brought to him a treatise on justice when he was engaged in besieging cities that did not belong to him. Marius declared that the din of arms made it impossible for him to hear the voice of the laws.¹ Even Pompey, whose expression of countenance was so mild, dared to say : ' When I am in arms, am I to think of laws ? ' ²

4. Among Christian writers a similar thought finds frequent expression. A single quotation from Tertullian may serve in place of many : ' Deception, harshness, and injustice are the regular business of battles.' They who so think will no doubt wish to confront us with this passage in Comedy :

[viii] These things uncertain should you, by reason's aid,
Try to make certain, no more would you gain
Than if you tried by reason to go mad.

5. Since our discussion concerning law will have been undertaken in vain if there is no law, in order to open the way for a favourable reception of our work and at the same time to fortify it against attacks, this very serious error must be briefly refuted. In order that we may not be obliged to deal with a crowd of opponents, let us assign to them a pleader. And whom should we choose in preference to Carneades ? For he had attained to so perfect a mastery of the peculiar tenet of his Academy that he was able to devote the power of his eloquence to the service of falsehood not less readily than to that of truth.

Carneades, then, having undertaken to hold a brief against justice, in particular against that phase of justice with which we are concerned, was able to muster no argument stronger than this, that, for reasons of expediency, men imposed upon themselves laws, which vary according to customs, and among the same peoples often undergo changes as times change ; moreover that there is no law of

¹ In Plutarch Lysander displaying his sword says [*Apothegms, Lysander*, iii = 190 E] : ' He who is master of this is in the best position to discuss questions relating to boundaries between countries.'

In the same author Caesar declares [*Caesar*, xxxv = 725 B] : ' The time for arms is not the time for laws.'

Similarly Seneca, *On Benefits*, IV. xxxviii [IV. xxxvii] : ' At times, especially in time of war, kings make many grants with their eyes shut. One just man cannot satisfy so many passionate desires of men in arms ; no one can at the same time act the part of a good man and good commander.'

² This view-point of Pompey in relation to the Mamertines Plutarch expresses thus [*Pompey*, x = 623 D] : ' Will you not stop quoting laws to us who are girt with swords ? ' Curtius says in Book IX [IX. iv. 7] : ' Even to such a degree does war reverse the laws of nature.'

nature, because all creatures, men as well as animals, are impelled by nature toward ends advantageous to themselves; that, consequently, there is no justice, or, if such there be, it is supreme folly, since one does violence to his own interests if he consults the advantage of others.

6. What the philosopher here says, and the poet reaffirms in verse,

And just from unjust Nature cannot know,

must not for one moment be admitted. Man is, to be sure, an animal, but an animal of a superior kind, much farther removed from all other animals than the different kinds of animals are from one another; evidence on this point may be found in the many traits peculiar to the human species. But among the traits characteristic of man is an impelling desire for society, that is, for the social life—not of any and every sort, but peaceful, and organized according to the measure of his intelligence, with those who are of his own kind; this social trend the Stoics called sociableness.¹ Stated as a universal truth, therefore, the assertion that every animal is impelled by nature to seek only its own good cannot be conceded.

7. Some of the other animals, in fact, do in a way restrain the appetency for that which is good for themselves alone, to the advantage, now of their offspring, now of other animals of the same species.²

¹ Chrysostom, *On Romans*, Homily XXXI [Homily V, to chap. i, verse 31]: 'We men have by nature a kind of fellowship with men; why not, when even wild beasts in their relation to one another have something similar?'

See also the same author, *On Ephesians*, chap. i [Homily I], where he explains that the seeds of virtue have been implanted in us by nature. The emperor Marcus Aurelius, a philosopher of parts, said [V. xvi]: 'It was long ago made clear that we were born for fellowship. Is it not evident that the lower exist for the sake of the higher, and the higher for one another's sake?'

² There is an old proverb, 'Dogs do not eat the flesh of dogs'. Says Juvenal [*Sat.* XV. 160, 163]:

Tigress with ravening tigress keeps the peace;
The wild beast spares its spotted kin.

There is a fine passage of Philo, in his commentary on the Fifth Commandment, which he who will may read in Greek. As it is somewhat long, I shall here quote it only once and in Latin [Philo, *On the Ten Commandments*, xxiii, in English as follows]:

'Men, be ye at least imitators of dumb brutes. They, trained through kindness, know how to repay in turn. Dogs defend our homes; they even suffer death for their masters, if danger has suddenly come upon them. It is said that shepherd dogs go in advance of their flocks, fighting till death, if need be, that they may protect the shepherds from hurt. Of things disgraceful is not the most disgraceful this, that in return of kindness man should be outdone by a dog, the gentlest creature by the most fierce?'

'But if we fail to draw our proper lesson from the things of earth, let us pass to the realm of winged creatures that make voyage through the air, that from them we may learn our duty. Aged storks, unable to fly, stay in their nests. Their offspring fly, so to say, over all lands and seas, seeking sustenance in all places for their parents; these, in consideration of their age, deservedly enjoy quiet, abundance, even comforts. And the younger storks console themselves for the irksomeness of their voyaging [xx] with the consciousness of their discharge of filial duty and the expectation of similar treatment on the part of their offspring, when they too have grown old. Thus they pay back, at the time when needed, the debt they owe, returning what they have received; for from others they cannot obtain sustenance either at the beginning of life, when they are small, or, when they have become old, at life's end. From no other teacher than nature herself have they learned to care for the aged, just as they themselves were cared for when they were young.

'Should not they who do not take care of their parents have reason to hide themselves for very

This aspect of their behaviour has its origin, we believe, in some extrinsic intelligent principle, because with regard to other actions, which involve no more difficulty than those referred to, a like degree of intelligence is not manifest in them. The same thing must be said of children. In children, even before their training has begun, some disposition to do good to others appears, as Plutarch sagely observed; thus sympathy for others comes out spontaneously at that age. The mature man in fact has knowledge which prompts him to similar actions under similar conditions,¹ together with an impelling desire for society, for the gratification of which he alone among animals possesses a special instrument, speech. He has also been endowed with the faculty of knowing and of acting in accordance with general principles. Whatever accords with that faculty is not common to all animals, but peculiar to the nature of man.

