Chap. 3.

Of the persons against whom Crimes may be Committed.

Crimes may be Committed against those who are not Capable to Commit them, as Children under the age of Discretion, or Madmen: Pati enim potest qui non potuit l. 35 ff. de Injur. So Crimes may in some sense be Committed against the Dead, by railing at their Memory l. 1 § 4 ff. de Injur. Stopping their Burial d. l. i § 6. Defacing their Statues l. 27 ff. Eod. Raising their Bodies l. 8 pr. ff. de Religios. Or taking away the ornaments from them Code 3 Inst. 110 Hale pl. Cr. 67 Hawkins pl. Cr. lib. 1 Cap. 33 § 29 M'Lenzie Crim. part 1 pl. 1934. By which Unlawful doings the Heirs and Friends of the Dead are properly Understood to be offended, and may sue for Reparation. For a Crime may be Committed against a man either Directly in his own person, or Indirectly in the persons of those Under his power or affection in which he hath a Special Interest, as against a Father by an Injury offered to his Child, or a Child, or a Husband by an Injury offered to his wife; or against a Master by an Injury offered to his Servant l. 1 § 3 & ult. l. 15. § 34 & Legg. l. 17 § 10 & Legg. ff. de Injur. Volenti non fit Injuria l. 183 ff. de Injur. Where he who suffers by what is done, hath power to Dispense with and pass from it. V. G. one Cannot Steal his own goods nor is guilty of Theft by taking away the Goods of Another with Consent. But ones Giving way or Consenting to an Act of Violence against his life or body, doth not excuse the Actor because Nemo est Dominus Suorum Membrorum l. 13 § 2 ad L. Aquil. No person hath the free Disposal of his own life and Members. Therefore the Amabate who gave the Coup de Grace to Saul in his Anguish at his own Desire was justly put to Death 2 Sam. 1. 9. 10. 15. For the same Reason Self Murder, and a Mans Prostituting his wife's Chastity with her own Consent, are Highly Criminal. Aut. Matth. de Crimin. Prolegom. Cap. 3.

What would be a Crime, if Committed against some persons, may be lawfully done to others. Thus, Law doth not Much Notice Verbal Injuries done to Vile Unchaste words and profligate persons l. 22 l. 29 ad L. Jul. Eod. Tit. Nov.

Adultor. Jo. Voet. Comm. ad Tit. ff. de Injur. n. 4. And Homicide Committed in the Advancement or Execution of Justice is Lawfull in some cases Act 6 Parl. 3 J. 5 Act 33 Parl. 1 J. 6 Act 22 Parl. 1 Sess. 1 Act 6 Parl. 1 Sess. 2 Act 4 Parl. 2 Sess. 2 Ch. 2.

Chap. 4.

Laws would be of Little Effect in Governing Mankind, if Transgressors were not punished. Vice is Restrained and people are Kept within bounds, by the Terror of punishments and forefeitures. Punishment is the Correction of a Crime Committed, or an Evil that one Suffers, for the Evil he hath done. Forfeiture is the losing some right privileged Estate, honour, office or Effects, in Consequence of a Transgression of the Law. In treating of punishments and forfeitures, I shall first set forth the Nature and Design of them, 2dly Explain the several kinds of them.

Sect. 1.

The Nature & Design of Punishment & forfeiture.

Both punishment and forfeiture are Intended partly to satisfy the publick and private Revenge for the Contempt of Authority, and Injury done thereby to the Community and to private persons, whence in the Civil Law it is termed Vindicta l. 3 ff. de Verb. Signif. Partly to Secure Against Such Offences in time Comming from others by the Terror of the Offenders Exemplary punishment, and from himself by Cutting him off or obliging him by the Smart of his Sufferings to future good Behaviour: Because Impunitas Continuum affectum tribuit Delinquendi, et Minatur Innocentibus, qui parcit Nocentibus. Whence Aristotle Ethic. calls punishment Inequitatis et Malorum Medicina.

One or other of which Motives takes place in the punishment of Every Crime; and some times all Concur to Influence the punishment. I say, that all these Motives do only some times Most. Because a Capital punishment is not Inflicted with any View to Reform the Criminal