Sect. 1.

Of Necessary homicide with Respect to private Interest.

Necessary homicide ~~made~~ Relative to private Interest, is, when one is forced against his Inclination to kill another for the Defence of his own life or of that which is his, or in Defence of the life of some other person, keeping all ways within the bounds of self Defence. Fabian de pace 11. Lawyers are Mightily Divided about what is Moderamen inculpatæ tutelæ or blameless defence. Carpzovius makes three things Necessary to it, Viz. the cause, the Manner or Measure and the time. 1st That the killer was first Unjustly attacked: For there cannot be a just Defence without a previous Just ground of offence. But that being proved, he is presumed to have killed the first aggressor in Necessary self defence, Carpzov. Crim. part 1. q. 28 n. 20. 21. 22. 2d That he was in hazard of his life by the assault, and could not avoid without Depriving the assaulter of his l. 2 C. ad L. Cornel. de sicar. l. 45 § 4 ff. ad L. Aquil. And that the Manner of Defence was proportionate to the offence. That is to say, that violence offered by arms was Repelled with the same kind of Arms, or injurious words with the like words &c. Unless the injurious or the latter had not the like Instrument to Resist the Violence offered with. But if the Attacker was Superior in Strength to the other, the person assaulted is allowed to Supply his want of Strength with a weapon the the aggressor had none, or with a more Dangerous Weapon than he used: And if the person Attacked has not such an Instrument as was used against him, he may defend himself with what he hath at hand Carpzov. ibid. n. 23. 24. n. 30 n. 1 & pagg. 15 & pagg. 39 Self Defence must be Exercised on Incontinenti while the person attacked is actually in present hazard of his life. 5. ff. ad L. Aquil. l. 359 l. 17 ff. de Vi & Vi armata Carpzov. ibid. q. 28 n. 28 qu. 30 n. 43 & pagg. qu. 31 n. 1 & pagg. 9 to

to do it ex Justo vallo favours of Revenge, which is not allowable in private persons Gil. Fod. quando licet Unicuique sine Judice. l. 176 ff. de Reg. Jur. When violence is Under stood to be Repelled ex incontinenti, and when ex intervallo is Referred to the Discretion of the Judge Carpzov. ibid. n. 19.

By the law of England, where one kills a Defendendo or having no other possible Means of preserving his own life than by killing the person who Reduced him to such a Necessity this is termed only excusable Homicide and the killer forfeits all his goods and Chattels &c. but gets a write of Restitution or pardon of course upon Report of the Justices 3 Ed. 1. cap. 9. Coke 3 Inst. 56. Hale p. c. Cr. 41. Hawkins pl. Cr. lib. 1 cap. 29 § 25. Which forfeiture is made, that men may be wary and careful how they take away the life of any man. By the law of Savoy also he who kills in self Defence needs a pardon which the Prince cannot refuse to grant, and is therefore termed gratia Justitiæ, Fabr. Cod. lib. 9 Tit. 10 def. 5.

By the law of Scotland, and the Laws of most of Nations where Mohammedan Jurisprudence is strictly observed according to the Rules of it without Bordering it excepted from all Manner of Punishment Mr Crawford Crim. part 1 Tit. 11 § 52. Dankoud. Crim. cap. 7 n. 2. Menoch de Arbitr. Jud. quæst. lib. 2 cap. 277 n. 1. 2. 3. Jul. Clar. Sho micidium n. 24. And. Gail. lib. 2 observ. 110 n. 9 & pagg. Carpzov. Crim. part 1 qu. 28 n. 30 & pagg. 20 v. is any Fault or will is Necessary in such cases: Albeit it is ordinary to take Remissions bearing self Defence as a Motive in the Narration, Mr Hume ibid. Because killing in Necessary self Defence is allowed by the law of God. Gen. 14. 14 Exod. 22. the Canon law c. 6 x. de sent. Excom. in 6. law of Moses and the Civil law l. 1 l. 3 ff. de just. & Jure l. 5 § 27 ff. de vi & Vi armata l. 45 § pen. ff. ad L. Aquil. l. 4 C. ad L. Cornel. de sicar. and is Reckoned in the law of Scotland Murdrum Justum, Leg. Malcolm cap. 11. The Doctors say, that intoxica