8. This maintenance of the social order,² which we have roughly sketched, and which is consonant with human intelligence, is the source of law properly so called. To this sphere of law belong the abstaining from that which is another's,³ the restoration to another of anything of his which we may have, together with any gain which

shame when they hear this—they that neglect those whom alone, or above all others, they ought to help, especially when by so doing they are not really called upon to give, but merely to return what they owe? Children have as their own nothing to which their parents do not possess a prior claim; their parents have either given them what they have, or have furnished to them the means of acquisition.'

In regard to the extraordinary care of doves for their young, see Porphyry, *On Abstaining from Animal Food*, Book III; concerning the regard of the parrot-fish and lizard-fish for their kind, see Cassiodorus, [*Variae*,] XI. xl.

¹ Marcus Aurelius, Book IX [IX. xlii]: 'Man was born to benefit others'; also [IX. ix]: 'It would be easier to find a thing of earth out of relation with the earth than a human being wholly cut off from human kind'. The same author in Book X [X. ii]: 'That which has the use of reason necessarily also craves civic life.'

Nicetas of Chonae [*On Isaac Angelus*, III. ix]: 'Nature has ingrained in us, and implanted in our souls, a feeling for our kin.' Add what Augustine says, *On Christian Doctrine*, III. xiv.

² Seneca, *On Benefits*, Book IV, chap. xviii: 'That the warm feeling of a kindly heart is in itself desirable you may know from this, that ingratitude is something which in itself men ought to flee from, since nothing so dismembers and destroys the harmonious union of the human race as does this fault. Upon what other resource, pray tell, can we rely for safety, than mutual aid through reciprocal services? This alone it is, this interchange of kindnesses, which makes our life well equipped, and well fortified against sudden attacks.'

³ Imagine ourselves as isolated individuals, what are we? The prey, the victims of brute beasts—blood most cheap, and easiest to ravage; for to all other animals strength sufficient for their own protection has been given. The beasts that are born to wander and to pass segregate lives are provided with weapons; man is girt round about with weakness. Him no strength of claws or teeth makes formidable to others. To man [deity] gave two resources, reason and society; exposed as he was to danger from all other creatures, these resources rendered him the most powerful of all. Thus he who in isolation could not be the equal of any creature, is become the master of the world.

'It was society which gave to man dominion over all other living creatures; man, born for the land, society transferred to a sovereignty of a different nature, bidding him exercise dominion over the sea also. Society has checked the violence of disease, has provided succour for old age, has given comfort against sorrows. It makes us brave because it can be invoked against Fortune. Take this away and you will destroy the sense of oneness in the human race, by which life is sustained. It is, in fact, taken away, if you shall cause that an ungrateful heart is not to be avoided on its own account.'

⁴ Porphyry, *On Abstaining from Animal Food*, Book III [III. xxvi]: 'Justice consists in the abstaining from what belongs to others, and in doing no harm to those who do no harm.'

we may have received from it; the obligation to fulfil promises, the making good of a loss incurred through our fault, and the inflicting of penalties upon men according to their deserts.

9. From this signification of the word law there has flowed another and more extended meaning. Since over other animals man has the advantage of possessing not only a strong bent towards social life, of which we have spoken, but also a power of discrimination which enables him to [ix] decide what things are agreeable or harmful (as to both things present and things to come), and what can lead to either alternative: in such things it is meet for the nature of man, within the limitations of human intelligence, to follow the direction of a well-tempered judgement, being neither led astray by fear or the allurements of immediate pleasure, nor carried away by rash impulse. Whatever is clearly at variance with such judgement is understood to be contrary also to the law of nature, that is, to the nature of man.

10. To this exercise of judgement belongs moreover the rational allotment¹ to each man, or to each social group, of those things which are properly theirs, in such a way as to give the preference now to him who is more wise over the less wise, now to a kinsman rather than to a stranger, now to a poor man rather than to a man of means, as the conduct of each or the nature of the thing suggests. Long ago the view came to be held by many, that this discriminating allotment is a part of law, properly and strictly so called; nevertheless law, properly defined, has a far different nature, because its essence lies in leaving to another that which belongs to him, or in fulfilling our obligations to him.

11. What we have been saying would have a degree of validity even if we should concede that which cannot be conceded without the utmost wickedness, that there is no God, or that the affairs of men are of no concern to Him. The very opposite of this view has been implanted in us partly by reason, partly by unbroken tradition, and confirmed by many proofs as well as by miracles attested by all ages. Hence it follows that we must without exception render obedience to God as our Creator, to Whom we owe all that we are and have; especially since, in manifold ways, He has shown Himself supremely good and supremely powerful, so that to those who obey Him He is able to give supremely great rewards, even rewards that are eternal, since He Himself is eternal. We ought, moreover, to believe that He has willed to give rewards, and all the more should we cherish such a belief if He has so promised in plain words; that He has done this, we Christians believe, convinced by the indubitable assurance of testimonies.

¹ Ambrose treats this subject in his first book *On Duties* [I. xxx].

12. Herein, then, is another source of law besides the source in nature, that is, the free will¹ of God,¹ to which beyond all cavil our reason tells us we must render obedience. But the law of nature of which we have spoken, comprising alike that which relates to the social life of man and that which is so called in a larger sense, proceeding as it does from the essential traits implanted in man, can nevertheless rightly be attributed to God,² because of His having willed that such traits exist in us. In this sense, too, Chrysippus and the Stoics used to say that the origin of law should be sought in no other source than Jupiter himself; and from the name Jupiter³ the Latin word for law (*ius*) was probably derived.

13. There is an additional consideration in that, by means of the laws which He has given, God has made those fundamental traits more manifest, even to those who possess feeblér reasoning powers; and He has forbidden us to yield to impulses drawing us in opposite directions—affecting now our own interest, now the interest of others—in an effort to control more effectively our more violent impulses and to restrain them within proper limits.

14. But sacred history, besides enjoining rules of conduct, in no slight degree reinforces man's inclination towards sociableness by teaching that all men are sprung from the same first parents. In this sense we can rightly affirm also that which Florentinus asserted from another point of view, that a blood-relationship has been established among us by nature; consequently it is wrong for a man to set a snare for a fellow-man. Among mankind generally one's parents are as it were divinities,⁴ and to them is owed an obedience which, if not unlimited, is nevertheless of an altogether special kind.

15. Again, since it is a rule of the law of nature to abide by pacts (for it was necessary that among men there be some method of obligating themselves one to another, and no other natural method can be imagined), out of this source the bodies of municipal law have arisen. For those who had associated themselves with some

¹ [xxi] Hence, in the judgement of Marcus Aurelius, Book IX [IX. i]: 'He who commits injustice is guilty of impiety.'

² Chrysostom, *On First Corinthians*, xi. 3 [Homily XXVI, iii]: 'When I say nature I mean God, for He is the creator of nature.' Chrysippus in his third book *On the Gods* [Plutarch, *On the Contradictions of the Stoics*, ix = *Morals*, 1035 c]: 'No other beginning or origin of justice can be found than in Jupiter and common nature; from that source must the beginning be traced when men undertake to treat of good and evil.'

³ Unless perhaps it would be more true to say that the Latin word for 'right', *ius*, is derived, by process of cutting down, from the word for 'command', *iussum*, forming *ius*, genitive *iusis*, just as the word for 'bone', *os*, was shortened from *ossum*; *iusis* afterwards becoming *turis*, as *Papirii* was formed from *Papisii*, in regard to which see Cicero, *Letters*, Book IX. xxi [*Ad Fam.* IX. xxi. 2].

⁴ Hierocles, in his commentary on the *Golden Verse* [rather *How parents should be treated*, quoted by Stobaeus, *Anthology*, tit. lxxix. 53], calls parents 'gods upon earth'; Philo, *On the Ten Commandments* [chap. xxiii], 'Visible gods, who imitate the Unbegotten God in giving life'. Next after the relationship between God and man comes the relationship between parent and child; Jerome, epistle xcii [cxvii. 2]. Parents are the likenesses of gods; Plato, *Laws*, Book XI [XI. 11]. Honour is due to parents as to gods; Aristotle, *Nicomachean Ethics*, Book IX, chap. ii.

group, or had subjected themselves to a man or to men, [x] had either expressly promised, or from the nature of the transaction must be understood impliedly to have promised, that they would conform to that which should have been determined, in the one case by the majority, in the other by those upon whom authority had been conferred.

16. What is said, therefore, in accordance with the view not only of Carneades but also of others, that

Expediency is, as it were, the mother
Of what is just and fair,¹

is not true, if we wish to speak accurately. For the very nature of man, which even if we had no lack of anything would lead us into the mutual relations of society, is the mother of the law of nature. But the mother of municipal law is that obligation which arises from mutual consent; and since this obligation derives its force from the law of nature, nature may be considered, so to say, the great-grand-mother of municipal law.

The law of nature nevertheless has the reinforcement of expediency; for the Author of nature willed that as individuals we should be weak, and should lack many things needed in order to live properly, to the end that we might be the more constrained to cultivate the social life. But expediency afforded an opportunity also for municipal law, since that kind of association of which we have spoken, and subjection to authority, have their roots in expediency. From this it follows that those who prescribe laws for others in so doing are accustomed to have, or ought to have, some advantage in view.

17. But just as the laws of each state have in view the advantage of that state, so by mutual consent it has become possible that certain laws should originate as between all states, or a great many states; and it is apparent that the laws thus originating had in view the advantage, not of particular states, but of the great society of states. And this is what is called the law of nations, whenever we distinguish that term from the law of nature.

This division of law Carneades passed over altogether. For he divided all law into the law of nature and the law of particular countries. Nevertheless if undertaking to treat of the body of law which is maintained between states—for he added a statement in regard to war and things acquired by means of war—he would surely have been obliged to make mention of this law.

18. Wrongly, moreover, does Carneades ridicule justice as folly.

¹ In regard to this passage Acro, or some other ancient interpreter of Horace [*Sat.* I. iii. 98]: 'The poet is writing in opposition to the teachings of the Stoics. He wishes to show that justice does not have its origin in nature but is born of expediency.' For the opposite view see Augustine's argument, *On Christian Doctrine*, Book III, chap. xiv.

For since, by his own admission, the national who in his own country obeys its laws is not foolish, even though, out of regard for that law, he may be obliged to forgo certain things advantageous for himself, so that nation is not foolish which does not press its own advantage to the point of disregarding the laws common to nations. The reason in either case is the same. For just as the national, who violates the law of his country in order to obtain an immediate advantage,¹ breaks down that by which the advantages of himself and his posterity are for all future time assured, so the state which transgresses the laws of nature and of nations cuts away also the bulwarks which safeguard its own future peace. Even if no advantage were to be contemplated from the keeping of the law, it would be a mark of wisdom, not of folly, to allow ourselves to be drawn toward that to which we feel that our nature leads.

19. Wherefore, in general, it is by no means true that

You must confess that laws were framed
From fear of the unjust,²

a thought which in Plato some one explains thus, that laws were invented from fear of receiving injury, and that men are constrained by a kind of force to cultivate justice. For that relates only to the institutions and laws which have been devised to facilitate the enforcement of right; as when many persons in themselves weak, in order that they might not be overwhelmed by the more powerful, leagued themselves together to establish tribunals and by combined force to maintain these, that as a united whole they might prevail against those with whom as individuals they could not cope.

And in this sense we may readily admit also the truth of the saying that right is that which is acceptable to the stronger; so that we may understand that law fails of its outward effect unless it has a sanction behind it. In this way Solon accomplished very great results, as he himself used to declare,

[xi] By joining force and law together,
Under a like bond.

20. Nevertheless law, even though without a sanction, is not entirely void of effect. For justice brings peace of conscience, while injustice causes torments and anguish, such as Plato describes, in the breast of tyrants. Justice is approved, and injustice condemned, by

¹ This comparison Marcus Aurelius pertinently uses in Book IX [IX. xxi]: 'Every act of thine that has no relation, direct or indirect, to the common interest, rends thy life and does not suffer it to be one; such an act is not less productive of disintegration than he is who creates a dissension among a people.' The same author, Book XI [XI. viii]: 'A man cut off from a single fellow-man cannot but be considered as out of fellowship with the whole human race.' In effect, as the same Antoninus says [VI. liv]: 'What is advantageous to the swarm is advantageous to the bee.'

² As Ovid says [*Metamorphoses*, VIII. 59]:

Strong is the cause when arms the cause maintain.

the common agreement of good men. But, most important of all, in God injustice finds an enemy, justice a protector. He reserves His judgements for the life after this, yet in such a way that He often causes their effects to become manifest even in this life, as history teaches by numerous examples.

21. Many hold, in fact, that the standard of justice which they insist upon in the case of individuals within the state is inapplicable to a nation or the ruler of a nation. The reason for the error lies in this, first of all, that in respect to law they have in view nothing except the advantage which accrues from it, such advantage being apparent in the case of citizens who, taken singly, are powerless to protect themselves. But great states, since they seem to contain in themselves all things required for the adequate protection of life, seem not to have need of that virtue which looks toward the outside, and is called justice.

22. But, not to repeat what I have said, that law is not founded on expediency alone, there is no state so powerful that it may not some time need the help of others outside itself, either for purposes of trade, or even to ward off the forces of many foreign nations united against it. In consequence we see that even the most powerful peoples and sovereigns seek alliances, which are quite devoid of significance according to the point of view of those who confine law within the boundaries of states. Most true is the saying, that all things are uncertain the moment men depart from law.

23. If no association of men can be maintained without law, as Aristotle showed by his remarkable illustration drawn from brigands,¹ surely also that association which binds together the human race, or binds many nations together, has need of law; this was perceived by him who said that shameful deeds ought not to be committed even for the sake of one's country. Aristotle takes sharply to task²

¹ Chrysostom, *On Ephesians*, chap. iv [Homily IX, iii]: 'But how does it happen, some one will say, that brigands live on terms of peace? And when? Tell me, I pray. This happens, in fact, when they are not acting as brigands; for if, in dividing up their loot, they did not observe the precepts of justice and make an equitable apportionment, you would see them engaged in strifes and battles among themselves.'

Plutarch [*Pyrrhus*, ix=388 A] quotes the saying of Pyrrhus, that he would leave his kingdom to that one of his children who should have the sharpest [xxii] sword, declaring that this has the same implication as the verse of Euripides in the *Phoenician Maidens* [line 68]:

That they with gory steel the house divide.

He adds, moreover, the noble sentiment: 'So inimical to the social order, and ruthless, is the determination to possess more than is one's own!'

Cicero, *Letters*, XI. xvi [*Ad Fam.* IX. xvi. 3]: 'All things are uncertain when one departs from law.' Polybius, Book IV [IV. xxix. 4]: 'This above all other causes breaks up the private organizations of criminals and thieves, that they cease to deal fairly with one another; in fine, that good faith among them has perished.'

² Plutarch, *Agesilaus* [xxxvii=617 D]: 'In their conception of honour the Lacedaemonians assign the first place to the advantage of their country; they neither know nor learn any other kind of right than that which they think will advance the interests of Sparta.'

In regard to the same Lacedaemonians the Athenians declared, in Thucydides, Book V [V. cv]: 'In relations with one another and according to their conception of civil rights they are most strict

those who, while unwilling to allow any one to exercise authority over themselves except in accordance with law, yet are quite indifferent as to whether foreigners are treated according to law or not.

24. That same Pompey, whom I just now quoted for the opposite view, corrected the statement which a king of Sparta had made, that that state is the most fortunate whose boundaries are fixed by spear and sword; he declared that that state is truly fortunate which has justice for its boundary line. On this point he might have invoked the authority of another king of Sparta, who gave the preference to justice over bravery in war,¹ using this argument, that bravery ought to be directed by a kind of justice, but if all men were just they would have no need for bravery in war.

Bravery itself the Stoics defined as virtue fighting on behalf of equity. Themistius in his address to Valens argues with eloquence that kings who measure up to the rule of wisdom make account not only of the nation which has been committed to them, but of the whole human race, and that they are, as he himself says, not friends of the Macedonians alone, or friends of the Romans,² but friends of mankind. The name of Minos³ became odious to future ages for no other reason than this, that he limited his fair-dealing to the boundaries of his realm.

25. Least of all should that be admitted which some people imagine, that in war all laws are in abeyance. On the contrary war ought not to be undertaken except for the enforcement of rights; when once undertaken, it should be carried on only within the bounds of law and good faith. Demosthenes well said that war is directed against those who cannot be held in check by judicial processes. For judgements are efficacious against those who feel that they are too weak to resist; against those who are equally strong, or think that they are, wars [xii] are undertaken. But in order that wars may be justified, they must be carried on with not less scrupulousness than judicial processes are wont to be.

26. Let the laws be silent, then, in the midst of arms, but only the laws of the State, those that the courts are concerned with, that

in their practice of virtue. But with respect to others, though many considerations bearing upon the subject might be brought forward, he will state the fact in a word who will say that in their view what is agreeable is honourable, what is advantageous is just.

¹ Hearing that the king of the Persians was called great, Agesilaus remarked: 'Wherein is he greater than I, if he is not more just?' The saying is quoted by Plutarch [*Apothegms, Agesilaus*, lxiii = *Morals*, 213 c].

² Marcus Aurelius exceedingly well remarks [VI. xlv]: 'As Antoninus, my city and country are Rome; as a man, the world.' Porphyry, *On Abstaining from Animal Food*, Book III [III. xxvii]: 'He who is guided by reason keeps himself blameless in relation to his fellow-citizens, likewise also in relation to strangers and men in general; the more submissive to reason, the more godlike a man is.'

³ In regard to Minos there is a verse of an ancient poet:

Under the yoke of Minos all the island groaned.

On this point see Cyril, *Against Julian*, Book VI.

are adapted only to a state of peace; not those other laws, which are of perpetual validity and suited to all times. It was exceedingly well said by Dion of Prusa, that between enemies written laws, that is, laws of particular states, are not in force, but that unwritten laws¹ are in force, that is, those which nature prescribes, or the agreement of nations has established. This is set forth by that ancient formula of the Romans, 'I think that those things ought to be sought by means of a war that is blameless and righteous.'

The ancient Romans, as Varro noted, were slow in undertaking war, and permitted themselves no licence in that matter, because they held the view that a war ought not to be waged except when free from reproach. Camillus said that wars should be carried on justly no less than bravely; Scipio Africanus, that the Roman people commenced and ended wars justly. In another passage you may read: 'War has its laws no less than peace.' Still another writer admires Fabricius as a great man who maintained his probity in war—a thing most difficult—and believed that even in relation to an enemy there is such a thing as wrongdoing.

27. The historians in many a passage reveal how great in war is the influence of the consciousness that one has justice on his side;² they often attribute victory chiefly to this cause. Hence the proverbs, that a soldier's strength is broken or increased by his cause; that he who has taken up arms unjustly rarely comes back in safety; that

¹ Thus King Alphonse, being asked whether he owed a greater debt to books or to arms, said that from books he had learned both the practice and laws of arms. Plutarch [*Camillus*, x=134 B]: 'Among good men certain laws even of war are recognized, and a victory ought not to be striven for in such a way as not to spurn an advantage arising from wicked and impious actions.'

² Pompey well says in Appian [*Civil Wars*, II. viii. 51]: 'We ought to trust in the gods and in the cause of a war which has been undertaken with the honourable and just [xxiii] purpose of defending the institutions of our country.' In the same author Cassius [*Civil Wars*, IV. xii. 97]: 'In wars the greatest hope lies in the justice of the cause.' Josephus, *Antiquities of the Jews*, Book XV [XV. v. 3]: 'God is with those who have right on their side.'

Procopius has a number of passages of similar import. One is in the speech of Belisarius, after he had started on his expedition to Africa [*Vandalic War*, I. xii. 21]: 'Bravery is not going to give the victory, unless it has justice as a fellow-soldier.' Another is in the speech of the same general before the battle not far from Carthage [I. xii. 19]. A third is in the address of the Lombards to the Herulians, where the following words, as corrected by me, are found [*Gothic War*, II. xiv]: 'We call to witness God, the slightest manifestation of whose power is equal to all human strength. He, as may well be believed, making account of the causes of war, will give to each side the outcome of battle which each deserves.' This saying was soon afterward confirmed by a wonderful occurrence.

In the same author Totila thus addresses the Goths [*Gothic War*, III. viii]: 'It cannot, it cannot happen, I say, that they who resort to violence and injustice can win renown in fighting; but as the life of each is, such the fortune of war that falls to his lot.' Soon after the taking of Rome Totila made another speech bearing on the same point [*Gothic War*, III. xxi].

Agathias, Book II [*Histories*, II. i]: 'Injustice and forgetfulness of God are to be shunned always, and are harmful, above all, in war and in time of battle.' This statement he elsewhere proves by the notable illustrations of Darius, Xerxes, and the Athenians in Sicily [*Histories*, II. v]. See also the speech of Crispinus to the people of Aquileia, in Herodian, Book VIII [*Histories*, VIII. vi].

In Thucydides, Book VII [VII. xviii], we find the Lacedaemonians reckoning the disasters which they had suffered in Pylos and elsewhere as due to themselves, because they had refused a settlement by arbitration which had been offered them. But as afterward the Athenians, having committed many wicked deeds, refused arbitration, a hope of greater success in their operations revived in the Lacedaemonians.

hope is the comrade of a good cause; and others of the same purport.

No one ought to be disturbed, furthermore, by the successful outcome of unjust enterprises. For it is enough that the fairness of the cause exert a certain influence, even a strong influence upon actions, although the effect of that influence, as happens in human affairs, is often nullified by the interference of other causes. Even for winning friendships, of which for many reasons nations as well as individuals have need, a reputation for having undertaken war not rashly nor unjustly, and of having waged it in a manner above reproach, is exceedingly efficacious. No one readily allies himself with those in whom he believes that there is only a slight regard for law, for the right, and for good faith.

28. Fully convinced, by the considerations which I have advanced, that there is a common law among nations, which is valid alike for war and in war, I have had many and weighty reasons for undertaking to write upon this subject. Throughout the Christian world I observed a lack of restraint in relation to war, such as even barbarous races should be ashamed of; I observed that men rush to arms for slight causes, or no cause at all, and that when arms have once been taken up there is no longer any respect for law, divine or human; it is as if, in accordance with a general decree, frenzy had openly been let loose for the committing of all crimes.

[Johann Wild] 29. Confronted with such utter ruthlessness many men, who are the very furthest from being bad men, have come to the point of forbidding all use of arms to the Christian,¹ whose rule of conduct above everything else comprises the duty of loving all men. To this opinion sometimes John Ferus and my fellow-countryman Erasmus seem to incline, men who have the utmost devotion to peace in both Church and State; but their purpose, as I take it, is, when things have gone in one direction, to force them in the opposite direction, as we are accustomed to do, that they may come back to a true middle ground. But the very effort of pressing too hard in the opposite direction is often so far from being helpful that it does harm, because in such arguments the detection of what is extreme is easy, and results in weakening the influence of other statements which are well within the bounds of truth. For both extremes therefore a remedy must be found, that men may not believe either that nothing is allowable, or that everything is.

30. At the same time through devotion to study in private life I have wished—as the only course now open to me, undeservedly

¹ Tertullian, *On the Resurrection of the Flesh* [chap. xvi]: 'The sword which has become blood-stained honourably in war, and has thus been employed in man-killing of a better sort.'

forced out from my native land, which had been graced by so many of my labours—to contribute somewhat to the philosophy of the law, which previously, in public service, I practised with the utmost degree of probity of which I was capable. [xiii] Many heretofore have purposed to give to this subject a well-ordered presentation; no one has succeeded. And in fact such a result cannot be accomplished unless—a point which until now has not been sufficiently kept in view—those elements which come from positive law are properly separated from those which arise from nature. For the principles of the law of nature, since they are always the same, can easily be brought into a systematic form; but the elements of positive law, since they often undergo change and are different in different places, are outside the domain of systematic treatment, just as other notions of particular things are.

31. If now those who have consecrated themselves to true justice should undertake to treat the parts of the natural and unchangeable philosophy of law, after having removed all that has its origin in the free will of man; if one, for example, should treat legislation, another taxation, another the administration of justice, another the determination of motives, another the proving of facts, then by assembling all these parts a body of jurisprudence could be made up.

32. What procedure we think should be followed we have shown by deed rather than by words in this work, which treats by far the noblest part of jurisprudence.

33. In the first book, having by way of introduction spoken of the origin of law, we have examined the general question, whether there is any such thing as a lawful war; then, in order to determine the differences between public war and private war, we found it necessary to explain the nature of sovereignty—what nations, what kings possess complete sovereignty; who possess sovereignty only in part, who with right of alienation, who otherwise; then it was necessary to speak also concerning the duty of subjects to their superiors.

34. The second book, having for its object to set forth all the causes from which war can arise, undertakes to explain fully what things are held in common, what may be owned in severalty; what rights persons have over persons, what obligation arises from ownership; what is the rule governing royal successions; what right is established by a pact or a contract; what is the force of treaties of alliance; what of an oath private or public, and how it is necessary to interpret these; what is due in reparation for damage done; in what the inviolability of ambassadors consists; what law controls the burial of the dead, and what is the nature of punishments.

35. The third book has for its subject, first, what is permissible in war. Having distinguished that which is done with impunity, or even that which among foreign peoples is defended as lawful, from that which actually is free from fault, it proceeds to the different kinds of peace, and all compacts relating to war.

36. The undertaking seemed to me all the more worth while because, as I have said, no one has dealt with the subject-matter as a whole, and those who have treated portions of it have done so in a way to leave much to the labours of others. Of the ancient philosophers nothing in this field remains; either of the Greeks, among whom Aristotle had composed a book with the title *Rights of War*, or—what was especially to be desired—of those who gave their allegiance to the young Christianity. Even the books of the ancient Romans on fœtal law have transmitted to us nothing of themselves except the title. Those who have made collections of the cases which are called ‘cases of conscience’ have merely written chapters on war, promises, oaths, and reprisals, just as on other subjects.

37. I have seen also special books on the law of war, some by theologians, as Franciscus de Victoria, Henry of Gorkum, William Matthæi;¹ others by doctors of law, as John Lupus, Francis Arias, Giovanni da Legnano, Martin of Lodi. All of these, however, have said next to nothing upon a most fertile subject; most of them have done their work without system, and in such a way as to intermingle and utterly confuse what belongs to the law of nature, to divine law, to the law of nations, to civil law, and to the body of law which is found in the canons.

38. What all these writers especially lacked, the illumination of history, the very learned [xiv] Faur undertook to supply in some chapters of his *Semestria*, but in a manner limited by the scope of his own work, and only through the citation of authorities. The same thing was attempted on a larger scale, and by referring a great number of examples to some general statements, by Balthazar Ayala; and still more fully, by Alberico Gentili. Knowing that others can derive profit from Gentili’s painstaking, as I acknowledge that I have, I leave it to his readers to pass judgement on the shortcomings of his work as regards method of exposition, arrangement of matter, delimitation of inquiries, and distinctions between the various kinds of law. This only I shall say, that in treating controversial questions it is his frequent practice to base his conclusions on a few examples, which are not in all cases worthy of approval, or even to follow the opinions of modern jurists, formulated in arguments of which not

¹ To these add the work of John of Cartagena, published at Rome in 1609.

a few were accommodated to the special interests of clients, not to the nature of that which is equitable and upright.

The causes which determine the characterization of a war as lawful or unlawful Ayala did not touch upon. Gentili outlined certain general classes, in the manner which seemed to him best; but he did not so much as refer to many topics which have come up in notable and frequent controversies.

39. We have taken all pains that nothing of this sort escape us; and we have also indicated the sources from which conclusions are drawn, whence it would be an easy matter to verify them, even if any point has been omitted by us. It remains to explain briefly with what helps, and with what care, I have attacked this task.

First of all, I have made it my concern to refer the proofs of things touching the law of nature to certain fundamental conceptions which are beyond question, so that no one can deny them without doing violence to himself. For the principles of that law, if only you pay strict heed to them, are in themselves manifest and clear, almost as evident as are those things which we perceive by the external senses; and the senses do not err if the organs of perception are properly formed and if the other conditions requisite to perception are present. Thus in his *Phoenician Maidens* Euripides represents Polynices, whose cause he makes out to have been manifestly just, as speaking thus:

Mother, these words, that I have uttered, are not
Inwrapped with indirection, but, firmly based
On rules of justice and of good, are plain
Alike to simple and to wise.¹

The poet adds immediately a judgement of the chorus, made up of women, and barbarian women at that, approving these words.

40. In order to prove the existence of this law of nature, I have, furthermore, availed myself of the testimony of philosophers,² historians, poets, finally also of orators. Not that confidence is to be reposed in them without discrimination; for they were accustomed to serve the interests of their sect, their subject, or their cause. But when many at different times, and in different places, affirm the same thing as certain, that ought to be referred to a universal cause; and this cause, in the lines of inquiry which we are following, must be either a correct conclusion drawn from the principles of nature,

¹ The same Euripides represents Hermione as saying to Andromache [*Andromache*, 243]:

Not under laws barbaric do men live
In this our city;

and Andromache as answering [*ibid.*, 244]:

What there is base, here too not blameless is.

² Why should not one avail himself of the testimony of the philosophers, when Alexander Severus constantly read Cicero *On the Commonwealth* and *On Duties*? [Lampridius, *Alexander Severus*, xxx. 2.]

or common consent. The former points to the law of nature; the latter, to the law of nations.

The distinction between these kinds of law is not to be drawn from the testimonies themselves (for writers everywhere confuse the terms law of nature and law of nations), but from the character of the matter. For whatever cannot be deduced from certain principles by a sure process of reasoning, and yet is clearly observed everywhere, must have its origin in the free will of man.

41. These two kinds of law, therefore, I have always particularly sought to distinguish from each other and from municipal law. Furthermore, in the law of nations I have distinguished between that which is truly and in all respects law, and that which produces merely a kind of outward effect simulating that primitive law, as, for example, the prohibition to resist by force, or even the duty of defence in any place by public force, in order to secure some advantage, or for [xv] the avoidance of serious disadvantages. How necessary it is, in many cases, to observe this distinction, will become apparent in the course of our work.

With not less pains we have separated those things which are strictly and properly legal, out of which the obligation of restitution arises, from those things which are called legal because any other classification of them conflicts with some other stated rule of right reason. In regard to this distinction of law we have already said something above.

42. Among the philosophers Aristotle deservedly holds the foremost place, whether you take into account his order of treatment, or the subtlety of his distinctions, or the weight of his reasons. Would that this pre-eminence had not, for some centuries back, been turned into a tyranny, so that Truth, to whom Aristotle devoted faithful service, was by no instrumentality more repressed than by Aristotle's name!

For my part, both here and elsewhere I avail myself of the liberty of the early Christians, who had sworn allegiance to the sect of no one of the philosophers, not because they were in agreement with those who said that nothing can be known—than which nothing is more foolish—but because they thought that there was no philosophic sect whose vision had compassed all truth, and none which had not perceived some aspect of truth. Thus they believed that to gather up into a whole the truth which was scattered among the different philosophers¹ and dispersed among the sects, was in reality to establish a body of teaching truly Christian.

¹ The words are those of Lactantius, *Divine Institutes*, Book VI, chap. ix [VII. vii. 4].

Justin, *First Apology* [*Second Apology*, chap. xiii]: 'Not because the teachings of Plato are altogether different from the teachings of Christ, but because they do not completely harmonize,

43. Among other things—to mention in passing a point not foreign to my subject—it seems to me that not without reason some of the Platonists and early Christians¹ departed from the teachings of Aristotle in this, that he considered the very nature of virtue as a mean in passions and actions. That principle, once adopted, led him to unite distinct virtues, as generosity and frugality, into one; to assign to truth extremes between which, on any fair premise, there is no possible co-ordination, boastfulness, and dissimulation; and to apply the designation of vice to certain things which either do not exist, or are not in themselves vices, such as contempt for pleasure and for honours, and freedom from anger against men.

44. That this basic principle, when broadly stated, is unsound, becomes clear even from the case of justice. For, being unable to find in passions and acts resulting therefrom the too much and the too little opposed to that virtue, Aristotle sought each extreme in the things themselves with which justice is concerned. Now in the first place this is simply to leap from one class of things over into another class, a fault which he rightly censures in others; then, for a person to accept less than belongs to him may in fact under unusual conditions constitute a fault, in view of that which, according to the circumstances, he owes to himself and to those dependent on him; but in any case the act cannot be at variance with justice, the essence of which lies in abstaining from that which belongs to another.

By equally faulty reasoning Aristotle tries to make out that adultery committed in a burst of passion, or a murder due to anger, is not properly an injustice. Whereas nevertheless injustice has no other essential quality than the unlawful seizure of that which belongs to another; and it does not matter whether injustice arises from avarice, from lust, from anger, or from ill-advised compassion; or from an overmastering desire to achieve eminence, out of which instances of the gravest injustice constantly arise. For to disparage such incitements, with the sole purpose in view that human society may not receive injury, is in truth the concern of justice.

45. To return to the point whence I started, the truth is that

as the teachings of others do not [xxiv] —for example, those of the Stoics, the poets, and the writers of history. For each one of these spoke rightly in part, in accordance with the reason which had been implanted in him, perceiving what was consistent therewith.

Tertullian [*On the Soul*, xx]: 'Seneca often on our side'; but the same writer also warns us [*An Answer to the Jews*, ix] that the entire body of spiritual teachings was to be found in no man save Christ alone.

Augustine, *Letters*, ccii [xci. 3]: 'The rules of conduct which Cicero and other philosophers recommend are being taught and learned in the churches that are increasing all over the world.' On this point, if time is available, consult the same Augustine in regard to the Platonists, who, he says, with changes in regard to a few matters can be Christians; *Letters*, lvi [cxviii. 21]; *On the True Religion*, chap. iii, and *Confessions*, Book VII, chap. ix, and Book VIII, chap. ii.

¹ Lactantius treats this subject at length in the *Institutes*, Book VI, chaps. xv, xvi, xvii. Says Cassiodorus [*De Amicitia*, chapter entitled *Quod affectus sine consensu non multum prosit vel obsit*]: 'It is advantageous or harmful to be moved not by feelings, but in accordance with feelings.'

some virtues do tend to keep passions under control ; but that is not because such control is a proper and essential characteristic of every virtue. Rather it is because right reason, which virtue everywhere follows, in some things prescribes the pursuing of a middle course,¹ in others stimulates to the utmost degree. We cannot, for example, worship God too much ; for superstition errs not by [xvi] worshipping God too much, but by worshipping in a perverse way. Neither can we too much seek after the blessings that shall abide for ever, nor fear too much the everlasting evils, nor have too great hatred for sin.

With truth therefore was it said by Aulus Gellius, that there are some things of which the extent is limited by no boundaries—the greater, the more ample they are, the more excellent. Lactantius, having discussed the passions at great length, says :

‘The method of wisdom consists in controlling not the passions, but their causes, since they are stirred from without. And putting a check upon the passions themselves ought not to be the chief concern, because they may be feeble in the greatest crime, and very violent without leading to crime.’

Our purpose is to make much account of Aristotle, but reserving in regard to him the same liberty which he, in his devotion to truth, allowed himself with respect to his teachers.

46. History in relation to our subject is useful in two ways : it supplies both illustrations and judgements. The illustrations have greater weight in proportion as they are taken from better times and better peoples ; thus we have preferred ancient examples, Greek and Roman, to the rest. And judgements are not to be slighted, especially when they are in agreement with one another ; for by such statements the existence of the law of nature, as we have said, is in a measure proved, and by no other means, in fact, is it possible to establish the law of nations.

47. The views of poets and of orators do not have so great weight ; and we make frequent use of them not so much for the purpose of gaining acceptance by that means for our argument, as of adding, from their words, some embellishment to that which we wished to say.

48. I frequently appeal to the authority of the books which men inspired by God have either written or approved, nevertheless

¹ Agathias, Book V, in a speech of Belisarius [*Histoires*, V. xviii] : ‘Of the emotions of the soul those ought in every case to be seized in which there is found, pure and unmixed, an impulse in harmony with the requirements of duty and worthy to be chosen. Those emotions, however, which have a trend and inclination toward evil, are not to be utilized in all cases, but only so far as they contribute to our advantage. That good judgement is a blessing pure and unmixed no one would deny. In anger the element of energy is praiseworthy, but what exceeds the proper limit is to be avoided, as involving disadvantage.’

with a distinction between the Old Testament and the New. There are some who urge that the Old Testament sets forth the law of nature. Without doubt they are in error, for many of its rules come from the free will of God. And yet this is never in conflict with the true law of nature; and up to this point the Old Testament can be used as a source of the law of nature, provided we carefully distinguish between the law of God, which God sometimes executes through men, and the law of men in their relations with one another.

This error we have, so far as possible, avoided, and also another opposed to it, which supposes that after the coming of the New Testament the Old Testament in this respect was no longer of use. We believe the contrary, partly for the reasons which we have already given, partly because the character of the New Testament is such that in its teachings respecting the moral virtues it enjoins the same as the Old Testament or even enjoins greater precepts. In this way we see that the early Christian writers used the witnesses of the Old Testament.

49. The Hebrew writers,¹ moreover, most of all those who have thoroughly understood the speech and customs of their people, are able to contribute not a little to our understanding of the thought of the books which belong to the Old Testament.

50. The New Testament I use in order to explain—and this cannot be learned from any other source—what is permissible to Christians. This, however—contrary to the practice of most men—I have distinguished from the law of nature, considering it as certain that in that most holy law a greater degree of moral perfection is enjoined upon us than the law of nature, alone and by itself, would require. And nevertheless I have not omitted to note the things that are recommended to us rather than enjoined, that we may know that, while the turning aside from what has been enjoined is wrong and involves the risk of punishment, a striving for the highest excellence implies a noble purpose and will not fail of its reward.

51. The authentic synodical canons are collections embodying the general principles of divine law as applied to cases which come up; they either show what the divine law enjoins, or urge us to that which God would fain persuade. And this truly is the mission of the Christian Church, to transmit those things which were transmitted to it by God, and [xvii] in the way in which they were transmitted.

Furthermore customs which were current, or were considered praiseworthy, among the early Christians and those who rose to the measure of so great a name, deservedly have the force of canons.

¹ This was perceived by Cassian [Cassiodorus] as shown by his *Institute of Holy Writ* [Preface].

Next after these comes the authority of those who, each in his own time, have been distinguished among Christians for their piety and learning, and have not been charged with any serious error; for what these declare with great positiveness, and as if definitely ascertained, ought to have no slight weight for the interpretation of passages in Holy Writ which seem obscure. Their authority is the greater the more there are of them in agreement, and as we approach nearer to the times of pristine purity, when neither desire for domination nor any conspiracy of interests had as yet been able to corrupt the primitive truth.

52. The Schoolmen, who succeeded these writers, often show how strong they are in natural ability. But their lot was cast in an unhappy age, which was ignorant of the liberal arts; wherefore it is less to be wondered at if among many things worthy of praise there are also some things which we should receive with indulgence. Nevertheless when the Schoolmen agree on a point of morals, it rarely happens that they are wrong, since they are especially keen in seeing what may be open to criticism in the statements of others. And yet in the very ardour of their defence of themselves against opposing views, they furnish a praiseworthy example of moderation; they contend with one another by means of arguments—not, in accordance with the practice which has lately begun to disgrace the calling of letters, with personal abuse, base offspring of a spirit lacking self-mastery.

53. Of those who profess knowledge of the Roman law there are three classes.

The first consists of those whose work appears in the Pandects, the Codes of Theodosius and Justinian, and the Imperial Constitutions called *Novellae*.

To the second class belong the successors of Irnerius, that is Accursius, Bartolus, and so many other names of those who long ruled the bar.

The third class comprises those who have combined the study of classical literature with that of law.

To the first class I attribute great weight. For they frequently give the very best reasons in order to establish what belongs to the law of nature, and they often furnish evidence in favour of this law and of the law of nations. Nevertheless they, no less than the others, often confuse these terms, frequently calling that the law of nations which is only the law of certain peoples, and that, too, not as established by assent, but perchance taken over through imitation of others or by pure accident. But those provisions which really belong to the law of nations they often treat, without distinction or discrimination, along with those which belong to the Roman law,

as may be seen by reference to the title *On Captives and Postliminy*. We have, therefore, endeavoured to distinguish these two types from each other.

54. The second class, paying no heed to the divine law or to ancient history, sought to adjust all controversies of kings and peoples by application of the laws of the Romans, with occasional use of the canons. But in the case of these men also the unfortunate condition of their times was frequently a handicap which prevented their complete understanding of those laws, though, for the rest, they were skilful enough in tracing out the nature of that which is fair and good. The result is that while they are often very successful in establishing the basis of law, they are at the same time bad interpreters of existing law. But they are to be listened to with the utmost attention when they bear witness to the existence of the usage which constitutes the law of nations in our day.

55. The masters of the third class, who confine themselves within the limits of the Roman law and deal either not at all, or only slightly, with the common law of nations, are of hardly any use in relation to our subject. They combine the subtlety of the Schoolmen with a knowledge of laws and of canons; and in fact two of them, the Spaniards Covarruvias and Vasquez, did not refrain from treating the controversies of peoples and kings, the latter with great freedom, the former with more restraint and not without precision of judgement.

[xviii] The French have tried rather to introduce history into their study of laws. Among them Bodin and Hotman have gained a great name, the former by an extensive treatise, the latter by separate questions; their statements and lines of reasoning will frequently supply us with material in searching out the truth.

56. In my work as a whole I have, above all else, aimed at three things: to make the reasons for my conclusions as evident as possible; to set forth in a definite order the matters which needed to be treated; and to distinguish clearly between things which seemed to be the same and were not.

57. I have refrained from discussing topics which belong to another subject, such as those that teach what may be advantageous in practice. For such topics have their own special field, that of politics, which Aristotle rightly treats by itself, without introducing extraneous matter into it. Bodin, on the contrary, mixed up politics with the body of law with which we are concerned. In some places nevertheless I have made mention of that which is expedient, but only in passing, and in order to distinguish it more clearly from what is lawful.

58. If any one thinks that I have had in view any controversies

of our own times, either those that have arisen or those which can be foreseen as likely to arise, he will do me an injustice. With all truthfulness I aver that, just as mathematicians treat their figures as abstracted from bodies, so in treating law I have withdrawn my mind from every particular fact.

59. As regards manner of expression, I wished not to disgust the reader, whose interests I continually had in mind, by adding prolixity of words to the multiplicity of matters needing to be treated. I have therefore followed, so far as I could, a mode of speaking at the same time concise and suitable for exposition, in order that those who deal with public affairs may have, as it were, in a single view both the kinds of controversies which are wont to arise and the principles by reference to which they may be decided. These points being known, it will be easy to adapt one's argument to the matter at issue, and expand it at one's pleasure.

60. I have now and then quoted the very words of ancient writers, where they seemed to carry weight or to have unusual charm of expression. This I have occasionally done even in the case of Greek writers, but as a rule only when the passage was brief, or such that I dared not hope that I could bring out the beauty of it in a Latin version. Nevertheless in all cases I have added a Latin translation for the convenience of those who have not learned Greek.¹

61. I beg and adjure all those into whose hands this work shall come, that they assume toward me the same liberty which I have assumed in passing upon the opinions and writings of others. They who shall find me in error will not be more quick to advise me than I to avail myself of their advice.

And now if anything has here been said by me inconsistent with piety, with good morals, with Holy Writ, with the concord of the Christian Church, or with any aspect of truth, let it be as if unsaid.

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This series, which includes the classic works connected with the history and development of international law, was undertaken by the Carnegie Institution of Washington in 1906, at the suggestion of Mr. James Brown Scott, then Solicitor for the Department of State, under whose supervision as General Editor the series has since been published. On January 1, 1917, the project was transferred to the Carnegie Endowment for International Peace and the publication of the series is being continued by the Endowment's Division of International Law, of which the General Editor of the Classics is the Director.

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